

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 05-4174

CHICAGO ACORN, WYVONIA)	Appeal from the United States
PICKETT, CALLIE DAVIS, FLORIDA)	District Court for the Northern
WASHINGTON, and JOAN BANKS,)	District of Illinois, Eastern Division
On Behalf of Themselves and All)	
Others Similarly Situated,)	
)	
Plaintiffs-Appellants,)	No. 05 C 3049
)	
v.)	The Honorable Judge Blanche
)	Manning
THE UNITED STATES)	
DEPARTMENT OF HOUSING AND)	
URBAN DEVELOPMENT ("HUD"),)	
and ALPHONSO JACKSON, In His)	
Official Capacity as Secretary of)	
HUD,)	
)	
Defendants-Appellees.)	

APPELLANTS' MOTION TO EXPEDITE BRIEFING AND ORAL ARGUMENT

Plaintiffs-Appellants, Chicago ACORN, Wyvonia Pickett, Callie Davis, Florida Washington, and Joan Banks ("Appellants") move to expedite briefing and oral argument in this appeal. In support thereof, Appellants state as follows:

1. Appellants are residents of Lawndale Restoration, a 1,240-unit, multi-family housing property on the west side of Chicago. Lawndale Restoration is owned privately but has been financed and subsidized over the years by the Defendant-Appellee, the United States Department of Housing and

Urban Development (“HUD”).¹ Under these financing arrangements and the federal laws that authorize them, Lawndale Restoration is a “project-based” Section 8 property. Appellants, as residents of the property, are entitled to pay a fixed thirty percent of their income as rent. The balance of the rent is paid by HUD or its local governmental agents to the landlord. Because the subsidy for Lawndale Restoration is project-based, the property is a significant part of the overall supply of affordable housing available to any low-income person in the Chicago market.²

2. The landlord of Lawndale Restoration defaulted on its mortgage, and HUD, as insurer, repaid the lender and assumed the mortgage. HUD now plans to foreclose on the mortgage and “dispose” of the property through an agreement with the City of Chicago (“City”) and a number of private developers. HUD’s Planned disposition of the property will negatively impact the rights of the current residents by altering their current subsidies and their ability to remain in a rehabilitated Lawndale Restoration. The disposition will also negatively impact the affordable housing stock in Chicago by eliminating over 1,000 units of project-based subsidized housing.

3. During the winter and spring of 2005, HUD made it clear to the tenants that it would not under any circumstance continue project-based

¹ Alphonso Jackson also was sued, in his official capacity as Secretary of HUD. For simplicity, Defendants-Appellees are collectively referred to as “HUD.”

² The factual statements herein are supported by the Declaration of Katherine E. Walz, attached hereto as Exhibit 1. The Declaration also provides additional background information regarding Appellants’ lawsuit.

subsidies in Lawndale Restoration. It also created uncertainty about tenants' ability to relocate or stay at Lawndale Restoration.

4. Appellants filed suit in this action to prevent HUD from violating multiple federal statutes in its plan to foreclose on and dispose of Lawndale Restoration. The District Court dismissed the action under Federal Rule of Civil Procedure 12(b)(6), holding that 12 U.S.C. § 1715z-11a(a) exempts HUD from compliance with all other applicable laws in disposing of foreclosed upon properties.

5. Shortly after the District Court dismissed the action, Appellants learned that HUD is now proceeding with its disposition plan. From conversations with HUD and the City and an October 14, 2005 letter from HUD to the residents of Lawndale Restoration, HUD has made it known that it will shortly finalize an agreement with the City for the disposition of the property. As Appellants understand the agreement, HUD will acquire the property in foreclosure or through a deed in lieu of foreclosure and will transfer ownership to the City. The City will then sell the property to several private developers.

6. HUD intends to convey the development to the City as soon as possible in the next two months and the sale to private developers will occur immediately thereafter. Residents have already been asked to complete a survey to determine if they intend to remain at the Lawndale Restoration or move using a soon-to-be-issued Housing Choice Voucher.

7. Expedited treatment of this appeal is necessary to preserve plaintiffs' ability to protect their rights should they prevail. If the appeal is not expedited and the current deal is finalized, the resulting changes will irrevocably alter the rights of some members of the proposed class. Some residents will inevitably move out of Lawndale Restoration, and new residents will move in. If HUD is ultimately determined to have, as Appellants believe, illegally terminated the project-based subsidies currently in place at Lawndale Restoration, it will be difficult, if not impossible, to restore all former residents to their pre-disposition status. Furthermore, it will be difficult to revise the intervening contractual arrangements with developers that would be premised on the elimination of the project-based housing subsidies now in place.

8. Absent expedited treatment, HUD's disposition plan will be fully implemented before this Court determines whether HUD had the discretion to disregard all applicable law in forming its disposition plan. While injunctive relief after the fact may resolve many of the illegalities created by HUD's disposition, it cannot make whole all of the current residents, and would make any return to project-based subsidies unnecessarily difficult.

9. There are only two discrete, and related, legal issues currently before this Court—whether 12 U.S.C. § 1715z-11a(a) allows HUD to ignore all other laws in disposing of foreclosed upon properties, and whether that provision also precludes Administrative Procedure Act review of any such disposition. The record is not extensive, as the District Court only addressed the Motion to Dismiss, and the parties have already briefed these issues before

the District Court. Therefore, advancing the appeal and providing expedited briefing and argument would not unduly burden the parties or the Court.

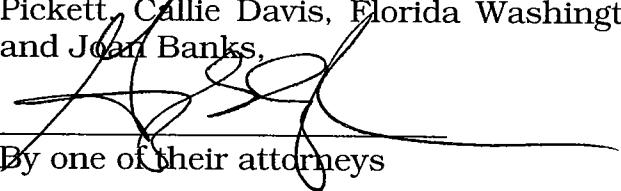
10. If Appellants prevail in this appeal, expedited review could return the case to the District Court before HUD has taken any final steps in its disposition plan. Appellants would then be in a position to reassert their Motion for a Preliminary Injunction, and if the Court determined that Appellants were likely to prevail on the merits, the status quo could be maintained pending a final resolution of Appellants claims.

11. For the foregoing reasons, Appellants respectfully request that this Court expedite briefing and oral argument in this appeal.

Dated: November 7, 2005

Respectfully submitted,

Appellants Chicago Acorn, Wyvonia
Pickett, Callie Davis, Florida Washington,
and Joan Banks,


By one of their attorneys

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Attorneys for Plaintiffs/Appellants

CERTIFICATE OF SERVICE

The undersigned certifies that he served a true and correct copy of the above referenced Plaintiffs-Appellants' **MOTION TO EXPEDITE BRIEFING AND ORAL ARGUMENT** on each counsel of record on November 7, 2005, served in the manner specified below:

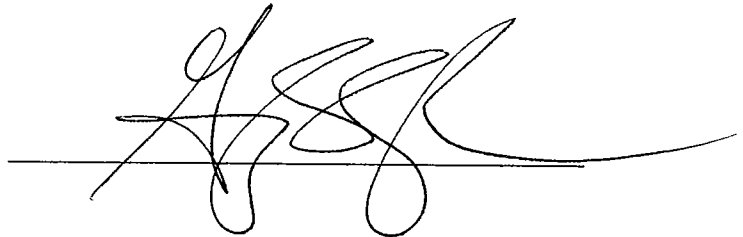
VIA FIRST CLASS MAIL:

Clare Harrigan
Office of the General Counsel
United States Department of
Housing and Urban
Development
451 7th Street, SW
Washington, DC 20410

BY HAND DELIVERY:

LaShonda A. Hunt
Assistant United States Attorney
219 South Deaborn, 5th Floor
Chicago, IL 60604

The Motion to Advance Appeal was filed in the Clerk's Office on November 7, 2005, by hand delivery.

A handwritten signature in black ink, appearing to be 'L. A. Hunt', is written over a horizontal line. The signature is stylized and cursive.

CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 05-4174

Short Caption: Chicago ACORN, Wyvonia Pickett, Callie Davis, et al., v. HUD

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party or amicus curiae, or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1.

The Court prefers that the disclosure statement be filed immediately following docketing; but, the disclosure statement must be filed within 21 days of docketing or upon the filing of a motion, response, petition, or answer in this court, whichever occurs first. Attorneys are required to file an amended statement to reflect any material changes in the required information. The text of the statement must also be included in front of the table of contents of the party's main brief. **Counsel is required to complete the entire statement and to use N/A for any information that is not applicable if this form is used.**

(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P 26.1 by completing item #3):

Chicago ACORN, Wyvonia Pickett, Callie Davis, Florida Washington, and Joan Banks

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

Sargent Shriver National Center on Poverty Law, Inc., and Sachnoff & Weaver, Ltd.

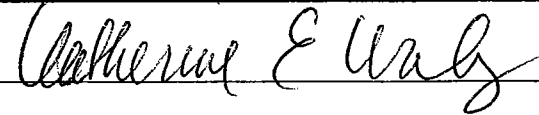
(3) If the party or amicus is a corporation:

i) Identify all its parent corporations, if any; and

N/A

ii) list any publicly held company that owns 10% or more of the party's or amicus' stock:

N/A

Attorney's Signature:  Date: 11/7/05

Attorney's Printed Name: Katherine E. Walz

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). Yes No

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CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 05-4174

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Housing Preservation Project, Inc.

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Attorney's Printed Name: Gary S. Caplan

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Phone Number: (312) 207-6425 Fax Number: (312)207-6400

E-Mail Address: gcaplan@sachnoff.com

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Appellate Court No: 05-4174

Short Caption: Chicago ACORN, Wyvonia Pickett, Callie Davis, et al., v. HUD

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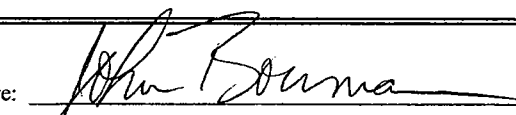
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ii) list any publicly held company that owns 10% or more of the party's or amicus' stock:

N/A

Attorney's Signature: 

Date: Nov. 7, 2005

Attorney's Printed Name: John M. Bouman

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