

June 27, 2005

Ms. Janice E. Yates, Chief Deputy Clerk  
United States Court of Appeals, Sixth Circuit  
524 Potter Stewart U.S. Courthouse  
Cincinnati, OH 45202-3908

**VIA FACSIMILE TO: (513) 564-7096**

RE: Case No: 04-1540, *Caswell v. Detroit Housing Commission*  
Letter Brief

Dear Ms. Yates:

The Court's Order of June 17, 2004, directed the parties to file a letter brief on the following question:

**Does 42 U.S.C. §1473f confer a right upon participants in the Tenant-Based Assistance Housing Choice Voucher Program that is enforceable under §1983?**

*Gonzaga Univ. v. Doe*, 536 U.S. 273, 280 (2002), quoting *Wright v. Roanoke Redevelopment and Housing Authority*, 479 U.S. 418, 430 (1987), recognized that the rent-ceiling provision of the Public Housing Act at §1437a conferred "a mandatory [benefit] focusing on the individual family and its income." *Gonzaga* noted that the rent-ceiling provision in §1437a "unambiguously conferred 'a mandatory [benefit] focusing on the individual family and its income.'" *Id.*, quoting *Wright*, at 430; *Sabree v. Richman*, 367 F.3d 180, 191-192 (3<sup>rd</sup> Cir. 2004).

The conclusion that an enforceable right exists depends upon three factors:

- (1) The statute contains “rights-conferring language”; *Gonzaga* at 280; *Alexander v. Sandoval*, 532, U.S. 275, 288 (2001);
- (2) Such “rights-conferring language” directs that such rights be –
  - (a) — specific and identifiable; and,
  - (b) — conferred directly upon an identified class of persons that include the [plaintiff]; *Gonzaga* at 285-286 (citing *Wright* at 423 and *Alexander* at 289 (2001));
- (3) The enforcement of those rights is not exclusively reserved to the agency charged with administering the statute’s provisions, but allows enforcement by the intended beneficiaries. *Id.*; *Gonzaga* 287

Those three factors are present in the case at bar and render the Appellant’s right to his Section 8 Voucher payment and entitlement that can be enforced by §1983.

**Rights-Conferring Language is Present**

The *Gonzaga* decision acknowledged an unambiguous, congressional intent to create an enforceable right by tenants in the rent-ceiling provisions of the Public Housing Act, at §1437a (the Brooke Amendment).

The rent-ceiling language found at §1437a of the Housing Act and upon which the *Wright* decision was based, is identical, in all critical aspects, to that contained in the Voucher Program portion of the Housing Act, at §1437f (0)(2).

For this reason, the amount of rent required to be paid by the agency of Housing and Urban Development (“HUD”) constitutes an entitlement, just as it was for the tenants in *Wright*.

The fact that the *Wright* tenants used the rent-ceiling mandate to enforce utility allowances under the Statute does not change the fact that the basis for the Court’s determination of an entitlement was the language of the rent-ceiling formula as iterated in the statute.

**The Rights Conferred are Specific and Directed to Individuals**

The policy declaration found in §1437 (a) specifically identifies the persons who are to benefit from the money apportioned under the Housing Act — families of low income.

This low-income families entitled to the Section 8 Housing Payment are more specifically identified in the statute at §§1437f (b)(2) and (0)(4).

HUD regulation 24 C.F.R. §5.403 defines “family” to include single individuals, which includes the Appellant.

The focus of § 1437f concerns itself is with low-income families or individuals, who otherwise cannot afford safe and decent housing. The statute does not focus on HUD regulation of those individuals. *Gonzaga* at 287; *Alexander* at 288-289.

**Enforcement of the rights is not Exclusively Reserved to HUD**

In legislation enacted pursuant to the spending power, the typical remedy for state noncompliance is not a private cause of action, but a termination of funds. *Gonzaga* at 280 (quoting *Pennhurst State School and Hospital v. Halderman*, 451 U.S. 1, 28 (1981)).

In this case, HUD has significant implementation authority under the statute, but the agency is not authorized to enforce its regulations or the enabling legislation by withholding or terminating funding for the program. *Alexander* at 289.

In fact, HUD has recognized the right of tenants to enforce their Housing Act rights in federal court. *Wright*, at 425-426, quoting from Hearings on Housing and Community Development

Amendments before the Subcommittee on Housing and Community Development of the House Committee on Banking, Finance and Urban Affairs, 97<sup>th</sup> Cong., 1<sup>st</sup> Sess., pt. 1, p. 654 (1981).

The Voucher Program found at §1437f (0) is an individualized entitlement, enforceable by the tenants themselves via §1983.

Sincerely,

Daniel P. Feinberg  
Attorney for Appellant