Enjoining Urban Renewal--Inadequate Relocation Facilities: Western Addition Community Organization v. Weaver

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ENJOINING URBAN RENEWAL--INADEQUATE RELOCATION FACILITIES: WESTERN ADDITION COMMUNITY ORGANIZATION V. WEAVER

Urban renewal projects provide for the physical revitalization of a neighborhood. They also necessitate changes in the housing of the individuals and families in the about-to-be-renewed neighborhood. In some cases, there is not enough adequate housing available to fill the needs of those persons forced to leave the urban renewal area. Focusing on the recent case of Western Addition Community Organization v. Weaver, this note will examine the ability and adequacy of the judiciary to provide injunctive relief for those persons.

I. Background

The enabling legislation for the urban renewal program is the Housing Act of 1949. Its stated policy is to “remedy the serious housing shortage... [eliminate] substandard and other inadequate housing through the clearance of slums and blighted areas, and... [realize] the goal of a decent home and a suitable living environment for every American family...” The Department of Housing and Urban Development (HUD), in conjunction with other related departments and agencies of the federal government, is assigned the task of accomplishing these national objectives. To perform this task, HUD encourages private enterprise and local public agencies (LPA’s) to initiate projects of slum clearance and urban renewal and assists them by providing financial backing and administrative guidance. Local communities desire to initiate these projects for several reasons: anticipated increases in tax revenues, a need to restore the inner city for economic reasons, aesthetic considerations of the urban environment, and a need to eliminate slums and blighted areas. Because the federal government’s financial backing makes the urban renewal projects economically attractive, private enterprise readily cooperates with the local

2. Ch. 338, 63 Stat. 413.
4. Id.
5. For a further discussion of the role of the LPA, see A. VAn HUYCK & J. HORNUNG, THE CITIZEN’S GUIDE TO URBAN RENEWAL 35-42 (1964). The Local Public Agency (LPA) is the officially designated public body established under the auspices of the state laws to carry out the responsibility of urban renewal under a cost-sharing loan and grant of the federal government.
7. See A. VAn HUYCK & J. HORNUNG, supra note 5, at 17-23.
public agency in carrying out the projects.  

To ensure that the proposed urban renewal projects actually promote the national objectives of the Housing Act of 1949, HUD has established certain priorities in considering project applications submitted by the LPA's. HUD has stated that priority will be given to those project applications that (a) contribute to conserving and increasing the existing housing supply for low- and moderate-income families, (b) contribute to the development of employment opportunities for jobless, underemployed, and low-income persons through commercial and industrial redevelopment, and (c) contribute to the elimination of critical slum and blighted areas.  

This last category is defined as "areas of physical decay, high tensions, and great social need . . . ."  

As a result of this combination of community desires and national goals, the majority of urban renewal projects entail the clearance of slums and blighted areas. Many of the buildings destroyed in the clearance of these areas provided housing for low-income individuals and families. Consequently, these persons are displaced during the clearance phase of the project.  

Unfortunately, section 105(c) of the Housing Act of 1949 did not provide relocation services and payments for displaced persons. In 1956, however, an amendment provided for relocation payments as a matter of right and in 1964, by further amendment, the LPA's were required to establish relocation services to refer displaced persons to decent housing. At present, section 105(c) of the Housing Act of 1949, amended and codified in sections 1455(c)(1) and (2) of Title 42 of the United States Code, requires that each LPA establish a relocation assistance program to coordinate the needs of the residents with the avail-

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8. The system of economic aid established by the federal government is set out in 42 U.S.C. § 1452 (1964). This economic aid makes the acquisition of land easier for the LPA, thereby enabling private enterprise to acquire the land from the LPA in conjunction with its development plan at a price often far below open market price.  


10. HANDBOOK RHA 7202.1, ch. 1, sec. 1, at 1.  

11. Section 105(c) of the Housing Act of 1949, ch. 338, 63 Stat. 413, provided that "[t]here 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 . . . ."  


able housing resources. Further, the LPA must assure HUD within a reasonable time prior to actual displacement that adequate relocation facilities do in fact exist. This assurance by the LPA becomes part of the contract between the federal government and the LPA.

The Secretary of Housing and Urban Development is given a mandate to issue rules and regulations to administer the relocation assistance program. HUD regulations require the LPA to assure HUD, as a part of the LPA's project application, that there will be adequate relocation housing available on a nondiscriminatory basis when the project is executed. Although HUD requires the LPA to submit a narrative description of the available relocation housing supply, the effectiveness of this requirement is greatly diminished by HUD's explanation that no surveys need be undertaken to obtain this information.

14. 42 U.S.C. § 1455(c)(1) (Supp. III, 1968): "(1) There shall be a feasible method for the temporary relocation of individuals and families displaced from the urban renewal area, and there are or are being provided, in the urban renewal area or in other areas not generally less desirable in regard to public utilities and public and commercial facilities and at rents or prices within the financial means of the individuals and families displaced from the urban renewal area, decent, safe, and sanitary dwellings equal in number to the number of and available to such displaced individuals and families and reasonably accessible to their places of employment. The Secretary shall issue rules and regulations to aid in implementing the requirements of this subsection and in otherwise achieving the objectives of this subchapter. Such rules and regulations shall require that [the LPA establish] at the earliest practicable time, for each urban renewal project involving the displacement of individuals, families, and business concerns occupying property in the urban renewal area, a relocation assistance program which shall include such measures, facilities, and services as may be necessary or appropriate in order (A) to determine the needs of such individuals, families, and business concerns for relocation assistance; (B) to provide information and assistance to aid in relocation and otherwise minimize the hardships of displacement, including information as to real estate agencies, brokers, and boards in or near the urban renewal area which deal in residential or business property that might be appropriate for the relocating of displaced individuals, families, and business concerns; and (C) to assure the necessary coordination of relocation activities with other project activities and other planned or proposed governmental actions in the community which may affect the carrying out of the relocation program, particularly planned or proposed low-rent housing projects to be constructed in or near the urban renewal area."

15. 42 U.S.C. § 1455(c)(2) (Supp. III, 1968): "(2) As a condition to further assistance after August 10, 1965, with respect to each urban renewal project involving the displacement of individuals and families, the Secretary shall require, within a reasonable time prior to actual displacement, satisfactory assurance by the local public agency that decent, safe, and sanitary dwellings as required by the first sentence of this subsection are available for the relocation of each such individual or family."


18. HANDBOOK RHA 7212.1, ch. 1, at 1.

19. Id. at 1-2.
Overall housing resources data can ordinarily be obtained from
the following combination of sources: Census data . . . city plan-
ning and building departments; LHA [Local Housing Authority];
local real estate board; home builder’s association; and utility
companies.20

As an example of the inadequate way in which this requirement is often
met, a HUD official recently commented on the questionableness of in-
cluding the availability of hotel rooms in computing available relocation
facilities.21

In addition to the lack of clearly defined criteria for estimating
available relocation facilities, a problem of when to apply the criteria
also exists. Estimations of the adequacy of relocation facilities often
must be done several years prior to actual relocation.22 Housing stand-
ards change; what was once an acceptable unit often becomes a sub-
standard unit by the time relocation actually begins. This is due to
normal deterioration, new and more rigid housing codes, and the re-
luctance of the “slumlords” to put substantial investments into repairs
or improvements once they learn, often several years before actual con-
demnation, that their property will be affected by the urban renewal proj-
et.23 As a result, in many cases there must be a large measure of
guesswork about available relocation facilities until the actual reloca-
tion begins.

Furthermore, the political and economic force of the federally
sponsored urban renewal program, in conjunction with the initially weak
legislative provisions for the benefit of the displacee, all too often result
in the mere shifting or fragmenting of the slums or blighted areas.
Instead of achieving the stated national objectives, the urban renewal
projects have effected a decrease in the quality of the physical environ-
ment of those displaced. Through the 1950’s and into the 1960’s, often
well over half of those displaced relocated into structurally substandard
units.24 Even when the displacee relocated into structurally standard units, prohibitive rent increases, some resulting in
a rent constituting as much as 46 percent of the family’s net income,
invariably resulted.25

20. Id. at 2.
21. Western Addition Community Organization v. Weaver, 294 F. Supp. 433, 439
(N.D. Cal. 1968). See also text accompanying note 109 infra.
22. From the beginning of the project until completion, as much as 12 years may
23. See Pozen, Goshen & Bellin, Evaluation of Housing Standards of Families
Within Four Years of Relocation By Urban Renewal, 58 AM. J. OF PUB. HEALTH
1256 (1968).
24. Hartman, The Housing of Relocation Families, 30 J. AM. INSTITUTE OF PLAN-
NERS 266, 270-71, 278 (1964).
25. Id. at 273. “Welfare administrators and others concerned with low-income
family budgets make widespread use of a norm of 20 per cent of income as the maxi-
The injurious effect of the urban renewal program upon the living environment of the average displaced person is still another major problem. Most displaced persons are nonwhite; de facto residential segregation has barred their relocation into better neighborhoods, thereby perpetuating or intensifying segregated living patterns.

From the above discussion, it is clear that legislative action has not been sufficient to attain the national goals of the Housing Act of 1949. As previously noted, it was not until 1965 that Congress required the Secretary of Housing and Urban Development to demand of the LPA, within a reasonable time prior to actual displacement, satisfactory assurance that adequate relocation facilities did in fact exist. In an attempt to obtain priority in achieving the national goals of the Housing Act of 1949 rather than mere physical redevelopment, the displacees turned to the judiciary.

II. Western Addition Community Organization v. Weaver

In *Western Addition Community Organization v. Weaver* (*WACO I*), plaintiffs, an unincorporated association of individuals and organizations in the Western Addition A-2 area of San Francisco, California, in August of 1967 filed an administrative protest with Robert Weaver, Secretary of Housing and Urban Development. The basis for
the protest was that no adequate relocation plan existed for the Western Addition A-2 area.31 After receiving no reply, plaintiffs commenced this action in the federal district court on December 15, 1967, against the Secretary and the San Francisco Redevelopment Agency, seeking declaratory and injunctive relief. On the basis of the plaintiffs' contention "that the 'relocation plan' of the Redevelopment Agency [did] not in fact meet the requirements of section 1455(c) and the Secretary's approval of it [had] been arbitrary and without actual [sic] basis . . . ."32 the court enjoined the Secretary from honoring future financing requests from the LPA and enjoined the San Francisco Redevelopment Agency from proceeding with the enforced displacement of residents in the project area.33 In its opinion, the court discussed the issues raised in any judicial review of an urban renewal project having allegedly inadequate relocation facilities.

A. Standing to Sue

The first question that a court must consider is whether the plaintiffs have adequate standing to sue.34 Though many actions have been brought seeking to enjoin urban renewal projects, the majority of these cases have been based on alleged violations of the fifth amendment.35 It was not until 1962, in the case of Harrison-Halsted Community Group, Inc. v. Housing and Home Finance Agency,36 that the question of standing to sue under section 105(c) was directly dealt with in a federal court.37

In Harrison-Halsted, many businesses and residents self-relocated in areas adjacent to the new development. This was done primarily in

31. Id. at 437-40. The right of plaintiff displacees to file an administrative protest with the Dep't of Housing and Urban Development was judicially determined in the case of Norwalk CORE v. Norwalk Rede. Agency, 395 F.2d 920 (2d Cir. 1968).
32. WACO I at 435.
33. Id. at 440-41.
34. Plaintiffs have standing to sue whenever their interest in the determination of the case or controversy is direct and substantial. See generally Tondro, Urban Renewal Relocation Problems in Enforcement of Conditions of Federal Grants to Local Agencies, 117 U. Pa. L. Rev. 183, 205-214 (1968).
36. 310 F.2d 99 (7th Cir. 1962).
37. In Hunter v. New York, 121 N.Y.S.2d 841 (1953), the court declined to rule on the issue of standing to sue, claiming that even if plaintiffs had standing, they lacked jurisdiction over the acts of federal officials administering federal laws. Id. at 847-48. This decision determined the jurisdiction for subsequent actions arising under section 105(c) of the Housing Act of 1949, all of which have been brought in federal courts.
reliance on the approved redevelopment plan. The plan, however, was abruptly changed from its proposed development as a residential area for moderate-income families to a plan for a new campus for the University of Illinois. The Chicago Land Clearance Commission held no hearings on the new resolution. After approval of the resolution, the Planning and Housing Committee of the Chicago City Council held a public hearing. Objectors were allowed to appear and make statements but were not allowed to subpoena witnesses, documents, or cross-examine city and land clearance officials. Subsequently, the State Housing Board held a hearing on the plan but terminated its proceedings before objectors had an opportunity to present evidence. The state board then ratified the new proposal and forwarded its findings to the Housing and Home Finance Agency. Though plaintiffs filed briefs objecting to the plan, the Housing and Home Finance Agency approved the project and entered into loan and capital grant contracts.

Plaintiffs sought injunctive relief on the basis of detrimental reliance in self-relocating and on the basis of lack of an adequate relocation plan as required by section 105(c). In affirming the dismissal of the complaint by the district court, the Seventh Circuit Court of Appeals held that the Housing Act of 1949 was a subsidy statute providing federal grants of aid to local governmental units. As such, the included provisions and regulations did not confer private legal rights on anyone not a party to the contract. Relying on 

Frothingham v. Mellon, the court stated that “it is well settled that in a private suit in a federal court, where it is claimed that a substantial federal question is involved, it must clearly appear that defendant’s acts constituted the invasion of plaintiffs’ private legal rights.” Since plaintiffs were not parties to the contract, they had no private legal rights under the Housing Act of 1949 and therefore no standing to sue.

The Ninth Circuit, in Johnson v. Redevelopment Agency of Oakland, delivered a similar holding. Plaintiffs sought injunctive relief as third party beneficiaries, alleging that the redevelopment agency failed to comply with the requirements of section 105(c). The court rejected this argument finding that it was not the intent of Congress to grant displacees a cause of action to enforce the regulations of section 105(c). Although plaintiffs might have met the requirements for a third party beneficiary under California law, the court found that the contract was a federal contract, and that federal law, which had con-

38. See note 11 supra.
39. 310 F.2d at 104.
40. 262 U.S. 447 (1923).
41. 310 F.2d at 103.
42. Id. at 106.
43. 317 F.2d 872 (9th Cir. 1963).
sistently denied standing to displaced tenants, was applicable to the situation. Furthermore, the court pointed out that federal administrative remedies were available, and that state statutory provisions authorize judicial review within 60 days after the project has been approved by the local authority.

In *Green Street Association v. Daley*, plaintiffs alleged that the purpose of the urban renewal project was "Negro removal." Plaintiffs also relied upon deficiencies in the urban renewal project with respect to the requirements of section 105(c). In dismissing the complaint, the court stated: "The plaintiffs renewed attack on the Plan in terms of the Housing Act of 1949 is . . . subject to the rule stated in the *Harrison-Halsted* case . . . . The plaintiffs have no standing to litigate questions arising from alleged violations of the Act."

In all three of the above cases, the courts failed to realize the importance of adequate housing to the displaced person and the concomitant duty of the court to find a private legal right under the Housing Act of 1949. This may have been due to the courts' fear that emphasis

44. *Id.* at 874.
45. The occupants of a site selected for an urban renewal project have the right to attend a public hearing and voice their objections prior to the acquisition of any of the land in the project area. 42 U.S.C. § 1455(d) (1964). Though ostensibly an adequate nonjudicial remedy, in practice it is no remedy at all. Because of their typically lower level of education, the occupants of the slums and blighted areas characteristically have a sense of political disenfranchisement. See Statement by Mr. John Hirten, Executive Director of the San Francisco Planning and Urban Renewal Association (SPUR), in 2 HEARINGS BEFORE THE NATIONAL COMMISSION ON URBAN PROBLEMS 268-69 (1968). As the hearing is held by those interests who have already decided that the project is necessary, the demands by the site inhabitant that the decision be reversed until more adequate relocation facilities are available are generally futile. The site inhabitant can petition the Secretary of HUD to hear evidence that the project should not be granted federal funds; however, the Secretary is under considerable pressure from the community, which has financially and politically committed itself to the project. In view of this pressure, it is highly unlikely that evidence produced by the site resident in opposition to the proposed project will have any effect.

46. The court was referring to Cal. Stat. 1949, c. 1573, § 19, at 2822. This section provided for a judicial remedy after the initial approval of the project at the local level. Though this section has been repealed, CAL. HEALTH & SAFETY CODE § 33500 still provides a 60 day statute of limitations for bringing such an action. However, as this remedy is available for only a relatively short period of time, the longer the delay, the more surely it is to fail.

47. *See* Johnson v. Redevelopment Agency, 317 F.2d 872 (9th Cir. 1963).
48. 373 F.2d 1 (7th Cir. 1967).
49. *Id.* at 8.

50. "Housing is a necessary." Block v. Hirsch, 256 U.S. 135, 156 (1921). This is particularly true for the low-income family and the low-income elderly. They are already, in most cases, living in inadequate housing and a policy which ignores their needs, indeed which allows their living conditions to become aggravated by inadequate relocation provisions, cannot and should not be tolerated.
on relocation would substantially curtail urban renewal activities, as indeed it would have in the 1950's, or due to the courts' reluctance to either create or discover adequate standards of review.

The first indication of a change in emphasis is found in *Norwalk CORE v. Norwalk Redevelopment Agency.* Plaintiffs alleged that in the planning and implementation of the redevelopment project the defendants did not provide equal protection of the law because they failed to assure or attempt to assure relocation for displaced Negroes and Puerto Ricans to the same extent they did for whites. The court granted standing on the basis of plaintiffs' right not to be subjected to racial discrimination in government programs. The court, however, also examined the legislative intent behind the recent amendment to the relocation provisions of the Housing Act of 1949. It determined that the plaintiffs qua displacees had a sufficient interest in relocation to give them standing. The court expressly declined to follow *Johnson v. Redevelopment Agency of Oakland and Green Street Association v. Daley,* and distinguished *Harrison-Halsted* on the basis that plaintiffs' economic interest there was not sufficient to support standing.

The end result of *Norwalk CORE* was to grant standing to plaintiffs seeking to enjoin urban renewal projects because of deficiencies in meeting the requirements of section 105(c), as amended, on either of two grounds: (1) violation of the fourteenth amendment guarantee of equal protection of the laws; or (2) that the federal legislative intent was to give the right of judicial review to displaced persons alleging substantial violations of section 105(c).

It should be noted that in *Norwalk CORE* the granting of standing was eased considerably by the court's determination that the action was justiciable on the basis of whether there was racial discrimination in the assurances of relocation housing, thereby avoiding the issue of standards of review of administrative compliance with the statute.

*WACO I* completes the evolutionary trend from a finding of no standing to sue under the provisions of the Housing Act of 1949 to the finding that the Housing Act of 1949 confers private legal rights upon displacees of an urban renewal project. Reviewing the cases and the legislative history of the Housing Act of 1949, the *WACO I* court stated

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51. See text accompanying notes 24-25 *supra.*
52. 395 F.2d 920 (2d Cir. 1968).
53. *Id.* at 927.
54. See note 14 *supra.*
55. 395 F.2d at 933-34.
56. *Id.* at 935.
57. *Id.*
58. *Id.* at 929.
that recent amendments to the Act clarified congressional intent. The court found that Congress, by imposing upon the Secretary the duty of requiring satisfactory assurance that the LPA's contractual obligations regarding the availability of adequate relocation facilities were met, intended to confer private legal rights upon displaced persons. It clearly recognized the right of the displacee to be provided with adequate relocation facilities prior to actual displacement. The decision relied heavily upon Norwalk CORE and the recent case of Flast v. Cohen, in which the United States Supreme Court distinguished Frothingham v. Mellon and held that the de minimis doctrine had no application where specific constitutional rights are concerned.

The court in WACO I also relied on Powelton Civic Home Owners Association v. Department of Housing and Urban Development. The decision in Powelton, however, was based on a narrow set of facts and has only limited application to a case such as WACO I. Since the project was still in its initial stages, there were no significant financial commitments that would be jeopardized. HUD was enjoined from disbursing federal funds until plaintiffs were afforded the opportunity to submit evidence bearing on the eligibility of the project to receive federal funds. If the procedural objection had not been raised until the land had been acquired and actual clearance had begun, it is questionable whether the court would have entertained the action solely on this basis. The holding in Powelton can be narrowly characterized as a mere recognition of the right to an administrative review. The right of a substantive review was not established; only the procedural implications of section 1435(c) were ruled upon.

In summary, the early decisions refused to find that section 105(c) of the Housing Act of 1949 conferred private legal rights upon residents about to be displaced by an urban renewal project. Subsequent legislation amending section 105(c), however, clarified congressional intent. Moreover, an increasing awareness by the courts of the social impact of urban renewal as evidenced by the recent intensification of social unrest in the low-income and minority groups has resulted in a change in the status of the plaintiff. The court in Powelton explicitly recognized that the plaintiff had standing to assert the procedural implications of the relocation provisions. Finally, in WACO I the court held

59. WACO I at 443.
60. Id. at 442.
61. 392 U.S. 83 (1968) (allowing taxpayers standing to sue to enjoin expenditures of public funds on parochial schools).
62. 392 U.S. at 104-05. There has been no ruling on whether a single individual may obtain an injunction against an urban renewal project on the basis on inadequate relocation facilities. The reliance the court in WACO I placed on Flast v. Cohen suggests that an injunction would be granted.
that section 105(c) of the Housing Act of 1949, as amended, conferred standing to assert substantive rights granted by the relocation provisions. WACO I completed the cycle and recognized the plaintiffs' standing to sue solely on the basis of private legal rights conferred by section 105(c), amended and restated in sections 1455(c)(1) and (2) of Title 42 of the United States Code.

B. Judicial Review

Acknowledging the standing of the plaintiff to sue, the next question that a court must consider is whether it has judicial power to review administrative decisions affecting relocation programs.

The Administrative Procedure Act (APA) provides that "[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." Nevertheless, judicial review is not available if the particular statute precludes it, or if, by law, the agency action is committed to agency discretion.

An examination of sections 1455(c)(1) and (2) reveals that neither section implicitly or explicitly precludes judicial review. The question, however, whether the agency action is committed to agency discretion by law must be examined.

Since section 1455(c)(1) does not contain any language that might be interpreted as committing agency action to agency discretion, this examination must center on section 1455(c)(2). It might be argued that Congress, by requiring that the LPA's assurances of adequate relocation housing be "satisfactory" to the Secretary, was committing all action prescribed by section 1455(c)(2) to agency discretion. If so construed, any action arising under 1455(c)(2) would not be subject to judicial review. But this argument involves a misunderstanding of the nature of the agency action established by section 1455 (c)(2). Section 1455(c)(2) establishes that the Secretary "shall require . . . satisfactory assurance by the local public agency that decent, safe, and sanitary dwellings . . . are available for the relocation of each such individual or family."

There are three aspects of agency action in section 1455(c)(2). First, the LPA is required to provide the assurances described in the section; second, the Secretary shall require these assurances. These actions by their terms are made mandatory by Congress as a condition

66. See notes 14 & 15 supra.
to further assistance to each urban renewal project involving the displacement of individuals and families. Third, these assurances must be satisfactory. Clearly, there is no discretion involved in either the first or second aspect on the part of the LPA or the Secretary; nor is the LPA the judge of the satisfactoriness of the assurances; the determination must be made by the Secretary. The question remains, however, whether because there is inherent in the nature of satisfactoriness a certain quantum of subjectivity, the use by Congress of “satisfactory” in section 1455(c)(2) constitutes a sufficient legislative commitment of agency action to agency discretion within the meaning of the Administrative Procedure Act to preclude judicial review.

The court in WACO I compared the language of this section to that of section 1465(e), and relying on the case of Cappadora v. Celebrezze, concluded that the Secretary's determination of satisfactoriness was subject to judicial review, as least to the extent of ensuring that his determination had not been arbitrary.

C. Standards of Review

Once a court has concluded that it has judicial power to review an administrative decision affecting relocation programs, it is faced with the additional problem of creating or discovering criteria by which to evaluate that decision.

In Norwalk CORE the court stated that in determining whether there has been compliance with the requirements of section 105(c), “courts will evaluate agency efforts and success at relocation with a realistic awareness of the problems facing urban renewal programs. Objections by individual displaces based on too literal an interpretation of the Act's standards could unnecessarily interfere with programs of benefit to the entire community.” Though clearly sympathetic to

68. 42 U.S.C. § 1465(e) (Supp. III, 1968): “[D]eterminations of any duly designated officer or agency as to eligibility for and the amount of relocation assistance . . . shall be final and conclusive for any purposes and not subject to redetermination by any court or any other officer.”

69. 356 F.2d 1 (2d Cir. 1966). The holding of Cappadora was that the discretionary refusal of the Secretary of Health, Education and Welfare to reconsider a denial of benefits was reviewable under the APA. This holding was recently followed in another Social Security action, Pasquale v. Cohen, 296 F. Supp. 1088, 1093 (D.R.I. 1969). This holding has been applied in other areas: Norwalk CORE v. Norwalk Redeve. Agency, 395 F.2d 920, 932 (2d Cir. 1968) (urban renewal action); Szostak v. Railroad Retirement Bd., 370 F.2d 253, 254 (2d Cir. 1966) (retirement claim); Powelton Civic Home Owners Ass'n v. Department of Housing and Urban Dev., 284 F. Supp. 809, 820 (E.D. Pa. 1968) (urban renewal action); Road Review League v. Boyd, 270 F. Supp. 650, 659 (S.D.N.Y. 1967) (highway location).

70. WACO I at 443.

the urban renewal program, the court nevertheless found that a review of the adequacy of the relocation program on its merits was necessary. As previously mentioned, however, the court had already defined the justiciable issue to be whether or not racial discrimination existed in assuring adequate relocation facilities, thus avoiding the issue of standards of review of nonconstitutional questions.\^2

In \textit{WACO I}, while denying that it is the function of the court to administer the complexities of urban redevelopment, Judge Sweigert stated that "the court can and should see to it that the Secretary complies with the requirements of the federal statute and his own regulations, not merely in form but in substance, and that the administrative discretion vested in him by law is not arbitrarily abused . . . but is reasonably exercised with some substantial basis in fact to support it."\^3 The court specifically stated that it was under a duty to ensure that the Secretary's discretion in determining the satisfactoriness of the LPA's assurances had not been arbitrarily abused.\^4 The court's interpretation of the facts, however, prevented it from performing this self-imposed duty.

Reviewing the HUD evaluation of the relocation program contained in a letter of July 29, 1968,\^5 the court in \textit{WACO I} found that while the letter was ostensibly a finding of satisfactoriness, it was in actuality an expression of unsatisfactoriness.\^6 The court based this finding partly on the fact that the Regional Director's determination of satisfactoriness was made entirely contingent upon future accomplishments and events.\^7 Because the relocation plan depended in part upon

\^2. See text accompanying notes 52-53 supra.
\^3. \textit{WACO I} at 441 (emphasis added).
\^4. \textit{Id}.
\^5. This letter was from Robert Pitts, Regional Administrator of HUD in San Francisco, acting on behalf of the Secretary, to the San Francisco Redevelopment Agency. \textit{WACO I} at 437.
\^6. \textit{WACO I} at 437-38.
\^7. The letter stated that the relocation plan submitted by the LPA was acceptable and satisfactory. However, the Redevelopment Agency was prohibited from proceeding with relocation until four contingencies were either met, or that other resources meeting the requirements of section 1455(c) were satisfactorily demonstrated to be available. These four contingencies were:

\^1. Availability and utilization of relocation aids under the pending 
Housing and Urban Development Act of 1968 and related appropriation bills;

\^2. Adoption by the Board of Supervisors of a resolution or resolutions, 
satisfactory to the Regional Administrator, specifying the purposes for which money 
previously appropriated ($300,000) shall be expended, including amounts for rent 
supplements, and the organizational unit or units having control of such appropriations and 
expenditures;

\^3. The further implementation of 221(d)(3) housing in Western Addition 
A-2 and the other two projects in accordance with the statements set forth in my letter 
to you of July 19, 1968; and
those contingencies, the Regional Director's determination was in fact unsatisfactory. As a result, the requirements of the contractual provisions of sections 1455(c)(1) and (2) had not been met and a preliminary injunction was appropriate relief.\(^7\)

The Secretary's determination, as the court properly concluded from its review of the record, was a determination of unsatisfactoriness. Consequently, there was no discretionary determination of satisfactoriness to provide the basis for a judicial review of arbitrariness.

To meet the contractual obligations under section 1455(c), the Secretary or his designated representative must first make a determination of satisfactoriness. At that time, in order to dissolve the preliminary injunction, it becomes incumbent upon the court to assume the duty that it so definitely and distinctly expounded: *Review the Secretary's determination of satisfactoriness to ensure that it is not arbitrary, but is reasonably exercised upon a substantial basis of fact.* Yet here lies the difficulty: To review the Secretary's determination of satisfactoriness, the court must first determine just what constitutes a reasonably factual basis.

To illustrate the court's dilemma, the nature and terms of the preliminary injunction must be examined.

D. The Preliminary Injunction

The court in *WACO I* enjoined the defendant, San Francisco Redevelopment Agency, from proceeding with the enforced displacement of residents of the project area "unless and until the local agency has submitted to the Secretary a relocation plan, satisfactory to the Secretary and approved by this court . . . "\(^7\) The court further stated that "*To the extent that relocation of families or individuals is dependent upon the contingencies . . . already set forth, and such contingencies have not been accomplished sufficiently . . . the local agency shall not proceed with the displacement.*"\(^8\)

The court stated that the relocation plan must be "satisfactory to the Secretary and approved by this court." This may be interpreted in several ways. One, the court may have simply meant that the new

\(^4\) Appropriate and satisfactory phasing of relocation activities in an orderly and progressive manner so that site occupants, to the extent feasible, may be relocated within the project area with a minimum of hardship, and that such phasing be over such period of time (presently estimated to be approximately five years) as may be needed for provision of the required housing." *WACO I* at 437-38.

\(^7\) HUD continued to supply federal funds to the project even though the contractual obligations had not been met by the LPA. This fact obstructs any clear understanding of the holding.

\(^7\) *WACO I* at 440 (emphasis added).

\(^8\) *Id.* at 441 (emphasis added).
plan must be acceptable to the Secretary, the phrase "and approved by the court" being excess verbiage. In this event, upon the Secretary's statement of satisfactoriness, the court would summarily dissolve the injunction without any review. Two, the court may have meant that the new plan must be satisfactory to the Secretary and also approved by the court through an independent examination of the plan; yet, this would necessarily involve the court in the administrative complexities that it clearly stated it would abstain from. Three, the court may have meant that the new plan must be satisfactory to the Secretary, and that the Secretary's determination of satisfactoriness must, upon review by the court, be found to be based upon such reasonably substantial facts as would merit court approval. The third suggestion is the only interpretation consistent with the stated holding of the court that "the court can and should see to it that the . . . discretion vested in [the Secretary] . . . is not arbitrarily abused . . . but is reasonably exercised with some substantial basis of fact to support it."  

The court enjoined the Secretary from honoring future requisitions from the LPA for federal financing until and unless, upon further application to this court, he can show that the relocation plan of the local agency is in fact satisfactory . . . to the extent, at least, that it assures reasonable and present availability of decent, safe and sanitary housing, within the meaning of Section 1455(c)(1) and (2) for any individuals or families about to be displaced by condemnation, eviction or threats of condemnation or eviction. The court therefore conditioned a dissolution of the preliminary injunction against the Secretary not merely upon a determination of satisfactoriness by the Secretary, but upon the Secretary's demonstration that the plan is in fact satisfactory.

The distinction noted above between a plan which is satisfactory and one which is in fact satisfactory is subject to the same interpretation as the condition stated by the court in dissolving the preliminary injunction against the San Francisco Redevelopment Agency. Further, the court not only required that the relocation plan assure adequate relocation facilities for those individuals and families that officially enter the relocation workload, but also prohibited any action that might be

81. *Id.*
82. *Id.*
83. *Id.* (emphasis added).
84. The three possible interpretations are: One, there is no difference and the court will accept the determination of the Secretary at its face value; two, the court will use independently arrived at data to decide whether or not the plan is in fact satisfactory; and three, the court will review the determination of the Secretary upon its merits to ensure it is not arbitrary. See text accompanying notes 81-83 supra.
85. **HANDBOOK** RHA 7212.1, ch. 3, sec. 1, at 1, states that a site occupant (a
interpreted by the individuals and families concerned as threats of condemnation or eviction. 86

The concern of the court for the rights of the displaced persons is reflected in the terms of the injunction. Dissolution was based not merely upon accomplishment of the contingencies, 87 but upon sufficient accomplishment of them.88 Without this relief, the individuals and families in the area "would remain uncertain and insecure . . . and may well conclude that they must leave the area notwithstanding the absence of reasonably available relocation housing within the meaning of section 1455(c)(1)." 89

The concern of the court for the rights of the plaintiffs was further reinforced by the scope of the relocation plan. The court required availability of adequate relocation housing for the existent population of the project area subject to displacement. By requiring the relocation plan to include provisions for those individuals and families about to be displaced by threats of condemnation or eviction, 90 the court implicitly condemned any unofficial action designed to panic the residents into self-relocation, with a consequently reduced relocation workload. A thorough judicial review of the Secretary's determination was the only way in which the court could ensure protection of the rights of the displaced.

To sum up, the court in WACO I took a giant step forward in the protection of the rights of the individuals and families living in areas

family, individual, or business concern occupying property in the area) "enters the relocation workload when any of the following occurs:

1. The property occupied is acquired by the LPA or other public body.
2. A landlord requests assistance in relocating a tenant to permit rehabilitation or code enforcement.
3. A code enforcement agency requests assistance in vacating a unit.
4. A site occupant requests assistance as a result of rehabilitation or code enforcement" (emphasis added).

86. It is not uncommon for unofficial administrative actions to be interpreted by the site occupants as threats of condemnation or eviction. Many of the site occupants are thereby panicked into self-relocation. When this occurs, the housing into which the site occupant self-relocates is not regulated by the requirements of section 1455(c). Those site occupants who self-relocate do not enter the relocation workload of the LPA; see note 86 supra. Consequently, statistics reflect a smaller quantity of relocation facilities than is actually the case.

When a relocation program is obviously inadequate, it is possible for a LPA to purposefully intensify the panic leading to self-relocation. This decreases the number of individuals and families for which the LPA must provide adequate relocation facilities and consequently allows the LPA to more easily achieve the requirements of section 1455(c). See Statement by Joel August, 2 HEARINGS BEFORE THE NATIONAL COMM’N ON URBAN PROBLEMS 286 (1968).

87. See note 77 supra.
88. WACO I at 441.
89. Id. (emphasis added).
90. Id.
scheduled for urban renewal projects. It not only unqualifiedly recognized that section 105(c) of the Housing Act of 1949 confers private legal rights upon those individuals and families, but that the Secretary’s determination of the satisfactoriness of the LPA’s assurance of adequate relocation facilities is subject to judicial review for arbitrariness. The court, however, left itself in limbo regarding the criteria it would use to determine what constitutes a reasonably substantial factual basis for the Secretary’s determination. To see how the court resolved this dilemma, its subsequent action must be reviewed.

III. Western Addition Community Organization v. Romney (WACO II)

In WACO I, the court granted a preliminary injunction and established the criteria for dissolution of that injunction. On March 5, 1969, an unpublished memorandum decision on the defendant’s motion to dissolve the preliminary injunction was filed.\textsuperscript{91} The new Secretary of Housing and Urban Development, George Romney, was substituted for Robert Weaver, and the action was again presided over by District Judge Sweigert.

In WACO II, the court, in a brief review of its prior decision, stated that it had had “no other course but to hold that the Secretary was not proceeding in compliance with the Housing Act and that further financing of the project would be enjoined until he brought himself into compliance.”\textsuperscript{92}

In WACO II, the court ruled favorably on the motion of the Secretary to dissolve the preliminary injunction on the basis that “as of January 29, 1969, he [had] made an unqualified and unconditional determination that the local agency’s relocation plan and its assurances of available relocation housing for displacees [were] now satisfactory . . . .”\textsuperscript{93} The Secretary’s determination of satisfactoriness was based on his decision that the four contingencies discussed in WACO I no longer existed.\textsuperscript{94}

\textsuperscript{91} Memorandum of Decision on Defendant’s Motion To Dissolve Preliminary Injunction, Western Addition Community Organization v. Romney, Civil No. 49,053 (N.D. Cal., filed March 5, 1969) [hereinafter cited as WACO II].
\textsuperscript{92} Id. at 3.
\textsuperscript{93} Id.
\textsuperscript{94} Id. at 4-7. In substance and effect, the findings upon which the determination of satisfactoriness is made are:

“[(a)] with respect to the first condition, availability and utilization of new federal relocation aids, that the Housing and Urban Redevelopment Act of 1968 was enacted as Public Law 90-448, 90th Congress, S. 3497 . . . [and] that the new law contains many provisions designed to promote new and rehabilitated housing, particularly for low and moderate income families; . . . that the local agency is presently utilizing some of the provisions of the new law and \textit{proposed to utilize others}, and
In dissolving the injunction the court noted the plaintiffs' disagreement with the Secretary's determination of satisfactoriness, but stated this "merely [indicated] that the record [was] such as to be subject to different inferences and [was], therefore, controversial." The court further noted that section 1455(c)(2) does not "make continuance of federal assistance dependent upon the existence in fact of available relocation housing. Rather, the requirement is merely that the Secretary, exercising his sound discretion and presumed expertise, be 'satisfied' with the local agency's 'assurances' in that respect." Relying on the 1936 Ohio case of Sidle v. Baker, the court pointed out that "assurance" does not mean an absolute certainty of the factual situation in question. Rather, the term means that the subject matter, considering the appearances, reasonably seems to be sure, although it could conceivably be found not to be so.

The court in WACO II held that upon the record before it and the Secretary's unqualified, unconditional expression of satisfactoriness such actual and proposed utilization is satisfactory.

"(b) with respect to the second condition, action by the Board of Supervisors . . . [adopting] Resolution No. 353-68, declaring its policy to appropriate certain . . . revenues for use in relocating [displaced] persons . . . [and adopting] Resolution No. 581-68, specifying the purposes for which money previously appropriated ($300,000) would be expended . . . taken together, are deemed satisfactory for the purpose of . . . providing an acceptable program of local rest supplements for an initial period of eighteen months.

"(c) with respect to the third condition, further implementation of FHA Section 221(d)(3) housing in accordance with letter of July 19, 1968 . . . it is contemplated that the new Section 236 interest reduction payment program . . . will ultimately supplant the FHA Section 221(d)(3) . . . and, therefore, future construction . . . will be under the 236 program . . .; that there are two 221(d)(3) projects . . . under construction . . . and there is presently pending before HUD applications for four Section 236 projects which will provide . . . housing in the project . . .; that the local agency represents that applications will be filed in the near future . . . and long range, . . . an additional 16 sites for 1673 units will be made available to sponsors . . . .

"(d) with respect to the fourth condition, appropriate and satisfactory phasing of relocation, that the local agency carries on its relocation activities in conjunction with other development activities in three phases, according to land area rather than by time periods; that data supplied by the local agency indicated that in Phase I 941 individuals and families are to be displaced, and there exist or are being provided for them 1776 dwelling units; that in Phase II 1073 individuals and families are to be displaced, and there exist or are being provided for them 2727 dwelling units; that in Phase III 1989 individuals and families are to be displaced, and there exist or are being provided for them 5087 dwelling units; that the local agency's reliance upon vacancies in existing dwellings to satisfy relocation needs is acceptable and that the phasing program . . . is satisfactory . . ." Id. at 4-7. (emphasis added). The original contingencies are set out in note 77 supra.

95. WACO II at 7.
96. Id.
97. Id.
98. 52 Ohio App. 89, 3 N.E.2d 537 (1936).
99. WACO II at 8.
with the relocation plan and assurances of available relocation housing, it could not find that the Secretary's decision was "wholly arbitrary, irresponsible and without factual basis." Since the preliminary injunction "expressly provided that it would remain in effect only 'until the Secretary could show that the plan for relocation of said residents [was] in fact satisfactory ... '," and since the action was at the preliminary injunction stage, the court weighed the possibility of some individual hardship against the public interest that would be served by completion of the project. In dissolving the injunction, the court stated:

Because of the changed posture of the case, resulting from the January 29, 1969 unqualified statement of approval and satisfaction of the Secretary of Housing and Urban Development, the court concludes that the preliminary injunction should be and is hereby dissolved.

A. Criteria for Dissolving the Injunction

The result of the hearing on the defendant's motion to dissolve the preliminary injunction is clear. However, it is necessary to examine this result in terms of the court's criteria for dissolution as set forth in WACO I to see whether the court maintained consistency in its holdings. In view of the criteria for dissolution discussed above, several alternative methods of judicial review were available to the court.

1. Face Value Acceptance of the Secretary's Determination

Although not strictly a method of judicial review, the court could have accepted the Secretary's determination of satisfactoriness at face value. Such an acceptance, however, completely ignores the court's earlier self-imposed duty to review the Secretary's determination to ensure a reasonably substantial factual basis. Assuming that the court chose this alternative, the decision in WACO II was predetermined. As soon as the Secretary made a finding of satisfactoriness, the court would automatically dissolve the injunction. But this would be totally irreconcilable with the holding of WACO I that the court can and should ensure that the Secretary does not abuse his discretion.

2. Quasi-Substantive Review

The court could have reviewed the Secretary's determination to ensure that it was not arbitrary. But this necessarily presupposes the existence of some standard of review. One possibility, a quasi-sub-

100. Id. at 9.
101. Id. at 10.
102. Id. at 10-11.
103. See text accompanying notes 79-83 supra.
104. See text accompanying note 73 supra.
stantive approach, would be to compare the new evidence with the record before the court in *WACO I*. The court could then examine the evidence to see if there were any apparent inconsistencies and whether new evidence satisfied the deficiencies that caused the original relocation plan to be rejected as unsatisfactory. Though a possible, and perhaps adequate means of judicial review in this instance, it cannot be squared with the court's requirement in *WACO I* that the Secretary show that the relocation plan "is in fact satisfactory . . . to the extent, at least, that it assures reasonable and present availability of decent, safe and sanitary housing . . . ."\(^\text{105}\) Nevertheless, in view of the court's reliance on *Sidle v. Baker*,\(^\text{106}\) this may well be what the court attempted to do. Assuming this was the approach of the court in *WACO II*, difficulties are immediately encountered.

In *WACO I*, the court determined that the relocation plan was unsatisfactory. This determination was made upon the record before the court, including the letter of July 29, 1968. The court stated that to the extent relocation of families or individuals was dependent upon the accomplishment of the four contingencies, the relocation program was unsatisfactory.\(^\text{107}\)

The program was unsatisfactory not only because it was contingent on future events, but because several other unsatisfactory areas were indicated. First, as far back as August 29, 1967, the Regional Director was advised:

*Since the timing on the availability of these newly constructed or rehabilitated units is an important factor and, at this time, we are unable to fix a date, the relocation period may have to be extended beyond five years and definite phasing scheduled.*\(^\text{108}\)

Second, a memorandum from the Relocation Branch Director to the Assistant Regional Administrator dated August 21, 1967, concluded that

> [i]t should be noted that the entire relocation plan is based on turnover with the exception of 200 units of new public housing which will not be available. Despite the discrepancies . . . regarding the supply available, and the questionable technique of estimating the availability of hotel rooms, there is still a deficiency as acknowledged by the LPA.\(^\text{109}\)

Third, in support of a rejection of a request for permission to waive contract provisions and use project funds for rental deposits, the Assistant Secretary stated in a memorandum dated March 7, 1968, that

> there is a serious shortage of low and moderate cost housing in

\(^\text{105}\)  *WACO I* at 441.

\(^\text{106}\)  52 Ohio App. 89, 3 N.E.2d 537 (1936). See text accompanying note 98 *supra*.

\(^\text{107}\)  *WACO I* at 441.

\(^\text{108}\)  *Id.* at 438 (emphasis added).

\(^\text{109}\)  *Id.* at 439 (emphasis added).
San Francisco. We do not believe that Federal funds should be expended to permit the San Francisco LPA to capture available units and hold them for those it displaces, without regard to other demand, in a housing market in which there are virtually no vacancies. The Department is presently preparing implementation of a policy which will state that no community with less than a three per cent vacancy rate will be permitted to rely upon the existing housing supply for relocation resources. It is less than three per cent. The shortage of housing resources, coupled with the magnitude of displacement occurring by reason of the execution of several urban renewal and code enforcement projects in the city, makes us seriously question the wisdom of using Federal funds in this manner.\(^{110}\)

What new information was available to the court in *WACO II* that indicated that these deficiencies had been corrected? The only new information was the response of the LPA to the contingencies noted in *WACO I*.\(^{111}\) An examination of this response, however, reveals that the original contingencies had *not* been met.

To satisfy the original contingencies, the LPA relied heavily on the fact that the Housing and Urban Redevelopment Act of 1968\(^{112}\) was enacted. This furnished many provisions designed to alleviate the problem of relocation housing. The LPA *proposed* to use some of these provisions, and stated that it *was* utilizing others.\(^{113}\) Nonetheless, the court in *WACO I* did not require that token action be taken; it demanded that the contingencies be *sufficiently* satisfied.\(^{114}\) In solving the problem of inadequate relocation facilities, utilization of the new provisions would not necessarily be *sufficient* to effect a solution.

Though resolutions were adopted authorizing appropriations for rent supplements for an initial period of 18 months,\(^{115}\) HUD previously stressed that the relocation program might have to be extended beyond five years.\(^{116}\) The period of appropriations was patently inadequate in view of the sufficiency requirement laid down by the court in *WACO I*.\(^{117}\)

The remaining information that allegedly satisfied the original contingencies was laden with speculation and new contingencies. Phrases such as “it is contemplated,” “will ultimately,” “presently pending,” “will be filed” and “will be made available” permeated the new material.\(^{118}\) In brief, the original contingencies had merely been re-

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110. *Id.* (emphasis added).
111. See note 94 *supra*.
113. See note 94 *supra* at (a).
114. *WACO I* at 441.
115. See note 94 *supra* at (b).
116. *WACO I* at 438; see text accompanying note 108 *supra*.
117. *Id.* at 441. See text accompanying note 80 *supra*.
118. See note 94 *supra*. 
placed by new ones. The actions that were taken were either inadequate or not capable of being evaluated according to the sufficiency of relief provided.

Finally, the LPA's response assured the Secretary that adequate relocation housing was available to meet the needs of its relocation phasing program. But the new information, which stated that adequate housing either existed or was being provided, failed to show the source of the new housing. It is difficult to understand the Secretary's determination that "the local agency's reliance upon vacancies in existing dwellings to satisfy relocation needs is acceptable . . . ." Less than a year before, the Department's position was that there was a serious shortage of low- and moderate-cost housing in San Francisco and that there were virtually no vacancies in the housing market. The relocation program had been described as based "on turnover with the exception of 200 units of new public housing which will not be available . . . ." Furthermore, even though the questionable technique of estimating the availability of hotel rooms was used, the LPA, in any event, acknowledged a deficiency in available relocation housing.

With this information confronting the court, it is difficult to see, assuming it used the quasi-substantive method of review, how the court in WACO II could have determined that there were no significant inconsistencies in the evidence and that the former discrepancies had been adequately resolved.

3. Independent Standards of Review

The court could have reviewed the Secretary's determination for arbitrariness by establishing independent standards by which the adequacy and accuracy of the Secretary's findings could be measured. As previously noted, this method of review would require the court to enter into the administrative complexities of the urban renewal program to an undetermined degree. In any case, it is doubtful that the court could surpass the expertise of HUD in analyzing the requirements of a relocation program and selecting standards to ensure its adequacy.

An examination of the court's opinion in WACO II shows there was no evidence that the court either established or used any such independent criteria. If it did, the court failed to indicate any conclusions it might have made that were sufficient to overcome the apparent inconsistencies and inadequacies already noted in the Secretary's deter-

119. Id. at (d).
120. Id.
121. WACO I at 439; see text accompany note 110 supra.
122. WACO I at 439.
123. Id.
124. See text accompanying note 81 supra.
amination of satisfactoriness. 125

B. Rights of the Plaintiffs

The interpretation of and emphasis on the rights conferred upon plaintiffs by section 1455(c) by the court in the two WACO decisions must also be compared. In WACO I, the court stated that the low- or moderate-income plaintiff needed the protection of the court. Without injunctive relief, he would remain uncertain and insecure in his residence within the project. Being under the impression that his displacement from his present residence could be legally enforced, he could well conclude that he must leave the area, notwithstanding the absence of reasonably available relocation housing within the meaning of section 1455 (c). 126 The implication of the court was clear: A resident could not be legally required to move unless adequate relocation facilities did in fact exist. Further, the court stated that at that time, individuals and families in the area [did] not have any assurance of such protection and [were] left for all practical purposes to the pleasure of the local agency and of the federal financing agency as to when, how and under what conditions they [could] be involuntarily displaced or threatened with such displacement. 127 The court certainly implied that the private legal rights of the plaintiffs were no less important than the interest of the public in the completion of the project.

On the other hand, in WACO II the court stated that the public interest in the completion of the project outweighed any individual relocation hardship that might occur due to a possible administrative error in judgment. 128 In addition to reversing its former stand that plaintiffs could not legally be required to move unless adequate relocation facilities in fact existed, 129 it justified its new position on the basis of the very issue that it was to determine; that is, it stated that if the Secretary's determination appeared to be reasonable and not arbitrary, then the fact that individual plaintiffs were in fact displaced without the assurance of reasonably available relocation housing was not a basis for injunctive relief. 130 This holding not only assumed the Secretary's determination was not arbitrary, 131 but it seriously weakened the court's own previous recognition in WACO I of the scope of the private rights conferred upon

125. See text accompanying notes 103-23 supra.
126. See WACO I at 441.
127. Id.
128. WACO II at 10.
129. See WACO I at 441.
130. WACO II at 8.
131. For a discussion of whether or not the Secretary's determination could reasonably be found by the court to be not arbitrary, see text accompanying notes 103-123 supra.
the plaintiffs by section 1455(c).\textsuperscript{132}

It must be concluded that the decisions of the court in \textit{WACO I} and \textit{WACO II} are irreconcilable both as to the criteria for dissolution of the injunction and as to the attitude of the court toward the private legal rights conferred upon the plaintiffs by section 1455(c).

\textbf{IV. Conclusion}

The standing to sue of the plaintiff on a cause of action arising out of section 1455(c) and the ability of the court to review the administrative action giving rise to that cause of action are now well recognized. The adequacy of the judicial review of that action as presented by the incompatible \textit{WACO} decisions is questionable. Nevertheless, the irreconcilability of the \textit{WACO} decisions is not the problem. The problem is the reasoning that underlies the court's inconsistency. It is submitted that a combination of factors may explain the difference: the lack of any well-defined standard of review, the substantial degree of execution of the project representing a large financial investment, and the political and social pressures from the community.

The advances made by the court in \textit{WACO I} are commendable and clearly provide the displaced person with a means to ensure his right to be provided adequate relocation housing within the meaning of section 1455(c)(1). Not having an easily defined justiciable issue at hand,\textsuperscript{133} however, the court seemed to flounder and, in \textit{WACO II}, retreated from its previous position. The court appears to have accepted at face value the determination of the Secretary, ignoring the implications of its previous decision.

The court should review the Secretary's determination of the satisfactoriness of a relocation program to ensure that it has not been arbitrary. This is especially true when, as in \textit{WACO I}, it is clear that the requirements of section 1455(c) have not been met. This not only prevents an increase in social tensions and unrest, but also ensures that the individuals and families about to be displaced are afforded the protection of section 1455(c).

The means by which the court should accomplish this review are not clear; however, until the court is able to establish standards which are easily defined and applied, it is suggested that the "quasi-substantive" method be used. This method allows the court to examine the record before it for inconsistencies and inadequacies without the necessity of becoming embroiled in the actual administration of the urban renewal program. By using HUD's own carefully established criteria,

\textsuperscript{132} See \textit{WACO I} at 441.

\textsuperscript{133} See, \textit{e.g.}, Norwalk CORE \textit{v.} Norwalk Redevel. Agency, 395 F.2d 920 (2d Cir. 1968); see text accompanying notes, 52-58 \textit{supra}.\textsuperscript{134}
the court can review the agency's action for arbitrariness and provide plaintiffs with an effective forum to enforce their rights under section 1455(c).

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