# ACHIEVING INSTITUTIONAL REFORM THROUGH THE POLITICAL PROCESS: THE STORY OF THE PROVIDENCE HOUSING AUTHORITY

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Sometimes when you're poor, you
have to *make* people pay attention ...

- Janette Silva, tenant leader in
the Providence housing projects[1]

## INTRODUCTION

The story of the Providence Housing Authority is one of successful institutional reform through the use of the political processes. It serves as a testament to the theory that what plaintiffs often need in institutional reform cases is a political victory, not a judicial one. This paper suggests that although litigation can be a useful, and powerful, tool to help achieve reform, the ultimate outcome will necessarily depend on political factors and actors outside the judicial context.

This paper is divided into three parts. Part I provides some background history of the Hartford Park high-rise apartment towers. Part II begins with a discussion of the case, *Durrett v. Housing Authority of the City of Providence*. It argues that the successful reform of the

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[1] Deborah Barfield, *Low-Income Tenants Buck System*, PROVIDENCE JOURNAL, June 26, 1989, at D-01 (emphasis added).

agency was attributable primarily to a change in the political landscape that had been effected prior to implementation of the court remedy. Although the litigation played a significant role in the reform, it was but one of the various tools that was used to achieve the ultimate outcome. Part III analyzes the case *Project B.A.S.I.C. v. Kemp*. It concludes that reform of housing agencies will be most effective when three factors are present: 1) the cooperation of HUD, 2) a "reform-minded" housing authority, and 3) political support or a general political climate in favor of reform.

## I. BACKGROUND

The Providence Housing Authority's four elevator apartment towers at Hartford Park, the first of their kind in the nation, opened on November 11, 1953, to great fanfare.[2] Housing planners, architects and government experts from around the country expressed their admiration for what Mayor Walter Reynolds deemed the "crown and capstone" of his housing authority's achievements.[3] Hailed as a "milestone in social progress," the towers were to provide safe, sanitary and affordable housing for working

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[2] *See Scattered-Site Could Solve Hartford Park Housing Mess*, PROVIDENCE JOURNAL, June 8, 1987, at A-14.

[3] *Id.*

class families who were saving to one day buy a home of their own.[4] Local officials also anticipated that the towers would revitalize the community, spurring economic growth and general housing renovation.[5]

Such enthusiasm would prove to be seriously misguided. The first several years, however, gave little indication of the troubles to come. Public housing was then seen as a privilege,[6] rather than as a dumping ground for the homeless, which is the pervading perception today. Thus, waiting lists were long, and tenants were carefully screened through the use of background checks with the police and social-service agencies.[7]

In the late 1950s, however, many of these background checks were eliminated and "undesirables" - the disorderly, the chronically unemployed and the drug dealers - began moving in.[8] The structure of the typical resident family also began to change, with two-parent families being replaced by single women with children.[9] Many of these

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[4] Robert Corriea, *Hartford Park Towers That Once Aspired to An Ideal Now Face Demolition*, March 5, 1989, at M-15.

[5] *See id.*

[6] *See id.*

[7] *See id.*

[8] *See id.*

[9] *See id.*

children, left unsupervised during the day, vandalized the buildings, adding to their rapid physical deterioration.[10]

By the early 1960s, the Providence Housing Authority was starting to join in the growing consensus that concentrating low-income people in high-rises was a mistake.[11] Congress concurred and passed legislation in 1968 prohibiting construction of public high-rise apartment buildings for families.[12] Today, policy officials mostly agree that putting low-income families together in high-rises was a social experiment that failed;[13] it tended to magnify social ills, and created "a ready-made market" for drugs.[14] The deteriorating conditions would then drive the upwardly mobile working-class out of the project, leaving only the chronically poor.[15]

Problems at the Providence Housing Authority were further exacerbated by racial discrimination. By the late 1960s, the authority's family projects, that were once mostly occupied by whites, became almost exclusively

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[10] *See id.*

[11] *See id.*

[12] *See* 42 U.S.C. § 1437d(a) ("[E]xcept in the case of housing predominantly for elderly or disabled families, high-rise elevator projects shall not be provided for families with children unless … there is no practical alternative.")

[13] *See* Corriea, *supra* note 4 (quoting Richard Y. Nelson, executive director of the National Association of Housing and Redevelopment Officials).

[14] *Id.*

[15] *See id.*

occupied by blacks.[16] As the number of minority tenants rose, the Authority began to increasingly neglect the projects from 1973 to 1982,[17] while at the same time, lavishing attention on its primarily white-occupied developments for the elderly.[18]

As a result, Hartford Park's family projects were in a dismal state by the 1980s. Tenants were living under filthy conditions, including roach and rodent infestations, leaking ceilings, peeling paint, and other major code violations.[19] Drug dealing was commonplace,[20] and management of the program was deficient on many levels.[21] By 1986, only 66% of the apartments were occupied at Hartford Park,[22] an extraordinarily low percentage in light of the dire shortage of affordable housing existing in Providence at the time.[23]

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[16] *See* Craig Flournoy and George Rodrigue, *Separate and Unequal: Illegal Segregation Pervades Nation's Subsidized Housing*, DALLAS MORNING NEWS, Feb. 10, 1985, at 1A.

[17] *See id. See also* Ira Chinoy, *PHA Points Finger as HUD Terms Its Operations "Troubled"*, PROVIDENCE JOURNAL, March 21, 1985, at C-03.

[18] *See* Flournoy and Rodrigue, *supra* note 16.

[19] *See* Ira Chinoy, *Hartford Park Tenants Urge City Housing-Code Inspections*, PROVIDENCE JOURNAL, Nov. 16, 1984, at C-01; Chinoy, *supra* note 17.

[20] *See* Scott MacKay, *HUD Blasts Housing Authority for Poor Management of City Program*, PROVIDENCE JOURNAL, Feb. 21, 1986, at C-01.

[21] *See HUD Blasts Housing Authority for Poor Management of City Program: Some Findings of the Report*, PROVIDENCE JOURNAL, Feb. 21, 1986 at C-01.

[22] *See id.*

[23] *See A Special Report - The Cost of Housing*, PROVIDENCE JOURNAL, May 10, 1989, at Z-01. The report summarizes the findings of a two-year study

The ensuing five years - 1986 to 1991 - would prove to be a pivotal period for the Providence Housing Authority. Facing two major lawsuits and aggressive political attacks, the authority would emerge from the scuffle a reformed institution. The two lawsuits, involving the intersection of race discrimination law and the law relating to public housing demolition and neglect, played a significant role in achieving this reform.

## II. Durrett v. Housing Authority of the City of Providence

### A. Introduction

In July of 1986, a class of tenants in the Hartford Park and nearby Manton Heights housing projects, represented by named plaintiff Ruth Durrett, filed a federal lawsuit against HUD, the City of Providence and the Providence Housing Authority. The complaint alleged, *inter alia*, that the City and the Authority had violated substantive and procedural due process by failing to enforce housing code provisions, and the Fair Housing Act of 1968 by denying plaintiffs' rights to decent, safe and sanitary housing.[24] The plaintiffs further charged that HUD had deprived them of

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conducted by Brown University on Providence's housing affordability squeeze.

[24] *See* Durrett v. Housing Authority of the City of Providence, 896 F.2d 600, 601 (1st Cir. 1990).

their rights to decent, safe, and sanitary housing, free from discrimination.[25]

After considerable discovery, negotiations and a lengthy rent strike, and before the case was heard on the merits, plaintiffs and the Housing Authority reached a settlement stipulation and consent decree agreement in late 1988.[26] The agreement, containing 50 numbered paragraphs in 29 pages, was detailed, and included provisions for renovations such as eliminating asbestos, landscaping around buildings, and replacing appliances, in addition to provisions dealing with policies and procedures, such as the security deposit system, tenant screening and evictions, service programs, and the duty to meet and confer in good faith.[27]

When the parties presented the agreement to the district court, however, Judge Ronald Lagueux refused to give his approval, due partly to the fear that the court would become "a super-superintendent of [the] two housing projects," being called upon to rule on petty, non-federal matters, such as inadequately functioning toilets.[28] On appeal, the First Circuit reversed, finding that Judge

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[25] *See id.*

[26] *See id.*

[27] *See id.* at 601-02.

[28] *Id.* at 602.

Lagueux's refusal to approve the proposed settlement was an abuse of discretion.[29] The court determined that Judge Lagueux's fear that he would become enmeshed in petty non-federal matters was unfounded because the obligations assumed by the Authority in the agreement were of a systemic nature.[30] Thus, the court envisaged at most minimal judicial involvement in helping to implement the proposed settlement.[31]

Circuit Judge Torruella concurred in the opinion, agreeing that on the record, refusal to approve the settlement was an abuse of discretion by the district court.[32] However, he added a cautionary note that federal courts should not be enmeshed in overseeing continuing petty disputes, both because it would be an unpardonable waste of limited resources and because "the trivialization of constitutional proceedings is deleterious to the well-being of the federal judicial system."[33] Judge Torruella thus urged the district court to remain alert to any future attempt by the parties to turn the court into a "super-superintendent" of the housing project.[34]

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[29] *See id.* at 604.

[30] *See id.*

[31] *See id.*

[32] *See id.* at 605 (Torruella, Circuit Judge, concurring).

[33] *Id.*

[34] *Id.*

Fortunately for the plaintiffs and for Judge Lagueux, judicial involvement proved to be unnecessary. The plaintiffs did not have to turn to the courts to induce compliance from the Authority, a significant turnaround for an institution that had once been under danger of being put under receivership.[35] Undoubtedly, the relative ease of implementing the decree was due in part to the systemic nature of the obligations imposed on the Authority. The decree left little room for the exercise of discretion; either the Authority was complying or it was not. More important than the substantive nature of the decree, however, was the marked lack of intransigence on the part of the Housing Authority in implementing it. The question then becomes - what was the source of the Authority's willingness to meet its obligations? And what effect did the litigation have on achieving reform?

B. Outside the Courts: Political Victories

A probe into the circumstances surrounding the *Durrett* litigation shows that, prior to the entering of the decree, the plaintiffs had already secured a *political* victory that had effectively reorganized the agency and placed it in the

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[35] *See* Sheryl Stolberg, *Tenants File Suit in Federal Court Against City's Housing Agency*, PROVIDENCE JOURNAL, July 8, 1986, at C-01 (reporting that tenants at the Hartford Park and Manton Heights projects filed a state court suit requesting a receiver, if necessary, to run the Providence Housing Authority).

throes of reform. This political victory, moreover, was the primary factor accounting for the success of the litigation. The following sections trace the events that led up to the victory and the settlement in *Durrett*.

1. 1984-1985: Finger-pointing, Excuses and Inaction

The Providence Housing Authority continued its downward spiral unchecked until the mid-1980s. The first signs of a stir appeared in November of 1984, when a group of residents, led by Rose Veiga, head of the Hartford Park Tenants Association, and Ruth Durrett, head of the Manton Heights Tenants Association, sent letters to the city's Code Enforcement Division requesting inspections of their apartments for conditions violating the city's minimum housing code.[36] Until Veiga started speaking out, no effective tenants organization had existed at Hartford Park since 1970.[37]

The tenants continued to mobilize throughout this period with the help of Rhode Island Legal Services, lodging civil rights complaints with HUD, the Providence Human Relations Commission, and in federal district court.[38] The

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[36] *See* Ira Chinoy, *Hartford Park Tenants Urge City Housing-Code Inspections*, PROVIDENCE JOURNAL, Nov. 16, 1984, at C-01.

[37] *See id.*

[38] *See id.*

complaints, all similar in substance, alleged that as the percentage of minority tenants had risen in the previous fifteen years, the quantity and quality of services provided by the Housing Authority and the city had declined dramatically.[39] In going public with the Human Relations complaint, Veiga stated that she believed that the city and the Authority were stalling in responding to the investigations.[40] Veiga also continued to make public comments critical of Mayor Joseph Paolino's administration for not becoming more active in solving the city's public housing problems.[41]

The tenants' efforts did not go unnoticed. Faced with lawsuits and mounting negative publicity, the various governmental actors tried to punt the blame on one another. In March of 1985, HUD, which provides half of the Providence Housing Authority's operating budget, issued a report that the Authority had been labeled "operationally troubled."[42] In the wake of that report, the Authority's Board of Commissioners and its executive director, Eugene Capoccia, accused federal officials of failing to take a sufficiently

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[39] *See* Ira Chinoy, *PHA Points Finger as HUD Terms Its Operations 'Troubled'*, PROVIDENCE JOURNAL, March 21, 1985, at C-03.

[40] *See* Chinoy, *supra* note 36.

[41] *See id.*

[42] *See id.*

active role in resolving the agency's problems.[43] The Chairman of the Board also berated Capoccia for failing to come up with the solutions, indicating that lack of funds was no excuse.[44]

In the meantime, the tenants' complaints to the city's Code Enforcement Division had resulted in orders to correct 500 to 600 housing code violations.[45] When the Housing Authority failed to correct the violations, the City filed a state court suit in August of 1985, naming the Authority, Cappocia, and the Board of Commissioners as defendants.[46] The Hartford Park and Manton Heights tenant associations moved to intervene in the suit several months thereafter.[47] John Dineen, an attorney for the tenants, publicly stated that if the motion to intervene was granted, the tenants would ask that the Authority be placed in receivership and that HUD and the city provide money to repair the two projects.[48]

Thus, by the end of 1985, the Providence Housing Authority was facing attacks from a number of different

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[43] *See id.*

[44] *See id.*

[45] *See id.*

[46] *See* Doane Hulick, *Tenants to Intervene in Housing Suit*, PROVIDENCE JOURNAL, Oct. 3, 1985, at C-01.

[47] *See id.*

[48] *See id.*

sources - the tenants, local and federal officials, the courts, and the media.

2. 1986: The Pivotal Year

Mayor Paolino started off 1986 by pledging a shakeup of the Housing Authority in his "state of the city" address.[49] More importantly, he did not renege on that promise, appointing seven new members to the eleven-member authority board in a period of six months.[50] The new board, in turn, pledged to take a "fresh approach."[51] When HUD issued another report in February of 1986, criticizing the Authority for poor management of its housing program,[52] newly-appointed Chairman Beverly Ledbetter vowed not to get into an argument with HUD over who was in the wrong.[53] Rather, she acknowledged that the report would be a good starting point to reform the agency, adding that the board

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[49] *See* Sharon Griffin, *Tenant Leaders Celebrate Resignation of Capoccia as Housing Agency Head*, PROVIDENCE JOURNAL, Dec. 12, 1986, at C-01.

[50] *See* Scott MacKay, *HUD Blasts Housing Authority for Poor Management of City Program: Filthy Conditions, Segregation Among Many Faults Cited*, PROVIDENCE JOURNAL, Feb. 21, 1986, at C-01.

[51] *Id.*

[52] Findings of the report included: maintenance problems, major housing code violations, racial segregation, high vacancy rates, overly lenient personnel policies, unassigned management functions, discriminatory housing policies, lack of communication throughout the authority, and insufficient knowledge of federal housing requirements on the part of the staff. *See HUD Blasts Housing Authority for Poor Management of City Program: Some Findings of the Report*, PROVIDENCE JOURNAL, Feb. 21, 1986, at C-01.

[53] *See* MacKay, *supra* note 50.

was going to address all of HUD's concerns.[54] The board's reformist attitute was in marked contrast to Capoccia's persistent position that HUD, through its inadequate financial support and erratic disbursal schedules, was to blame for most of the Authority's problems.[55]

Capoccia, a holdover from the administration of the previous mayor, Vincent Cianci,[56] was to have a limited remaining tenure as executive director of the Authority. Paolino asked the board in February to complete a financial audit of the agency and review the performance of top administrators including Capoccia.[57] In the same month, Paolino stated publicly that he believed that Capoccia should go, but left the ultimate decision on whether he should be fired to the new board.[58] The tenants joined the battlecry in April, calling for Capoccia's resignation and requesting in state court that the authority be put under the control of a court-appointed receiver.[59]

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[54] *See id.*

[55] *See id. See generally* PETER SCHUCK, SUING GOVERNMENT 7 (1983) ("The claim that adequate performance is precluded by insufficient resources, of course, is the first refuge of the harried bureaucrat.")

[56] *See* MacKay, *supra* note 50.

[57] *See* Griffin, *supra* note 49.

[58] *See* MacKay, *supra* note 50.

[59] *See* Sharon Griffin, *Housing Authority Director Resigns*, PROVIDENCE JOURNAL, Dec. 11, 1986, at C-01.

Harshly criticized by tenants, federal housing officials, and his mayor, Capoccia announced his resignation as executive director in December of 1986.[60] Capoccia's resignation and the subsequent appointment of Stephen O'Rourke, a city administrator, as his replacement, would prove to be the critical first element in achieving progress. It would mark the beginning of a new chapter for the Providence Housing Authority - the "beast of public housing" [61] was gone, and the agency was poised for reform.

3. "Cleaning House"

Stephen O'Rourke was a controversial choice as Capoccia's replacement. During his twelve years as a Providence city administrator, O'Rourke had often been kidded for his belief in Ronald Reagan and the philosophy that government should refrain from interfering in social issues.[62] And O'Rourke was taking over an extremely troubled agency - one that was in the middle of a rent strike and under fire from both local and federal officials. O'Rourke, however, vowed that his conservative philosophy would not stand in the way of becoming the advocate for low-

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[60] *See id.*

[61] Griffin, *supra* note 49.

[62] *See* Russell Garland, *'Reaganite Conservative' Determined to Get Housing Agency Back on Track*, Feb. 16, 1987, at C-01.

income housing in the city of Providence.[63] His publicly-stated plans for the authority included improving management systems, evicting troublemakers and screening applicants, rehabilitating existing projects, and providing new low-income housing.[64]

When O'Rourke was put in charge of the authority, essentially no management systems were in place except for those required by HUD.[65] O'Rourke thus undertook to reorganize and reengineer the entire agency. He shuffled around the staff, created new departments, and developed operational plans for each of those departments.[66] Throughout the whole process, he received great cooperation from the staff.[67] According to O'Rourke, the staff was aware that the orders from the Board were to "clean house"; their ensuing apprehension thus led to greater cooperation.[68]

O'Rourke's ultimate goal for the Providence Housing Authority was to "turn it around" and win HUD's award for

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[63] *See id.*

[64] *See id.*

[65] Telephone Interview With Stephen O'Rourke, Executive Director, Providence Housing Authority (April 13, 1999) (hereinafter "O'Rourke Interview").

[66] O'Rourke Interview.

[67] O'Rourke Interview.

[68] O'Rourke Interview.

the most improved housing authority.[69] Commentators have suggested that reform will be difficult in an organization that has successfully instilled a sense of mission and goals; those who believe in that mission are likely to resist judicial efforts to change it.[70] The converse then must be equally as true - where a court's attempts to reorient an agency promotes or reinforces the organizational mission, the difficulties in securing cooperation will decrease. A key part of O'Rourke's plans for the Authority was to rehabilitate existing projects; Hartford Park figured prominently in this regard.[71] Thus, by the time that the settlement agreement was reached in *Durrett*, the tenants were not asking for anything in that agreement that the housing authority did not already want to do.[72] Indeed, the provisions dealing with policies and procedures had already been put into place by the time the decree was entered.[73] Because the remedial goals in *Durrett* thus coincided with the goals that had been instilled internally by the agency,

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[69] Jonathan Karp, *Housing Authority Elevates O'Rourke*, PROVIDENCE JOURNAL, July 2, 1987, at C-01.

[70] *See* Robert A. Katzmann, *Judicial Intervention and Organization Theory: Changing Bureaucratic Behavior and Policy*, 89 YALE LAW J. 513, 523 (1980).

[71] *See* Garland, *supra* note 62.

[72] O'Rourke Interview; Telephone Interview With Steven Reid, Attorney for the Providence Housing Authority (April 9, 1999) (hereinafter "Reid Interview").

[73] O'Rourke Interview.

the resulting lack of intransigence on the part of the Authority is unsurprising.

C. The Role of the Litigation

By the time the *Durrett* settlement was reached in November of 1988, a shakeup of the housing authority had already occurred through the political branches. The question thus remains of what influence, if any, the litigation had on reforming the agency.

Litigation in this case had two very important effects. First, it provided the tenants with much needed publicity, which ultimately resulted in a redefining of the political landscape. It has often been argued that what plaintiffs need in institutional reform cases, and especially in housing cases, is a political victory, not a judicial one.[74] *Durrett* demonstrates that litigation may in fact be one of the primary tools to help secure that political victory.

The second effect of the litigation was on HUD's decision to allocate funds. Although the housing authority was willing to comply with much of what the plaintiffs were demanding well before the settlement date,[75] it could not do

[74] *See, e.g.*, Peter M. Shane, *Rights, Remedies and Restraint*, 64 CHI.-KENT L. REV. 531, 569 (1989).

[75] O'Rourke interview.

so due to lack of finances.[76] In July of 1987, however, HUD awarded the Providence Housing Authority a $16.7 million HUD grant for renovations at Hartford Park.[77] HUD's decision to disburse the funds was not just good luck, but attributable, rather, to a number of factors. First, the Providence Housing Authority applied for the funding. This is more than just a trivial point - HUD normally does not seek to allocate funds in an area unless a specific proposal has been made.[78] HUD, moreover, seemed particularly receptive to Providence's housing authority because of improvements in management and a perceived commitment on the part of the authority to institute changes.[79] Finally, it can be reasonably assumed that the litigation also had some effect on HUD's decision. HUD was named as a defendant in *Durrett*. Rather than expend the time and energy to defend the lawsuit, HUD may have determined that it would be easiest just to cooperate by providing funding.[80]

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[76] *See* Florence Roisman, *Intentional Racial Discrimination and Segregation by the Federal Government as a Principal Cause of Concentrated Poverty: A Response to Schill and Wachter*, 143 U. PA. L. REV. 1351, 1371 (1995) ("Congress never has appropriated enough money to repair or replace all severely distressed public housing.")

[77] *See $400,000 Cut From Grant for Hartford Park*, PROVIDENCE JOURNAL, July 22, 1987, at D-03.

[78] *See* Philip Tegeler, *Housing Segregation and Local Discretion*, 3 J.L. & POL'Y 209, 214 (1994).

[79] *See* Kevin Sullivan, *Local HUD Chief Says More Money May Be Available for Housing Authority*, PROVIDENCE JOURNAL, May 22, 1987, at C-01.

[80] *See generally* GERALD N. ROSENBERG, THE HOLLOW HOPE 26 (1991) (discussing the theory that the threat of litigation can serve as a basic political resource).

Several commentators have argued that institutional reform litigation will be most effective when there is a general political climate that is conducive to significant social reform.[81] *Durrett* certainly bears out this conclusion. The ease of achieving compliance with the order in *Durrett* was primarily attributable to the fact that the shakeup of the Housing Authority had occurred through the political branches prior to entry of the judicial order. This shakeup in turn had produced a reorganization of the agency and had instilled goals and a sense of mission, which coincided with the remedial purpose of *Durrett*. Litigation was thus but one tool that was used to achieve the ultimate outcome.

Similar factors would also come into play, in varying degrees, in the second lawsuit involving the Providence Housing Authority, *Project B.A.S.I.C. v. Kemp*.

## III. Project B.A.S.I.C. v. Kemp

### A. Challenge to Demolition

In June of 1987, the Providence Housing Authority decided to demolish three high-rise buildings at Hartford Park and replace the 240 apartments in them with an equal

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[81] *See, e.g.*, ROSENBERG, *supra* note 80, at 32.

number of scattered-site units.[82] The demolition of the towers was part of Steven O'Rourke's overall plan for renovating the Hartford Park project.

Project B.A.S.I.C., an unincorporated association of tenants and housing advocates, opposed the proposed demolition and scattered-site program, citing the critical shortage of affordable housing available in the city,[83] and arguing that the program would result in the transfer of minorities from Hartford Park, a predominantly white neighborhood, to predominately minority neighborhoods, thereby leading to further residential segregation.[84] In April of 1989, Project B.A.S.I.C. filed a federal lawsuit against HUD, the Providence Housing Authority and the City of Providence, challenging the proposed demolition.[85] The suit alleged that the proposed demolition of the 240 units and the proposed construction of replacement housing on scattered sites violated the U.S. Housing Act, the Fair Housing Act,[86] and the Civil Rights Act of 1964.[87,88]

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[82] *See* Kevin Sullivan, *Housing Authority Wants to Demolish or Sell 3 Hartford Park High-Rises*, PROVIDENCE JOURNAL, June 4, 1987, at C-01.

[83] *See* Deborah Barfield, *Housing Group Takes Battle to Federal Court*, PROVIDENCE JOURNAL, Oct. 5, 1989, at C-01.

[84] *See* Doane Hulick, *U.S. Judge to Rule on Hartford Park Plan in 30 Days*, PROVIDENCE JOURNAL, June 6, 1989, at E-01.

[85] *See* Project B.A.S.I.C. v. Kemp, 721 F.Supp. 1501 (D.R.I. 1989).

[86] 42 U.S.C. § 3601 et seq.

[87] 42 U.S.C. § 2000a et seq.

Judge Raymond Pettine denied Project B.A.S.I.C.'s request for an injunction, finding that HUD and the housing authority had complied with the statutory requirements for demolition under § 1437p of the U.S. Housing Act, including the requirement that the demolition would help "to assure the useful life of the remaining portion of the project."[89] HUD had previously made the determination that the partial demolition of Hartford Park would in fact help to assure the useful life of the remainder of the project by reducing the project's density.[90] This decision was based on evidence submitted with the Housing Authority's application for HUD approval that tended to link greater height and density to higher vacancy rates and increased crime.[91] According to the authority, "[t]he savings of staffing, management, excessive maintenance and decreased criminal activity will enhance the quality of life for the remaining 508

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[88] *See* Project B.A.S.I.C. v. Kemp, 721 F.Supp. at 1503. Judge Raymond Pettine initially granted a temporary restraining order, prohibiting the defendants from taking any further steps to demolish the three high-rise buildings. This order was subsequently modified to allow for demolition of one of the buildings, which had been determined to be structurally damaged by preparation for demolition and hence unsafe. *Id.* Despite this determination, more than 550 pounds of dynamite failed to down the stubborn tower. *See* Karen Schwartz *Dynamite Couldn't Bring Tower Down …*, ASSOCIATED PRESS, May 22, 1989, 1989 WL 4039121. A second round of explosives managed to knock out the first two floors, causing the tower to be dubbed the "Leaning Tower of Providence." *See* Deborah Barfield, *Providence Housing Agency Has Laugh At Own Expense: T-Shirts of 'Leaning Tower'*, PROVIDENCE JOURNAL, June 19, 1989, at A-01. The authority eventually settled on the traditional wrecking ball. *Id.*

[89] Project B.A.S.I.C. v. Kemp, 721 F.Supp. at 1509 (quoting 42 U.S.C. § 1437p).

[90] *See id.*

households, for without the three [high-rise] towers as a detrimental catalyst, the financial, physical and social environment of the remaining portion of the project will be substantially enhanced."[92]

Although finding the authority's arguments sensible, Judge Pettine lamented the lack of supporting evidence in the record. Specifically, Judge Pettine noted that there were 1) no statistics comparing the maintenance costs per unit for the high-rises versus the low-rises, 2) no data on the loci of criminal activity, and 3) no evidence of the staffing and management which would be required by the scattered site replacement housing as compared to that required by the high-rises.[93] Under the Administrative Procedure Act, however, the court could overturn HUD's determination only if found to be "arbitrary or capricious."[94] Thus, although Judge Pettine found HUD's approval of the demolition of 240 units of needed housing "incredible" based on the record, he could not say that its decision was unauthorized under the relevant statutes and

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[91] *See id.* at 1509-10.

[92] *Id.* at 1510 (quoting the Providence Housing Authority's Application for U.S. Department of Housing and Urban Development Approval of Public Housing Demolition, January 1988).

[93] *See id.*

[94] 5 U.S.C. § 706.

regulations.[95] Project B.A.S.I.C.'s remaining challenges under § 1437p were also denied.[96]

Judge Pettine further found the challenges under the Fair Housing Act and the Civil Rights Act to be without merit. Project B.A.S.I.C. argued that because racial minorities constituted a majority of the tenants in the Providence Housing Authority's family projects, the demolition would have a disproportionate impact on minority persons.[97] Judge Pettine rejected this argument, however, because the authority's plan was not for demolition alone, but rather for demolition plus the construction of replacement housing.[98] He further found that the challenge to the scattered site plan was not ripe for adjudication

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[95] *See* Project B.A.S.I.C. v. Kemp, 721 F.Supp. at 1510.

[96] These challenges involved the § 1437p requirements of tenant consultation and relocation assistance. *See* Project B.A.S.I.C. v. Kemp, 721 F.Supp. at 1510-13. As to the tenant consultation requirement, Judge Pettine found that the Providence Housing Authority made only "bare-bones, lackadaisical" efforts to develop its HUD application in consultation with the tenants. *Id.* at 1512. However, the judge found that HUD's decision to approve the application was not arbitrary or capricious under the APA, despite the limited amount of tenant consultation. *See id.*
For an argument that meaningful tenant consultation must occur *before* HUD approves the demolition of public housing, see Marvin Krislov, *Ensuring Tenant Consultation Before Public Housing is Demolished or Sold*, 97 YALE L.J. 1745 (1988). Krislov argues that litigation is inadequate to ensure that tenants' views are taken into account because the HUD regulations do not establish a test for determining when the tenant consultation provision has been violated. *See id.* at 1758. Litigation, moreover, is time-consuming and expensive and is likely to undermine cooperation between the management and the tenants. *See id.* at 1759. According to Krislov, when housing authorities and tenants litigate, their divergent interests become entrenched and compromise thus becomes less likely. *See id.*

[97] *See* Project B.A.S.I.C. v. Kemp, 721 F.Supp. at 1517.

[98] *See id.*

because neither HUD nor the City of Providence had approved the sites for the location of the replacement housing.[99, 100]

Subsection (b)(3) of 42 U.S.C. § 1437p required, however, that the housing authority develop a one-for-one replacement plan, providing for "an additional decent, safe, sanitary, and affordable dwelling unit for each public housing dwelling unit to be demolished."[101] Additionally, the same subsection provided that the one-for-one replacement plan must include a schedule for completing the plan within a period consistent with the size of the proposed demolition, not to exceed six years.[102] In its application for HUD approval of the demolition, the Providence Housing Authority had proposed that it would construct the 240 units of replacement housing within 23 months.[103] Because it was on the basis of this 23-month construction schedule that the authority was given permission by HUD to demolish the high-rises, Judge Pettine

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[99] *See id.*

[100] Project B.A.S.I.C.'s claim of National Environmental Policy Act violations was also denied. *See* Project B.A.S.I.C. v. Kemp, 721 F.Supp. at 1515-17.

[101] Project B.A.S.I.C. v. Kemp, 721 F.Supp. at 1514 (quoting 42 U.S.C. § 1437p(b)(3)).

[102] *See id.* (quoting 42 U.S.C. § 1437p(b)(3)(D)).

[103] *See id.*

held that this was the schedule that must be followed.[104] Accordingly, he ordered the authority to:

> [P]roceed as soon as possible to begin construction of the 240 public housing units, funded by HUD, needed to replace the 240 units lost due to the past and planned demolition of the high-rises at Hartford Park. The [Providence Housing Authority] is ordered to complete construction of all 240 units of replacement housing within 23 months of the date of this opinion.[105]

The precise wording of this order would prove to be important in subsequent litigation, as will be discussed further below.

Judge Pettine also added a cautionary note that, although the challenge to the scattered site plan was not ripe for adjudication, the claim raised an important issue. Specifically, if Project B.A.S.I.C.'s fear that the scattered site replacement proposal would exacerbate the residential segregation in the city was well-founded, Judge Pettine urged the defendants to reconsider the plan.[106] Thus, unless the housing authority would be able to locate a sufficient number of lots in accord with the Fair Housing Act, the Civil Rights Act, and the HUD Fair Housing/ Equal Opportunity Division's condition that the units be sited in areas of non-minority concentration, the housing authority

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[104] *See id.* at 1515.

[105] *Id.*

[106] *See id.* at 1517.

or HUD should cease demolishing those units which it could not replace.[107]

The Providence Housing Authority subsequently proceeded to demolish the two remaining high-rise towers. The first major battle was over and Project B.A.S.I.C. had lost; the next controversy, however, was to arise soon thereafter. And as Judge Pettine predicted, the new battle would be over the siting of the replacement units.

## B. Challenge to the Selection of the Scattered-Site Replacement Units

The Providence Housing Authority began submitting replacement sites for HUD's review in April 1989.[108] Under HUD's Site and Neighborhood Standards,[109] the sites for new construction could not be located in an area of minority concentration unless 1) sufficient, comparable opportunities existed for housing for minority families outside areas of minority concentration or 2) the project was necessary to meet overriding housing needs.[110] Further, new sites could not be located in a racially mixed area if the project would cause a significant increase in the proportion of minority

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[107] *See id.*

[108] *See* Project B.A.S.I.C. v. Kemp, 776 F.Supp. 637, 640 (D.R.I. 1991).

[109] 24 C.F.R. § 941.202.

[110] *See* Project B.A.S.I.C. v. Kemp, 776 F.Supp. at 640 (citing 24 C.F.R. § 941.202).

to non-minority residents in the area.[111] The site selection also had to avoid undue concentration of assisted persons in areas containing a high proportion of low income persons.[112]

Although the Site and Neighborhood Standards favor, on their face, siting in nonsegregated, nonimpacted areas, HUD's practice over the years of interpreting these regulations so leniently had resulted in the exceptions swallowing the rule.[113] In the case of Providence, HUD determined that the Authority would be permitted to site up to half of the replacement units in areas of minority concentration.[114] Thus, as of February 1991, HUD had either given final approval or initial review of 220 replacement units, 101 of which were located in areas of minority concentration, and 71 of which had already been completed.[115]

In court, Project B.A.S.I.C. challenged the siting of the replacement housing as violative of the Fair Housing Act, Title VI of the Civil Rights Act of 1964, and the equal

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[111] *See id.*

[112] *See id.*

[113] *See* Roisman, *supra* note 76, at 1371; Tegeler, *supra* note 78, at 225-26.

[114] *See* Project B.A.S.I.C. v. Kemp, 776 F.Supp. at 641. HUD defined "areas of minority concentration" as census tracts in Providence with minority populations greater than 21.5% according to the 1980 census. *Id.* HUD chose 21.5% as the relevant figure because it represented the total minority population in Providence at the time of the 1980 census. *See id.* at 641, n.2. Project B.A.S.I.C. argued, on the other hand, that a figure of 15.6% was appropriate, as that figure represented the percentage of minority population in the census tract that housed the demolished Hartford Park high-rise towers. *See id.*

[115] *See* Project B.A.S.I.C. v. Kemp, 776 F.Supp. at 641.

protection and due process clauses of the fourteenth amendment.[116] Subsequently, both HUD and the authority filed motions for summary judgment, which were denied.[117]

In denying defendants' motions for summary judgment, however, Judge Pettine expressed concerns about the relief that could be awarded should Project B.A.S.I.C. prevail at trial, stating that the court "face[d] the difficult task of avoiding both remedies that may be too intrusive, interfering with HUD's ability to carry out its basic grant-awarding mission, and those that may prove to be ineffective."[118] He further noted that the fact that funding comes through HUD would have an effect on the remedy that the court could fashion, as the APA "does not ordinarily empower a court to order an agency to fund particular projects or to reach particular results."[119] Thus, although the court could fashion *some* remedy - setting aside unlawful agency actions and creating other comparable remedies, for example - Judge Pettine urged the parties to settle,

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[116] *See id.* at 640.

[117] *See id.*

[118] *Id.* at 644 (quoting ***NAACP v. Sec'y of HUD***, 817 F.2d 149, 159 (1st Cir. 1987)).

[119] *Id.* at 644, 645 n.8 (quoting ***NAACP v. Sec'y of HUD***, 817 F.2d 149, 159 (1st Cir. 1987)).

expressing his belief that settlement would accomplish far more than litigation.[120]

The parties heeded Judge Pettine's advice, and before the case could proceed to trial on the merits, reached a settlement in April of 1991.

C. The Settlements

By April of 1991, HUD had already given final approval for 131 of the 240 scattered site replacement units, only 58 of which were located outside "areas of minority concentration."[121] The Providence Housing Authority had already constructed or was in the process of constructing those units.[122] As such, the parties agreed to focus on the remaining 109 units of the replacement housing in the settlement agreement.[123]

The settlement stipulation between Project B.A.S.I.C. and HUD and the Housing Authority was brief, consisting of only ten numbered paragraphs. It provided that the remaining 109 units of replacement housing could be constructed only in Providence census tracts outside areas of minority concentration, "areas of minority concentration"

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[120] *See id.* at 644-45.

[121] Project B.A.S.I.C. v. Kemp, 1991 WL 329756, at *1 (D.R.I. April 16, 1991) (settlement stipulation).

[122] *See id.*

being defined as those census tracts containing a higher proportion of racial minorities than the City-wide average using 1990 census information.[124] HUD was to continue to fund the construction of the remaining units, and the Housing Authority was to make all reasonable efforts to construct them within thirty-six months of the date of the settlement stipulation.[125] The Authority, moreover, was to make available to Project B.A.S.I.C. bi-weekly reports concerning the status of the construction.[126] The court retained jurisdiction until the 240 units had been constructed in accordance with the terms of the stipulation.[127]

Negotiations with the City were conducted separately from those with HUD and the Authority.[128] According to an attorney for Project B.A.S.I.C., the City of Providence's attitude towards fair housing issues could at best be termed indifferent.[129] The plaintiff had thus essentially given up on the City as a potential mover for reform, and focused its efforts instead on HUD and the housing authority.

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[123] *See id.*

[124] *See id.*

[125] *See id.*

[126] *See id.*

[127] *See id.*

[128] Telephone Interview with Steven Fischbach, Attorney for Project B.A.S.I.C. (April 9, 1999) (hereinafter "Fischbach interview").

The consent order reached between the City and Project B.A.S.I.C. provided that the City was not to interfere with the development of the scattered-site replacement units, including the 109 units referenced in the settlement stipulation between Project B.A.S.I.C. and HUD and the Housing Authority.[130] The City was further required to provide to Project B.A.S.I.C. a list of all city-owned land and buildings located outside "areas of minority concentration" and was to continue to provide the list on an annual basis.[131] Moreover, for every future application received or made by the City for financial assistance for a low/moderate income housing development, the City was required to solicit Project B.A.S.I.C.'s opinion as to the fair housing consequences of the funding of the application.[132] When requested by Project B.A.S.I.C., the City was to prepare a Fair Housing assessment of the application, in which the City had to determine the effect of approval of the application on the racial and socio-economic composition of the area surrounding the proposed development, and describe how the funding of the proposed development would increase the supply of open housing

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[129] Fischbach interview.

[130] *See* Project B.A.S.I.C. v. Kemp, C.A. No. 89-0248/P, April 22, 1991 (consent order).

[131] *See id.*

[132] *See id.*

opportunities for minorities in Providence. The City was also to encourage and permit the development of low income housing in all neighborhoods of Providence, and was not to support the demolition of family public housing units without obtaining one-for-one replacement of those units.[133]

## D. Implementation

Except for one instance, discussed further below, judicial involvement proved to be unnecessary to implement the settlement stipulation reached between Project B.A.S.I.C. and HUD and the Housing Authority. As in *Durrett*, the major reason accounting for the success of the *Project B.A.S.I.C.* litigation was political; the primary factor that ordinarily impedes implementation of court-imposed desegregation remedies, *i.e.* public opposition, had been removed prior to entry of the *Project B.A.S.I.C.* order.

### 1. The Political Climate

Court-imposed housing desegregation remedies often encounter strong opposition and resistance from the white neighborhoods in which the sites are to be placed. In Providence, however, the political opposition to the scattered-sites came from a quite different source - the

[133] *See id.*

residents and politicians from the predominately-minority areas of the city.

The Housing Authority's original plan for the scattered-site program had called for most of the replacement units in the first phase of construction ("Phase I") to be built in the predominantly minority areas of upper and lower South Providence and Elmwood.[134] From the plan's inception, south side and Elmwood officials harshly criticized the Authority for putting a disproportionate share of low-income housing in the poorest neighborhoods of the city.[135] Residents of south side neighborhoods argued that they already shouldered more than their fair share of social service programs for the poor, such as soup kitchens, low-income housing and outreach programs.[136] And city council members from the south side and Elmwood publicly criticized Mayor Paolino's administration over the proposed plan.[137]

In August of 1988, the city council held a public meeting to discuss the Housing Authority's plan. The debate and vote were along geographic lines. South side and

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[134] *See* Scott MacKay, *Hearings Sought on 152 Housing Units*, PROVIDENCE JOURNAL, July 12, 1988, at E-01; Deborah Barfield, *Suit on Integrating Housing Units Settled*, PROVIDENCE JOURNAL, April 26, 1991, at B-01.

[135] *See, e.g.*, James M. O'Neill, *Housing Plans for South Side Assailed*, PROVIDENCE JOURNAL, Aug. 4, 1998, at D-01.

[136] *See* MacKay, *supra* note 134.

[137] *See* O'Neill, *supra* note 135.

Elmwood officials argued that the plan would unfairly concentrate the poor and minorities into the neighborhoods with already the largest concentration of poor minority families, thereby reinforcing de facto segregation[138] Supporters of the plan emphasized the need in the city for new low income housing units, and argued that the cost of lots in wealthy neighborhoods was too high to be built for $85,000 or less in accordance with HUD guidelines.[139] In the end, the council voted not to protest the plan, which would have located virtually all of the 184 new units in South Providence and Elmwood.[140]

Immediately after the vote, several South Providence officials, including a state senator, expressed support for filing a lawsuit to overturn the authority's plan.[141] Thus, when Project B.A.S.I.C. filed its lawsuit in early 1989, it did so with a significant amount of political backing. By late 1989, the political opposition was powerful enough to persuade the Authority to revamp its original plan to build eighty percent of the units in Phase I in the south side and

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[138] *See* Scott MacKay, *Council Oks Low-Income Housing Plan*, PROVIDENCE JOURNAL, Aug. 5, 1988, at C-01.

[139] *See id.*

[140] *See id.*

[141] *See id.*

Elmwood.[142] The new plan called for 79 of the 140 units in Phase I to be built in those neighborhoods, and for most of the units in Phase II to be located outside minority areas.[143] Thus, by the time that the settlement in *Project B.A.S.I.C.* was reached, the Authority had already planned for 96 of the 109 apartments in Phase II to be constructed in nonminority neighborhoods.[144] The settlement meant that the Authority had to shop for the remaining thirteen sites, an obligation that the Authority found "acceptable."[145]

The main problem in implementing the decree did in the end turn out to be in locating appropriate sites.[146] The difficulty in locating sites was due in turn to the numerous HUD requirements imposed on the housing authority. For example, the authority was not allowed to build more than ten units in one location.[147] HUD regulations also required the new units to have adequate access to schools, recreational and health facilities and job opportunities,[148]

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[142] *See* Deborah Barfield, *Scattered-Site Plan Called Segregation Attempt*, PROVIDENCE JOURNAL, Oct. 18, 1989, at D-01.

[143] *See id.*

[144] *See* Deborah Barfield, *Suit on Integrating Housing Units Settled*, PROVIDENCE JOURNAL, April 26, 1991, at B-01.

[145] O'Rourke interview.

[146] O'Rourke interview.

[147] O'Rourke interview.

[148] *See* Project B.A.S.I.C. v. Kemp, 776 F.Supp. at 640.

and imposed a $85,000 cap for the amount of money that could be spent per unit.[149]

In general, however, implementation of the order was relatively unproblematic, with one notable exception.

2. An Unforeseeable Contingency

Phoenix-Griffin Group II Ltd. ("Phoenix") was one of the main contractors selected by the Providence Housing Authority to build the replacement scattered-site units.[150] In March of 1991, HUD informed the Housing Authority that the United States Department of Labor was conducting an investigation into Phoenix's operations, and that the Authority had to withhold $500,000 until the completion of the investigation.[151] Withholding of those funds would have effectively stopped Phoenix's work on the construction project.[152]

In April of 1991, Phoenix filed suit to enjoin the withholding of the $500,000.[153] The Housing Authority, although nominally a defendant, supported Phoenix's

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[149] *See* Dan Barry, *Authority Chooses Developers, Locations for New Public Housing*, PROVIDENCE JOURNAL, July 8, 1988, at E-01.

[150] *See* Project B.A.S.I.C. v. Kemp, 768 F.Supp. 21, 23 (D.R.I. 1991).

[151] *See id.*

[152] *See id.*

[153] *See id.*

contention that the money could not be fairly withheld.[154] Judge Pettine agreed, finding that HUD had failed to prove the defense of impossibility because it was within its power and discretion to issue a "change-order" which would authorize additional funding to cover the Labor Department lien.[155] Accordingly, Judge Pettine held that if a change-order was not issued by the imposed deadline, he would find HUD in civil contempt, initially fining the agency $250,000, then at a rate of $2000 a day until HUD ensured the swift completion of the replacement units that were being constructed by Phoenix.[156]

The First Circuit reversed, citing a rather technical reason, namely that Judge Pettine's 1989 Order did not comprise a clear and unequivocal command binding HUD to the performance of the duties envisioned by the district court.[157] The 1989 decree had ordered that "the PHA proceed as soon as possible to begin construction of the 240 public housing units, *funded by HUD* …"[158] According to the First Circuit, this Order was not explicitly aimed toward HUD; rather, HUD was only mentioned parenthetically as an

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[154] *See id.*

[155] *See id.* at 25.

[156] *See id.*

[157] *See* Project B.A.S.I.C. v. Kemp, 947 F.2d 11, 15 (1st Cir. 1991).

[158] *See id.* at 14 (emphasis added).

explanation of the funding source.[159] More was needed in order to satisfy the requirement that orders enforceable through the contempt power must be clear and unambiguous.[160]

In deciding the case on this technical point, the First Circuit was able to avoid the more difficult questions raised by HUD, including the arguments that the contempt citation intruded improperly into the law enforcement functions of the Executive Branch and that the district court's assessment of a monetary sanction against HUD transgressed principles of sovereign immunity.[161] Ultimately, the problem surrounding the withholding of funds was resolved out-of-court.[162]

E. Looking Back: The Lessons of Project B.A.S.I.C.

In *Gautreaux*, the district court tried unsuccessfully for fifteen years to force the Chicago Housing Authority to comply with the scattered-site portion of the court's remedy.[163] As one commentator has described it, the *Gautreaux* court was in essence attempting to compel what

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[159] *See id.* at 18.

[160] *See id.* at 17.

[161] *See id.* at 15.

[162] Fleet Bank, Phoenix's lender, foreclosed on the units that Phoenix was unable to finish and hired other contractors to complete the project. *See* Dave Crombie, *Fleet Takes Over Project*, PROVIDENCE JOURNAL, Feb. 1, 1993, at C-01.

[163] *See* Alexander Polikoff, *Gautreaux and Institutional Litigation*, 64 CHI.-KENT L. REV. 451, 459 (1989).

amounted to political action.[164] However, due to public opposition, the Chicago Housing Authority found one excuse after another for not building the scattered-sites.[165] Similarly, in Yonkers, New York, the city incurred $800,000 in fines as a result of a contempt citation for failure to comply with a federal court desegregation order.[166]

Several factors combined to achieve a different result in *Project B.A.S.I.C.* First, the Providence Housing Authority was not just under a *court-imposed* order to build scattered-site units, but was also required by *HUD regulations* to replace demolished housing with a one-for-one replacement plan. The presence of the HUD regulations was significant because as the provider of fifty percent of the housing authority's budget, and as the holder of future funds, HUD wielded enormous power to influence the Authority's behavior.

Also relevant was that the Providence Housing Authority was generally "reform-minded". Specifically, it was firm in its conviction that scattered-site housing was preferable to high-rises, and equally as firm in its resolve to provide those units. Some commentators have argued that the goal to

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[164] *See id.*

[165] *See id.*

[166] *See* DOUGLAS S. MASSEY AND NANCY A. DENTON, AMERICAN APARTHEID: SEGREGATION AND THE MAKING OF THE UNDERCLASS 228 (1993).

provide decent, safe and affordable housing conflicts with the goal of integration.[167] Because of resource limitations and the inevitable political opposition, it is contended that housing authorities must necessarily choose between providing housing with decent conditions and integration.[168] If this is indeed the case, however, organization theory would indicate that the *Project B.A.S.I.C.* scattered-site remedy would have met with resistance on the part of the Providence Housing Authority.[169] Because an organization that has successfully instilled a sense of mission is likely to resist judicial efforts to alter it,[170] one would expect at least some opposition from the Authority if the integration order did in fact conflict with its mission to provide decent affordable housing. Thus, in this case, one can see that the goals are not necessarily conflicting, but rather, parallel. As Roisman and Tegeler have argued, the conflict between these two goals is produced only by scarcity, an artificial constraint which is not acceptable.[171]

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[167] *See, e.g.*, A. Dan Tarlock, *Remedying the Irremediable: The Lessons of* Gautreaux, 64 CHI.-KENT L. REV. 573 (1989).

[168] *See, e.g.*, John O. Calmore, *Fair Housing vs. Fair Housing: The Problems with Providing Increased Housing Opportunities Through Spatial Deconcentration*, CLEARINGHOUSE REV. 7, 8-10 (May 1980).

[169] *See* Katzmann, *supra* note 70, at 523.

[170] *See id.*

[171] *See* Florence Roisman and Philip Tegeler, *Improving and Expanding Housing Opportunities for Poor People of Color: Recent Developments in*

Perhaps the most important factor accounting for the result in *Project B.A.S.I.C.* was the political climate surrounding the litigation. As in Chicago and Yonkers, there was public opposition to the Providence Housing Authority's scattered-site program, but it functioned in a reverse manner - to effectively prevent the housing authority from locating the new units in *minority* neighborhoods. Opposition from the primarily-white neighborhoods of Providence was, moreover, significantly less extreme than was the case in Chicago and Yonkers. In fact, before the settlement had been reached in *Project B.A.S.I.C.*, several Providence city council members who represented non-minority areas had already publicly announced that they would welcome the scattered-site apartments in their neighborhoods.[172]

Thus, in looking back at the *Project B.A.S.I.C.* litigation, several things become clear. First is that the cooperation of HUD is crucial to successfully achieve reform of housing authorities. The real problem is often one of inadequate resources, and courts inherently lack the power

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*Federal and State Courts*, CLEARINGHOUSE REV. 312, 314 (Aug-Sept 1990). *See also* Elizabeth K. Julian and Michael M. Daniel, *Separate and Unequal - The Root and Branch of Public Housing Segregation*, CLEARINGHOUSE REVIEW, 667 (Oct. 1989)(arguing that efforts to remedy the separate and unequal legacy can create a legal as well as a moral imperative to increase the supply of housing).

[172] *See* Deborah Barfield, *Officials at Odds Over Sites for Houses*, PROVIDENCE JOURNAL, Nov. 24, 1989, at E-01.

to order HUD to fund particular projects or to reach particular results. As Judge Pettine noted, a court "faces the difficult task of avoiding both remedies that may be too intrusive, interfering with HUD's ability to carry out its basic grant-awarding mission, and those that may prove to be ineffective."[173] The cooperation of HUD also serves the peripheral purpose of reassuring the court and the judge that the reform has executive support.[174]

*Project B.A.S.I.C.* also suggests that litigation is more effective when the institution that is seeking to be reformed is itself "reform-minded", even if the remedial aspirations of the litigation are not perfectly aligned with the institution's own goals.

Finally, *Project B.A.S.I.C.* provides a concrete example for the oft-suggested proposition that institutional reform litigation makes the most sense, and will ultimately be most effective, when there is some political support for significant social reform.[175] As Professor Schuck has noted, "at the remedial stage, what the court says is far less important than what politicians, bureaucrats, and relevant groups actually do and the manner and spirit in which they

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[173] Project B.A.S.I.C. v. Kemp, 776 F.Supp. at 644 (quoting *NAACP v. Sec'y of HUD*, 817 F.2d 149, 159 (1st Cir. 1987)).

[174] *See* Rosenberg, *supra* note 80, at 31 (arguing that circumstances showing that the executive branch is supportive of the claims of reformers provides good evidence that court decisions ordering significant social reform will be well received).

do it."[176] Where the governmental defendants are intransigent, or merely passive, the court has extremely limited resources for inducing compliance, controlling only two means -- the contempt power, and the informal influence exerted by their moral legitimacy.[177]

## CONCLUSION

The Providence Housing Authority today is a vastly different institution from the Providence Housing Authority of the 1980s. In 1991, the Housing Authority's scattered-site program and its preparation for community living program received awards from national housing officials.[178] Both the construction of the scattered-site housing and the renovations of the remaining portion of Hartford Park are now complete, and the current occupancy rate of Hartford Park is around 97 percent.[179] And in 1996, the Providence Housing Authority was finally taken off HUD's "troubled" list.[180]

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[175] *See, e.g.*, Rosenberg, *supra* note 80, at 31.

[176] PETER H. SCHUCK, *supra* note 55, at 167.

[177] *See id.*, at 163.

[178] *See* Deborah Barfield, *Housing Authority Programs Earn Plaudits*, PROVIDENCE JOURNAL, Aug. 8, 1991, at Z-01.

[179] O'Rourke interview.

[180] O'Rourke interview.

This paper does not mean to suggest that because the need for judicial intervention was minimal, reforming the Providence Housing Authority was, by any means, easy - both *Durrett* and *Project B.A.S.I.C.* were long, hard-fought and often bitter battles. What *Durrett* and *Project B.A.S.I.C.* make clear, however, is that reforming attempts do have a better chance of succeeding where plaintiffs engage both the judicial *and* the political branches. The resulting remedy will likely be more successful, and less superficial.