

March 26, 2002

COURT PERMITS EVICTION OF DRUG DEALERS FROM PUBLIC HOUSING

(HUD v. Rucker, No. 00-1770)

The U.S. Supreme Court ruled unanimously today that public housing authorities are authorized to evict tenants from public housing if the tenant, a household member, or a guest engages in drug-related criminal activity.

The decision was a victory for the Washington Legal Foundation (WLF), which had filed a brief in the case, *HUD v. Rucker*, in support of the housing authorities. The Court agreed with WLF that such evictions are permissible even if the tenant himself has no knowledge of, or control over, the criminal activity.

WLF had argued that unless housing authorities are permitted to take strong steps to rid public housing of the criminal element, law-abiding tenants of such housing will continue to be denied safe housing that is not ravaged by the effects of drug dealing.

"Those who suffer the most from the drug trade and associated violence are those, such as occupants of government-subsidized housing, who cannot afford to move to areas away from the center of the drug trade," said WLF Chief Counsel Richard Samp after the Court's decision. "The Court was correct that when an apartment is turned into a crack house, housing authorities should not be required to delay eviction until they can absolutely prove that the tenant on the lease knows what other members of his household are up to," Samp said.

This case arose in connection with efforts by the Oakland Housing Authority (OHA) to evict four of its public-housing tenants whose household members had been discovered to have engaged in illegal drug activity. The tenants thereafter filed suit in federal court against OHA and the U.S. Department of Housing and Urban Development (HUD), alleging that the attempted evictions violated federal housing law. The lower courts agreed and enjoined OHA from evicting any tenant for illegal drug activity in the absence of evidence that the tenant knew of the activity and had failed to take appropriate steps to eliminate it. The lower courts also struck down a HUD regulation which had interpreted federal housing law as permitting such evictions. The Supreme Court overturned those lower court decisions.

The Court agreed with WLF's argument that the lower courts had wholly misinterpreted federal housing law. The Court held that Congress, when it adopted the Anti-Drug Abuse Act of 1988, explicitly required that public housing leases include a clause permitting eviction whenever a household member engages in illegal drug activity, and that the mandated clause permits eviction regardless of the tenant's knowledge of that activity. The Court noted that the mandated clause does not *require* eviction in every case in which illegal drug activity is detected, but held that Congress gave housing authorities the flexibility to decide which instances of illegal drug activity warrant eviction in order to preserve public safety, and which do not.

The Supreme Court also rejected the lower court's position that eviction of tenants who lack knowledge of the household members' illegal activities is irrational and thus unconstitutional. WLF had argued that it can be extremely difficult for housing authorities to prove a tenant's knowledge of her household members' illegal activities and thus that imposing a "knowledge" requirement would place huge obstacles in the way of efforts to rid public housing of drug activity, even when the tenant does, in fact, have such knowledge. Accordingly, WLF argued, the HUD rule is a wholly rational tool to assist in the effort to clean up public housing. WLF also argued that it is eminently reasonable for HUD to assume that public housing will be safer if housing authorities evict tenants whose household members and guests have been engaging in drug activity, regardless how "innocent" of wrongdoing those tenants may be.

WLF is a public interest law and policy center that devotes a substantial portion of its resources to the support of government efforts to ensure that law-abiding citizens can feel safe while in their homes and walking in their neighborhoods. WLF filed its brief with the assistance of Allison Rosenstock, an attorney in the San Diego office of the law firm of Latham & Watkins. WLF filed the brief on behalf of itself and the Allied Educational Foundation.

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