

**IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT**

U.S.C.A. – 7th Circuit
RECEIVED

No. 05-4174

DEC - 2 2005 JIR

**GINO J. AGNELLO
CLERK**

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’ RESPONSE TO EMERGENCY MOTION
TO REMAND IN LIGHT OF INTERVENING LAW**

Plaintiffs-Appellants, Chicago ACORN, Wyvonnia Pickett, Callie Davis, Florida Washington, and Joan Banks (“Appellants”) hereby file this Response to the Emergency Motion to Remand in Light of Intervening Law (“Emergency Motion”) filed by the Appellees, United States Department of Housing and Urban Development and HUD Secretary Alphonso Jackson (collectively “HUD” or “Appellees”).

1. This matter is before the Court on Appellants' appeal from the district court's opinion granting HUD's motion to dismiss and the ensuing entry of judgment dismissing the case. Appellants do not oppose HUD's Emergency Motion, but believe that the Court must, in remanding to the district court, also vacate the opinion and judgment below.

2. As set forth in the Emergency Motion, after Appellants filed their brief, Congress passed the Transportation, Treasury, Housing and Urban Development, the Judiciary, and Independent Agencies Appropriations Act, 2006, and the President signed it into law. (See Emergency Motion at ¶ 5.) Included in that act is a new provision—Section 311—which, as the Emergency Motion notes, now controls HUD's disposition of the properties at issue in this matter, and requires HUD to act in the manner Appellants originally sought in bringing this action.

3. Because of this intervening change in the law, Appellants agree with HUD that the Court should terminate briefing, cancel oral argument, remove this appeal from its docket, and remand the case to the district court. Appellants also believe, however, that this Court must also vacate the district court's prior opinion and the judgment entered against them. Given HUD's position regarding the applicability of the newly enacted law, vacating the existing ruling and judgment of the district court is necessary to ensure that the conclusions reached in that opinion are not binding on the parties going forward.

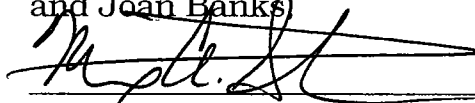
4. Unless the district court's opinion and judgment are vacated, once remanded to the district court, there would be no case in which the district court could, as HUD suggests, "consider the Secretary's planned disposition in light of the new authority provided by Section 311." (See Emergency Motion at ¶ 7.) Indeed, unless the Court vacates the district court's opinion and judgment, Appellants' claims would remain dismissed, leaving Appellants in the awkward position of having had their claims remanded for further consideration in a district court that lacks the ability to consider them.

5. Consequently, Appellants respectfully request that, in granting the Emergency Motion, the Court also vacate both the district court's opinion and the judgment in this matter.

Dated: December 2, 2005

Respectfully submitted,

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



By one of their attorneys

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CERTIFICATE OF SERVICE

The undersigned certifies that he served a true and correct copy of the above referenced **APPELLANTS' RESPONSE TO EMERGENCY MOTION TO REMAND IN LIGHT OF INTERVENING LAW** on each counsel of record on December 2, 2005, served in the manner specified below:

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The Appellants' Response To Emergency Motion To Remand In Light Of Intervening Law was filed in the Clerk's Office on December 2, 2005, by hand delivery.

