

supporting documentation within fourteen business days may result in eviction.<sup>35</sup> Owners “must expeditiously begin to notify existing tenants” of the lease addendum.<sup>36</sup> The notice instructs owners to forward the addendum to tenants with a letter stating that tenants can either accept the modification or move, and that a response is due within thirty days.<sup>37</sup>

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### Conclusion

Although the notice is an important development in implementing VAWA in the project-based Section 8 program, many owners will remain unaware of their obligations under the statute unless advocates step in. To improve project-based owners’ and tenants’ awareness of VAWA, advocates should consider: (1) providing domestic violence and VAWA training to property managers; (2) working with owners to revise admissions and occupancy policies as well as termination notices; (3) reminding owners of their duty to distribute the lease addendum to new and existing tenants; (4) urging owners to include information about VAWA in briefing packets and termination notices; and (5) encouraging owners to post notices of tenants’ VAWA rights in the lobbies, hallways, and lounges of their buildings.

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## Court Finds Voucher Tenant Properly Asserted Section 1983 Action

In *Stevenson v. Willis*<sup>1</sup>, a federal district court held that a tenant’s claims under the United States Housing Act challenging a housing authority’s termination of her voucher were enforceable via 42 U.S.C. § 1983. The court also found that the tenant had stated a cause of action under § 1983 for violation of her constitutional right to procedural due process.

### Factual Background

The tenant, a disabled single mother of four children, rented an apartment in 2002 under a lease approved by the housing authority.<sup>2</sup> When the tenant sought to move, the housing authority required her to obtain written approval from the landlord stating that she owed no money for back rent or damage to the property.<sup>3</sup> The landlord claimed that the tenant caused damage to the property and refused to provide written approval unless she agreed to be responsible for repairs.<sup>4</sup> The tenant denied that she had caused any damage, but signed an agreement to pay for the repairs.<sup>5</sup> When she failed to pay, the landlord served her with a notice to vacate.<sup>6</sup> The tenant moved out of the apartment to stay with her mother and subsequently received a notice that the housing authority planned to terminate her voucher on two grounds: (1) “moving in lieu of eviction” and (2) “damages to the unit.”<sup>7</sup>

During the informal hearing, the hearing officer both presented the housing authority’s case and adjudicated the issues.<sup>8</sup> The hearing officer presented no witnesses and instead relied on an internal record of a telephone conversation between the landlord and a housing authority case manager, in which the landlord stated that the tenant owed \$3,500 in damages.<sup>9</sup> The hearing officer also presented the repair agreement between the tenant and the landlord.<sup>10</sup> However, no proof of the alleged damages was presented, and the landlord did not attend the hearing. The hearing officer issued a written decision requiring the tenant to enter into a repayment agreement with

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<sup>1</sup>2008 WL 4346512 (N.D. Ohio Sept. 18, 2008).

<sup>2</sup>*Id.* at \*1.

<sup>3</sup>*Id.*

<sup>4</sup>*Id.*

<sup>5</sup>*Id.*

<sup>6</sup>*Id.*

<sup>7</sup>*Id.*

<sup>8</sup>*Id.*

<sup>9</sup>*Id.*

<sup>10</sup>*Id.*

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<sup>35</sup>*Id.*

<sup>36</sup>Notice H 08-07 at 6.

<sup>37</sup>*Id.*

the landlord for the damages by January 30, 2007.<sup>11</sup> The decision did not state the evidence the hearing officer relied on in making her decision.<sup>12</sup>

The January 30 deadline passed without the tenant setting up a repayment plan, and the housing authority refused to allow the tenant back into the voucher program.<sup>13</sup> The tenant filed suit against the housing authority, its executive director, and the hearing officer,<sup>14</sup> alleging causes of action under 42 U.S.C. § 1983 for violations of the due process clause of the Fourteenth Amendment and the United States Housing Act. The housing authority then filed a motion to dismiss for failure to state a claim.

### Due Process Violations

The tenant alleged that the housing authority violated her Fourteenth Amendment right to due process because she had no opportunity to confront the witnesses whose testimony was used as the basis of her voucher termination. Specifically, the tenant challenged the hearing officer's reliance on the report of a phone conversation in which the landlord reportedly told a housing authority case manager that the tenant owed \$3,500 in damages. The court immediately acknowledged that a Section 8 voucher is a property interest protected by the requirement of procedural due process.<sup>15</sup> Accordingly, the process for terminating a voucher must comply with the criteria of *Goldberg v. Kelly*,<sup>16</sup> including the requirement that the party facing property deprivation have an opportunity to confront and cross-examine adverse witnesses. While noting that hearsay is admissible at Section 8 termination hearings, the court found that "it is improper for a hearing officer to rely solely on hearsay evidence."<sup>17</sup>

The court declined to decide whether the allegations regarding the hearing officer's use of hearsay evidence, standing alone, sufficed to state a due process cause of action. However, the court found that these allegations, combined with the tenant's allegations that the hearing officer both presented and adjudicated the housing authority's case, "amplified the danger" to her right to procedural due process. The court stated that at a minimum, due process requires a hearing before an impartial decision maker. Accordingly, the court found that the housing authority's procedure of having "a single individual in the agency's employ performing the dual functions of

advocate and adjudicator . . . raises very serious constitutional concerns."<sup>18</sup> The court therefore concluded that the tenant stated a cause of action under § 1983 for violation of her right to procedural due process.

### Violations of the United States Housing Act

In addition to her due process claims, the tenant alleged claims under 42 U.S.C. § 1983 for violations of 42 U.S.C. §§ 1437d and 1437f and 24 C.F.R. § 982.555.<sup>19</sup> In opposition, the housing authority argued that these laws do not provide a private cause of action that is enforceable via § 1983. The court noted that pursuant to *Blessing v. Freestone*<sup>20</sup> and *Gonzaga University v. Doe*,<sup>21</sup> it was obligated to consider whether Congress intended the provisions in question to benefit the tenant, whether the rights asserted were so vague or amorphous that their enforcement would strain judicial competence, and whether the statutes unambiguously imposed a binding obligation on the housing authority. The court also noted that prior to *Gonzaga*, the Supreme Court held in *Wright v. Roanoke Redevelopment & Housing Authority*<sup>22</sup> that the United States Housing Act created a private right of action to challenge a housing authority's utility charges.

The court primarily relied on the language of 42 U.S.C. § 1437d(k), which "require[s] each housing agency receiving assistance under this Act to establish and implement a grievance procedure" under which tenants will receive specific procedural protections, including an opportunity for a hearing before an impartial party and an opportunity to ask questions of witnesses.<sup>23</sup> Although the court acknowledged that the Supreme Court's approach to § 1983 enforcement of federal statutes "has generally been restrictive," it found that Congress intended § 1437d(k) to benefit Section 8 participants.<sup>24</sup> It determined that the law imposed an unambiguous duty on housing authorities to implement procedures that provide voucher holders with the right to a hearing before termination of assistance.<sup>25</sup> The court further found that the statute imposed a binding

<sup>11</sup>*Id.* at \*2.

<sup>12</sup>*Id.*

<sup>13</sup>*Id.*

<sup>14</sup>The tenant later voluntarily dismissed the housing authority from the case. The hearing officer and executive director, in their official capacities, remained named defendants.

<sup>15</sup>*Id.* at \*4 (citing *Davis v. Mansfield Metro. Hous. Auth.*, 751 F.2d 180, 184 (6th Cir. 1984).

<sup>16</sup>397 U.S. 254, 266-71 (1970).

<sup>17</sup>*Stevenson*, 2008 WL 4346512 at \*5 (citing *Edgecomb v. Hous. Auth. of the Town of Vernon*, 824 F. Supp. 312, 316 (D. Conn. 1993).

<sup>18</sup>*Id.*

<sup>19</sup>*Id.* at \*6. Specifically, the tenant alleged that the housing authority violated 24 C.F.R. § 982.555(c)(2) (requiring that the housing authority give the family prompt written notice that they may request a hearing), 24 C.F.R. § 982.555(e)(5) (requiring that the family be given the opportunity to present evidence and question any witnesses), 24 C.F.R. § 982.555(e)(6) (requiring that the hearing officer issue a written decision stating the reasons for the decision, and that factual determinations shall be based on a preponderance of the evidence presented at the hearing).

<sup>20</sup>520 U.S. 329 (1997).

<sup>21</sup>536 U.S. 273 (2002).

<sup>22</sup>479 U.S. 418 (1987).

<sup>23</sup>*Stevenson*, 2008 WL 4346512 at \*7. Although many of the provisions of 42 U.S.C. § 1437d deal specifically with public housing, § 1437d(k) generally refers to "each public housing agency receiving assistance under this Act" and does not distinguish between public housing and Section 8.

<sup>24</sup>*Id.*

<sup>25</sup>*Id.*

obligation on housing authorities to implement an administrative grievance procedure with specific requirements.<sup>26</sup> Finally, the court stated that the statute was not so vague that its enforcement would strain judicial competence because HUD's regulations at 24 C.F.R. § 982.555 clarify voucher holders' procedural rights.<sup>27</sup>

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In concluding that the tenant's federal statutory claims were enforceable via § 1983, the court noted a "recent trend" by several courts finding that certain provisions of the Housing Act provide private causes of action.<sup>28</sup> Like the *Stevenson* court, the district court in *Gammons v. Massachusetts Department of Housing and Community Development*<sup>29</sup> held that the language of § 1437d(k) "unambiguously confers rights for the benefit of Section 8 subsidy recipients." Similarly, the district court in *Fields v. Omaha Housing Authority*<sup>30</sup> held that a tenant could maintain a § 1983 action based on violations of § 1437d(k) where the tenant alleged that she was not afforded an impartial hearing. The *Stevenson* court also cited *Johnson v. Housing Authority of Jefferson Parish*,<sup>31</sup> in which the Fifth Circuit held that tenants could bring a private action to challenge utility allowance calculations because "in adopting § 1437f(o)(2), Congress intended to grant to voucher program participants . . . federal rights enforceable under § 1983." The *Stevenson* court therefore reasoned that "[j]ust as tenants can challenge a rent calculation, they should also be able to challenge procedures for termination of the subsidy altogether."<sup>32</sup>

## Conclusion

The *Stevenson* decision, along with several other recent cases,<sup>33</sup> should be useful to advocates seeking to establish

the procedural protections that are due in Section 8 voucher termination hearings. Additionally, the case illustrates that § 1983 is still a viable option for enforcing certain provisions of the United States Housing Act. However, it is important to note that some courts have narrowly construed the circumstances under which voucher holders may enforce the Housing Act using § 1983.<sup>34</sup> Advocates should therefore consider whether there are alternatives to § 1983 claims, such as preemption causes of action under the Constitution's supremacy clause.<sup>35</sup> ■

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<sup>26</sup>*Id.*

<sup>27</sup>*Id.*

<sup>28</sup>*Id.*

<sup>29</sup>523 F. Supp. 2d 76, 85 (D. Mass. 2007).

<sup>30</sup>2006 WL 176629, at \*3 (D. Neb. Jan. 23, 2006).

<sup>31</sup>442 F.3d 356, 360-67 (5th Cir. 2006).

<sup>32</sup>*Stevenson*, 2008 WL 4346512 at \*8.

<sup>33</sup>*See, e.g.*, *Basco v. Machin*, 514 F.3d 1177 (11th Cir. 2008); *Hendrix v. Seattle Hous. Auth.*, 2007 WL 3357715 (W.D. Wash. Nov. 9, 2007); *Carter v. Lynn Hous. Auth.*, 880 N.E. 2d 778 (Mass. 2008); *see also* NHLP, *Courts Embellish Procedural Protections for Voucher Terminations*, 38 HOUS. L. BULL. 39 (Feb. 2008).

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<sup>34</sup>*See, e.g.*, *Caswell v. City of Detroit Hous. Comm'n*, 418 F.3d 615, 620 (6th Cir. 2005) (finding that 42 U.S.C. § 1437f(o)(2) does not confer a private right of action upon a tenant seeking to challenge termination of Section 8 assistance resulting from initiation of eviction proceedings); *Thomas v. Butzen*, 2005 WL 2387676, at \*11 (N.D. Ill. Sept. 26, 2005) (holding that 42 U.S.C. § 1437f(o) "does not create a private right of action or contain any indication that Congress intended it to confer enforceable rights on plaintiffs").

<sup>35</sup>Several circuit courts have recently held that a federal statutory right or right of action is not required where a party seeks to enjoin the enforcement of a local regulation or agency order on the grounds that it is preempted by federal law. *See, e.g.*, *Independent Living Center of S. Cal. v. Shewry*, \_\_ F.3d \_\_, 2008 WL 4244917 (9th Cir. Sept. 17, 2008); *Planned Parenthood of Houston v. Sanchez*, 403 F.3d 324 (5th Cir. 2005); *Qwest Corp. v. City of Santa Fe*, 380 F.3d 1258, 1266 (10th Cir. 2004); *Local Union No. 12004 v. Massachusetts*, 377 F.3d 64, 75 (1st Cir. 2004); *see also* Lauren K. Saunders, *Preemption as an Alternative to Section 1983*, 38 CLEARINGHOUSE REV. 705 (Mar. 2005).