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Federal Procedure - Standing of Displacess to Challenge Urban Renewal Projects - Norwalk CORE v. Norwalk Redevelopment Agency, 395 F. 2d 920 (2d Cir. 1968)

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difficult to support. As the Tax Court pointed out, this would be reading section 2055(b)(2) as if it contained conditions which were not inserted therein by Congress.[40] Moreover, there is no indication that Congress so intended the section to be interpreted.[41] On this point it would seem that both the Tax Court and the Third Circuit are correct and any change should come from Congress and not from a court.

The decision as to Hugh's estate, however, is not as easily defended. To allow a charitable deduction to both Edna's and Hugh's estates for the identical charitable gift of the same item is to place too much of a premium on literalness. The reasoning of the Tax Court, while open to the objections made by the Third Circuit, would seem to result in the better decision. Perhaps clarification will be forthcoming from the Supreme Court. In any event, Congress should act as soon as possible to resolve the complex problems of this area.

HOMER ELLIOTT

Federal Procedure—STANDING OF DISPLACEES TO CHALLENGE URBAN RENEWAL PROJECTS. Plaintiffs, the Norwalk Connecticut chapter of the Congress of Racial Equality, two tenants' associations representing displaced Negroes and Puerto Ricans, and four classes of individuals representing different types of displacees, brought a class action charging that defendants,[1] while implementing an urban renewal project, did not assure displacees equal protection of the laws and did not provide them adequate housing under section 105(c) of the Housing Act of 1949.[2] The court dismissed the action holding *inter alia* that neither the associations nor the individual plaintiffs had standing to challenge the official conduct of the defendants.[3]

40. Estate of Edna Allen Miller, 48 T.C. 251, 259 (1967).

41. *Id.*, citing from the legislative history of the section.

1. Defendants were The Norwalk Housing Authority, its executive director; The Norwalk Redevelopment Agency, its executive director and members; the City of Norwalk, its mayor and city clerk; Towne House Gardens and David Katz & Sons (responsible for the "middle income" housing development on the six acre site in question); the Asst. Regional Administrator of the Department of Housing and Urban Redevelopment (HUD) and Robert C. Weaver, Secretary of HUD.

2. Housing Acts of 1949 and 1954 (hereinafter called "the Act") 63 Stat. 413 (1949), *as amended*, 42 U.S.C. §§ 1441-1460 (Supp. 1967); and 68 Stat. 590 (1954), *as amended*, 42 U.S.C. §§ 1446-1460 (Supp. 1967).

3. Norwalk CORE v. Norwalk Redevelopment Agency, 42 F.R.D. 617 (D. Conn. 1967).

The Court of Appeals for the Second Circuit reversed the decision and remanded the case,[4] holding that plaintiffs did have standing to raise both their constitutional claim[5] and their claim under section 105(c) of the Act.

Congress made federal funds available to attack urban blight by passing the Housing Acts of 1949 and 1954.[6] In order to receive loan or capital grant contracts, section 105(c) of the Act[7] provided that displacees be relocated into decent, safe, and sanitary housing. Yet, because of discrimination in housing markets and a multitude of other factors, displaced minority groups were often forced to live in substandard housing.[8] Consequently, displacees have attempted to seek judicial remedies, but, until this case, had been unsuccessful in both

4. Norwalk CORE v. Norwalk Redevelopment Agency, 395 F.2d 920 (2d Cir. 1968).

5. *Id.* at 926-923. Plaintiffs' constitutional claim was that they and those whom they represented were denied equal protection of the laws. The District Court held that plaintiffs could not "by alleging civil rights violations . . . gain standing. . . ." 42 F.R.D. at 662. The Court of Appeals held that they did have standing, contending that the right plaintiffs sought to enforce—"the right not to be subjected to racial discrimination in government programs"—is distinguishable from governmental aid to one's competitors as in Harrison Holstead Community Group v. Housing and Home Fin. Agency, 310 F.2d 99 (7th Cir. 1962), *cert. denied,* 373 U.S. 914 (1962), and is one protected by the courts, Norwalk CORE v. Norwalk Redevelopment Agency, 395 F.2d 920, 927 (2d Cir. 1968). The court also made a distinction between standing and justiciability, contending that some of the reluctance of courts to delve into the matter of urban renewal was due to the belief that the controversy was not justiciable. After conceding that political issues were at stake, the court said: "We see no reason to believe that the courts are incapable of fashioning remedies to insure that the standards are equally met for all citizens." *See* Green Street Ass'n v. Daley, 373 F.2d 1 (7th Cir. 1967), *cert. denied,* 387 U.S. 932 (1967), where the court reached the constitutional claim on its merits.

6. 63 Stat. 413 (1949), *as amended,* 42 U.S.C. §§ 1441-1460 (Supp. 1967); and 68 Stat. 590 (1954), *as amended,* 42 U.S.C. §§ 1446-1460 (Supp. 1967).

7. 42 U.S.C. § 1455 (Supp. 1967) (Requirements for loan or capital grant contracts) states in pertinent part that:

> (c) There must be a feasible method for the temporary relocation of individuals and families displaced from the urban renewal area and there are or are being provided in the urban renewal area or in other areas not generally less desirable in regard to public and commercial facilities and at rents or prices within the financial means of the individuals and families displaced from the urban renewal area, decent, safe and sanitary dwellings. . . .

Coverage was increased by the Urban Development Act § 305 (c) (1965). 79 Stat. 476 (1965). This extension however did not apply to this project. *See* Norwalk CORE v. Norwalk Redevelopment Agency, 395 F.2d 920 n. 24 (2d Cir. 1968).

8. *See, e.g.,* U.S. ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS; RELOCATION; UNEQUAL TREATMENT OF PEOPLE AND BUSINESSES DISPLACED BY GOVERNMENT (1965).

state[9] and federal courts.[10] In the federal courts, displacees had been denied enforcement of section 105(c) of the Act because they lacked standing.[11]

Standing exists if the plaintiff has a personal stake in the outcome of litigation[12] and the right which he asserts is a right which the court recognizes.[13] For example, in urban renewal projects courts have refused to take cognizance of a right stemming from economic injuries sustained due to the creation or advancement of competition by governmental action.[14] An enforceable legal right would arise if the purpose of a statute was to protect an interest. One adversely affected may assert this by alleging neglect of his interests by the agency.[15]

In *Green Street Association v. Daley*,[16] plaintiffs sought relief under section 105(c) of the Act and were denied standing because the Act was said not to confer a legal right upon displacees.[17] Relying upon *Harrison-Halstead Community Group v. Housing and Home Finance Agency*,[18] where it was held that economic loss was not a basis for standing, the court in *Green Street* then equated the situation of creation of competition with that of displacees.[19] This comparison seems anomalous in light of decisions in *Gart v. Cole*[20] and *Merge v. Shar-*

9. Generally state courts have held that enforcement of § 105 of the Act lies with the federal administrative agency. Spadanuta v. Incorporated Village of Rockville Centre, 33 Misc.2d 499, 224 N.Y.S. 2d 963 (Sup. Ct. 1962); Housing and Redevelopment Authority v. Minneapolis Metropolitan Co., 259 Minn. 1, 104 N.W.2d 864 (1960).

10. Green Street Ass'n v. Daley, *cert. denied*, 387 U.S. 932 (1967); Johnson v. Redevelopment Agency, 317 F.2d 872 (9th Cir. 1963), *cert. denied*, 387 U.S. 915 (1963).

11. Green Street Ass'n v. Daley, 373 F.2d 1 (7th Cir. 1967).

12. *E.g.*, Baker v. Carr, 369 U.S. 186 (1962); Frothingham v. Mellon, 262 U.S. 447 (1923).

13. Alabama Power Co. v. Ickles, 302 U.S. 464 (1938); *see generally* Jaffe, *Standing to Secure Judicial Review; Private Actions*, 75 HARV. L. REV. 255 (1961).

14. Berry v. Housing and Home Fin. Agency, 340 F.2d 939 (2d Cir. 1965) (*per curiam*); Pittsburgh Hotels Assn. v. Urban Redevelopment Authority, 309 F.2d 186 (3d Cir. 1962), *cert. denied*, 372 U.S. 916 (1963); Harrison Holstead Community Group v. Housing and Home Fin. Agency, 310 F.2d 99 (7th Cir. 1962). Taft Hotel Corp. v. Housing and Home Fin. Agency, 262 F.2d 307 (2d Cir. 1958) (*per curiam*). In *Taft* the court held that [e]conomic loss stemming from lawful competition, even though made possible by federal aid, is *damnum absque injuria*" 262 F.2d at 308.

15. Chicago Junction Case, 264 U.S. 258 (1924); Braude v. Wirtz, 350 F.2d 702 (9th Cir. 1965); Pennsylvania R.R. v. Dillon, 335 F.2d 292 (D.C. Cir. 1964). *See generally* Jaffe, *supra* note 13.

16. 373 F.2d 1 (7th Cir. 1967).

17. *Id.* at 5, 8.

18. 310 F.2d 99 (7th Cir. 1962), *cert. denied*, 373 U.S. 914 (1963).

19. 373 F.2d 1 (7th Cir. 1967).

20. 263 F.2d 244 (2d Cir. 1958), *cert. denied*, 359 U.S. 987 (1959).

rot,[21] which held that displacees had standing to challenge administrative decisions concerning other portions of the Act.[22]

The instant case abandoned the approach taken in *Green Street*[23] and pursued an inquiry into congressional intent. After determining that the intent of the Act was to protect displacees' interest in adequate relocation,[24] the court took an approach more in accord with *Gart v. Cole*[25] and increased the scope of judicial review under the Act to include section 105(c).[26]

Congress has fashioned rules for displacee relocation and the executive branch has implemented them, but it is a well-known fact that the results of this phase of the program have been less than satisfactory.[27] Perhaps judicial intervention can help assure all displacees of adequate relocation.

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21. 341 F.2d 989 (3d Cir. 1965).

22. *E.g.*, Gart v. Cole, 263 F.2d 244 (2d Cir. 1958), where property owners and tenants had standing under § 101 (c) of the Act which barred the HHFA (predecessor of HUD) from delegating the decision of relocation. The court gave standing because the provision was for the protection of displacees. Similarly in Merge v. Sharrot, 341 F.2d 989 (3d Cir. 1965), displaced businesses had standing to challenge as arbitrary HHFA findings regarding compensation for moving expenses under § 114 of the Act.

23. 373 F.2d 1 (7th Cir. 1967). In the instant case the court said:

> The court's conclusion [in *Green Street*] that the interest asserted was not sufficient to support standing was based on a long line of cases holding that injury through economic competition is generally not a sufficient basis for standing to sue. But none of those cases support a holding that displacees have no standing to seek judicial review of agency action under § 105 (c).

Norwalk CORE v. Norwalk Redevelopment Agency, 395 F.2d 920, 935 (2d Cir. 1968).

24. Norwalk CORE v. Norwalk Redevelopment Agency, 395 F.2d 920, 993 (2d Cir. 1968); *see* S. Rep. No. 84 81st Cong., 1st Sess. 1550 in U.S. Code Cong. Serv. (1949); Note, *Judicial Review of Displacees Relocation in Urban Renewal*, 77 YALE L.J. 966 (1968).

25. Gart v. Cole, 263 F.2d 244 (2d Cir. 1959).

26. The court also held that this was a proper class action under FED. R. CIV. P. 23. Norwalk CORE v. Norwalk Redevelopment Agency, 395 F.2d 920, 937-938 (2d Cir. 1968).

27. S. Rep. No. 84, 81st Cong., 1st Sess., 1550 in U.S. Code Cong. Serv. (1949); Note, *supra* note 24. *See generally* Hartman, *The Housing of Relocated Families*, 30 J. AM. INST. PLANNERS 266 (1964).