RECENT DEVELOPMENTS

STANDING: URBAN RENEWAL DISPLACEES MAY CHALLENGE REDEVELOPMENT PLANS

In *Norwalk CORE v. Norwalk Redevelopment Agency*,[1] the Court of Appeals for the Second Circuit held that urban renewal relocation programs which allegedly deny displacees equal protection or violate section 105(c) of the Housing Act of 1949[2] are appropriate subjects for judicial review, and that those displacees have standing to obtain such review in the federal courts. The court also held that the association plaintiff, CORE, should be granted standing in this class action if there was a compelling need to do so in order to protect the rights of absent members of the class. In *Norwalk*, the local CORE chapter, together with a number of individuals displaced by a federal assisted urban renewal project, brought a class action in federal district court against the redevelopment agency and others, alleging racial bias in the plan for relocation of persons displaced by the project. The plaintiffs sought discontinuation of demolition pending satisfactory relocation of residents of the project site, and construction of low-cost housing instead of planned middle-income units. The district court, expressing concern for obstruction of the nearly completed project, dismissed the action on the pleadings. It held that neither the association nor the individual plaintiffs had standing to challenge the relocation program, nor could they gain such standing merely by alleging civil rights violations, and further ruled that since CORE was not a member of the class the plaintiffs claimed to represent, it had no standing to sue.[3] The court of appeals reversed and remanded the case to the district court for trial on the merits.

In 1949 Congress passed the Housing Act, which authorized the awarding of capital loans and grants for approved local urban renewal projects.[4] Section 105(c) of the Act was intended to alleviate

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

[2] Housing Act of 1949, 42 U.S.C. §§ 1441-68 (1964), *as amended*, (Supp. II, 1965-66).

[3] Norwalk CORE v. Norwalk Redevelopment Agency, 42 F.R.D. 617, 622 (D. Conn. 1967).

[4] 42 U.S.C. § 1450 (1964).

the hardships suffered by urban renewal displacees by requiring the local agency, prior to approval of the capital grant or loan contract, to submit a comprehensive plan for the effective relocation of displaced persons.[5] It was an unavoidable consequence of the program that relocation hardships should bear most heavily on minority groups, especially Negroes, often concentrated in blighted areas. These groups typically had smaller incomes than their white counterparts and were faced with significant discrimination in the public housing market. This tended to cause relocation of nonwhite displacees into existing segregated neighborhoods, often with substandard housing, and contributed to a housing shortage resulting in rents significantly higher than those previously paid.[6]

When these displacees turned to the courts for assistance, they met with little success.[7] The courts have generally been reluctant to permit individuals to assert a denial of due process by an administrative agency when the party seeking review has only a remote interest in the outcome of the litigation.[8] Allegations of such violations in urban relocation cases were commonly dismissed as improper attempts to circumvent the statutory limitations of section 105(c) of the Housing Act and to obtain unauthorized judicial review of administrative decisions.[9] Yet when displacees alleged violations of the relocation provisions themselves, the courts, apparently foreseeing the obstruction of urban renewal programs by multiple lawsuits, held with considerable uniformity that the Act did not give displacees standing to sue for alleged deviations,[10] particularly when the complaint alleged infringements upon economic interests.[11] For similar reasons, the courts have held that plaintiffs who had no right to sue under section 105(c) could not escape their plight by relying upon the standing offered to "persons aggrieved by administrative action"[12] under section 10 of the Administrative Procedure Act.[13]

[5] *Id.* at § 1455(c), *as amended*, (Supp. II, 1965-66).

[6] Millspaugh, *Problems & Opportunities of Relocation*, 26 LAW & CONTEMP. PROB. 6, 20-21 (1961).

[7] *See generally* Note, *Judicial Review of Displacee Relocation in Urban Renewal*, 77 YALE L.J. 966 (1968).

[8] Frothingham v. Mellon, 262 U.S. 447 (1923).

[9] Green Street Ass'n v. Daley, 373 F.2d 1, 6 (7th Cir. 1967).

[10] *E.g., id.* at 8; *see* Franklin, *Expanding Relocation Responsibilities of Local Renewal Agencies*, 11 N.Y.L.F. 51, 66-70 (1965).

[11] *E.g.*, Berry v. Housing & Home Finance Agency, 340 F.2d 939 (2d Cir. 1965).

[12] Administrative Procedure Act § 10, 5 U.S.C. § 1009 (1964).

[13] Harrison-Halsted Community Group v. Housing & Home Finance Agency, 310 F.2d 99,

Relying upon an alternative ground to deny standing, the Ninth Circuit held that review of determinations made under the Housing Act was limited to parties to the urban renewal contract.[14] While speaking in terms of standing to sue, that court seemingly precluded *any* individual judicial review of such determinations, in recognition of the expertise involved.[15] The issue of standing, however, was apparently bypassed by the courts in some relocation cases, in which the complaints of displacees were resolved on the merits.[16] Moreover, courts have agreed to review alleged administrative denials of equal protection provided the complaint alleged a calculated plan to deny such rights.[17] In *Gart v. Cole*, the Second Circuit provided an indication of the outcome in the instant case when it held that the Housing Act was intended to protect the interests of displacees, and granted them standing to protest the denial of a relocation hearing.[18]

In *Norwalk*, the court considered separately the plaintiffs' constitutional and statutory claims, both as to standing and as to justiciability. It held that the plaintiffs, as displacees, had a direct and personal interest in the outcome of the litigation, and were asserting a right—"the right not to be subjected to racial discrimination in government programs"[19]—which the courts would protect. Hence the plaintiffs had standing to obtain judicial review of the alleged denial of equal protection.[20] Further, the court ruled that although formulation of the statutory standard was a political matter not subject to review,[21] allegations that its *application* resulted in racial discrimination warranted judicial scrutiny.[22] Thus, if under the relocation program members of minority races were unable to obtain satisfactory relocation housing as easily as whites, the standard would be operating to deny minority displacees equal protection.[23] Morever, that the existing pattern of discrimination is "accidental" to

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104 (7th Cir. 1962); Gart v. Cole, 263 F.2d 244, 250 (2d Cir.), *cert. denied*, 359 U.S. 978 (1959).

[14] Johnson v. Redevelopment Agency, 317 F.2d 872 (9th Cir. 1963).

[15] *Id.* at 874.

[16] *E.g.*, Barnes v. Gadsden, 268 F.2d 593 (5th Cir. 1959); Tate v. Eufaula, 165 F. Supp. 303 (M.D. Ala. 1958).

[17] Progress Development Corp. v. Mitchell, 286 F.2d 222 (7th Cir. 1961).

[18] 263 F.2d 244, 250 (2d Cir.), *cert. denied*, 359 U.S. 978 (1959).

[19] 395 F.2d at 927.

[20] *Id.*

[21] *Id.* at 929.

[22] *Id.*

[23] *Id.* at 930-31.

the renewal program was found to be irrelevant. The bare fact of discrimination arising out of application of the relocation standard was sufficient to warrant access to the courts.[24] The court noted that this holding might require classification of relocation efforts by race, but held that this was proper, and in some instances mandatory, if the classification was designed to alleviate the effects of racially unequal treatment.[25] With regard to the alleged violations of section 105(c) of the Housing Act, the court declined to follow existing precedent and ruled that since the displacee was the person most vitally concerned with the relocation program,[26] and since Congress had clearly expressed concern over his plight,[27] he had standing to seek relief from such violations. The court rejected the argument that standing should be limited to parties to the urban renewal contract, holding that the prospect of administrative abuse was equally great whether the federal program was implemented through contract or through direct regulation, and hence the rationale behind allowing standing for displacees in such cases was not weakened by the presence of such a contract.[28] The issue to be decided, then, was whether administrative actions under section 105(c) would *ever* be subject to judicial inquiry.[29] The court held that unless Congress had indicated a contrary intent, as was not the case here, such actions would not be insulated from judicial review.[30] The court cautioned, however, that it was reviewing neither the planning of urban renewal projects nor the adequacy of the relocation standards derived by Congress, and that future claims of this type would be subjected to careful scrutiny to avoid unreasonable interference with urban renewal programs.[31]

The court proposed a dual requirement for standing of association plaintiffs in a class action: that the association must exist for the purpose of representing the interests of that class, and that there be a compelling need to grant standing in order to protect the interests of absent members.[32] CORE appears to satisfy the first criterion,

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[24] *Id.* at 931.

[25] *Id.* at 931-32; *cf.* Kaplan, *Equal Justice in an Unequal World: Equality for the Negro—The Problem of Special Treatment*, 61 NW. U.L. REV. 363, 379-83 (1966).

[26] 395 F.2d at 932.

[27] *Id.* at 933.

[28] *Id.* at 934.

[29] *Id.* at 932.

[30] *Id.* at 934.

[31] *Id.* at 937.

[32] *Id.* at 937-38.

although its purpose is considerably broader than that of representing urban renewal displacees. However, the authority cited in support of the "compelling need" requirement weakens the argument for standing in this case, as there are individual plaintiffs present who should be able to defend the interests of absent members of the class (indeed the court inclines toward this view), and standing is not necessary to enable CORE to provide legal and financial assistance.

Because the case was decided at the pleading stage and the merits were not under consideration, the court offered little guidance for formulation of relief measures. It is clear from the opinion, however, that if there is discrimination against nonwhites on the housing market in a particular area, their right to equal protection will require a racially "unequal" relocation standard. If the relocation program meets the needs of whites more easily than those of nonwhites, then even if the program is sufficiently intensive to relocate the nonwhite displacees and thus satisfy the mandate of section 105(c) of the Housing Act, there will still be a denial of equal protection. So it appears that the Second Circuit has established a requirement in addition to those of section 105(c): that the program be free from even incidental racial discrimination. Satisfying the statute in light of this increased emphasis on nonwhite relocation poses other difficulties. If the nonwhite housing shortage becomes sufficiently critical, effective relocation may require assignment of large blocks of relocation housing exclusively to nonwhites, particularly if they constitute a large percentage of displacees, as is usually the case. Thus urban renewal could actually serve to perpetuate de facto segregation. Open housing legislation should mitigate this result by facilitating a broader redistribution of nonwhite displacees in the community. In addition, it should make the court's incorporation of the equal protection requirement into relocation programs less obstructive to renewal projects, since to the extent that discrimination in housing continues to exist, direct legal sanctions will be available both to relocation personnel and to displacees. The more stringent relocation standards may also bring about a change in the very nature of such renewal projects. If existing relocation housing is insufficient to meet the demand, new housing must be constructed. Since in congested areas there is little or no land available for building of additional low-cost housing units, the cleared site must be utilized for that purpose if the project is to proceed. The investment prospects of such land utilization would hardly seem attractive to commercial developers, so

to the extent that the project site must be so used, urban reconstruction under the Housing Act may become largely a government-financed low-cost housing venture. However, the improvement in living conditions of low-income groups that should result both from the increased requirements for effective relocation and the change in the nature of urban renewal projects is perhaps more desirable than the continued construction of shopping centers and civic auditoriums.