IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION

FRANCES HINES, TIMOTHY OWENS PRISCILLA JOHNSON, ESSIE McCATREY, DANNY HINES, ANGELA MOORE and HOUSING COMES FIRST, Inc., A Missouri non-profit corporation, Plaintiffs, v. CHARLESTON HOUSING AUTHORITY, A municipal corporation; PAUL PAGE, in his official capacity As Executive Director of the Charleston Housing Authority; UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, and MEL MARTINEZ, in his official capacity as Secretary of the United States Department of Housing and Urban Development, Defendants.	))	Case No. 1:01CV00070CDP

PLAINTIFFS PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

Plaintiffs seek a preliminary injunction under Fed.R.Civ.P. 65 requiring the Defendant Charleston Housing Authority and its executive director Paul Page (collectively referred to as "CHA" or "the Housing Authority Defendants") to lease, maintain and use vacant units at the Charleston Apartments as low-income rental housing and enjoining the Housing Authority Defendants from demolishing the Charleston Apartments. They also seek injunctive relief requiring the Defendant U.S. Department

of Housing and Urban Development and Secretary of Housing and Urban Development Mel Martinez (collectively referred to as "HUD" or "the HUD Defendants") to take all steps necessary to treat the Housing Assistance Payment ("HAP") contract between CHA and HUD as still in effect pending a final determination of the validity of CHA's attempt to opt out of the HAP contract or alternatively, requiring CHA and HUD to execute a renewal HAP contract pending a final hearing on the merits of Plaintiffs' First Amended Complaint.

Now, having heard and considered the evidence and the parties' briefs, the Court finds as follows:

FINDINGS OF FACT

The Parties

1. Plaintiff Frances Hines is an African-American, low-income head of household who resides in the Charleston Apartments with her five (5) children. Stipulation of Uncontested Facts ("Stipulation") at ¶1 (June 18, 2001).

2. Plaintiff Essie McCatrey is an African-American, low-income head of household who resides in the Charleston Apartments with her son. Stipulation at ¶2

3. Plaintiff Timothy Owens is an African-American, low-income head of household who resides in the Charleston Apartments with his five (5) children. Stipulation at ¶3.

4. Plaintiff Priscilla Johnson is an African-American, low-income head of household who resides in the Charleston Apartments with her five (5) children. Stipulation at ¶4.

5. Plaintiff Danny Hines is an African-American who resides in the Charleston Apartments with his two (2) brothers. He is unemployed. Stipulation at ¶ 5.

6. Plaintiff Housing Comes First is a Missouri not-for-profit corporation, whose primary purpose is to work toward the prevention of homelessness and seeks to preserve affordable housing. Stipulation at ¶6. Housing Comes First has diverted hundreds of hours of time from other projects to Charleston Apartments to prevent the threatened demolition of the Charleston Apartments and to require the Housing Authority Defendants to rent up the vacant units at Charleston Apartments.

7. Defendant Charleston Housing Authority is a housing authority created under Section 99.010 of the Revised Statutes of Missouri and is a public housing agency.

8. Defendant Paul Page is the executive Director of CHA and is responsible for its day-to-day operations. Stipulation at ¶8.

The Charleston Apartments Housing Development

9. The Charleston Apartments is a 50-unit federally subsidized apartment complex located in Charleston, Missouri that is owned and operated by CHA. As Defendant Page has testified, it contains 9 four plex units (with 2 and 3 bedroom units) 1 duplex (with 2 and 3 bedroom units) and 12 single family units with 4 and 5 bedroom units). Tr. __.

10. The Charleston Apartments was built in the early 1970s as Section 23 leased housing. On or about April 27, 1981, it was converted to a Farmer's Home Administration ("FmHA") – mortgaged Section 8 project-based Substantial Rehabilitation Project when FmHA made a 50 year loan to Defendant CHA in the

amount of $740,000 (the "Loan") pursuant to the Section 515 Rural Rental Housing program. Pl. Exh. 6.

11. In connection with the Section 515 Loan, CHA executed a Loan Resolution, a promissory note (with level principal and interest payments over a 50-year period) and a Deed of Trust[1] on the Charleston Apartments in favor of FmHA securing repayment of the promissory note. Pl. Exh. 1, 2, & 3.

12. The Housing Authority also executed a 20 year Housing Assistance Payment ("HAP") contract with the Defendant U.S. Department of Housing and Urban Development ("HUD") effective April 27, 1981 to cover the difference between the rent contributed by Charleston Apartment residents and the maximum approved contract rent for the unit. Pl. Exh. 20, 21.

13. Pursuant to the Loan Resolution, the Housing Authority agreed that "[s]o long as the loan obligations remain[ed] unsatisfied" and until the Government gave prior consent, it would not use the housing for any purpose other than rental housing and would do other things as may be required by the Government in connection with the housing. Loan Resolution, ¶6d(1) and 6(i). Pl. Exh. 3.

14. Under the Deed of Trust, CHA agreed that so long as the Government held the Note, it would "maintain improvements in good repair…and not abandon the property or cause or permit waste…" Deed of Trust ¶ 9. CHA also expressly agreed to use the housing " for the purpose of housing people eligible for occupancy as provided in Section 515…and FmHA regulations then extant during the 20 year period beginning April 27, 2001." Deed of Trust, ¶27. Pl. Exh. 2.

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[1] The Loan Resolution, promissory note and Deed of Trust shall be collectively referred to herein as the "Loan Agreement."

15. The CHA and USDA executed a Management Plan for Charleston Apartments on April 17, 1995 pursuant to 7 C.F.R. Part 1930, Subpart C, Ex. B-1. In it, CHA promised that "[c]ontinual and periodic advertising will be used in an effort to maintain the highest levels of occupancy that are reasonably attainable," waiting lists will be kept, and prospective tenants will be selected from the waiting list when vacancies occur. Pl. Exh. 34.

16. CHA did not update its 1995 plan in 1998 or thereafter because of its intention to demolish Charleston Apartments. CHA did not inform or obtain approval from USDA of its unilateral decision to forego renewal of the management plan.

The Adoption and Implementation of Resolution No. 604

17. Since December 1999, the Housing Authority Defendants have failed and refused to lease vacant units in the Charleston Apartments. Stipulation at ¶17. They have also reduced expenditures for maintenance and repairs by over $7000. (Pl. Exh. 39, 40).

18. CHA's decision not to rent units at Charleston Apartments as they became vacant was part of a plan to vacate the development and then demolish all 50 housing units. This plan was formally approved by the CHA Board of Commissioners on February 14, 2000 when it unanimously passed Resolution No. 604. Pl. Exh. 6. CHA Board of Commissioners performed no racial or socioeconomic analysis of its decision to pass Resolution No. 604. Except for a single elliptical reference to the fact that "[a]ll except one (1) white family living in Charleston Apartments are minority race, African American," the record of its decision to remove Charleston Apartments from the

federal affordable housing programs and to demolish the development is devoid of any assessment of the fair housing consequences of that action.

19. At the time Resolution No. 604 was passed, the Housing Authority had over $140,000 in its Reserve Accounts for Charleston Apartments to fund repairs. Pl. Exh. 39.

20. For the past three years, CHA has operated Charleston apartments at a net cash surplus. (Pl. Exh. 39-41).

21. The CHA notified the residents of the Charleston Apartments of the planned demolition by letter dated April 1, 2000. It informed them that rental assistance would continue to be provided on their behalf for one year and that subject to the availability of appropriations, HUD would provide portable vouchers that would enable the residents to choose other Section 8 housing which was "not likely to include the dwelling" in which they resided. Pl. Exh. 61

22. HUD "determined [CHA's notice] was consistent with [program] notification requirements." HUD's Trial Brief at 8.

23. HUD performed no racial or socioeconomic analysis of its decision to approve CHA's April 1, 2000 notice and has no institutionalized method for performing such an analysis. HUD's Trial Brief at 6-9.

24. Approximately 40 families have vacated the Charleston Apartments since the adoption of Resolution 604. While 47 families resided there on February 14, 2000, today there are only 7 families. Pl. Exh. 6.

25. Twelve of the families that moved applied for portable tenant-based Section 8 housing subsidy vouchers from East Prairie Housing Authority. Of the 10

families that received such vouchers, none were able to find an apartment to rent with their vouchers. Pl. Exh. 68 – Deposition of Paul Page, page 58 (L. 13-25)

26. Presently, there are more than 80 families on the waiting list for admission to CHA housing. Pl. Exh. 59, Pl. Exh. 68 at 105 (L. 9-16). A majority of these families are African American. Pl. Exh. 18.

27. African-American families and low-income families of all racial affiliations in Mississippi County have "severe" needs with respect to the affordability, supply, and quality of available housing. Pl. Exh. 18, page 9.

28. As it has been vacated by the Housing Authority, the physical condition of Charleston Apartments has begun to deteriorate. One unit has been damaged by a car and other by fire. Neither have been repaired. Pl. Exh. 68, page 114 (L.9-25), 115 (L.1-2).

29. Despite this neglect, the rest of the vacant units at the Charleston Apartments can be made habitable with minimal repairs. Pl. Exh. 68, page 114 (L.9-25), 115 (L.1-2).

The Adoption of Resolution No. 639

30. On June 11, 2001, Board of Commissioners of the Housing Authority adopted Resolution No. 639 revoking and rescinding Resolution 604 and resolving to "explore and pursue" the demolition of the nine 4-plex units and the "preservation" and "restoration of the twelve (12) single dwellings and one (1) duplex in combination with either an enhanced voucher program or a renewed, repriced, restructured …[HAP] contract or preferably conversion to Public Housing Program." Def. Exh. D.

31. There is no evidence that the Board of Commissioners performed any analysis of the racial or socioeconomic effects of the actions contemplated by Resolution 639. Def. Exh. D.

32. Resolution No. 639 commits CHA to no particular course of action and sets no deadline or timeframe for action of any kind. Def. Exh. D. Moreover, there is nothing preventing the Board of Commissioners from rescinding Resolution No. 639 or reinstating Resolution No. 604.

33. Although Resolution No. 639 recites that there are "issues concerning asbestos, and lead based paint and other environmental concerns" about the nine (9) 4-plex buildings, CHA has produced no evidence of as to the existence of lead-based paint, asbestos, or other environmental concerns at Charleston Apartments . Def. Exh. D.

34. The Real Estate Assessment Center ("REAC") Physical Inspection Summary Report of the Charleston Apartments completed by the HUD Real Estate Assessment Center ("REAC") on November 27, 2000 includes no finding of lead paint or asbestos. Pl. Exh. 45.

35. Further, Priscilla Johnson lived in a 4-plex unit at the Charleston Apartments until June 15, 2001 when she was moved into a single family unit. Stipulation at ¶34..

The Pre-Payment of the Loan

36. On or about December 1, 2000, the Housing Authority Defendants requested the U.S. Department of Agriculture (USDA) to accept a final payment of "approximately $120.00" on the Loan. Although the maturity date of the Loan was

April 27, 2031, the Housing Authority has been making accelerated payments on the Loan since its inception. By February 14, 2000 the Housing Authority had reduced the principal balance to a sum that was less than the total of 6 regular monthly payments. Pl. Exh. 25.

37. In January 2001 the Housing Authority notified USDA that it was not interested in any financial incentives from USDA to keep Charleston Apartments as low-income housing. Pl. Exh. 13.

38. On May 7, 2001 and June 4 , 2001 the Housing Authority tendered a check in the amount of $126.14 to the USDA as the balance due on the Note. Stipulation at ¶ 14.

39. By letter dated May 8, 2001 and again by letter dated June 5, 2001, USDA returned the Housing Authority's tendered payment. Stipulation at ¶15 It advised the Housing Authority that it could not accept final payment prior to the final determination and review of information submitted by the Housing Authority with its prepayment request. Pl. Exh. 30, 32.

40. On June 5, 2001, USDA informed the Housing Authority Defendants that by allowing Charleston Apartment units to sit empty and by not performing maintenance on the units, the Housing Authority was in non-compliance with its Loan Agreement and other program requirements because of its failure to make units "available to prospective tenants." Pl. Exh. 31.

41. Resolution No. 639 directs Defendant Page to "take such action as in his discretion shall be deemed proper to negotiate with or if necessary litigate with

the…[USDA] in order that the…[USDA]" will accept the payment tendered by the Housing Autority. Def. Exh. D.

42. CHA has withdrawn its application for prepayment to USDA and refuses to acknowledge the applicability of federal prepayment requirements to its plans for Charleston Apartments. CHA's Motion to Dismiss at II.5.B. In particular, the CHA refuses to offer the Charleston Apartments for sale to any not for profit or government entity interested in preserving the units.

CONCLUSIONS OF LAW REGARDING DEFENDANTS MOTIONS TO DISMISS

43. Defendants have moved to Dismiss Plaintiffs' First Amended Complaint on the grounds that this court lacks subject matter jurisdiction, that Plaintiffs have failed to join an indispensable party and that Plaintiffs have failed to state a claim upon which relief can be granted. This Court denies Defendants' motion.

Subject Matter Jurisdiction

44. On the issue of subject matter jurisdiction, Defendants contend that as a result of the adoption of Resolution 639, the controversy is now moot or lacks ripeness. Alternatively, they contend that Plaintiffs lack standing.

Mootness

45. "It is well settled that 'a defendant's voluntary cessation of a challenged practice does not deprive a federal court of its power to determine the legality of the practice. If it did, the courts would be compelled to leave the defendant…free to return to his old ways." Friends of the Earth Incorporated v. Laidlaw Environmental Services, Inc.*, 528 U.S. 167, 189 (1999) citing* City of Mesquite v. Aladdin's Castle, Inc*, 455 U.S.*

283, 289 (1982). Therefore, the standard for determining whether a case has been mooted by a defendant's voluntary conduct is a stringent one: "A case might become moot if subsequent events made it absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur." Friends of the Earth, *supra at 189* quoting United States v. Concentrated Phosphate Export Assn. *, 393 U.S. 199, 203 (1968)* (internal quotes omitted). Essentially, the voluntary cessation doctrine is an evidentiary presumption that the controversy reflected by the violation of alleged rights continues to exist. Friends of the Earth, supra at 213 (Scalia, dissent).

47. Here, as in City of Mesquite, supra there is nothing to prevent Defendant CHA from revoking Resolution No. 639 and passing another Resolution to demolish all 50 Charleston Apartment units. Indeed, Resolution No. 639 contemplates the elimination of nine four-plex buildings in Charleston Apartments complex. CHA's failure to operate and preserve these nine four-plex buildings is a current and on-going violation of it's legal obligations.

48. Because CHA may rescind Resolution 639 and reinstate Resolution No. 604 and because CHA is engaged in and contemplates on-going violations of its legal obligations, CHA's motion to dismiss for mootness is hereby denied.

Ripeness

49. There are two factors relevant to a ripeness decision: the fitness of the issue for judicial resolution and the hardship to the parties of withholding court consideration. *Automotive Petroleum & Allied Ind. V. Gelco Corp*. 758 F.2d 1274, 1275 (8th Cir. 1985). By withdrawing its application for prepayment to USDA, CHA has made clear that it has no intention of offering the Charleston Apartments for sale to a non profit entity. It has

also made clear that it has no intention of renting up the vacant units because it believes it has no obligation under ELIHPA or 42 U.S.C. § 1437f to do so. There is also a substantial probability that CHA will demolish, at a minimum, the nine four-plex buildings at the Charleston Apartments.(36 units). Finally, there remains the question of the disparate impact of CHA's actual and threatened conduct on African-Americans and Defendants' violations of the Fair Housing Act of 1968 42 U.S.C. §§ 3601, *et seq*. On these issues, "the lines are drawn, the parties are at odds and the dispute is real." *Capitol Indemnity Corp. v. Miles*, 978 F.2d 437, 438 (8th Cir. 1992).

50. CHA's motion to dismiss for lack of ripeness is therefore denied.

Standing

51. This Court has previously addressed the standing of Housing Comes First in its June 7, 2001 Memorandum and Order. Plaintiff Housing Comes First's mission is to prevent homelessness and to preserve, expand, and ensure the availability of affordable housing. Its Executive Director, Scott Mills testified that Housing Comes First has diverted hundreds of hours of time from other projects to Charleston Apartments to prevent the threatened demolition and require the Housing Authority Defendants to rent up the vacant units. Housing Comes First, therefore, has satisfied the injury in fact requirement for standing.

52. The individual Plaintiffs have also suffered "an injury in fact economic or otherwise" traceable to CHA's conduct. *Data Processing Service v. Camp*, 397 U.S. 150, 152 (1970). Their Charleston Apartment community has been practically emptied and left deserted by the Defendants' conduct. Further, they, like Housing Comes First, have

an interest in seeing that defendant CHA complies with its ELIHPA obligations so that the Charleston Apartments and the Plaintiffs' community are preserved. Defendant CHA's refusal to rent the vacant units and offer the units for sale and its refusal to maintain the development, which will inexorably lead to its deterioration, is thwarting ELIHPA's preservation objective and harms the individual Plaintiffs' interest in maintaining their homes and the surrounding complex as decent affordable housing.

53. Defendants motion to dismiss for lack of standing is therefore denied.

Failure to Join an Indispensable Party

54. In determining whether a party is a necessary party, the focus is on the relief between the parties to the action and not on the speculative possibility of further litigation between one of those parties and an absent party. *LLC Corporation v. The Pension Benefit Guaranty Corp*., 703 F.2d 301 (8th Cir. 1983); *Geissal v. Moore Medical Corp*. 927 F.Supp 352 (E.D. Mo. 1996) aff'd 114 F.3d. 1458). Here, complete relief may be granted between Plaintiffs and Defendants without USDA's joinder.

55. Plaintiffs' First Amended Complaint does not allege any wrongdoing on the part of USDA or challenge its regulations. Instead, USDA's interests and those of the Plaintiffs are aligned since Plaintiffs seek to enforce the same rights that USDA would assert were it a party. *See Edgecomb v. Housing Authority of Town of Vernon,* 824 F. Supp. 312, 314 (D. Conn. 1993)(plaintiffs were not required to join HUD in action against defendant housing authority for alleged violations of HUD regulations because plaintiffs were not specifically challenging the constitutionality of the regulations); *Gwartz v. Jefferson Memorial Hospital Association*, 23 F.3d. 1426, 1429 (8th Cir. 1994)(disposition of physician's wrongful termination complaint against hospital would

not as a practical matter impair or impede physician's professional corporation's ability to protect its interest because physician had same interest in establishing the facts that his professional corporation had); and *Jeffries v. Georgia Residential Finance Authority*, 678 F.2d 919 (11th Cir. 1982) (where defendants advanced the same position that the absentee parties would have taken, and their interests were coextensive, disposition of action would not as a practical matter impair or impede the interests of the absentee parties).

56. While USDA may have an interest in the Loan Agreement and enforcing its regulations, its absence from the case will not impair its ability to protect that interest since it can file a separate suit to protect its interest if it deems it necessary to do so. Nor will USDA's absence from the suit subject CHA to the risk of inconsistent or multiple obligations.

> It is important to note that the 'multiple liability' clause compels joinder of an absentee to avoid inconsistent *obligations*, and not to avoid inconsistent adjudications. It is not triggered by the possibility of a subsequent adjudication that may result in a judgment that is inconsistent as a matter of logic.

4 MOORE'S, FEDERAL PRACTICE AND PROCEDURE, § 19.03[4][d].

57. A party is subject to inconsistent obligations when compliance with one court order might result in breach of another. See *Martin v. Wilks*, 490 U.S. 755, 757 (1989). Here, CHA complains that it may be subject to an "inconsistent result" if it prevails on its defense that it is not making a prepayment, and USDA files a separate suit. Motion to dismiss, Page 2. But an inconsistent result (or adjudication) is not the same as an inconsistent obligation.

58. Where Rule 19 refers to multiple obligations, it compels joinder of an absentee whose nonjoinder threatens a party with a risk of paying double damages. *See*

Gwartz v. Jefferson Memorial Hospital, 23 F.3d 1426, 1430 (8th Cir. 1994) and *Angst v. Royal Maccabees Life Ins. Co.*, 77 F. 3d 701, 705-706 (3d Cir. 1996). The Plaintiffs, however, are not seeking monetary damages against CHA. Therefore, there is no risk of CHA incurring multiple obligations or paying double damages.

59. CHA's motion to dismiss for failure to join USDA is therefore denied.

Failure to State a Claim Under the 14th Amendment of the U.S. Constitution

60. Relying on *Hill v. Group Three Hous. Dev. Corp.*, 799 F.2d 385 (8th Cir. 1986), CHA contends that the Plaintiffs have no property interest in continued occupancy and no procedural due process interest in the preservation of Charleston Apartments and that they fail to state a claim for this reason.

61. *Hill* is wholly inapplicable to residents. Without question, residents' interest in continued occupancy and operation of the RHS and Section 8 affordable housing programs constitute legally protectable property interests. *See, e.g., Holbrook v. Pitt*, 643 F.2d 1261 (7th Cir. 1981); *Johnson v. U.S. Dept. of Agriculture*, 734 F.2d 774 (11th Cir. 1984).

62. Persons awaiting admission into Charleston Apartments are differently situated than the plaintiffs in *Hill.* Persons on the waiting list are not mere "applicants." Under HUD and RHS regulations, families may only be placed on a waiting list after they have been successfully screened—i.e., determined to be "eligible and … otherwise acceptable," by CHA. 24 C.F.R. § 880.603(b)(1),[2] 7 C.F.R. Part 1930, Subpart C., Ex. B.,

[2] This regulation is made applicable to the Section 8 Substantial Rehabilitation Program by 24 CFR § 881.601. Universities Research Ass'n v. Coutu, 450 U.S. 754, 772 (1981), Cannon v. University of Chicago, 441 U.S. 677 (1979).

¶ VI.F.1.c. Having been successfully screened and admitted to CHA's waiting list, persons on this list are entitled to their spot on it.

63. Persons entitled to participate in a governmental program have a property interest in continued participation that may be infringed upon only in accordance with the procedural Due Process requirements of the federal Constitution. *See Goldberg v. Kelly*, 90 S.Ct. 1011, 1018 (1970).

64. CHA's motion to dismiss for failure to state a claim is therefore denied.

Failure to State a Claim Under the Uniform Relocation Act

65. Defendant CHA has moved to dismiss Plaintiff's Uniform Relocation Act (URA), 42 USC §§ 4601, *et seq.,* claim on the ground that CHA does not received the type of federal financial assistance that brings it within the ambit of the URA.

66. Section 8 housing assistance payments and a Section 515 loan both fall squarely within the URA's definition of a "grant, loan or contribution provided by the United States," and do not fit within any of the narrow statutory exceptions. 42 USC § 4601. Further, USDA's Section 515 regulations expressly require CHA to comply with the URA. 7 C.F.R. § 1944.215 (v) (2000).

67. CHA's motion to dismiss for failure to state a claim is therefore denied.

Failure to State a Claim under the Missouri Administrative Procedure Act

68. CHA has moved to dismiss Plaintiffs' claim under the Missouri Administrative Procedure Act arguing that Section 535.100 R.S.Mo. does not apply and that there are no facts pled which create the existence of a "contested" case.

69. CHA is in error in that Plaintiffs brought their claim under Section 535.150 R.S.Mo., which properly governs "non-contested" cases such as this one.

70. CHA's motion to dismiss for failure to state a claim is therefore denied.

Failure to State a Claim to Enforce Affirmative Fair Housing Duties under the Quality Housing and Work Responsibility Act

71. CHA contends that it has no affirmative duty to further fair housing in its operation of Charleston Apartments because the planning provisions of the Quality Housing and Work Responsibility Act of 1998 do not apply to Charleston Apartments and that the Plaintiffs have no right to enforce these provisions in any case.

72. In 1998, Congress in the Quality Housing and Work Responsibility Act (QHWRA) required every public housing authority (PHA) to prepare and to submit for HUD approval an "annual public housing agency plan" detailing the housing needs in the public housing authority's jurisdiction and the authority's administration of its programs. 42 U.S.C. § 1437c-1(b).

73. Because Charleston Apartments is housing "owned, assisted, or operated" by CHA it is subject to the CHA's QHWRA-mandated PHA plan. 42 U.S.C. § 1437c-1(d)(5).

74. The QHWRA further requires a PHA to certify that it "will carry out the public housing agency plan in conformity with … the Fair Housing Act … and will affirmatively further fair housing." *Id.* at § 1437c-1(d)(15). In carrying out this plan in regards to the management of Charleston Apartments, CHA must affirmatively further fair housing.

75. Congress has specifically allowed §1983 actions under these circumstances—i.e. when private parties challenge a PHA's compliance with PHA plan requirement. The statute provides that HUD is permitted to conduct a paper review of the PHA plans submitted to it, but that such review "shall not preclude … an action regarding such compliance under … 42 U.S.C. 1983." 42 U.S.C. §1437c-1(i)(4)(B).

76. CHA's motion to dismiss for failure to state a claim is therefore denied.

Failure to State a Claim of Discriminatory Effect under the Fair Housing Act

77. CHA argues that the Plaintiffs' discriminatory effect claim under Title VIII of the Civil Rights Act of 1968, the Fair Housing Act, must be dismissed in light of *Alexander v. Sandoval,* __ U.S. __, 121 S.Ct. 1511 (2001). In the alternative, it argues that the Plaintiffs have not made allegations sufficient to support a claim of discriminatory effect under Title VIII.

78. *Sandoval* has no direct relevance to discriminatory effect claims brought under the Fair Housing Act, Title VIII of the Civil Rights Act of 1968, 42 U.S.C. § 3601, *et seq*.

79. Plaintiffs have alleged facts, which if proved, amount to a sufficient prima facie showing of disparate impact. *See U.S. v. City of Black Jack, Mo.,* 508 F.2d 1179 (8th Cir. 1975); *In re Malone*, 592 F.Supp. 1135, 1166, n. 21 (E.D.Mo. 1984) Plaintiffs have alleged that African Americans comprise a greater number of the group adversely affected by CHA's policies and practices at issue in this case. Plaintiffs have also alleged that African Americans suffer a qualitatively more severe harm as a result of these policies and practices.

80. CHA's motion to dismiss for failure to state a claim is therefore denied.

Failure to State a Claim under 12 U.S.C. § 1715z-1b

81. CHA has moved to dismiss plaintiff's claim that it interfered with plaintiffs' efforts to obtain rent subsidies pursuant to 12 U.S.C.A § 1715z-1b on the ground that Charleston Apartments is not a "multi-family housing project" as defined by that statute.

82. Charleston Apartments falls within any one of the three alternative definitions of "multi-family housing project" in the statute. 12 USCA § 1715z-1b(a).

83. CHA's motion to dismiss for failure to state a claim is therefore denied.

Failure to State a Claim under Rural Rental Housing Program Requirements and Loan Documents

84. CHA argues that its 231st payment was merely a "payment" and not a "prepayment" that would subject it to 42 U.S.C. § 1472 and RHS regulations.

85. CHA's 231st payment meets the definition of a prepayment set forth in USDA regulations. *See* 7 C.F.R. § 1965.202.

86. CHA's motions to dismiss for failure to state a claim is therefore denied.

Failure to State a Claim under 42 U.S.C. § 1437f

87. Defendant's seek to dismiss Plaintiffs' third claim on the grounds that the Section 8 HAP contract between defendants CHA and HUD has been terminated as a matter of law and that, as a result, Plaintiffs cannot sustain their cause of action.

88. A Section 8 HAP contract may only be terminated in accordance with prescribed statutory procedures. *See* 215 Alliance v. Cuomo, 61 F. Supp.2d 879 (D.

Minn. 1999). If, as Plaintiffs allege, these procedures are not followed, a Section 8 HAP contract may not be terminated.

89. CHA also contends that once the HAP contract has been terminated the Plaintiffs, as a matter of law, cannot maintain their claim that it has an obligation to accept enhanced vouchers.

90. The purpose of enhanced vouchers is to allow residents of projects whose owners have properly terminated their HAP contract to remain in their units. The enhanced voucher provides the residents with a voucher that has a higher value and thus enables the residents to remain in their units and pay rents higher than other vouchers holders can pay. Thus, the only time when enhanced vouchers can be issued is *after* termination of a project based Section 8 contract. Indeed, as 42 U.S.C. § 1437f(t) makes clear, the owner's obligation to accept vouchers only becomes effective upon an "eligibility event" which is defined, in part, as "the termination or expiration of the contract for rental assistance under section 8 of the United States Housing Act of 1937." 42 USC § 1437f(t)(2). Thus, in accordance with the statute, until the Section 8 contracted is properly terminated the obligation to issue enhanced vouchers does not accrue in the first place.

91. CHA's motions to dismiss for failure to state a claim is therefore denied.

CONCLUSIONS OF LAW REGARDING PLAINTIFFS REQUEST FOR PRELIMNARY INJUNCTIVE RELIEF

92. Whether this Court should grant Plaintiffs' request for a preliminary injunction is determined by a consideration of four factors: (1) the threat of irreparable

harm to the movant; (2) the state of balance between this harm and the injury that granting the injunction will inflict on other parties litigant; (3) the probability that movant will succeed on the merits; and (4) the public interest. *Dataphase Systems, Inc. v. C.L. Systems*, 640 F. 2d 109, 114 (8th Cir. 1981 (*en banc*).

Irreparable Harm to the Plaintiffs

93. By failing to operate Charleston Apartments at full occupancy and allowing the development to stand largely empty and deteriorate, CHA has consigned the Plaintiffs to residing in a deserted, deteriorating housing complex.

94. Further, these actions by CHA, together with CHA and HUD's failure to extend Charleston Apartments' Section 8 Housing Assistance Payments ("HAP") contract will inexorably foreclose the possibility of a buyer being able to purchase and operate Charleston Apartments as affordable housing as contemplated under the Emergency Low Income Housing Preservation Act of 1987, 42 U.S.C. § 1472.

95. CHA's action purportedly to terminate the Section 8 Housing Assistance Payments contract eliminates a regular cash flow from tenant rents and HAP subsidies for occupied units. This conduct also frustrates a prospective buyer's ability to be able to purchase Charleston Apartments and to operate it as affordable housing for the types of low-income families it serves and is intended to serve. CHA's failure to maintain the development and its inevitable physical deterioration over time will make the prospect of a purchase even more remote as time passes.

96. In short, the Plaintiffs face the on-going loss of their community and the loss of the guaranteed affordability of their homes. The loss of an affordable, subsidized home

is a severe and irreparable injury. *See, e.g., McNeil v. New York City Hous. Auth.*, 719 F. Supp. 233, 254 (S.D.N.Y. 1989); *Lancor v. Lebanon Hous. Auth.*, 760 F.2d 361, 363 (1st Cir. 1985); *Johnson v. United States Dept. of Agric.*, 734 F.2d 774, 789 (11th Cir. 1984); *Edwards v. Habib*, 366 F.2d 628, 630 (D.C. Cir. 1965).

Hardships Posed to Defendants

97. An extension of the Charleston Apartments Section 8 HAP contract poses no hardship to the Defendants because HUD has stipulated to providing subsidy payments for occupied Charleston Apartments dwelling units and CHA has stipulated to accepting these payments. Stipulation , ¶ 32

98. An order requiring CHA to operate Charleston Apartments at full occupancy imposes no significant hardship on CHA because it will receive HAP and tenant rental contributions for the units it rents sufficient to operate the development, because only two of the vacant units have suffered significant damage to date, and because there exists over $140,000 in cash reserves for Charleston Apartments to fund any required repairs.

Plaintiffs' Probability of Success on the Merits of Their Claims

99. For the reasons stated below, there is a substantial probability that Plaintiffs will succeed on the merits of their claims. Consideration of this factor, favors granting relief to the Plaintiffs.

Violation of the Terms of the Section 515 Loan Resolution, Note, and Deed of Trust for Charleston Apartments by CHA

100. The Loan Agreement for Charleston Apartments is effective and enforceable by the Plaintiffs.

101. By refusing to offer vacant units for rent and operate the development as rental housing for eligible families since December 1999, the Housing Authority Defendants have violated and continue to violate this Loan Agreement.

102. The Loan Resolution (¶6) requires the CHA to use Charleston Apartments as rental housing for eligible families until the loan on the property has been paid in full and the Government gives prior consent to cease such use.[3] In this case, the Section 515 loan has not been satisfied and USDA has not consented to CHA's decision to discontinue operation of Charleston Apartments as affordable rental housing.

103. The CHA's refusal to lease-up available units and use Charleston Apartments as affordable rental housing also violates the Deed of Trust on the property. That instrument includes a 20-year use restriction:

> The borrower and any successors in trust agree to use the housing for the purpose of housing people eligible for occupancy as provided in Section 515 of Title V of the Housing Act of 1949 and FmHA regulations then extant during this 20 year period beginning April 27, 2001. No person occupying the housing shall be required to vacate prior to the close of such 20 year period because of early repayment.

Deed of Trust ¶ 27.

[3] The Loan Resolution also provides that the Section 515 loan "shall be used solely for the specific eligible purposes for which it is approved by the government, in order to provide rental housing and related facilities for eligible occupants." Furthermore, the CHA promised in the Loan Resolution to comply with all its agreements and obligations in or under the note, security instrument, and any related agreement executed in connection with the loan and to do other things as may be required by the Government in connection with the operation of the housing or with its other affairs that may affect the housing, the loan obligation, or the security. Loan Resolution at ¶ 6g and i. The Housing Authority Defendants' decision to leave units sitting empty and not to comply with USDA's lease-up directive of June 5, 2001 also violates these provisions of the Loan Resolution.

104. By refraining from renting vacant units since December 1999, the CHA breached its obligation to use the property as rental housing for those families eligible for occupancy. It similarly breached its duty under the Deed of Trust by encouraging existing residents to move out of their homes at Charleston Apartments.

105. The Deed of Trust provides that tenants as well as the Government may enforce those duties. Deed of Trust, ¶ 27.

106. In the Deed of Trust, the CHA further agreed to maintain Charleston Apartments "in good repair" and not to "abandon the property, or cause or permit waste." Deed of Trust ¶ 9. By vacating the premises and doing little more than shutting off the water and mowing the grass, the Housing Authority has abandoned the development, thereby fostering deterioration and waste of the housing units. Furthermore, while the CHA Housing Authority asserts that the apartments are presently, or with minor repairs, would be habitable, it is not keeping the property "in good repair" as required by the Deed of Trust.[4]

Violation of the Rural Housing Program Requirements, 42 U.S.C § 1485, by CHA

107. Section 515 and its implementing regulations also require CHA to operate Charleston Apartments as affordable rental housing over the duration of its mortgage. The Section 515 Rural Rental Housing Program is one of several programs established by Congress to increase the supply of affordable housing. *See* Lifgren v. Yeutter, 767 F. Supp. 1473, 1477 (D. Minn. 1991). *See also* 42 USC §1485(a).

[4] Pursuant to USDA requirements, the CHA also has a reserve fund for Charleston Apartments that can be used to make the repairs necessary for the vacant units to be rented to eligible families. According to CHA records as of December 31, 2000, there was $149,557.00 in reserve funds for the development.

108. Under Section 515, USDA issues long-term loans at market rates to developers and owners of rural rental housing for the elderly, disabled, and other low-income households. "In exchange, borrowers agreed to provide affordable housing over the duration of their government-assisted mortgages." Parkridge Investors Limited Partnership v. Farmers Home Administration, 13 F.3d 1192, 1195 (8th Cir. 1994).

109. The statutory scheme contemplates that units in the Section 515 project will be made available for occupancy on a continuous basis. Section 1485(p)(3) provides that "[u]nits in projects financed under this section which become available for occupancy after November 30, 1983, shall not be available for occupancy by persons and families other than very low income persons and families if the authority to provide assistance for such persons is available." 42 U.S.C. § 1485(p)(3).

110. Here, there is a project-based Section 8 HAP contract for Charleston Apartments. Therefore, CHA has the authority to provide assistance to very low-income families, and it must make the vacant units in the complex available for rental by such families.

111. The USDA regulations similarly obligate CHA to rent up vacant units in the complex. Section 515 projects must have and comply with a Management Plan approved by USDA. 7 C.F.R. § 1930.108; Part 1930, Subpart C, Exs. B ("Management Handbook" & B-1. The Management Plan must include "plans and procedures for marketing units, achieving and maintaining full occupancy" and "[d]escribe the methods that will be used to achieve and maintain the highest possible level of occupancy." Id. at Ex. B-1, ¶3. According to the Management Handbook, the borrower must advertise the availability of units even if there is an adequate waiting list, post permanent signage

indicating where rental applications may be made, advise prospective applicants of their right to file an application, and maintain a waiting list of eligible applicants. Id. at Ex. B, ¶ VI C, E. The Management Plan also includes extensive requirements for maintenance of the project. Id. at Ex. B-1 at ¶ 8; Ex. B at ¶ X.

112. Since December 1999, CHA admittedly did not comply with the requirements of its Management Plan and has violated this Management Plan and corresponding obligations under the FmHA regulations. It has failed to offer vacant units to waiting list families, advertise available units, accept applications, or place eligible applicants in available units violated Section 515 and its implementing regulations.

Violation of the Emergency Low Income Housing Preservation Act, 42 U.S.C. §1472, and Implementing Regulations by CHA

113. CHA's refusal to lease and maintain the vacant units also violates the Emergency Low Income Housing Preservation Act ("ELIHPA") 42 U.S.C. §1472(c). Congress was concerned that a large portion of the federally assisted housing stock, including thousands of units under the Section 515 program, was vulnerable to prepayment and removal from the supply of low-income housing. See Parkridge, 13 F.3d at 1195. In 1987, it enacted the Emergency Low Income Housing Preservation Act (ELIHPA) in order "to preserve and retain to the maximum extent practicable as housing affordable to low income families or persons those privately owned dwelling units that were produced for such purpose with Federal assistance . . . [and] to minimize the involuntary displacement of tenants currently residing in such housing." Pub. L. No. 100-242, § 202, 101 Stat. 1815, 1877-78 (Feb. 5, 1988).

114. ELIHPA (as amended in 1989) imposes prepayment restrictions for Section 515 projects that USDA and owners seeking to prepay their loans must comply with in order to preserve the properties as affordable housing. Generally, those steps are that (1) USDA must offer financial incentives to owners to continue operating their property as affordable housing and, if they rejects the incentives, (2) owners must offer the property for sale for a period of 6 months to nonprofit or public agencies that would continue to operate the project as affordable housing. See 42 U.S.C. § 1472(c)(4) & (5).

115. CHA stands in deliberate violation of prepayment requirements, refusing even to submit a completely prepayment application for consideration by USDA.

116. The USDA regulations implementing the ELIHPA requirements for Section 515 projects require that owners will continue to lease-up and maintain their properties during the prepayment process. For example, the regulations require a special lease addendum to be used with "tenants moving into the project while the prepayment request is pending." 7 C.F.R. § 1965.206(b)(5). Owners must submit the language they propose to use as an addendum to new tenant leases for approval by USDA. Id. The regulations also expect that existing tenants will remain in the complex during the prepayment process, providing that the USDA Servicing Office will keep tenants apprised of the status of the prepayment request and actions being taken. 7 C.F.R. § 1965.206(b)(6).

117. The USDA regulations require that vacant units will be made available for occupancy and the project will continue to operate as rental housing in order to facilitate the sale of the project to a non-profit organization and its preservation as low-income housing. Nonprofit or public agencies will be less inclined to purchase a Section 515

project if the development has no rental income stream and high deferred maintenance costs. The CHA cannot be permitted to thwart the preservation objectives of ELIHPA by driving the complex into the ground and failing to comply with its duties under the Section 515 program to maintain the highest possible level of occupancy and keep the complex in good repair.[5]

Violation of the United States Housing Act, 42 U.S.C. § 1437f, and Its Implementing Regulations by CHA and HUD

118. The Section 8 substantial rehabilitation program rules similarly require participating owners to make good faith efforts to lease available units to eligible families. *See* 24 C.F.R. § 880.504(a), 24 C.F.R. § 881.104, 24 C.F.R. § 881.503 (making § 880.504 applicable to the Section 8 substantial rehabilitation program), 24 C.F.R. § 880.504(d), 59 Federal Register 13652, Mar. 23, 1994.

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[5] This Court rejects Defendant CHA's assertion that there exists no private right of action under ELIHPA. Defendant CHA's Memorandum of Law in support of its Motion to Dismiss at page 12. The following factors must be considered In determining whether a private right of action exists under this statute: (1) whether plaintiffs constitute the class fo whose especial benefit the statute was passed, (2) whether Congress has indicated an intent to allow or preclude a private remedy, (3) whether a private right of action is consistent with the underlying purposes of the legislative scheme, and (4) whether the right of action is a traditional state law claim in an area of concern of the states. *Cort v. Ash,* 422 U.S. 66, 78 (1975). Consideration of the first factor, means the court must determine whether the "language of the statute explicitly confers a right on a class of persons that includes the plaintiff in the case." *Universities Research Ass'n v. Coutu,* 450 U.S. 754, 772 (1981), *Cannon v. University of Chicago*, 441 U.S. 677 (1979). In enacting ELIHPA, Congress expressly determined that prepayment would subject current tenants to unnecessary and unwanted displacement from their apartments. Further, ELIHPA prohibits CHA from prepaying unless USDA determines that the Charleston Community can provide current tenants with adequate low-rent housing. Also, "the statutory language of the Emergency Preservation Act focuses unmistakably on [tenants such as the Plaintiffs herein] as the specific and identifiable class of beneficiaries. *Orrego v. HUD*, 701 F. Supp. 1384, 1392 (N.D. Ill 1988). With regard to the second Cort factor - whether a implied right of action is consistent with the underlying purpose of the Act – Plaintiffs right to enforce enforce the Act is both consistent with the statutory scheme and necessary to the realization of Congress intent. Id. If a Section 515 loan owner tenders a prepayment and USDA accepts it and rescinds federal regulation over a housing complex, the tenants may be the only ones to bring an appropriate challenge. When the remedy is "necessary or at least helpful to the accomplishments of the statutory purpose, the Court is decidedly receptive to its implications under the statute. *Cannon v. University of Chicago,* 441 U.S. 677 at 703 (1979).

119. By failing to lease vacant units at Charleston Apartments since December 1999, CHA has violated its obligation to take all feasible actions to fill vacancies at Charleston Apartments. It violated the full occupancy mandate for more than a year before the scheduled time to opt out of the Section 8 HAP contract on April 27, 2001.

120. Owners choosing to opt out of their HAP contracts must provide statutorily required notice to HUD and tenants at least one year in advance of termination.[6] Section 1437f(c)(8)(A) sets out the precise terms of that notice:

> The notice shall also include a statement that, if the Congress makes funds available, the owner and the Secretary may agree to a renewal of the contract, thus avoiding termination, and that in the event of termination the Department of Housing and Urban Development will provide tenant-based assistance to all eligible residents, enabling them to choose the place they wish to rent, which is likely to include the dwelling unit in which they currently reside.

121. In this case, CHA provided to both HUD and the tenants a purported one-year notice that modified the statutory language to read "which is not likely to include the dwelling unit in which you currently reside." HUD determined CHA's notice was consistent with [program] notification requirements.

122. While HUD may have approved the notice, HUD may not waive statutory notice requirements, including those required in advance of Section 8 opt-outs. 215 Alliance v. Cuomo, 61 F. Supp.2d 879, 887 (D. Minn. 1999). The purpose of that language is to inform tenants that they have a statutory right to "elect to remain in the

[6] The notice requirements are part of Congress' effort to address the displacement of tenants and loss of affordable housing as a result of the expiration of Section 8 HAP contracts. In ELIHPA, Congress also found that more than 465,000 units under the Section 8 program could be lost through the expiration of rental assistance contracts. Pub. L. No. 100-242, § 202, 101 Stat. 1815, 1877-78 (Feb. 5, 1988). Congress has authorized various financial incentives to encourage owners to remain in the Section 8 project-based program and, as with mortgage prepayments, has required HUD and owners to take certain steps to minimize displacement and attempt to preserve the property as affordable housing. One of those steps is

same project in which the family was residing" using the enhanced vouchers that must be issued in connection with the terminating HAP contract. 42 U.S.C. § 1437f(t)(1)(B). In this case, because a Section 515 prepayment transaction is involved, tenants are also likely to remain at Charleston Apartments because nonprofit and public agencies must be offered an opportunity to purchase the project under the ELIHPA preservation process.

123. CHA's notice is defective under the statute.

124. When the notice given to HUD and to tenants pursuant to § 1437f(c)(8)(A) is defective, the clock for the one-year notice must be turned back, and it does not begin to run again until proper notice is given. Since the statutory notice must precede termination of the HAP contract by at least one year, the HAP contract on Charleston Apartments continues by operation of law and has not terminated.[7] See 215 Alliance, 61 F. Supp.2d at 883. The complex therefore remains subject to the full occupancy requirements of § 880.504.

Violation of Affirmative Fair Housing Duties under the Fair Housing Act, 42 U.S.C. § 3608(e)(5), by HUD

125. HUD cannot administer its programs as if the Fair Housing Act did not exist. Prior to the enactment of the Civil Rights Acts of the 1960s, "the administrators of the federal housing programs could, by concentrating on land use controls, building code enforcement, and physical conditions of buildings, remain blind" to the racial effects of their decisions; but "[t]oday such color blindness is impermissible." *Shannon v. U.S.*

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the requirement for a one-year notice to tenants and HUD before an owner may opt-out of the Section 8 HAP contract. See 42 U.S.C. § 1437f(c)(8)(A).

[7] HUD's Section 8 Renewal Guide provides that "[i]n order for an Owner to opt-out of the project-based Section 8 program, they must satisfy all notification requirements." The term "opt-outs" is defined as a

Dept. of Hous. and Urban Dev., 436 F.2d 809, 820 (3rd Cir. 1970). The purpose behind Congress's imposition of an affirmative duty to further fair housing on HUD was to counteract the historical "bureaucratic myopia" suffered by the department by requiring HUD to take into account the effect of its decisions on "the racial and socio-economic composition of affected areas." *See Anderson v. City of Alpharetta*, 737 F.2d 1530, 1535 (11th Cir.1984).

126. In this case, HUD has approved a course of action that will result in the loss of dozens of subsidized homes. The selection of the Charleston Apartments site for participation in the Section 8 Substantial Rehabilitation Program was subject to "[s]ite and neighborhood standards" intended to advance civil rights objectives, HUD has performed no examination of the racial and socioeconomic effects of its decision to approve the CHA's deficient opt-out notice. *See* 24 C.F.R. § 881.206 (1981) (requiring that a Section Substantial Rehabilitation development site "[b]e suitable from the standpoint of facilitating and furthering full compliance with the applicable provisions of Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968 [the Fair Housing Act], Executive Order 11063, and HUD regulations issued pursuant thereto.")

127. Indeed, HUD has in place no institutionalized method for gathering the racial and socioeconomic information necessary to perform such an analysis. Neither HUD's *Section Renewal Policy: Guidance for the Renewal of Project-Based Section 8 Contracts*, (which is supposed to "provid[e] comprehensive guidance" for the renewal of expiring properties) nor HUD's earlier administrative Notice 99-36 includes a description

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"conversion action where an Owner chooses to opt-out of certain programs by not renewing an expiring Section 8 or rent supplement program project-based contract." See Ex. 1 attached hereto.

of any fair housing analysis performed by HUD in implementing its policies on expiring affordable rental properties.

128. In addition, the evidence shows no indication that HUD performed any fair housing analysis in its decision to allow CHA to operate Charleston Apartments at less than full occupancy. If the Charleston Apartments' entry into the Section 8 program was expected to have fair housing effects, the development's exit from the program, should be expected to have fair housing effects — especially where the development's owner has violated federal law and program requirements.

129. Because HUD performed no fair housing analysis and has no institutionalized method for performing such an analysis it has violated its obligations under 42 U.S.C. § 3608(e)(5), and acted in a manner that is arbitrary, capricious, abusive of its discretion, or otherwise not in accordance with law in violation of the Administrative Procedure Act, 28 U.S.C. §§ 701, *et seq.*

Violation of Affirmative Fair Housing Duties under the Quality Housing and Work Responsibility Act, 42 U.S.C. § 1437c-1, by CHA

130. Like HUD, the Housing Authority Defendants are subject to special affirmative fair housing duties In 1998, Congress in the Quality Housing and Work Responsibility Act (QHWRA) required every public housing authority to prepare and to submit for HUD approval an "annual public housing agency plan" detailing the housing needs in the public housing authority's jurisdiction and the authority's administration of its programs. 42 U.S.C. § 1437c-1(b). QHWRA further requires each public housing authority to certify that it "will carry out the public housing agency plan in conformity

with title VI of the Civil Rights Act of 1964, the Fair Housing Act, … and will affirmatively further fair housing." *Id.* at § 1437c-1(d)(15).

131. The scope of public housing authorities' duty under QHWRA to further fair housing affirmatively is an issue of first impression. The decades of case law interpreting HUD's affirmative fair housing duty under 42 U.S.C. § 3608(e)(5) will inform the same obligation imposed on local housing authorities.[8] The duty to further fair housing affirmatively has been universally construed to mean more than a duty simply to refrain from engaging in illegal discrimination. *See e.g.*, *NAACP v. Secretary of Dept. of Hous. And Urban Dev.*, 817 F.2d 149, 155 (1st Cir. 1987).

132. At a minimum, a public housing authority's obligation to further fair housing affirmatively requires an agency to examine the fair housing effects of its decisions with clear and open eyes. It must have in place procedures for evaluating the fair housing implications of its actions and use those procedures to inform the decisions that it makes. An agency "must utilize some institutionalized method whereby . . . it has before it the relevant racial and socioeconomic information necessary for compliance with its duties under . . . [the Fair Housing Act.]" *Shannon v. U.S. Dept. of Hous. And Urban Dev.*, 436 F.2d 809, 820 (3d Cir. 1970).

133. The evidence shows that the CHA did not have an institutionalized process for evaluating the relevant data and did not engage in a considered analysis of the racial and socioeconomic effects of Resolution 604 and its decision to prepay the Section

[8] Indeed, some courts have held that housing authorities as well as HUD are subject to § 3608(e)(5) insofar as they administer HUD programs. *See Otero v. New York City Housing Authority ("Otero")*, 484 F.2d 1122, 1133 (2d. Cir. 1973). *See also U.S. v. Charlottesville Redevelopment and Housing Authority ("Charlottesville"),* 718 F.Supp. 461, 464–467 (W.D.Va. 1989).

515 loan, opt out of the Section 8 contract, and vacate and demolish Charleston Apartments.

The Public Interest

134. Consideration of the public interest favors granting the relief sought by the Plaintiffs.

135. Plaintiffs here seek to compel CHA and HUD to comply with their legal obligations. "[I]t is of the utmost interest to the public that administrative bodies obey the law." *Ross v. Community Services, Inc.*, 396 F. Supp. 278, 288 (D.Md. 1975).

136. Further, as CHA concedes, there is a strong public interest in affordable housing. The evidence shows that such interest is particularly strong in Charleston, where the need for affordable housing is especially acute.

137. Plaintiffs have an inadequate remedy at law.

Therefore, in accordance with these findings,

IT IS ORDERED THAT until this Court shall enter a final Order and Judgment on Plaintiffs request for a Permanent Injunction or such earlier date as may be set by the Court :

1. Defendants Charleston Housing Authority and Paul Page and all other persons acting in concert or in participation with them are preliminarily enjoined from demolishing the Charleston Apartments or evicting (other than for good cause), inducing or encouraging any residents to move out of the Charleston Apartments. Further, Defendant Charleston Housing Authority and Paul Page shall immediately :

a. lease, operate, maintain and repair all 50 dwelling units at the Charleston Apartments in accordance with the Rural Rental Housing Program, the Section 8 Rehabilitation Program and all legal requirements applicable to the programs;

b. advertise the vacant units at the Charleston Apartments pursuant to Defendant Charleston Housing Authority's April 17, 1995 Management Plan and the Affirmative Fair Housing Marketing Plan; and

c. offer the vacant units at the Charleston Apartments first to eligible families on any waiting list maintained by the Charleston Housing Authority, giving those families the choice to lease such a unit or refuse it without prejudice to their position on the waiting list, and then to other eligible families;

2. Defendant U.S. Department of Housing and Urban Development shall take all steps necessary to treat the Housing Assistance Payment ("HAP") contract as still in effect until such time as the validity of the Housing Authority's attempt to opt out of the HAP contract is finally determined.

SO ORDERED:

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Catherine D. Perry
United States District Judge

Dated:____________________