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Urban Renewal - Relocation of Displacees - Removing Procedural Barriers to Obtaining "A Decent Home and Suitable Living Environment"

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It leadeth me beside stilled unsecured creditors,
and restoreth my collateral.
It leadeth me in paths of simplicity,
for Its name's sake.
Yea, though I walk through the valley
of the Shadow of Preference,
I shall fear no trustee—
for Thou art with me.
Thy § 9-108 and thy § 9-204(3),
they comfort me.
Thou preparest a secured interest before me,
in the presence of mine enemies.
Thou anointest my floating lien with validity,
my security runneth over.
Surely, attachment and perfection will follow me,
all the days of my life;
And I shall dwell in the House of the Code,
forever.

URBAN RENEWAL—RELOCATION OF DISPLACEES—REMOVING PROCEDURAL BARRIERS TO OBTAINING "A DECENT HOME AND SUITABLE LIVING ENVIRONMENT"

In June, 1967, the Norwalk, Connecticut, chapter of the Congress of Racial Equality (CORE), two tenants' associations and eight individuals filed a class action[1] against the Norwalk local public agency (hereinafter, the LPA), the Department of Housing and Urban Development (HUD), a private developer, and others,[2] seeking injunctive relief to prevent the transfer of urban renewal land to the private developer by the LPA, and to prevent demolition of residential units within the project area until the displacees were relocated

[1] The plaintiffs are three non-profit associations and eight individuals, each bringing the action on behalf of themselves and all others similarly situated. The association plaintiffs, Norwalk CORE and two tenants' associations, are composed of and represent the overall class of low-income Negroes and Puerto Ricans. The individual plaintiffs each represent a subdivision of one overall class of low income Negroes and Puerto Ricans who were subject to racial discrimination in the carrying out of the Norwalk urban renewal project. The class subdivisions are: (1) persons presently located in the project area; (2) persons whose homes in the renewal area were demolished, and who now live in overcrowded rental units in Norwalk; (3) persons whose homes in the project area were demolished and who now live in over-priced rental units in Norwalk; and (4) persons who formerly lived in Norwalk, but who were forced to occupy rental units outside Norwalk as a result of the acts of the defendants.

[2] The defendants are: the Norwalk Housing Authority, its Executive Director and its members; the Norwalk Redevelopment Agency, its Administrator and its members; the City of Norwalk, its mayor and city clerk; the private developer; the sponsor, the Assistant Regional Administrator for Renewal Assistance of the United States Department of Housing and Urban Development; and the Secretary of HUD.

in "decent, safe, and sanitary dwellings" as required by statute.[3] The plaintiffs also sought an affirmative court order requiring the LPA, the City of Norwalk, and the Housing Authority to proceed "with all deliberate speed" to propose a plan which would provide low-income housing on the particular six-acre tract in question. The relief sought by the plaintiffs was based upon the following constitutional and statutory claims:

(1) that they and those whom they represent have been denied the equal protection of the laws guaranteed by the Fourteenth Amendment and by the laws of the United States;
(2) that the local defendants have intended to deprive low-income Negro and Puerto Rican families of the equal protection of the laws, and have intended to force such families out of the city; and
(3) that the defendants have acted in violation of the [1949 Housing] Act.[4]

The District Court ruling[5] followed the prevailing practice of disposing of such actions by negatively answering the following threshold questions: (1) Was this a proper class action? (2) Was the relief sought appropriate? (3) Did the plaintiffs have standing to sue? But the Court of Appeals on review answered these dispositive questions in the affirmative, and reversed and remanded, holding "that the allegations of this complaint state constitutional and statutory claims on which relief can be granted, that the individual plaintiffs have standing to make the claims, and that this action was appropriately brought as a class action." *Norwalk CORE v. Norwalk Redevelopment Agency,* 395 F.2d 920, 926 (2d Cir. 1968).

The Court of Appeals decision marks a clear change in thinking in the federal courts with respect to the question of whether the federal judiciary will entertain an action seeking enforcement of the statutory relocation provisions. By contrasting the traditional view, as expressed in the District Court, with the rationale of the Court of Appeals, the change in thinking can be clearly shown. The scope of this note encompasses the statutory and constitutional claims made by individuals displaced by urban renewal. More particularly, this note shall focus on the question of whether the urban renewal displacee may use the federal courts to coerce action respecting the statutory relocation provisions of the Housing Act of 1949.

In the 1949 Act,[6] Congress set forth as a national housing goal, "the realization as soon as feasible . . . of a decent home and a suitable living environment for every American family. . . ."[7] This ideal has been reaffirmed

[3] Housing Act of 1949, § 105(c), 42 U.S.C. § 1455(c) (Supp. 1968).

[4] Norwalk CORE v. Norwalk Redevelopment Agency, 395 F.2d 920, 925 (2d Cir. 1968) (hereinafter, Norwalk CORE).

[5] Norwalk CORE, 42 F.R.D. 617 (D. Conn. 1967).

[6] Housing Act of 1949, 42 U.S.C. §§ 1441 *et seq.* (Supp. 1968).

[7] Section 2 of the Housing Act of 1949, 42 U.S.C. § 1441, contains a "Declaration of

numerous times as a matter of utmost national concern and importance,[8] but one need not be a keen observer of the American scene to know that this goal has not been met, and that efforts up to now, two decades later, have been woefully inadequate. Failure to achieve or even approximate this national housing policy goal has been cited as a major contributing factor to the urban and social disorders which have plagued American cities during the past several years.[9] Achievement of this goal is undoubtedly one of the most crucial domestic issues of our time.

One major federal effort designed to help bring about the realization of the national goal was the creation of the federal urban renewal program as Title I of the Housing Act of 1949.[10] The Act provided that the Housing and Home Finance Agency (HHFA) through its Administrator (now HUD through its Secretary) was to administer the urban renewal program "consistently with the national housing policy declared by this Act. . . ."[11] Prior to lending financial assistance under Title I, the HUD Secretary is obligated to weigh the extent to which the LPA has "undertaken positive programs . . . for preventing the spread or recurrence, in such community of slums and blighted areas. . . ."[12] Such "positive programs" include a relocation plan for displacees of the urban renewal project. A pre-condition to a loan con-

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National Housing Policy," which reads in part: "The Congress declares that the general welfare and security of the Nation and the health and living standards of its people require housing production and related community development sufficient to remedy the serious housing shortage, the 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 communities and to the advancement of the growth, wealth, and security of the Nation. . . ."

[8] "The Congress finds that this goal has not been fully realized for many of the Nation's lower income families; that this is a matter of grave national concern. . . ." Housing and Urban Development Act of 1968, Pub. L. No. 90-448, 82 Stat. 476, 1968 U.S. Code Cong. & Ad. News 2793. *See also* 42 U.S.C. § 1441(a) (Supp. 1968).

[9] "There is no doubt that housing shortages, with ever increasing rents, doubling up and substandard conditions, flowing from programs conducted under the guise of improving the City, have been a major source of oppression and frustration leading to the urban upheaval which has characterized the last four summers in the United States." Brief for Appellants at 2. *See also* Brief for the National Association For the Advancement of Colored People and National Committee Against Discrimination in Housing as Amici Curiae at 2; Brief for Connecticut Civil Liberties Union as Amicus Curiae at 8-9; Note, *Judicial Review of Displacee Relocation in Urban Renewal,* 77 YALE L.J. 966, 986 (1968).

[10] "Title I—Slum Clearance and Community Development and Redevelopment." For general descriptions of the urban renewal program, *see* Johnstone, *The Federal Urban Renewal Program,* 25 U. CHI. L. REV. 301 (1958), and Note, 72 HARV. L. REV. 504 (1959).

[11] Housing Act of 1949, § 2, 42 U.S.C. § 1441 (Supp. 1968).

[12] Housing Act of 1949, § 101, 42 U.S.C. § 1441 (Supp. 1968).

tract between HUD and the LPA is the Section 105(c) of the 1949 Act requirement that:

> [t]here shall be a feasible method for the temporary relocation of individuals and families displaced from the urban renewal area, and that there are or are being provided, in the urban renewal area or in other areas not generally less desirable in regard to public utilities and public and commercial facilities and at rents or prices within the financial means of the individuals and families displaced from the urban renewal area, 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. . . .[13]

It is the enforcement of these statutory provisions which has given rise to much federal litigation, including the *Norwalk CORE* case.

The factual situation which gave rise to the *Norwalk CORE* action is not atypical of what has happened and what is happening in many urban renewal projects around the country. In 1958, the LPA of the City of Norwalk applied for and received federal funds to assist in the planning of a large urban renewal project. A Property Management-Relocation Office was established, and studies and surveys were made to ascertain whether there would be sufficient dwelling units available outside the project area to handle the relocation of those individuals and families displaced from within the project area. In 1962, the LPA reported that it expected no shortage in the supply of dwelling units available to the displacees because, among other factors, the turnover rate in low-income public housing was adequate to assure the satisfactory relocation of the displacees. The following year, the LPA entered into a Loan and Capital Grant Contract with the HHFA under the provisions of the Housing Act of 1949. Since the HHFA granted the loan, it was apparently satisfied with the preliminary relocation efforts made by the LPA. However, the plaintiffs herein alleged that by 1965 it had become quite apparent that the projected turnover rate in the low-income public housing was greatly exaggerated, and that notwithstanding this fact, the LPA failed to change any plans for moderate-income housing to provide for additional low-income housing. The LPA, in 1967, entered into a contract of sale with a private developer whereby the private developer was to purchase a particular six-acre tract within the project area and construct the moderate-income housing as had been originally planned by the LPA. "It is the use of this six acre tract for moderate-income housing rather than low-income rental units that forms the basis of the instant action."[14]

Judge Zampano in his District Court decision held that neither the association plaintiffs nor the individual plaintiffs[15] could properly bring this

[13] 42 U.S.C. § 1455(c) (Supp. 1968).

[14] Norwalk CORE, *supra* note 5, at 619.

[15] Judge Smith's appellate court decision concerning propriety of the class action

action as a class action because both groups failed to satisfy the prerequisites to a federal class action as set out in Rule 23 of the Federal Rules of Civil Procedure.[16] His basic rationale was that no question of law or fact existed common to the whole class, essentially since of the 271 families involved, some had been relocated, some had been on the present relocation workload, and others were to be relocated at a later date. Of those already relocated, he reasoned, some were satisfied and others perhaps were not; therefore, testimony and other evidence would have to be received and weighed in each of the 271 cases to determine which of the plaintiffs were legally aggrieved:

> [i]t . . . seems clear that there are no questions of fact common to the class but, rather, separate and perhaps disparate factual circumstances with respect to each displaced family's living conditions, places of employment, financial means and other relevant factors. These divergent factual circumstances are such that the named plaintiffs cannot fairly and adequately protect the interests of the class. To fragment the overall class into subdivisions avails the plaintiffs nothing; ultimately almost all the individual members would have to come before the court to be heard. . . .[17]

The Court of Appeals held that the District Court erred in its holding that the class action was inappropriately brought. Judge Smith in the appellate decision ruled that Judge Zampano had misinterpreted the plaintiffs' complaint in that the allegations did *not* anticipate that the factual circumstances involving each member of the class would ultimately be weighed by the court. In order to find the class action proper and in accord with Rule 23, Judge Smith concluded that the allegations that "Negroes and Puerto Ricans were discriminated against in connection with relocation and that the relocation standards of Section 105(c) were generally not met for Negro and Puerto Rican displacees . . . clearly raise questions of fact common to the class which plaintiffs represent."[18]

In holding the injunctive relief sought inappropriate,[19] Judge Zampano stated that the District Court did "not have the equitable power to grant

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centers on the individual plaintiffs. As to the association plaintiffs, he states, "the reasons for requiring an individual plaintiff in a class action to be a member of the class do not necessarily preclude an association from representing a class where its *raison d'etre* is to represent the interests of that class. We do not decide, however, whether the association plaintiffs have standing. . . ." Norwalk CORE, *supra* note 4, at 937.

[16] FED. R. CIV. P. 23.

[17] Norwalk CORE, *supra* note 5, at 621.

[18] Norwalk CORE, *supra* note 4, at 937.

[19] Although not specifically so stating, Judge Zampano is discussing this point in reference to FED. R. CIV. P. 23(b)(2) which provides that an action may be maintained as a class action if "the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby rendering appropriate injunctive relief with respect to the entire class. . . ."

the extensive, almost dictatorial, redress requested."[20] As a policy reason, he expanded on the lack-of-power-idea and concluded that:

> [E]ven if the Agency [LPA] has failed, or grievously and wilfully neglected, to perform some of its legal obligations in the construction of a massive urban renewal project, the proper remedy, except in the most extraordinary circumstances, is not a sweeping repudiation or disruption of that project by the Court which will undoubtedly seriously affect and irreparably harm the public interest, confidence and treasury. . . .[21]

The appellate court rejected this trial court argument, holding that, "if the complaint was dismissed on the basis that the relief requested was inappropriate, or beyond the Court's power to grant, the Court moved too quickly."[22] The basis for this appellate holding involves Rule 54(c) of the Federal Rules of Civil Procedure which provides in part that, "every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings."[23] This Rule, when construed in conjunction with Federal Rules 8, 12, and 15,[24] provides that when a motion to dismiss a complaint is made, the complaint "should not be dismissed for legal insufficiency except where there is a failure to state a claim on which *some* relief, not limited by the request in the complaint, can be granted."[25] Thus, the District Court was held to have erred in failing to find *any* claim upon which *some* relief, not necessarily injunctive, could be granted. The question of upon what claim could some relief be granted in this action leads to the final threshold question—that of standing.

The District Court, in denying the plaintiffs' standing to litigate their question, relied on three principal urban renewal cases which have likewise denied the plaintiffs standing: *Johnson v. Redevelopment Agency of City of Oakland, California;*[26] *Harrison-Halsted Community Group, Inc. v. Housing and Home Finance Agency;*[27] and *Green Street Association v. Daley.*[28] In each of these cases, constitutional and statutory claims were raised similar to those in *Norwalk CORE.* These cases comprise what has been recognized as the traditional view on the question of standing in urban renewal cases.

[20] Norwalk CORE, *supra* note 5, at 621.

[21] Norwalk CORE, *supra* note 5, at 621-22.

[22] Norwalk CORE, *supra* note 4, at 925.

[23] FED. R. CIV. P. 54(c).

[24] These sections deal respectively with claims for relief, motions for judgment on the pleadings, and amended supplemental pleadings.

[25] Norwalk CORE, *supra* note 4, at 925-26.

[26] 317 F.2d 872 (9th Cir. 1963), *cert. denied*, 375 U.S. 915 (1963).

[27] 310 F.2d 99 (7th Cir. 1962).

[28] 373 F.2d 1 (7th Cir. 1967).

In *Johnson,* thirteen residents of an urban renewal project area brought a class action to enjoin the LPA from carrying out the renewal project on the ground that the LPA failed to have a feasible displacee relocation plan as required under Section 105(c) of the 1949 Housing Act.[29] The court held that the plaintiffs lacked standing and gave as its reason for so holding that, "[w]e find no indication that Congress intended this section [105(c)] of the Housing Act to give a right of action to those not a party to the contract between the Redevelopment Agency and the United States."[30] The court further ruled inapplicable any third-party beneficiary argument, asserting that the loan contract was governed by federal law; consequently:

> [T]he federal courts have consistently held that those not parties to the contract have no standing to enforce conditions imposed on redevelopment agencies by the United States, although those suing would benefit from such enforcement. . . .[31]

In *Harrison-Halsted,* various residents and owners of property located within an urban renewal project area, prior to the exercise of eminent domain, sought to enjoin the LPA from changing its original plans—calling for construction of moderate-income housing—to allow construction of a Chicago branch of the University of Illinois on the site. The court held:

> [Q]uestions arising from the taking of property by condemnation for state purposes, are ordinarily matters for determination by the state courts. The plaintiffs in this case have sought relief in a federal court. Whether they may properly do so depends principally on whether they have a standing to sue and whether a substantial federal question is involved.
>
> We think it is well settled that in a private suit in a federal court, where it is claimed that a substantial federal question is involved, it must clearly appear that defendant's acts constituted the invasion of plaintiff's private legal rights. *Frothingham v. Mellon,* Secretary of the Treasury, et al., 262 U.S. 477, 43 S. Ct. 597, 67 L. Ed. 1078. . . .[32]

Since the plaintiffs were not parties to the loan contract between HHFA and the LPA, concluded the court, they *a fortiori* had no "private legal rights" invaded.[33]

The *Green Street* case to some extent paralled the *Johnson, Harrison-Halsted,* and *Norwalk CORE* cases. Therein, a not-for-profit corporation, which

[29] 42 U.S.C. § 1455(c) (Supp. 1968). In addition to the statutory claim, the plaintiffs also made constitutional claims which the appellate court failed to specifically discuss in its decision.

[30] Johnson v. Redevelopment Agency of City of Oakland, *supra* note 26, at 874.

[31] Johnson v. Redevelopment Agency of City of Oakland, *supra* note 26, at 874.

[32] Harrison-Halsted Community Group, Inc. v. Housing and Home Finance Agency, *supra* note 27, at 103-04.

[33] Harrison-Halsted Community Group, Inc. v. Housing and Home Finance Agency, *supra* note 27, at 104. As in *Johnson,* constitutional claims were raised, but mentioned by the court only to the extent that the court stated it found all additional claims without merit.

represented residents of an urban renewal project area, and many individual Negroes who owned or rented property in the area filed suit against Chicago's mayor, the Secretary of HUD, and the LPA, seeking to enjoin further acquisitions of property and to have the Englewood Project declared invalid. The plaintiffs claimed that the mayor and various other officials, under color of law and in bad faith conspired "to create a no-Negro 'buffer zone' between the shopping area and the surrounding residential community so that the shopping area will be more attractive to white customers. . . ."[34] Among other constitutional and statutory claims, the plaintiffs in Count IV alleged: (1) that displacee relocation provisions did not meet the Section 105(c) requirements of the 1949 Housing Act, and (2) that the urban renewal plan expressly acknowledged an existing segregated residential pattern in Chicago, and, therefore, the plaintiffs' constitutional rights to equal protection of the law were violated by the approval of the plan. The court rejected the statutory claim by relying on the *Harrison-Halsted* rule that since the plaintiffs are not parties to the loan contract, they lack standing to litigate that claim. In affirming the dismissal of Count IV and in discussing the constitutional claim made, the court further reasoned that "[t]he existing 'segregated' residential pattern is accidental to the Plan. The city admittedly could not require relocation in any particular area. . . . [T]he local defendants would be powerless to enforce 'integrated' relocation. . . ."[35]

Judge Zampano, in the *Norwalk CORE* District Court opinion, closely followed the reasoning of the three above-mentioned cases; he denied the plaintiffs' standing primarily on the basis that none of the plaintiffs were parties to the loan contract between HUD and the LPA, and therefore had no "private legal rights" invaded. And, as in the *Johnson*, *Harrison-Halsted* and *Green Street* cases, the District Court side-stepped the constitutional claims raised by citing those three decisions and concluding that, "[m]embers of the public, whether living inside or outside a project area, ordinarily have no standing to challenge planning of an urban renewal project, . . . nor, by alleging civil rights violations, do they gain standing they would otherwise not have. . . ."[36]

The *Norwalk CORE* Court of Appeals decision acknowledged that in the past "[c]ourts have been reluctant to interfere with urban renewal planning . . . and traditionally the courts have lumped together under the rubric of 'lack of standing to sue' "[37] their real reasons for non-interference—policy

[34] Green Street Association v. Daley, *supra* note 28, at 4.

[35] Green Street Association v. Daley, *supra* note 28, at 9.

[36] Norwalk CORE, *supra* note 5, at 622.

[37] *Supra* note 4, at 926.

considerations[38] and belief that the problems are non-justiciable. In rejecting the District Court finding of lack of standing, the Court of Appeals carefully distinguished between "standing"—whether a particular plaintiff can bring an action—and "justiciability"—whether the particular problem is susceptible to judicial review. The court discussed these concepts in reference to the constitutional claim, and separately discussed the statutory claim.

The appellate court first reasoned that a particular plaintiff cannot have standing to sue, and "[t]he courts will not, it is clear, entertain a suit by one who does not have some personal stake in the outcome of the litigation. . . ."[39] However, although a particular plaintiff has a personal stake in the litigation, "he may be denied standing to sue on the ground that the right which he is attempting to assert is not one which the courts will recognize. Thus, one cannot as a general matter object to governmental action on the basis that it aids one's competitors, for it is said that no legal wrong results from lawful competition."[40] The court then cited *Taft Hotel Corp. v. Housing and Home Finance Agency*[41] and *Berry v. Housing and Home Finance Agency*,[42] two Second Circuit urban renewal decisions involving plaintiffs who had a "personal stake" in the litigation, but whose claims concerned the aiding of plaintiffs' competitors. In both cases, the plaintiffs were hotel owners who sought to enjoin the construction of competing hotels in the project area; in both cases, the court held that the plaintiffs lacked standing. The *Berry* court reasoned that, "[t]he public good sought through the Housing Act could well be frustrated by delay and expense of litigation if allowed on the suit of every person objecting to possible competition in renewal projects."[43] The court then analogized the reasoning in *Taft* and *Berry* to the *Harrison-Halsted* situation, noting that the plaintiffs in *Harrison-Halsted* alleged threatened "economic injury" if the plans were carried out; thus they were properly denied standing. However, the court continued:

> [T]he plaintiffs in the case before us [*Norwalk CORE*] are in a very different position. Their stake in the outcome of the case is immediate and personal, and the right which they allege has been violated—the right not to be subjected to racial discrimination in government programs—is one which the courts will protect. Their standing to sue is clear.[44]

[38] *E.g.*, Judge Zampano's District Court policy consideration expressed earlier in this case note, *supra* note 21.

[39] Norwalk CORE, *supra* note 4, at 926-27.

[40] Norwalk CORE, *supra* note 4, at 927.

[41] 262 F.2d 307 (2d Cir. 1958).

[42] 340 F.2d 939 (2d Cir. 1965).

[43] *Id.* at 940.

[44] Norwalk CORE, *supra* note 4, at 927.

The issue of justiciability was raised in the District Court when, in citing *Green Street*, it stated that if the plaintiffs did not otherwise have standing, the allegation of civil rights violations would not give them standing; this implied that the claim in *Green Street* was not capable of judicial review. However, the Court of Appeals noted that the court in *Green Street* did not state that the plaintiffs lacked standing in reference to their equal protection claim, but rather focused its attention on the statutory claims in that case. The argument of the plaintiffs in *Norwalk CORE* differs from the *Green Street* argument in that in *Green Street* the entire program was condemned by the plaintiffs as intending to perpetuate racial segregation, while in *Norwalk CORE* the plaintiffs "complain that they were denied the equal protection of the laws in the planning and implementation of the relocation program, and this, at least, is a justiciable claim. . . ; [p]roof of these allegations would make out a case of violation of the equal protection clause. . . ."[45] In effect, the appellate court is saying that proof that Negro and Puerto Rican displacees were not assisted in finding "decent, safe, and sanitary dwellings" to the same extent that whites were assisted would be a violation of the fourteenth amendment.

The traditional view as to standing under the statutory claim holds that Section 105(c) of the 1949 Housing Act was intended to give contract rights to the federal government, not to the residents and displacees of the project areas. The supporting argument was that since Congress did not expressly indicate any intention that the displacees be given the right to enforce the 105(c) relocation provisions, they therefore had no such right. The Court of Appeals rejected and in effect reversed this argument, holding that "in the absence of a persuasive reason to believe that Congress intended to cut off judicial review . . . ,"[46] the language of 105(c) is sufficient to express an intent that the displacee has specific rights capable of judicial enforcement. The history of the Housing Act of 1949, the Declaration of National Housing Policy, and the subsequent legislative history of the urban renewal program all point toward the general purpose of eradicating slums and not allowing the slums to be merely displaced; these factors coupled with the 105(c) requirements *do* evidence a Congressional intent that displacees have standing to make a statutory claim.

As Judge Smith noted in the *Norwalk CORE* appellate court decision, courts in the past have virtually adopted a hands-off policy in regard to judicial enforcement of statutory relocation provisions. This hands-off policy is exemplified by the *Johnson*, *Harrison-Halsted*, and *Green Street* decisions as well as the District Court opinion in the *Norwalk CORE* case; in these

[45] *Supra* note 4, at 929.

[46] Norwalk CORE, *supra* note 4, at 934.

cases the courts have dismissed the actions by finding that improper class actions were brought, or that the relief requested was inappropriate, or that the plaintiffs lacked standing to litigate the issues, or that the issues raised were non-justiciable. The policy reason underlying these decisions seems to center on the belief that judicial interference in urban renewal planning and its implementation will give rise to so much litigation that the entire urban renewal effort will become bogged down in courtroom struggles. The Court of Appeals recognizes this problem:

> [T]he extent to which relocation of those displaced by urban renewal is required will necessarily affect the pace at which urban renewal can take place, and the priority of goals in urban renewal planning. [But the fact that] the necessity of discretionary decision making in urban renewal planning . . . would render unfit for judicial decision many questions concerning urban renewal . . . does not mean, however that every case or controversy touching this area lies beyond judicial cognizance. Case-by-case inquiry is necessary, with due regard for the need for judicially discoverable and manageable standards for resolving problems to be undertaken, and with recognition of the role played by the coordinate branches of the Federal Government in the planning and implementation of urban renewal. . . .[47]

The appellate court's opinion reflects a change in thinking in respect to the question of whether or not the urban renewal displacee may use the federal courts to enforce the statutory relocation provisions as set out in Section 105(c) of the Housing Act of 1949. The implications of this decision are yet to be felt, but there may be three broad responses to it: (1) it may be completely ignored; or (2) it may result in increased judicial review of the question; or (3) it may result in increased enforcement of the relocation provisions within the agency frameworks of HUD and the LPA.

The first response—ignoring the *Norwalk CORE* decision and its reasoning —is the least likely to occur because of judicial activism in the area of civil rights generally, and because of recent breakthroughs in the area of standing to litigate in federal courts. In *Flast v. Cohen*,[48] the Supreme Court recently modified the long-recognized *Frothingham*[49] standing rule that an individual, relying solely on his status as a taxpayer, does not have standing to maintain an action to restrain an expenditure of federal funds based upon the claim that the expenditure is unconstitutional. In order for a taxpayer to have standing under *Flast*, he must constitutionally challenge exercises of congressional power under the taxing and spending clause, and must show that there exists a specific constitutional limitation which was exceeded. In *Flast*, and *Protestants and Other Americans United for Separation of Church and*

[47] Norwalk CORE, *supra* note 4, at 929.

[48] 392 U.S. 83 (1968).

[49] Frothingham v. Mellon, 262 U.S. 477 (1923).

State v. O'Brien,[50] the plaintiffs-taxpayers used the Establishment Clause of the first amendment as the specific constitutional limitation which was exceeded. Although *Flast* and *Protestants* do not deal with standing in urban renewal cases, their importance cannot be diminished. The fact that standing was granted in these cases, notwithstanding many years of ruling to the contrary, is a harbinger of breakthroughs in other areas where standing has long been denied. *Norwalk CORE* is the forerunner in allowing standing to enforce the statutory relocation provisions of Section 105(c) of the Housing Act of 1949.

The most likely response to the *Norwalk CORE* decision will involve a combination of increased judicial review and increased agency enforcement of the statutory relocation provisions.[51] As the Court of Appeals noted, a "case-by-case inquiry" will be necessary, but "[n]othing we say in this opinion precludes defendants from trying to show to the District Court's satisfaction that plaintiffs have failed to take advantage of available administrative remedies."[52] Since the courts do not want to and cannot afford to take over total enforcement of the urban renewal program, the case-by-case judicial approach can be an effective method for insuring adequate agency enforcement of the statutory relocation provisions. Prior to *Norwalk CORE*, the LPA and HUD had no judicial pressure on them to enforce the Section 105(c) provisions because suits seeking enforcement were consistently dismissed at the pleading stage. But now, the agencies will be faced with trials on the merits to determine whether the relocation provisions are met. In using the discretionary, case-by-case inquiry method, the threat of a trial on the merits alone may be sufficient to insure increased agency enforcement. Whatever the result, the outlook of the urban renewal displacee is certainly brighter as a result of *Norwalk CORE*, and the goal of a "decent home and a suitable living environment for every American family"[53] can come closer to being a reality.

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[50] 404 F.2d 631 (1968).

[51] In a District Court opinion decided subsequent to the writing of this case note, urban renewal displacee standing to litigate claims similar to those raised in *Norwalk CORE* was upheld. *Flast* and *Norwalk CORE* were cited by the court which granted standing on two bases: broadened concepts of standing, and manifested congressional intent that displacees' interests be protected. *Western Addition Community Organization v. Weaver*, 294 F. Supp. 433, 443 (N.D. Cal. 1968). In an associated subject, Federal Judge Richard Austin on February 10, 1969, handed down his decision stating that the Chicago Housing Authority has discriminated in the selection of locations for public housing and in the placement of tenants in public housing. In so doing, he instructed the CHA and the American Civil Liberties Union to present to him, within thirty days, a scheme whereby site selection and tenant location can be properly done.

[52] Norwalk CORE, *supra* note 4, at 924, n. 4.

[53] Housing Act of 1949, § 2, 42 U.S.C. § 1441 (Supp. 1968).