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Judicial Review of Displacee Relocation in Urban Renewal

The burgeoning urban renewal programs of American cities have too often been accompanied by a sorry failure to rehouse displacees from project sites. Throughout the 1950's and into the 1960's, it was not infrequent for well over half those displaced to relocate back into structurally substandard units, and relocation typically brought no amelioration of the overcrowded living conditions common among the urban poor. Substantially higher rents resulted from the decrease in low-income housing as slums and blighted areas were bulldozed to make way for office buildings and high-rent apartments. The psychological and economic repercussions of eviction and neighborhood clearance aggravated the problems of decent housing.


While the focus of this Note is on the Title I program as administered by the Renewal Assistance Administration (RAA) of the Department of Housing and Urban Development (HUD), relocation under the new Demonstration Cities legislation and under the public housing program is governed by statutes similar to the urban renewal relocation provision, Housing Act of 1949 § 105(c), 42 U.S.C. § 1455(c) (Supp. I, 1965). See Demonstration Cities and Metropolitan Development Act of 1966 § 107, 1966 U.S. CODE CONG. & AD. NEWS 1471; Housing Act of 1937 § 15(7), 42 U.S.C. § 1415(7) (1964).

2. For a thorough review of the findings of relocation studies up to 1964, see Hartman, The Housing of Relocation Families, 30 J. AM. INST. PLANNERS 266 (1964) [hereinafter cited as Hartman]. Two recent studies using original data have also concluded that the rehousing of displaced families has been unsatisfactory. U.S. ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS, RELOCATION: UNEQUAL TREATMENT OF PEOPLE AND BUSINESSES DISPLACED BY GOVERNMENTS 27-52, 114-16, 127 (1965) [hereinafter cited as Advisory Commission]; P. Niebank, The Elderly in Older Urban Areas 125-62 (1965) [hereinafter cited as Niebank]; See also Gans, The Human Implications of Current Redevelopment and Relocation Planning, 25 J. AM. INST. PLANNERS 15 (1961); G. Grow, Housing and Slum Clearance: Elite and Small, 352 ANNALS 107 (1964); Abrams 133-54; A. Schork, Slums and Social Insecurity 61-68 (1963).

As it is estimated that displacements from renewal areas will continue in the near future at the rate of about 125,000 persons a year, the question of what provisions are made for these people is of no small importance. Niebank 13.

3. Hartman 270-71, 278.


6. A. Schork, supra note 2, at 68-73; Niebank 4-5, 133-44; H. Gans, The Urban
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The impact of inadequate relocation has been disproportionately severe on Negroes and other minority groups. Most displacees have been Negro, and residential segregation has barred their relocation in better neighborhoods, thereby perpetuating or intensifying segregated living patterns and magnifying the harshness of the whole procedure.

As a consequence, urban renewal has made those most lacking in social and economic resources bear a major share of the social and economic costs of redeveloping our cities. For this reason the program has all too frequently complicated rather than mitigated our urban ills. While relocation has improved in the past few years, complaints from...
displaces continue,¹¹ and even if the improvements are trustingly assumed permanent, there is no reason to believe the relocation problem has been solved.

The bleakness of the relocation landscape contrasts strikingly with the rosy picture painted by the urban renewal legislation. The Declaration of Policy in the Housing Act of 1949¹² stated explicitly the central goal of a decent home for every American family, and Section 105(c) specifically guaranteed "decent, safe and sanitary" rehousing to families displaced in Title I slum-clearance projects.¹³ In defining the conditions of

¹¹. Within recent months, for example, the NAACP has assisted displacee groups in filing complaints with HUD alleging the existence of inadequate relocation facilities for projects in Baltimore, Maryland and Pulaski, Tennessee. In New Haven, Connecticut, where urban renewal is supposed to have made its most significant contribution, the organized poor have recently accused the Local Public Agency (LPA) of moving displacees from one slum to another and causing an exodus of slumdwellers to nearby Bridgeport, New Haven Journal-Courier, April 28, 1967, at 1, col. 5. See also Wilhelm, The Success and Tragedy of Richard Lee, The New Journal, Oct. 15, 1957, at 5. Similar issues were raised in the recent case of Green Street Ass'n v. Daley, 373 F.2d 1 (7th Cir.), cert. denied, 387 U.S. 932 (1967).


The Congress declares that the general welfare and security of the Nation and the health and living standards of its people require housing production and related community development sufficient to remedy the serious housing shortage, the elimination of substandard and other inadequate housing through the clearance of slums and blighted areas, and the realization as soon as feasible of the goal of a decent home and a suitable living environment for every American family . . . . The Housing and Home Finance Agency and its constituent agencies . . . shall exercise their powers, functions, and duties under this or any other law, consistently with the national housing policy declared by this Act . . . .


¹³. The original Section 105(c), Housing Act of 1949, ch. 338, § 105, 63 Stat. 416, provided:

Contracts for financial aid shall be made only with a duly authorized local public agency and shall require that—

(c) There be a feasible method for the temporary relocation of families displaced from the project area, and that there are or are being provided, in the project area or in other areas not generally less desirable in regard to public utilities and public and commercial facilities and at rents or prices within the financial means of the families displaced from the project area, decent, safe, and sanitary dwellings equal in number to the number of and available to such displaced families and reasonably accessible to their places of employment . . . .

Congress has never weakened Section 105(c) and has recently moved to strengthen it in several significant respects. The 1964 amendments broadened the coverage to individuals as well as families and required that each community establish a special relocation assistance program to minimize the hardships of displacement. Housing Act of 1964, Pub. L. No. 88-560, § 305, 78 Stat. 786. In 1965, the requirements of careful planning and coordination with other federal programs were further elaborated, and Subsection 105(c)(2) was added to require the federal agency to extract, as a condition of further assistance,
the contract between the local public agency (LPA) and the Housing &
Home Finance Agency (HHFA)—now the Department of Housing and
Urban Development (HUD)—Section 105(c) provided that federal
funds were to be granted only where HHFA found that housing meet-
ing the statutory standards was available or being made available.24

Given the divergence between the harsh facts of relocation and the
statutory ideal, it is not surprising that displacees turned to the courts
for help. Not unreasonably, they hoped that judicial review could end
administrative disregard of the provisions of the Act protecting their in-
terests. To date, however, the federal courts have denied standing to
private citizens seeking to enforce the relocation requirements of Sec-
tion 105(c).6 The reasons given for this denial have not been compel-
ing. The arguments of the judges mesh so poorly with decisions in

reassurances from localities carrying out projects that relocation housing is available.

The public housing statute contains a provision similar to Section 105(c), and the new
Demonstration Cities Act incorporates 105(c) by reference. See note 1 supra.

14. Before the creation of HUD, the determination that statutory relocation housing
was feasible was a non-delegable responsibility of the HHFA Administrator. Housing Act
of 1949 § 101(c), 42 U.S.C. § 1451(c) (1964). Today it is a non-delegable function of the
Assistant Secretary for Renewal and Housing Assistance. 51 Fed. Reg. 8894-65 (1986).
See also Section 105(c)(2) of the Act, 42 U.S.C. § 1455(c)(2) (Supp. I, 1985).

In making this determination, the federal agency has chosen to rely largely on data sup-
plied by the locality, particularly information in the relocation plan. RAA, URBAN RENEWAL
MANUAL § 16. The statute and legislative history emphasize that the planning and carrying
out of a program are a local responsibility. Housing Act of 1949 §§ 2, 101, 42 U.S.C.
§§ 1441, 1451 (1964); S. Rep. No. 84, 81st Cong., 1st Sess. 27 (1949). However, this emphasis
should not becloud the federal responsibility to determine whether or not statutory relo-
cation is in fact feasible. This responsibility may well require (1) demanding more
extensive data from the localities and (2) developing independent means to determine the
accuracy of the information supplied.

15. The focus of this Note is on the federal courts, as the state remedy is generally
agreed to be inadequate. Moreover, substantial questions involving the operation of a
major federal program are involved. State courts have held that the enforcement of
Section 105(c) is the duty of the federal agency and they have refused to review its deter-
minations. Spadanuta v. Incorporated Village of Rockville Centre, 23 Misc. 2d 428, 224
N.Y.S.2d 953 (Sup. Ct. 1963); Hunter v. City of New York, 121 N.Y.S.2d 841 (Sup. Ct.
1953); Housing and Redevelopment Authority v. Minneapolis Metropolitan Co., 259 Minn.
1, 15, 104 N.W.2d 864, 872 (1960). State enabling legislation is typically far more permi-
tive regarding relocation than the federal act. Compare Section 105(c), 42 U.S.C. § 1455(c)
(Supp. I, 1965), with CONN. REV. STAT. § 8-127 (1966). State courts have almost invariably
held that the relocation planning satisfied their own statutes, even when the state reloca-
tion provision was patterned after Section 105(c). Sanguinetti v. City Council, 231 Cal. App.
2d 813, 819-20, 42 Cal. Rptr. 268, 271-72 (1965); Horton v. Redevelopment Comm'n, 262
N.C. 306, 317-18, 137 S.E.2d 113, 123-24 (1964); Housing and Redevelopment Authority v.
Minneapolis Metropolitan Co., 259 Minn. 1, 11-13, 104 N.W.2d 864, 872-73 (1960).
On the general problems of state review of urban renewal planning, see Note, Scope of Judicial
Review in Urban Renewal Litigation, 17 VAND. L. REV. 1235 (1964); Note, Judicial Review

Agency 317 F.2d 872 (6th Cir.), cert. denied, 375 U.S. 915 (1965); Harrison-Halsted Com-

munity Group, Inc. v. HHFA, 310 F.2d 99 (7th Cir. 1962), cert. denied, 373 U.S. 914 (1963).
See also Watts v. Housing Authority, 150 F. Supp. 552 (N.D. Ala. 1956) (complaint dis-
missed for improper class action).
allied standing cases that other explanations must be sought for their willingness to leave displacees out in the cold.

**Standing Under the Housing Act of 1949**

*Green Street Association v. Daley,*\(^1\) decided in 1967, presents most clearly the issue of displacee standing. In *Green Street* the Seventh Circuit denied standing to plaintiffs alleging inadequate relocation facilities on the theory that the provisions of the Housing Act of 1949 did not confer private legal rights on displacees.\(^1\) The court in reaching this conclusion followed closely its 1962 decision in *Harrison-Halsted Community Group, Inc. v. HHFA,* where a similar relocation challenge was involved.\(^1\) *Green Street* also paralleled *Johnson v. Redevelopment Agency of Oakland,*\(^2\) a 1963 decision in a suit against an LPA rather than HHFA, in which the Ninth Circuit held that “Congress [had not] intended this section [105(c)] of the Housing Act to give a right of action to those not a party to the contract between the Redevelopment Agency and the United States.”\(^2\)

These Section 105(c) decisions bear no resemblance to cases in other Circuits where displacees have been granted standing to enforce different but hardly distinguishable provisions of the Housing Act of 1949. In *Gart v. Cole* (1959),\(^2\) Chief Judge Clark held for the Second Circuit

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1. 873 F.2d 1 (7th Cir. 1967).
2. Id. at 5, 8.
3. 310 F.2d 59, 102-05 (7th Cir. 1962). As the Housing Act contains no review provisions, the right to review in *Green Street* and *Harrison-Halsted* was claimed under Section 10 of the Administrative Procedure Act (APA), now Chapter 7 of Title 5 of the U.S. Code. Administrative Procedure Act § 10, 5 U.S.C. §§ 701-06 (Supp. II, 1965-66). Section 10 provides in part:

   [E]xcept to the extent that (1) statutes preclude judicial review; or (2) agency action is committed to agency discretion by law.

   A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof.

   .......

   Agency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court are subject to judicial review.


that section 101(c) of the Act, which barred the HHFA Administrator from delegating the decision upon the feasibility of relocation, was for the protection of displacees; they therefore had standing to challenge an alleged delegation. In the more recent case of Merge v. Sharott (1965), the Third Circuit held on similar grounds that a displaced industrial concern had standing to challenge as arbitrary and capricious the HHFA's findings regarding moving expenses, compensable under Section 114 of the Act.

Nothing in the statute or legislative history suggests a basis for distinguishing Section 105(c) from Sections 101(c) and 114 with regard to the standing question. Indeed the court in Merge treated the three as peas in the same pod, emphasizing that relocation payments were only one of several Congressional measures to further the interests of displacees. After stating that "Congress from the first has evidenced a real and recurring concern for persons displaced as a result of the program," the court detailed the evidence of this concern, citing Sections 105(c), 101(c) and 114.

Why then have the courts denied standing where Section 105(c) is involved but not otherwise? One might conclude that the pattern is coincidental and that the decisions merely reflect different interpretations of conflicting precedents in the standing area. But chance does not explain why courts should continue dipping into the grab bag of precedent to emerge with opposing conclusions for similar sections of the Housing Act. Moreover, past decisions are not all that awry. No wild-eyed interpretation of existing standing law is needed to suggest that displacees should be able to obtain judicial review of the Secretary's determination that statutory relocation is feasible, and to enforce the relocation obligation assumed by the municipality when it accepts Title I aid.

As the preceding sentence suggests, the problem of standing under Section 105(c) may arise at two different points. The first is when the

23. Id. at 251. Similarly, the court held that the plaintiffs also had standing under the APA to challenge the Administrator's refusal to grant them an oral hearing on the feasibility of the city's relocation plan. Id. at 250.
24. 341 F.2d 989, 994 (3d Cir. 1965). Moving expenses of persons as well as businesses and made compensable by Section 114, 42 U.S.C. § 1465 (1964), as amended, (Supp. I, 1965). The Administrator has discretion as to whether or not to pay relocation expenses in a particular project. 42 U.S.C. § 1465(a) (1964). Typically, as in Merge, the Title I contract between the LPA and HHFA contains provision for the payment of these expenses. 341 F.2d at 993. The court held that in these circumstances the payments could not be determined arbitrarily or capriciously. 341 F.2d at 994. Review in Merge was sought under the APA. 341 F.2d at 991.
25. 341 F.2d at 993.
26. 341 F.2d at 993 n.6.
Secretary makes, or fails to make, a finding of the feasibility of adequate rehousing preliminary to entering a contract with the LPA for federal funds. The Housing Act makes no explicit provision for review of HUD determinations of relocation feasibility, but plaintiffs wishing to challenge the Secretary at this stage may enlist Section 10 of the Administrative Procedure Act. That section provides that judicial review is available to any person “suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute,” except when the statute precludes review or when agency action is “committed to agency discretion by law.”

Section 105(c) cannot be read to fall into either of these exceptions without doing substantial violence to the Housing Act or to existing case law. Nothing in the 1949 Act nor in later legislation suggests that Congress meant to preclude review of the finding required by Section 105(c). The exception for agency action committed to agency discretion by law is more mysterious. Inasmuch as all agency action involves some degree of discretion, this exception has that quality which pervades the Administrative Procedure Act of taking back by exception everything granted by a substantive provision. The courts, however, have declined to read Section 10 out of existence, and have held reviewable agency action involving discretion of a nature similar to that involved in Section 105(c). The courts in *Harrison-Halsted* and *Green Street* apparently reached the conclusion argued for here. Neither decision invokes any exception to Section 10 which would make the 105(c) finding inherently unreviewable; instead, both focus on the legal capacity of the particular plaintiffs.

27. The relevant parts of Section 10 are set out in note 19 supra.
28. In fact, the suggestion is just the opposite. Since Congress has given the Administrator authority to make moving expense determinations non-reviewable, it can be argued that if Congress had intended that the 105(c) finding not be reviewed, it would have written a similar provision into the Act. See Housing Act of 1949 § 114(d), 42 U.S.C. § 1465(d) (1964).
29. Recent decisions in which findings involving agency discretion were held reviewable under the APA include Webster Groves Trust Co. v. Saxon, 370 F.2d 381, 386-87 (8th Cir. 1966) (Comptroller’s decision granting bank charter); Freeman v. Brown, 342 F.2d 205, 212-13 (5th Cir. 1965) (Secretary’s decisions classifying tobacco under price support program). See also the Merge case, discussed at pp. 970-71 supra.
One recent case developed the idea that reviewable agency decisions were “mandatory” rather than “permissive” from an agency point of view. Ferry v. Udall, 338 F.2d 700 (9th Cir. 1964). Even by this test, the 105(c) finding would be reviewable. See 4 K. Davis, Administrative Law § 28.16 (1965 Supp.) [hereinafter cited as Davis]. Moreover, the argument against letting this provision bar review is buttressed by what Jaffe has called the case law presumption of reviewability. See L. Jaffe, Judicial Control of Administrative Action 336-63 (1965) [hereinafter cited as Jaffe]; Leedom v. Kyne, 353 U.S. 181 (1957); Harmon v. Brucker, 353 U.S. 570 (1957). At a minimum, the APA codified the presumption of reviewability. JAFFE 972-76; H.R. REP. No. 1980, 79th Cong., 2d Sess. 41 (1946). See also Rusk v. Cort, 369 U.S. 367, 380 (1962); Brownell v. We Shung, 352 U.S. 180, 185 (1956).
30. See p. 970 supra.
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On this question of simple standing, Section 10 at a minimum codified the pre-APA law. As long ago as 1924 the Supreme Court held that standing to challenge administrative action existed where a statute recognized and sought to protect an interest and one sharing that interest alleges its disregard by the agency. Although the Chicago Junction Case dealt with an alleged failure by the ICC to give proper weight to statutory criteria governing rail acquisitions and the protection of competitors, the principle established is equally applicable to a decision by HUD on relocation feasibility. The language and legislative history of the Housing Act demonstrate that Congress recognized the interests of displacees in “decent, safe, and sanitary” housing, and drafted Section 105(c) to protect those interests. Since before the APA plaintiffs would have had standing, it would be anomalous to argue that their position is less satisfactory under a statute assumed to have codified prior law.

31. This is the position taken in Kansas City Power & Light Co. v. McKay, 223 F.2d 924 (D.C. Cir.), cert. denied, 350 U.S. 884 (1956). The relevant sections of the APA are set out in note 19 supra. This interpretation relies heavily on the Attorney General's statement that the standing provision “reflects existing law.” S. Doc. No. 218, 80th Cong., 2nd Sess. 310 (1946). Other legislative history, however, suggests that the APA meant to expand standing. Id. at 276. The question is debated in 3 Davis § 22.02, and JAFFE 528-31. Both authorities agree on the minimal proposition asserted here.

32. In the Chicago Junction Case, 264 U.S. 238 (1924), plaintiff-carriers were held to have standing to challenge an ICC order because the Interstate Commerce Act intended to protect their interests in equality of treatment. Id. at 266-68. Professor Jaffe believes this case to be the most important federal standing decision before FGC v. Sanders Brothers Radio Station, 309 U.S. 470 (1940). JAFFE 507. Cf. Edward Hines Yellow Pine Trustees v. United States, 263 U.S. 145, 147-48 (1929) (plaintiff denied standing to challenge ICC order where statute failed to recognize its competitive interests). See also 3 Davis § 22.11. The Chicago Junction principle has been widely applied in cases brought under the APA. See Braude v. Wirtz, 350 F.2d 702, 706-08 (9th Cir. 1965); Berry v. HHFA, 340 F.2d 933 (2d Cir. 1965); Pennsylvania R.R. Co. v. Dillon, 355 F.2d 292 (D.C. Cir. 1966); Gart v. Cole, 263 F.2d 244 (2d Cir. 1959); Shanks Village Comm. v. Cary, 197 F.2d 212 (2d Cir. 1952).

33. The language of the statute and the legislative history are clear on this point. See the discussion of the statutory purpose and Section 105(c) in notes 13 and 14 supra, and also S. Rep. No. 84, 81st Cong., 1st Sess., Part 1 at 11-12, Part 2 at 6 (1949). See also Note, Protecting the Standing of Renewal Site Families to Seek Review of Community Relocation Planning, 73 YALE L.J. 1080, 1084 (1964). The policies behind the statute are discussed in ABRAMS 81-85 and P. WENDT, HOUSING POLICY: THE SEARCH FOR SOLUTIONS 199 (1964). Congress evidently intended displacees to be beneficiaries of urban renewal. See pp. 880-81 infra. However, variables other than housing quality are involved in displacement and relocation. See note 6 supra.

Congress has consistently declared its desire to protect the interests of displacees through provisions other than 105(c). In 1954 Congress introduced the Workable Program with its emphasis on overall planning, including the scheduling of relocation facilities and housing code enforcement. Housing Act of 1954, Pub. L. No. 63-506, § 101(c), 63 Stat. 623, as amended, 42 U.S.C. § 1451(c) (Supp. I, 1965). See HHFA, THE WORKABLE PROGRAM—WHAT IT IS (1957). See also GAZZI 10-11, 111. Relocation payments for displacees were introduced in 1958, 76 Stat. 1190 (1956), and have been broadened several times since. 42 U.S.C. § 1465 (Supp. I, 1965). The House Report on the Housing and Urban Development Act of 1965 stated that “[y]our committee has continued to seek ways in which to assume that individuals and families displaced by urban renewal projects will be afforded the opportunity to move into decent, safe, and sanitary housing.” H.R. REP. No. 583, 89th Cong., 1st Sess. 30-31 (1965).

34. Alternatively, plaintiffs might wish to argue that Section 10 of the APA expanded
The same result emerges from a consideration of the language of Section 10 itself. That provision, as noted earlier, grants a right of review to persons "suffering legal wrong" or "adversely affected or aggrieved...within the meaning of a relevant statute."\(^{35}\) Professor Jaffe has argued that the Chicago Junction Case provides the most appropriate definition of "legal wrong" for purposes of administrative law:\(^{36}\) displacees have "suffered legal wrong" if the statutory prescription intended for their protection has been slighted by HUD. Moreover, cases under the APA have interpreted the phrase "relevant statute" to include provisions similar to Section 105(c):\(^{37}\) since that section recognizes the interests of displacees, it is a "relevant statute" within the meaning of which displacees are aggrieved. And, to the extent that anyone is sufficiently aggrieved by a Section 105(c) finding to claim review under Section 10 of the APA, the argument for displacees' standing is particularly strong, since they are the parties most directly affected by the agency action and therefore best situated to challenge it vigorously.

This deductive argument for displacee standing to challenge a finding of relocation feasibility is reinforced by the peripheral relevance of the standing precedents on which the courts denying standing were forced to rely. Both Green Street\(^{38}\) and Harrison-Halsed\(^{39}\) leaned heavily on Kansas City Power & Light Co. v. McKay,\(^{40}\) in which a private power company was held to lack standing to complain of allegedly illegal pub-
lic subsidies to its competitors. Unlike displacees under the Housing Act, however, private power companies in Kansas City could make no claim that the legislation involved made any attempt to provide for their protection. Harrison-Halsted also cited two decisions denying standing to challenge certain aspects of urban renewal unrelated to relocation housing. In the first, the Taft Hotel of New Haven was seeking to block construction of a competitor in a renewal project; in the second, displacees were seeking to require the disposal of renewal land through competitive bidding. But the Housing Act nowhere protects the interests of competitors of urban renewal enterprises and the bidding requirement was found to be for the protection of the federal treasury, not displacees. Neither case is authority for denial of standing to plaintiffs' whose interests are specifically recognized by the Housing Act.

A strong argument can thus be made for the standing of potential displacees under Section 10 of the APA to challenge the Secretary's finding under Section 105(c) of relocation feasibility. But the problem of standing also arises in a second context, after a finding proper on its face has been made and HUD has contracted with an LPA for federal funds. Section 105(c) would be virtually meaningless were the LPA not then required to relocate displacees in accordance with the plan upon which the finding of relocation feasibility was based. The person who is the victim of a renewal project is in the best position to claim that the LPA has in fact failed to provide satisfactory housing with a minimum of hardship for those displaced. And when the argument for standing at the time of the feasibility finding is acknowledged, a court recognizing the patent need for review in this second context should have no difficulty finding standing. Section 105(c) may be read to require not only a feasibility finding, but also a policing by HUD of its contract with the LPA, without which the finding could be meaningless. By this analysis, the displacee would have a remedy against the

41. 225 F.2d at 928-33.
42. Id. at 932.
43. Taft Hotel Corp. v. HHFA, 262 F.2d 307 (2d Cir. 1958), aff'g 162 F. Supp. 538 (D. Conn. 1958).
45. See the discussion of this point in Berry v. HHFA, 340 F.2d 939 (2d Cir. 1965).
46. Gart v. Cole, 263 F.2d 244 (2d Cir. 1959).
47. See note 13 supra.
48. This argument becomes particularly strong when it is realized that a renewal project typically involves a series of financial aid contracts between HUD and an LPA spanning the entire period of displacement and relocation. See RAA, Urban Renewal Manual § 17. If Section 105(c) is read to require that "there are or are being provided" standard units as a condition for all contracts for financial aid between HUD
Secretary of HUD to force him to enforce the contract with the LPA. A more direct remedy, and therefore a more desirable one, would be against the LPA itself to force compliance with the contract and the feasibility finding underlying or incorporated in it. Standing here should flow from the municipality's assumption of a rehousing obligation upon signing financial aid contracts with HUD. This latter argument is strengthened by the analogy to the right under private law for third party beneficiaries to sue upon contracts.

To show that Green Street, Harrison-Halsted and Johnson are inconsistent with other standing decisions under different sections of the Housing Act and not dictated by precedent under the general law does not complete the task, however. The courts may have denied standing under Section 105(c) for reasons unmentioned in the opinions. To show that displacees both can and should be granted standing, two steps remain: (1) to identify the inarticulate factors which influenced the courts to deny standing under 105(c) but not under 101(c) and 114, and (2) to demonstrate that these reasons no longer, if they ever did, justify this denial.

**Factors Leading the Courts to Deny Standing**

If a court granted standing in a situation such as Green Street it would immediately be faced with two problems: (1) the need to discover or create adequate standards to review the feasibility of statutory rehous-
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... and (2) the possibility that the enforcement of Section 105(c) would result in a substantial curtailment of urban renewal activities. Either or both of these factors might have weighed in the minds of the judges denying standing. The problem of standards for review, however, is more apparent than real. On the other hand, the possibility that emphasis on rehousing would seriously curtail the urban renewal program as it existed in the 1950's and early 1960's was both obvious and substantial.

(1) Standards for review. Before granting federal funds HUD must find that rehousing resources consistent with Section 105(c) will be available to those displaced. To so find it must determine, first, that proper housing can be made available with a reasonable effort and, second, that the LPA will make such a reasonable effort. The second aspect of this determination is a question best left to rather broad agency discretion. Moreover, a check on LPA activities can be provided by suits against the municipality at a later point. The first aspect can be reviewed with some precision, however, since the issues are essentially quantitative.

A necessary step in measuring relocation housing availability is the development of standards for housing meeting Section 105(c)'s requirements. This HUD has satisfactorily done. The federal guidelines cover the structure and facilities of the dwelling units, the maximum rents...

51. See note 13 supra.
52. While negligence on the part of the LPA could prevent a feasible plan from being effectuated, it is doubtful that even exceptional LPA efforts could achieve desirable relocation if the scheduling of rehousing resources was seriously wide of the mark.
53. See p. 976 supra. The Housing Act and the regulations issued thereunder impose a number of specific obligations on LPA's subsidiary to the overall goal of finding "decent, safe, and sanitary" housing for displacees. These include (1) providing adequate notice to site residents, (2) informing those on the relocation workload of their right to standard rehousing, (3) distributing information on relocation payments and services available, and (4) conducting an interview with each family to determine its housing needs. See RAA, URBAN RENEWAL MANUAL § 16-3-1. It has been found that there is a correlation between the provision of services such as these and the ultimate success of the relocation program. Reynolds, Population Displacement in Urban Renewal, 22 AM. J. OF ECON. & SOC. 113, 117 (1963). However, these services have frequently not been provided. University of Pennsylvania and National Association of Housing and Redevelopment Officials, Essays on the Problems Faced in the Relocation of Elderly Persons 41 (1963). Since displaced persons can themselves testify in suits involving the LPA, evidentiary problems in these suits should not be unusually difficult.
54. The federal guidelines can be found in RAA, URBAN RENEWAL MANUAL § 16-2, and URBAN RENEWAL ADMINISTRATION, TECHNICAL GUIDE No. 9, Determining Local Relocation Standards (1961). An earlier but almost identical version of Technical Guide No. 9 is URBAN RENEWAL ADMINISTRATION, LOCAL STANDARDS FOR DETERMINING ACCEPTABILITY OF REHousing Resources (1958). Charles Abrams, no friend of the present relocation program, has praised these required specifications. ABRAMS 135-36. While these standards are local "guidelines," they leave but little room for LPA discretion.
55. HUD requires that rehousing standards include each of the following elements: safe, weather-tight structure in good repair; all bathroom facilities with hot and cold running water for exclusive use of family; kitchen facilities for exclusive use of family; properly functioning plumbing and sewage disposal system, safe and adequate heating system,...
families can be expected to pay for such units, and the location of the housing and its accessibility to public and consumer facilities and places of employment. Because these standards are reasonably strict and appear to effectuate the statutory purpose, it is doubtful that they will be the focal point of displacee challenges to HUD application of Section 105(c).

It is in the area of determining the number of available dwelling units meeting these standards that displacees and HUD will differ most sharply. Plaintiffs may wish to begin by attacking certain of the planning and estimating techniques prescribed by HUD for LPA's. HUD seems particularly vulnerable for (a) allowing a definition of the LPA relocation "workload," or number of families that must be rehoused,
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which misses many displacees,\(^9\) (b) permitting the use of private housing turnover rates as a major index of available relocation housing,\(^6\) (c) not requiring housing surveys to measure available resources,\(^6\) and (d) making no distinction between low-income and overall vacancy rates.\(^6\)

The inadequacy of HUD-sanctioned LPA planning practices is critical to the larger question of whether the required housing can in fact be made available to displacees. Here the court will have to consider (a) the feasibility of plans for new federally-assisted housing; (b) the size of the waiting lists for existing public housing; (c) the assistance planned for those too poor or otherwise unqualified for publicly-supported housing; (d) the location, rents, and availability (including racial availability\(^6\)) of standard units in the private market; and (e) LPA plans for bringing housing and people together.

Because at present a hearing before HUD on the feasibility of relocation is neither required nor held\(^6\)—although such a hearing would be

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\(^{59}\) See the definition of the “workload” in RAA, Urban Renewal Manual § 16-3-1. Hartman notes that residents of an area scheduled for clearance start to drift away long before the property is acquired by the local public body. See Hartman, A Comment on the HHFA Study of Relocation, in Urban Renewal: The Record and the Controversy 333-54 (J. Wilson ed. 1966).

\(^{60}\) RAA, Urban Renewal Manual § 16-1; City of New Haven, Workable Program for Community Improvement, May 12, 1967, at 19-22.

\(^{61}\) RAA, Urban Renewal Manual § 16-1; Advisory Commission 32-34.

\(^{62}\) RAA, Urban Renewal Manual § 16-1; Abrams 142-50. On the general question of LPA planning and the accuracy of the data used, see Short, Relocation: A Myth or Reality, 3 Urban Affairs Q. 62 (1967).

\(^{63}\) In an effort to assure that the effects of private housing discrimination do not result in an LPA overestimate of the number of units available to Negroes, HUD requires that a white-nonwhite breakdown be made in classifying displacees and rehousing resources. RAA, Urban Renewal Manual §§ 16-1 to -2. A recent challenge to this practice as a violation of Title VI of the Civil Rights Act of 1964 was rejected by the Seventh Circuit. Green Street Ass'n v. Daley, 375 F.2d 1 (7th Cir. 1967). Clearly there are extremely difficult policy questions involved. Requiring racially integrated relocation has an obvious appeal, but there are competing considerations, such as the possibility that requiring integrated relocation would curtail the renewal-rehousing effort. See Piven & Cloward, Desegregated Housing: Who Pays for the Reformer's Ideal? The New Republic, Dec. 17, 1966, at 17. See also Greer 58-59. A compromise approach would be to prevent urban renewal from having the effect of increasing racial isolation. The language of Section 105(c) supports this conclusion. See note 57 supra.

\(^{64}\) The Housing Act of 1949 does not specifically authorize a hearing before the federal agency, and the APA demands a hearing only where one is required by statute. 5 U.S.C. § 554 (Supp. II, 1955-66). First Nat'l Bank v. Saxon, 332 F.2d 267, 270 (4th Cir. 1963), discusses the APA legislative history on this point. Moreover, it has been held that due process does not require a hearing before the Administrator on the 105(c) determination. Hart v. Cole, 265 F.2d 244 (2d Cir. 1959). While HUD has not made provision for such a hearing, it may be advisable for it to do so. Moreover, the argument advanced in the Hart case on this point is not altogether convincing.

Section 105(c) of the Housing Act does require a local public hearing. 42 U.S.C. § 1455(d) (1964). This section has been interpreted as requiring a hearing before some municipal body prior to the approval of the urban renewal plan by the local governing body. The federal agency does not base its 105(c) decision on information provided at the hearing; the LPA is only required to supply a copy of excerpts from the minutes. RAA, Urban Renewal Manual § 4-5. As it presently stands, this procedure hardly qualifies as an adequate hearing for review purposes. Moreover, it would probably be best not to disturb
both possible and desirable—the court should receive evidence to establish its own record for review. There are numerous sources of information from which to draw besides HUD-LPA data: the Census of Housing; local housing surveys and other studies of local housing conditions; reports on relocation in past renewal projects in the city; and the testimony of housing market experts, local housing authority personnel, and displacees from previous projects. At least in suits under section 10, the court should set aside the agency action if it finds on the whole record at the end of the trial that in taking such action HUD abused or exceeded its discretion.

(2) Effects of enforcement on the renewal program. The best explanation of the courts' invocation of the standing doctrine can be found in the conflict between the requirements of Section 105(c) and the constraints under which the renewal program operated during the 1950's and early 1960's.

As originally conceived and as reflected in its Declaration of Policy, the Housing Act of 1949 sought slum clearance and rehousing for America's poor. The slum clearance and public housing titles were designed to work in tandem: Section 105(c) of Title I (Slum Clearance) required that displacees be relocated in standard housing; and Section 10(a) of Title II (Public Housing) required that a substandard unit be cleared for each unit of public housing constructed. Title II authorized 810,000 units of public housing to be built over a six-year period, and the frequent use of the present interpretation. The 105(d) hearing is useful as part of the local political process leading up to the approval of the project by the local governing body. At present, this 105(d) hearing would seem to be the only administrative remedy plaintiffs have to exhaust.


69. See generally HHFA, The Relationship Between Slum Clearance and Urban Redevelopment and Low-Rent Housing (1960).

70. See note 13 supra.


72. R. DAVIES, supra note 68, at 111.

73. Housing Act of 1937 § 10(g), 42 U.S.C. § 1410(g) (1964).
of Title I sites for rehousing displacees was anticipated. Other rehousing resources were to be made available to displacees by the “filtering down” process and by a private housing surplus.

In fact, adherence to the relocation goals of the Act was thwarted by the failure of the coalition that secured the passage of the legislation in Congress to function at the local level. The worst blow was the widespread public antipathy towards public housing. The National Association of Home Builders and other real estate interests launched their campaign against public housing within a year of the passage of the act. Playing on the theme that public housing was un-American, the real estate lobby was instrumental in defeating public housing in twenty-five of the first thirty-eight public referendums. Even liberals objected to many aspects of the public housing program, particularly its all too frequent failure to provide a decent living environment for those it housed. As a result, Title II never gained much support at the local level. Through 1954, only about 150,000 of the authorized units had been constructed, and Congress in that year cut the annual authorization from 135,000 to 35,000. Since the private housing surplus had already vanished by the time the act was passed and the “filtering down” process gave rise to few if any adequate units, the rejection of public housing meant that satisfactory relocation housing was virtually nonexistent.

In the meanwhile, Title I was undergoing a process of redefinition. Very little happened under the program prior to the mid-1950's. Public apathy, together with a lack of interest in important political and commercial circles, was a major part of the explanation.
difficult for local political leaders to make the program envisioned by Congress politically acceptable. If statutory relocation were enforced, most cities could not have complied without extensive use of public housing. Moreover, since it was not altogether clear for what redevelopment purpose Title I could be used, it was difficult to calculate the patronage the program would create. Yet it was clear that a considerable amount of hard work was involved and that some people—small businesses, slumlords, ward bosses—would be hurt no matter how the program operated.

Local political support for Title I could coalesce only after it became clear that HHFA was not going to enforce the relocation requirements of Section 105(c) and that the federal funds could be used for removing slums and other eyesores from downtown areas, rebuilding central business districts, attracting luxury apartment dwellers back from the suburbs, and improving the city's tax base. HHFA's acquiescence on the enforcement point was particularly important since the sort of redevelopment envisioned by the program's new business-minded supporters would require widespread demolition and displacement. In this guise the program could be made financially possible and politically palatable, though not extremely popular even with the middle classes.

Urban renewal thus came to be supported and directed primarily by those with little or no interest in rehousing the poor. It contributed to the economic and aesthetic rejuvenation of many central cities.

85. See p. 981 supra.
87. R. Dahl, supra note 85, at 117-21, 129; Bauer, supra note 68, at 7-10.
88. R. Dahl, supra note 85, at 117; Bauer, supra note 68, at 7-10.
89. Kaplan reports that URA was willing to wink at Newark's violations of the Workable Program. H. Kaplan, Urban Renewal Politics: Slum Clearance in Newark 3 (1963). Other studies have reached the same general conclusion. See Greer 97-98; Abrams 130-39. See also materials cited note 2 supra.
90. These were clearly the dominant goals of the program as it emerged in the 1950's and early 1960's. Greer 27-29, 91-93, 113-14, 154-60; Abrams 167; Long, Local Government and Renewal Policies, in Urban Renewal: The Record and the Controversy 462-27 (J. Wilson ed. 1966). The 1954 amendments, particularly the 10 per cent allowance for projects not predominantly residential either before or after the project, may have helped in shifting the goals of the program towards central city build-up. These amendments are discussed in Feard & Fefferman, supra note 1, at 655-58. See also note 12 supra.
91. Long, supra note 90, at 426-27. See also P. Rossi & R. Dentler, The Politics of Urban Renewal 64 (1961); Greer 115-14, 120.
while shying away from the job of rehousing those displaced by the new commercial and apartment complexes.65

A court sitting in the late 1950's or early 1960's might well have surveyed this situation and denied standing out of an appreciation of the benefits conferred by urban renewal and an unwillingness to jeopardize or curtail the program by forcing it to shoulder the burden of rehousing displacees in accordance with Section 105(c). The political structure of the urban renewal program as it then appeared strongly suggested that many projects could not be carried out if the courts intervened to require fulfillment of the statutory relocation requirements. Even were a court aware of the difficulties faced by displacees, it might have concluded that the gains accruing to the community as a whole were worth the costs of inadequate relocation. The district court in *Green Street* seems to have reasoned in precisely this manner:

This Court is aware of the problems to be solved in the relocation of persons displaced by urban renewal plans. However, if this litigation were permitted to restrain the civic action, it would be standing in the path of progress already made and perpetuating the de facto segregation already existing to the detriment of those that this action purportedly seeks to protect.66

One may question whether a court should ever rely on policy considerations of this sort in making a standing decision. One may also question whether the courts in *Johnson*, *Harrison-Halsted*, and *Green Street* correctly evaluated the various social interests even on the basis of then-available information. But whatever force the policy arguments for denying standing may have had five or ten years ago, the subsequent march of events has left them with little or no relevance.

Changes in the political context within which the renewal program operates today as well as our improved understanding of relocation and related urban problems suggest that a re-evaluation of the role of the federal courts is in order.

Crucial among the new considerations are legislative changes

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95. After noting the dramatic shift away from the original purpose of the Act, Abrams concludes:

>T]he legislation which Congress had enacted to help solve the slum problem was evicting many more slum dwellers than it was rehousing. It was only one of the many examples of how legislation passed with the best of intentions is ultimately perverted during the administrative process. In the long run, the profit motive somehow operates as the undesignated but effective legislator while the public obligation is pushed under the rug. Abrams 84.

96. 250 F. Supp. 139, 147 (N.D. Ill. 1966). Besides the 105(c) challenge, *Green Street* also involved a complaint that only segregated relocation facilities were being made available. See note 63 supra.
which, taken together, indicate a redirection of the federal urban renewal program towards goals more closely approximating those of the drafters of the 1949 Act. In 1964 and 1965, amendments to Section 105(c) Congress again stressed the importance of rehousing displacees. To this end, the range of federal assistance for displacees has been considerably expanded. Public housing has grown at an accelerated rate during the 1960's and has recently been made more accessible to displacees. Federal assistance for housing for the elderly, who constitute a significant percentage of displacees, has been greatly increased. The FHA 220 and 221 mortgage insurance programs have been amended, particularly by the addition of 221(d)(3), so as to strengthen considerably the prospects of statutory relocation. Section 221(d)(3) housing could be a particularly effective relocation resource when combined with the new rent supplement program, for which displacees are eligible. Finally, financial assistance directly available to displacees under the Housing Act of 1949 itself has been increased.

97. See note 13 supra.
98. By early 1966, the public housing stock had increased to 610,000 units. Public Housing Authority Rep., Program Status (Statistics Branch, Mar. 15, 1966). This represents a doubling of the number of units in the 1960's. Persons displaced by government action and the elderly have priority in getting into public housing units. See note 73 supra. The Housing Act of 1964 authorized a special payment to local housing authorities to enable them to take in more displaced families below the minimum acceptable income limit. 42 U.S.C. § 1410(a) (1964). The new "leased housing program" managed by local housing authorities may also increase the supply of low-income housing available to displacees. Housing and Urban Development Act of 1965 § 23, 42 U.S.C. § 1431(d) (Supp. I, 1965).
99. About 20 per cent of displaced households have had a family head over 60 years old. NIEBANCK 15.
100. The various programs are described in NIEBANCK 72-78.
101. Observers of the relocation scene have been particularly hopeful of the new 221(d)(3) program introduced in 1961. This program provides FHA-insured mortgages typically at below-market interest rates to limited dividend corporations for the construction of housing for low- and moderate-income families. Housing Act of 1961, 12 U.S.C. § 1715f (1964). In 1965 Congress greatly increased the subsidy by reducing the maximum interest rate to 3 per cent. Housing and Urban Development Act of 1965 § 102(b), 12 U.S.C. § 1715f(d)(5) (Supp. I, 1965). The utility of this program for relocation purposes is set out in R. WEaver, supra note 75, at 87-88, 116-20. The use of the 221(d)(3) program is likely to expand greatly as a result of the 1965 amendment requiring that urban renewal sites, unless redeveloped for predominantly non-residential purposes, be used to provide a substantial number of standard units for moderate and low-income families. Housing Act of 1949 § 105(f), 1966 U.S. Code Cong. & Ad. News 1497. Other amendments to FHA's 220 and 221 programs should also make statutory rehousing less troublesome. See, e.g., National Housing Act §§ 220(b), 221(d)(2), 221(d)(4), 12 U.S.C. §§ 1715k, 1715i (Supp. I, 1965).
104. The Section 114 relocation payments under the Housing Act of 1949 were considerably strengthened by 1964 and 1965 amendments. To the existing provision for the payment of moving costs have been added a short-term rent subsidy (not to exceed $500 per family) and a provision for the payment to displacees of expenses incidental to the transfer of real property. 42 U.S.C. § 1465(c)(2), § 1465(d) (Supp. I, 1965).
addition to expanding rehousing resources, Congress has also sought to limit the social upheavals caused by the program. The new reliance on rehabilitation and housing code enforcement, with the consequent drop in displacements, is the best example. Pursuant to these new policies, HUD has recently emphasized to LPA's that top priority be given to conserving and rebuilding the low-income housing supply. The new federal legislation should bring the supply and demand for relocation rehousing closer, thereby loosening one of the major constraints on the earlier program.

A second group of changes involve the local political setting of the renewal program. Three aspects of the new political situation seem particularly relevant. First, the scope of the program has increased greatly, indicating a significant reduction in public resistance to publicly-financed renewal. Urban renewal is no longer exceptional, and cities are expected to have redevelopment programs. There may also be more public awareness of an "urban crisis" and of the need for federal assistance. Second, where renewal has succeeded, powerful real estate, political and commercial interests have come to depend on the federal largess. Urban renewal has become a significant source of political patronage, and considerable local resources have become committed to continued action to the point that they will be difficult to extract. Third, whereas in an earlier day the primary political problems were overcoming apathy and winning the support of conservative business elements in the community, today's opposition increasingly comes from organized and...
disaffected slumdwellers themselves. Where such groups exist, they should heighten the interest of local politicians in achieving adequate relocation. Thus, not only is the local program stronger and more resilient today than a few years ago, but also there are independent forces shifting the politics of renewal in the direction of better relocation.

Finally, the violence which tore many cities last summer has sharpened our understanding of the urban crisis and urban renewal's relation to it. The social costs of the continued neglect of those in the slums and ghettos of our cities are more than a rational nation would be willing to pay. Newark and New Haven—two cities which have had large-scale clearance programs—were among the cities in which ghetto riots erupted last summer; in both cities, these projects have been cited as substantial factors contributing to the frustration and outrage which finally exploded.

Under these circumstances, judicial review of relocation could serve a valuable and creative function. The expanded availability of federal aids for rehousing displacees together with the changed local political context and the more flexible character of the renewal problem itself suggest that today most cities would be able to continue redevelopment and honor the requirements of Section 105(c). Judicial review, or the threat thereof, could insure that rehousing resources were used to the fullest extent of their availability. The recent improvement in relocation under HUD prodding indicates the efficacy of such a policy. Without review, however, there is no guarantee that HUD will enforce Section 105(c) and, therefore, no guarantee that available resources will be used.

To the extent that rehousing resources are still not available, judicial review would force into the open what remains of the contradiction within the program. By enjoining displacement where adequate rehousing was not available, the courts not only would be supporting a sound public policy but also would be generating pressures that could lead to a legislative solution. That legislative action would be forthcoming is suggested by the increasing strength of the program at the

110. Renewal in New Haven is meeting increasing opposition from such groups. Wilhelm, supra note 11, at 10. The Green Street Association, an organization of potential displacees, recently fought a Chicago project into the courts. See p. 970 supra. See also note 11 supra.

111. Anderson, The Voices of Newark, COMMENTARY, Oct. 1967, at 85; Wilhelm, supra note 11.

112. After a thorough study of the relocation problem, the Advisory Committee on Intergovernmental Relations concluded that "[r]elocation can be vastly improved with better administration of present laws and regulations." ADVISORY COMMISSION 127.

113. See note 10 supra.
local level and the recent Congressional re-emphasis of the importance of statutory relocation. Moreover, the legislative solution could be relatively straightforward: since Congress has already created a workable framework of relocation assistance, \textsuperscript{114} the problem is essentially one of appropriating the necessary funds.\textsuperscript{115}

\textsuperscript{114} See p. 984 supra.

\textsuperscript{115} The conclusions of the Advisory Commission's study lend support to the arguments advanced here:

Assurance of standard housing is uniquely germane to the purposes of urban renewal and public housing programs as it is not to other Federal grant programs. It is also true that persons displaced may presently be living in substandard housing, and that assuring a standard housing supply requires many types of action, public and private, governing the total supply of housing. However, the Commission believes the goal of providing standard housing for all is of such preeminent importance that its availability should be assured even if it means a delay in a federally aided project. Establishing this requirement for all Federal grant programs would probably, in fact, furnish considerable stimulus to the elimination of substandard housing.

Advisory Commission 116.