

GETTING EVICTED FOR THE ACTIONS OF OTHERS: A PROPOSED AMENDMENT TO THE ANTI-DRUG ABUSE ACT

Abstract: Section 1437d(4)(6) of the United States Housing Act of 1937 seeks to eliminate the dangerous conditions in America's public housing complexes by providing housing authorities with the ability to combat the drug crisis through streamlined third-party-action evictions. Both history and substantive due process challenges to this law reveal significant problems, however, with providing management with broad discretion to evict tenants uninvolved in or unaware of a third party's illegal activities. This Note proposes that Congress amend § 1437d(4)(6) to require that public housing tenants have actual or constructive notice, based on an objective standard, of a non-household member's prohibited activities in order to be evicted. This proposal effectively balances tenant interests with legislative intent to achieve efficient, effective, and fair public housing reform.

INTRODUCTION

Virgie Green was an "exemplary tenant" of her public housing complex.¹ She lived in her apartment for twelve years and served as a volunteer representative of her complex on the resident council board.² One day when she was not at home, Akisha Martin, a visiting acquaintance of Ms. Green's daughter, was arrested for selling drugs in the apartment.³ Even though Ms. Green was unaware of Ms. Martin's drug-related activities, she was evicted from her unit for the drug dealing because of a lease provision making the tenant responsible for any criminal activity taking place in the apartment.⁴ In 1995, in *Housing Authority of New Orleans v. Green*, the Louisiana Court of Appeals

¹ *Hous. Auth. of New Orleans v. Green*, 657 So. 2d 552, 553 (La. Ct. App. 1995). *Green* is an exemplary illustration of the eviction of an innocent tenant for third-party actions and at least one commentator introduces the topic of innocent tenant evictions with this case. Nelson H. Mock, *Punishing the Innocent: No-Fault Eviction of Public Housing Tenants for the Actions of Third Parties*, 76 TEX. L. REV. 1495, 1495 (1998).

² *Green*, 657 So. 2d at 552-53.

³ *Id.* at 553.

⁴ *Id.*

upheld Ms. Green's eviction.⁵ This case raises the issue of whether housing authorities should evict a public housing tenant for another individual's activities even when the tenant is unaware of the conduct. Why is a tenant's personal involvement in illegal activities not considered in decisions to evict tenants and their families who often have no alternate source of housing?⁶

In 1988, Congress passed the Anti-Drug Abuse Act ("ADAA") as an amendment to the United States Housing Act of 1937 ("Housing Act") to combat the drug crisis in public housing.⁷ Section 1437d(h)(6) of the Housing Act requires public housing agencies to incorporate a provision into public housing leases providing that tenants may be evicted if the tenant, any member of the tenant's household, or any guest or other person under the tenant's control engages in criminal or drug-related activity.⁸ This legislation was intended to decrease drug-related activity and its attendant crime by evicting problematic residents who engage in or condone illegal activities that place other public housing tenants at risk.⁹

There is little debate over the eviction of lease-signing tenants under § 1437d(h)(6) for a tenant's own illegal activities because housing authorities are evicting these leasehold tenants for their own violations of the lease.¹⁰ Section 1437d(h)(6), however, also provides for "third-party-action" evictions that enable public housing authorities to evict leasehold tenants for the actions of third parties, such as other

⁵ *Id.* at 552 (holding that the tenant could be evicted even though she lacked knowledge of a guest's possession of illegal drugs in the apartment).

⁶ Kristen D.A. Carpenter, *Promise Enforcement in Public Housing: Lessons from Rousseau and Hundertwasser*, 76 TUL. L. REV. 1073, 1091 (2002) (stating that public housing residents do not perceive that they have choices about where, how, or with whom they live and that public housing is filled with tenants who simply have no other alternative).

⁷ Anti-Drug Abuse Act of 1988, Pub. L. No. 100-690, 102 Stat. 4181 (1988). The ADAA is the authorizing statute that amends the Housing Act, 42 U.S.C. § 1437 (1994). See Dean P. Cazenave, *Congress Steps Up War on Drugs in Public Housing—Has It Gone One Step Too Far?*, 36 LOY. L. REV. 137, 137 (1990) (stating that the inadequacy of housing authorities in dealing with the drug crisis prompted Congress to pass the ADAA).

⁸ 42 U.S.C. § 1437d(h)(6).

⁹ See Ryan Johnson, *Criminal and Drug Related Evictions from Public Housing for the Activities of Third Parties*, 1 LOY. J. PUB. INT. L. 49, 50 (2000) (stating that Congress ought to clean up public housing by making leasehold tenants guarantors of third-party conduct).

¹⁰ See *Dep't Hous. & Urban Dev. v. Rucker*, 535 U.S. 125, 128-29 (2002) (involving the evictions of several tenants for the actions of other household members and guests). Cases challenging § 1437d(h)(6) evictions focus on the activities of third parties, not on the eviction of leasehold tenants who engage in the statute's prohibited activities. See *id.*; *Green*, 657 So. 2d at 553 (involving the eviction of a tenant for a guest's illegal activities).

household members and guests.¹¹ Ms. Green's case illustrates that some housing authorities do not consider fault, such as a tenant's personal involvement in, or knowledge of, illegal activities, before initiating eviction proceedings against a leasehold tenant under § 1437d(h)(6) for third-party actions.¹² In response, evicted tenants challenged these no-fault, third-party-action evictions under § 1437d(h)(6) on legislative intent and statutory interpretation grounds by arguing that Congress did not intend to evict leasehold tenants uninvolved in or unaware of another person's illegal activities.¹³ Opponents of the law also argued that no-fault, third-party-action evictions under § 1437d(h)(6) violate the substantive due process clause of the Fourteenth Amendment by improperly imposing liability on innocent individuals.¹⁴

Until recently, the fact that no-fault, third-party-action eviction cases under § 1437d(h)(6) were litigated in several courts resulted in inconsistent judicial holdings.¹⁵ On the one hand, the Tennessee Court of Appeals in *Memphis Housing Authority v. Thompson*, in 1999, held that no-fault, third-party-action evictions under § 1437d(h)(6) are proper because tenants contractually agreed to such liability.¹⁶ On the

¹¹ 42 U.S.C. § 1437d(h)(6).

¹² See *Green*, 657 So. 2d at 553.

¹³ See *Rucker v. Davis*, No. C98-00781CRB, 1998 U.S. Dist. LEXIS 9345, at *7-8 (N.D. Cal. June 19, 1998) (referring to the arguments made by evicted tenants that interpreting the law as allowing innocent tenant evictions is unlawful and that the eviction of innocent tenants was not intended by the statute), *vacated by* 203 F.3d 627 (9th Cir. 2000), *vacated by* 222 F.3d 614 (9th Cir. 2000), *reh'g granted*, 237 F.3d 1113 (9th Cir. 2001), *cert. granted sub nom.* Dep't of Hous. & Urban Dev. v. Rucker, 533 U.S. 976 (2001), *rev'd by* Dep't Hous. & Urban Dev. v. Rucker, 535 U.S. 125 (2002).

¹⁴ *Green*, 657 So. 2d at 553 (stating that the evicted tenant challenged the eviction as a violation of her due process rights); Cazenave, *supra* note 7, at 141-49 (considering potential substantive due process challenges for overbreadth, vagueness, and personal responsibility to innocent tenant evictions). See U.S. CONST. amend. XIV, § 1. The Due Process Clause of the Fourteenth Amendment provides that no state shall "deprive any person of life, liberty or property, without due process of law." *Id.* Substantive due process rights have been interpreted to void arbitrary limitations of individual freedom of action. JOHN E. NOWAK & RONALD D. ROTUNDA, CONSTITUTIONAL LAW § 13.1 (4th ed. 1991).

¹⁵ *Green*, 657 So. 2d at 552 (upholding tenant evictions for a guest's illegal activities); *Hous. Auth. of Jersey City v. Thomas*, 723 A.2d 119, 121 (N.J. Super. Ct. App. Div. 1999) (refusing to evict an innocent tenant, who did not engage in prohibited activities, for the criminal activity of another); *Memphis Hous. Auth. v. Thompson*, No. 02A01-9812-CV-00356, 1999 Tenn. App. LEXIS 506, at *6-7 (Tenn. Ct. App. July 29, 1999) (upholding the eviction of a public housing tenant for failing to cause one of her guests to refrain from engaging in drug-related activity in the apartment), *rev'd*, 38 S.W.3d 504 (Tenn. 2001).

¹⁶ 1999 Tenn. App. LEXIS 506, at *11-12. In *Thompson*, the tenant and her three children were evicted when the father of the tenant's youngest child was arrested in the

other hand, in 1999, the New Jersey Superior Court in *Housing Authority of Jersey City v. Thomas* refused to evict tenants who had no involvement in, nor prior knowledge of, another's illegal conduct because of the unfairness of punishing innocent individuals for the criminal activities of others.¹⁷

The recent United States Supreme Court decision in 2002, in *Department of Housing & Urban Development v. Rucker*, however, seemingly settled the debate over no-fault, third-party-action evictions under § 1437d(h)(6).¹⁸ Chief Justice Rehnquist, writing for the unanimous Court, upheld the constitutionality of evicting tenants for the activities of their guests and household members under § 1437d(h)(6), regardless of a leasehold tenant's involvement in, or knowledge of, another person's illegal activities.¹⁹ The Court reasoned that no-fault, third-party-actions evictions under § 1437d(h)(6) are constitutional because the statutory language is clear and because the evictions result from a lease provision authorized by Congress and affirmatively agreed to by public housing tenants.²⁰

This Note focuses on no-fault, third-party-action evictions under § 1437d(h)(6) and argues that holding § 1437d(h)(6) constitutional did not address important concerns with no-fault, third-party-action evictions.²¹ To address these concerns, this Note proposes that Congress amend § 1437d(h)(6) to require a tenant's actual or constructive notice, based on an objective standard, of a non-household member's criminal activities before eviction.²² Part I reviews the historical background of public housing in the United States, focusing on the reasons Congress enacted the ADAA.²³ This Part also details competing arguments for and against no-fault, third-party-action evictions under § 1437d(h)(6) based on the statute's legislative history and intent.²⁴

apartment for possessing cocaine. *Id.* at *5. The tenant had no prior knowledge of the guest's illegal activity. *Id.*

¹⁷ 723 A.2d at 120 (declining to uphold the eviction of a tenant who had no knowledge of a guest's cocaine possession because it is fundamentally unfair to punish an individual for the criminal activity of another person). *Thomas* involved the eviction of a leasehold tenant for the drug possession of the tenant's son, who was a household member. *Id.* at 119–20.

¹⁸ See 535 U.S. at 127–28.

¹⁹ *Id.* All members of the Court joined in the opinion except Justice Breyer who took no part in the consideration or decision of the case. *Id.* at 126–27.

²⁰ *Id.* at 130, 135.

²¹ See *id.* at 127–28; *infra* notes 185–214 and accompanying text.

²² See *infra* notes 184–239 and accompanying text.

²³ See *infra* notes 31–57 and accompanying text.

²⁴ See *infra* notes 58–71 and accompanying text.

Part II discusses *Rucker*, where the U.S. Supreme Court rejected challenges to § 1437d(h)(6) and explicitly upheld the constitutionality of no-fault, third-party-action evictions.²⁵ Part III examines arguments and concerns supporting and opposing no-fault, third-party-action evictions under § 1437d(h)(6).²⁶ This Part details substantive due process challenges to no-fault, third-party-action evictions under § 1437d(h)(6) for overbreadth, vagueness and personal fault, and the concerns raised by these claims.²⁷ Alternately, Part III also discusses contract law and legislative intent arguments offered to support § 1437d(h)(6).²⁸ Finally, Part IV argues that holding § 1437d(h)(6) to be constitutional did not address important historical and substantive due process concerns with no-fault, third-party-action evictions under § 1437d(h)(6).²⁹ As an effective solution that balances these concerns with the law's legislative intent, Congress should amend § 1437d(h)(6) to require public housing tenants to have actual or constructive notice, based on an objective standard, of a non-household member's illegal activities before eviction.³⁰

I. THE PUBLIC HOUSING CRISIS AND THE ANTI-DRUG ABUSE ACT

A. *Background on Public Housing, the Public Housing Crisis and Enactment of the Anti-Drug Abuse Act of 1988*

Congress created public housing in the United States by enacting the Housing Act in an effort to assist states and localities responding to the shortage of decent, safe, and sanitary dwellings for families of lower income.³¹ Under the Housing Act, the Department of Housing and Urban Development ("HUD") provides funds to local public housing authorities responsible for implementing federal housing regulations and distributing subsidies to low-income families to help them pay for housing.³² Changes in federal housing regulations and policies, therefore, have important effects on public housing tenants

²⁵ See *infra* notes 72-94 and accompanying text.

²⁶ See *infra* notes 95-183 and accompanying text.

²⁷ See *infra* notes 97-143 and accompanying text.

²⁸ See *infra* notes 144-183 and accompanying text.

²⁹ See *infra* notes 184-214 and accompanying text.

³⁰ See *infra* notes 184-239 and accompanying text.

³¹ 42 U.S.C. § 1437(a)(1) (1994) (declaring the policy of public housing).

³² Tenant Based Assistance: Housing Choice Voucher Program, 24 C.F.R. § 982 (1999) (stating that responsibility for day-to-day administration of public housing is delegated to local authorities). The CFR also provides the guidelines to local authorities for calculating a public housing tenant's share of the rent based on income. *Id.*

because the continued existence of their homes depends on the goodwill of Congress.³³ By 1997, there were roughly 4 million individuals living in approximately 1.4 million units throughout the United States.³⁴

Initially, Congress established public housing to provide comfortable and affordable residences for individuals and families in need of transitional assistance.³⁵ Congress intended to provide "good inexpensive homes for good, hardworking people, so they could care for their children, hold down their jobs and eventually save enough, if they chose, to move into homes of their own."³⁶ Public housing tenants often have no alternatives for housing and are comprised of a fragile population that is overwhelmingly minority and very poor.³⁷ A substantial number of residents are single parents or elderly persons having difficulties paying rent, putting food on the table, and clothing their children.³⁸ These tenants and their families rely heavily on outside personal networks and relationships for support and face grave adversity in the event of eviction because they often are forced into homelessness or temporary shelters.³⁹ Over the years, many notable

³³ Johnson, *supra* note 9, at 50.

³⁴ U.S. Dep't of Hous. & Urban Dev., 1997 *Picture of Subsidized Households Quick Facts*, at <http://www.huduser.org/datasets/assthsq/picqwik.html> (last visited Sept. 1, 2003).

³⁵ See Mock, *supra* note 1, at 1498.

³⁶ Remarks Announcing the "One Strike and You're Out" Initiative in Public Housing, 32 WKLY. COMP. PRES. DOC. 582 (Mar. 28, 1996).

³⁷ U.S. Dep't of Hous. & Urban Dev., *A Picture of Subsidized Households—1998*, at <http://www.huduser.org/datasets/assthsq/statedata98/index.html> (last visited Sept. 1, 2003) (stating that over half of public housing households are minorities and the average income for subsidized households is \$9,500 per year with seventeen percent having incomes below \$5,000 a year); Carpenter, *supra* note 6, at 1091 (stating that public housing tenants often have no alternative to public housing); Mock, *supra* note 1, at 1499 (stating that public housing tenants are a fragile population).

³⁸ *A Picture of Subsidized Households—1998*, *supra* note 37. Two-fifths of public housing households have single parents and one-third of households are elderly. *Id.*; Mock, *supra* note 1, at 1499 (stating the difficulties that public housing tenants face).

³⁹ See Mock, *supra* note 1, at 1499 (stating the serious consequences flowing from eviction such as children missing school and adults missing work, which result in an increase of the likelihood of falling deeper into poverty); Harry J. Wexler, *Hope VI: Market Means/Public Ends—The Goals, Strategies, and Midterm Lessons of HUD's Urban Revitalization Demonstration Program*, 10 J. AFFORDABLE HOUS. & CMTY. DEV. L. 195, 213 (2002) (stating that public housing is often rebuilt on same sites where failed housing has been demolished because of the valuable personal networks and support systems that have evolved at many of these sites).

Americans moved from public housing to prominence, a fact that illustrates the value of public housing's transitional nature.⁴⁰

A startling contrast, however, has been documented between what public housing was intended to be and what its deteriorated condition is today.⁴¹ Commentators use terms such as "hell" and "prison camp" to describe the "social tragedy of life in the worst of America's public housing projects."⁴² The dramatic rise in the availability and use of drugs in the 1980s and the attendant problems of violence and crime have made public housing complexes dangerous places to live.⁴³ Housing authorities, however, have been unable to combat this drug epidemic effectively and have lost control of their projects.⁴⁴ The buildings crumble in decay from lack of maintenance and vandalism.⁴⁵ Many residents are afraid to walk the hallways strewn with empty crack vials, used condoms, and excrement, where muggers and drug dealers have put out the lights.⁴⁶ Children often are put to sleep in bathtubs or underneath beds to prevent random bullets from striking them.⁴⁷

Because of the drug crisis, public housing tenants and their families no longer are guaranteed decent places to live, and many have become prisoners in their own homes.⁴⁸ The terrifying effects of the drug crisis and the inability of housing authorities to address these problems were the focus of a study conducted by the Committee on Government Operations ("Committee") in 1988.⁴⁹ The Committee found that local public housing authorities were having difficulty filling units because of the dangerous living conditions caused by

⁴⁰ Mock, *supra* note 1, at 1498 (stating that President Jimmy Carter, Bill Cosby, Isiah Thomas, Whoopie Goldberg, Kenny Rogers, and Elvis Presley are among many notable Americans who have lived in public housing).

⁴¹ See Johnson, *supra* note 9, at 49 (stating that drugs, violence, corruption, and poverty are likely to surround societal images of public housing projects today).

⁴² Robyn Minter Smyers, *High Noon in Public Housing: The Showdown Between Due Process Rights and Good Management Practices in the War on Drugs and Crime*, 30 URB. LAW. 573, 573 (1998).

⁴³ H.R. REP. NO. 100-702, at 3 (1988); Smyers, *supra* note 42, at 573-74 (stating that residents must pay tribute to gun-toting teenagers to enter their own buildings, ride the elevator, or get the mail).

⁴⁴ See H.R. REP. NO. 100-702, at 3 (stating efforts of housing authorities was not adequate assistance to combat drug activities in public housing); Smyers, *supra* note 42, at 606.

⁴⁵ Smyers, *supra* note 42, at 574.

⁴⁶ *Id.*

⁴⁷ *Id.* at 573.

⁴⁸ See *id.* at 574.

⁴⁹ H.R. REP. NO. 100-702, at 1.

drug abuse and drug dealers.⁵⁰ The study also noted the proven link between drugs and crime and concluded that HUD's response to the drug crisis was "woefully inadequate."⁵¹ The Committee recommended that HUD and Congress provide local public housing agencies the "equipment" they need to win the war against drugs in public housing.⁵²

The Committee's criticism of HUD's inadequacy in dealing with public housing's drug crisis prompted Congress to enact strict legislation to clean up the nation's housing projects.⁵³ At the heart of Congress's attempt to remedy the drug crisis in public housing is the ADAA, which amended the Housing Act.⁵⁴ Section 1437d(l)(6) of the Housing Act, as later amended and in its present form, requires that all public housing agencies incorporate a clause in its leases providing that:

[A]ny criminal activity that threatens the health, safety or right to peaceful enjoyment of the premises by other tenants or any drug-related criminal activity on or off such premises, engaged in by a public housing tenant, any member of the tenant's household, or any guest or other person under the tenant's control, shall be cause for termination of tenancy.⁵⁵

Section 1437d(l)(6) clearly permits housing authorities to evict tenants for third-party actions.⁵⁶ A debate, however, arose as to whether a tenant could be evicted under the law without fault, such as involvement in, or knowledge of, illegal activities, because § 1437d(l)(6) does not provide a standard for evicting tenants for third-party conduct.⁵⁷

⁵⁰ *Id.* at 3.

⁵¹ *Id.*

⁵² *Id.* at 4 (stating that HUD needs funding for modernization and repair of units, security, and drug education).

⁵³ See Cazenave, *supra* note 7, at 139; Smyers, *supra* note 42, at 608-10.

⁵⁴ 42 U.S.C. § 1437d (1994); Anti-Drug Abuse Act of 1988, Pub. L. No. 100-690, 102 Stat. 4181 (1988).

⁵⁵ 42 U.S.C. § 1437d(l)(6).

⁵⁶ See *id.*

⁵⁷ See *id.*; Hous. Auth. of Jersey City v. Thomas, 723 A.2d 119, 121 (N.J. Super. Ct. App. Div. 1999) (imparting a fault requirement for third-party-action evictions by refusing to evict a tenant who did not engage in illegal activities); Memphis Hous. Auth. v. Thompson, No. 02A01-9812-CV-000356, 1999 Tenn. App. LEXIS 506, at *1 (Tenn. Ct. App. July 29, 1999) (upholding no-fault eviction of a tenant who did not engage in illegal activities), *rev'd*, 38 S.W.3d 504 (2001).

B. *Competing Interpretations of § 1437d(l)(6) Based on
Legislative History and Intent*

With § 1437d(l)(6), Congress intended to evict problematic public housing residents by making leasehold tenants guarantors of third-party conduct.⁵⁸ Based on the statute's plain language, HUD and several federal and state courts determined that § 1437d(l)(6) permits no-fault, third-party-action evictions by imposing strict liability on public housing tenants.⁵⁹ This interpretation permits tenants who are uninvolved in, or unaware of, alleged drug-related activities to face eviction for another individual's conduct.⁶⁰ In contrast, several courts and legal commentators reached the opposite conclusion by using a fault-based interpretation of § 1437d(l)(6).⁶¹ Under this view, Congress did not intend to evict innocent tenants, and, instead, evictions under § 1437d(l)(6) require a tenant's knowledge of, or some degree of involvement in, the alleged illegal activity before eviction.⁶²

Both supporters and opponents of no-fault, third-party-action evictions under § 1437d(l)(6) point to legislative history and intent to support their respective views.⁶³ Section 1437d(l)(6)'s legislative history and intent, however, are unclear and provide no decisive answer to this debate.⁶⁴ On the one hand, the Code of Federal Regulations ("CFR"), which governs the administration of HUD programs, gives

⁵⁸ See 42 U.S.C. § 1437d(l)(6); Johnson, *supra* note 9, at 50.

⁵⁹ See, e.g., *City of S. San Francisco Hous. Auth. v. Guillory*, 49 Cal. Rptr. 2d 367, 369 (App. Dep't Super. Ct. 1995) (involving the eviction of a tenant when the tenant's son was caught in the apartment with drugs); *Minneapolis Pub. Hous. Auth. v. Lor*, 591 N.W.2d 700, 704 (Minn. 1999) (involving the police finding the tenant's son in possession of firearms); see also Barclay Thomas Johnson, *The Severest Justice is Not the Best Policy: The One-Strike Policy in Public Housing*, 10 J. AFFORDABLE HOUS. & CMTY. DEV. L. 234, 242 (2001) (stating that HUD and several courts interpreted the law to allow no-fault evictions and impose strict liability on tenants).

⁶⁰ See Johnson, *supra* note 59, at 242 (stating that under a strict liability interpretation, a court only considers if there is a connection between the tenant and the party involved in the alleged criminal acts).

⁶¹ *Rucker v. Davis*, No. C98-00781CRB, 1998 U.S. Dist. LEXIS 9345, at *38-39 (N.D. Cal. June 19, 1998) (refusing to uphold the eviction of a tenant not involved in illegal activities by granting an injunction), *vacated by* 203 F.3d 627 (9th Cir. 2000), *vacated by* 222 F.3d 614 (9th Cir. 2000), *reh'g granted*, 237 F.3d 1113 (9th Cir. 2001), *cert. granted sub nom. Dep't of Hous. & Urban Dev. v. Rucker*, 533 U.S. 976 (2001), *rev'd by* Dep't Hous. & Urban Dev. v. Rucker, 535 U.S. 125 (2002); *Thomas*, 723 A.2d at 120 (refusing to evict "unknowing" tenants for criminal activity of another); Mock, *supra* note 1, at 1497 (opposing strict liability and proposing a fault-based standard for third-party-action evictions under 42 U.S.C. § 1437d(l)(6)).

⁶² See Johnson, *supra* note 59, at 242.

⁶³ See *infra* notes 64-71 and accompanying text.

⁶⁴ See *infra* notes 65-71 and accompanying text.

local public housing agencies the discretion to consider all the circumstances of a case before eviction.⁶⁵ Thus, the CFR, arguably, shows intent not to evict innocent tenants because it allows local housing authorities to consider the seriousness of the offense, the extent of participation, and the effect the eviction would have on the household before initiating eviction proceedings against a tenant.⁶⁶

On the other hand, HUD supports no-fault, third-party-action evictions under § 1437d(h)(6) by stating that these evictions uphold the ADA's legislative intent of improving public housing communities by evicting problematic tenants.⁶⁷ HUD takes the stance that the lease provision imposes an affirmative obligation on tenants to prevent prohibited activities by third parties.⁶⁸ HUD reasons that Congress's decision to evict tenants for the crimes of others is reasonable and necessary to carry out the ADA's primary intent of promoting the general welfare of public housing communities.⁶⁹ Furthermore, HUD states that it would be problematic to evict tenants on a showing of individual fault because of the difficulties of proving a tenant's knowledge of, or ability to foresee, criminal activities.⁷⁰ Because the overriding legislative goal is to rid public housing of undesirable tenants, HUD reasons that a rule allowing tenants to escape sanctions because of the difficulties in proving fault frustrates legislative intent.⁷¹

II. NO-FAULT EVICTIONS UNDER § 1437d(h)(6) UPHELD BY DEPARTMENT OF HOUSING & URBAN DEVELOPMENT V. RUCKER

HUD reasons that the statutory language of § 1437d(h)(6) of the Housing Act and its legislative goal of improving the general welfare of public housing communities support no-fault, third-party-action evictions under § 1437d(h)(6).⁷² Based on this interpretation of the

⁶⁵ Public Housing Lease and Grievance Procedure, 24 C.F.R. § 966.4(h)(5)(vii)(B) (1999).

⁶⁶ See *id.*; Johnson, *supra* note 9, at 53 (stating that the CFR shows intent not to evict innocent tenants for third-party action).

⁶⁷ See *infra* notes 68-71 and accompanying text.

⁶⁸ Public Housing Lease and Grievance Procedures, 56 Fed. Reg. 51,560 § 3.3.1 (Oct. 11, 1991) (codified at 24 C.F.R. pt. 966).

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.* (stating that if a household member's criminal activity is grounds for lease termination, then the tenant has reason to try to control or prevent the activity to protect the tenant's right to continued occupancy).

⁷² *Id.*

statute, local housing authorities initiated eviction proceedings against tenants, innocent of any personal involvement in or knowledge of illegal third-party activities, in numerous cases.⁷³ Litigants and legal commentators responded by challenging no-fault evictions under § 1437d(h)(6) on statutory interpretation, legislative intent, and constitutional grounds.⁷⁴ The inconclusiveness of § 1437d(h)(6)'s legislative intent and divergent views concerning the imposition of liability on tenants for the illegal activities of third parties resulted in inconsistent judicial holdings.⁷⁵

The United States Supreme Court's recent holding in 2002, in *Department of Housing & Urban Development v. Rucker*, seemingly ended the debate over no-fault, third-party-action evictions of public housing tenants under § 1437d(h)(6).⁷⁶ The case was brought by public housing tenants against whom housing authorities instituted eviction proceedings for the alleged drug-related activities of guests and other household members.⁷⁷ The tenants challenged HUD's interpretation of § 1437d(h)(6) on statutory interpretation and constitutional grounds by arguing that § 1437d(h)(6) does not permit the eviction of innocent tenants.⁷⁸ Chief Justice Rehnquist, writing for the 8-0 unanimous Court, however, reversed the United States Court of Appeals for the Ninth Circuit decision in *Rucker v. Davis* by holding that

⁷³ See, e.g., *Hous. Auth. of New Orleans v. Green*, 657 So. 2d 552, 553 (La. Ct. App. 1995); *Memphis Hous. Auth. v. Thompson*, No. 02A01-9812-CV-000356, 1999 Tenn. App. LEXIS 506, at *5-6 (Tenn. Ct. App. July 29, 1999), *rev'd*, 38 S.W.3d 504 (Tenn. 2001); see also Johnson, *supra* note 9, at 56-59 (citing numerous cases where the ADAA has been challenged by tenants based on the initiation of eviction proceedings by housing agencies under the lease provision).

⁷⁴ *Rucker v. Davis*, 1998 U.S. Dist. LEXIS 9345, at *7-8 (N.D. Cal. June 19, 1998) (stating that the evicted tenants challenged 42 U.S.C. § 1437d(h)(6) no-fault, third-party-action evictions on statutory interpretation and constitutional grounds), *vacated by* 203 F.3d 627 (9th Cir. 2000), *vacated by* 222 F.3d 614 (9th Cir. 2000), *reh'g granted*, 237 F.3d 1113 (9th Cir. 2001), *cert. granted sub nom. Dep't of Hous. & Urban Dev. v. Rucker*, 533 U.S. 976 (2001), *rev'd by* Dep't Hous. & Urban Dev. v. Rucker, 535 U.S. 125 (2002); *Green*, 657 So. 2d at 553 (challenging the law on constitutional grounds); Cazenave, *supra* note 7, at 141-49 (challenging the law on substantive due process grounds).

⁷⁵ *City of S. San Francisco Hous. Auth. v. Guillory*, 49 Cal. Rptr. 2d 367, 372 (App. Dep't Super. Ct. 1995) (upholding the eviction of tenants for the illegal activities of household members); *Hous. Auth. of Jersey City v. Thomas*, 723 A.2d 119, 121 (N.J. Super. Ct. App. Div. 1999) (refusing to evict an innocent tenant, who did not engage in prohibited activities, for the criminal activity of another); *Thompson*, 1999 Tenn. App. LEXIS 506, at *6-7 (upholding the eviction of a public housing tenant for failing to prevent one of her guests from engaging in drug-related activity in the apartment).

⁷⁶ 535 U.S. 125, 127-28 (2002).

⁷⁷ *Id.* at 129.

⁷⁸ *Id.*

third-party-action evictions are constitutional under § 1437d(1)(6), regardless of whether tenants knew, or should have known, about the criminal activities of household members or guests.⁷⁹

The Supreme Court relied on the plain language of the statute to conclude that Congress intended to permit no-fault, third-party-action evictions under § 1437d(1)(6).⁸⁰ The Court pointed to the text of § 1437d(1)(6) and ruled that Congress's decision not to impose any qualifications in the statute and the use of the term "any" to modify "drug-related criminal activity" precludes any knowledge requirement.⁸¹ Thus, the Court concluded that any drug-related activity, "not just drug-related activity that the tenant knew, or should have known, about," is grounds for eviction.⁸² In addition, the Court compared § 1437d(1)(6) to the civil forfeiture statute and reasoned that the forfeiture statute, which Congress amended at the same time as the ADAA and provides for a knowledge requirement, shows that "Congress knew exactly how to provide an 'innocent owner' defense and did not provide one in the ADAA."⁸³

Additionally, the Court held that the Ninth Circuit was incorrect in concluding that the plain reading of the statute leads to absurd results.⁸⁴ The Supreme Court held that it is not "absurd" that local housing authorities sometimes evict a tenant who had no knowledge of drug-related activity because regardless of knowledge, a tenant who "cannot control drug crime, or other criminal activities by a household member which threaten health or safety of other residents, is a threat to other residents and the project."⁸⁵ The Court noted that the statute does not require the eviction of tenants violating the lease provision; rather, it entrusts that decision to local public housing authorities.⁸⁶

Furthermore, the Court held that no-fault, third-party-action evictions under § 1437d(1)(6) do not violate tenants' substantive due

⁷⁹ *Id.* at 135-36.

⁸⁰ *Id.* at 130-31. The U.S. Supreme Court noted that the Ninth Circuit's reference to legislative history was inappropriate when the text of the statute is unambiguous. *Id.* at 132-33.

⁸¹ *Rucker*, 535 U.S. at 130-31.

⁸² *Id.*

⁸³ *Id.* at 132 (stating that the civil forfeiture statute provides that "no property shall be forfeited under this paragraph . . . by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of the owner").

⁸⁴ *Id.* at 133-34.

⁸⁵ *Id.* at 134.

⁸⁶ *Rucker*, 535 U.S. at 134.

process rights.⁸⁷ The Court stated that there are no constitutional doubts about Congress's affording housing authorities discretionary eviction authority.⁸⁸ The Court expressly rejected the holding of the Ninth Circuit that no-fault evictions raise questions under the Due Process Clause of the Fourteenth Amendment because they permit "tenants to be deprived of their property interest without any relationship to individual wrongdoing."⁸⁹ The Supreme Court distinguished between government actions as sovereign and as landlord.⁹⁰ The Court held that the government is not attempting to criminally or civilly regulate members of the general public through § 1437d(h)(6), but rather, as landlord, is invoking a clause in public housing leases that tenants agreed to and that Congress expressly required.⁹¹

Finally, in upholding the constitutionality of no-fault, third-party-action evictions under § 1437d(h)(6), the Supreme Court made no distinction among various actors who engage in illegal activities leading to a tenant's eviction.⁹² Although two of the contested evictions involved the drug-related activities of household members and a third involved drug possession by guests, the Court did not distinguish between household and non-household members engaging in illegal activities that lead to eviction.⁹³ The Court held that § 1437d(h)(6) unambiguously requires lease terms that vest local public housing authorities with discretionary authority to evict tenants for the drug-related activities of others, regardless of who engaged in the illegal acts or whether the tenant knew, or should have known, about the activity.⁹⁴

⁸⁷ *Id.* at 135.

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Rucker*, 535 U.S. at 135.

⁹² *See id.* at 136.

⁹³ *Id.* The grandsons of two tenants, both of whom were residents of the unit, were caught in the apartment complex parking lot smoking marijuana. *Id.* at 128. A tenant's daughter, who resided in the complex and was listed on the lease as a resident, was found with cocaine and a crack pipe in her possession three blocks from the apartment. *Id.* A tenant's caregiver and the caregiver's two acquaintances were found with cocaine in the tenant's apartment. *Id.*

⁹⁴ *Id.* at 130, 136.

III. COMPETING ARGUMENTS CHALLENGING AND SUPPORTING NO-FAULT, THIRD-PARTY-ACTION EVICTIONS UNDER § 1437d(l)(6)

Before the United States Supreme Court's decision in 2002 in *Department of Housing & Urban Development v. Rucker*, there was considerable difference of opinion among courts and among commentators over the eviction of tenants uninformed, or unaware of, third-party conduct violating the lease provision of § 1437d(l)(6) of the Housing Act.⁹⁵ While opponents of the law argued that no-fault, third-party-action evictions under § 1437d(l)(6) violated tenants' substantive due process rights under the Fourteenth Amendment, others supported no-fault, third-party-action evictions under § 1437d(l)(6) on contract law and legislative intent grounds.⁹⁶

A. Substantive Due Process Challenges to § 1437d(l)(6)

The Due Process Clause of the Fourteenth Amendment provides that no state shall "deprive any person of life, liberty or property, without due process of law."⁹⁷ Courts have interpreted the Due Process Clause to have substantive and procedural components.⁹⁸ On the substantive side, due process restricts ways in which legislatures limit individual freedoms by protecting individuals against infringement on other constitutionally protected rights, arbitrary government actions, and the imposition of liability on individuals innocent of personal wrongdoing or omissions.⁹⁹

Before *Rucker*, several courts held that public housing evictions were subject to Fourteenth Amendment protections because housing agencies are state actors and evictions deprive tenants of the property right to occupy their apartments.¹⁰⁰ Hence, opponents of no-fault,

⁹⁵ See Mock, *supra* note 1, at 1524 (arguing that tenants should not be held to strict liability for third-party-action evictions); Smyers, *supra* note 42, at 610-13 (supporting measures such as the ADAA that provide managers with more discretion to solve the problems in public housing); *supra* notes 11-20 and accompanying text.

⁹⁶ See *infra* notes 97-183 and accompanying text.

⁹⁷ U.S. CONST. amend. XIV, § 1.

⁹⁸ NOWAK & ROTUNDA, *supra* note 14, § 13.1.

⁹⁹ See, e.g., *Vill. of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 495 (1982) (stating that a statute may infringe on a party's constitutionally protected behaviors such as those under the First Amendment); *Giaccio v. Pennsylvania*, 382 U.S. 399, 402-03, (1966) (stating that laws cannot be so vague that they leave tribunals free to make decisions without fixed standards); *Scales v. United States*, 367 U.S. 203, 224 (1961) (holding that guilt is personal).

¹⁰⁰ See, e.g., *McQueen v. Druker*, 438 F.2d 781, 784-85 (1st Cir. 1971) (considering the function of public housing authorities to be governmental because they help the state

third-party-action evictions under § 1437d(l)(6) challenged the law as violating tenants' Fourteenth Amendment substantive due process rights on several grounds.¹⁰¹ The Supreme Court in *Rucker*, however, rejected substantive due process challenges to no-fault, third-party-action evictions under § 1437d(l)(6) by holding that housing authorities are invoking a lease clause that tenants affirmatively agreed to and Congress expressly required.¹⁰² Despite the mootness of substantive due process claims on the issue of § 1437d(l)(6)'s constitutionality, substantive due process challenges to § 1437d(l)(6) for overbreadth, vagueness, and personal responsibility illustrate significant concerns with no-fault, third-party-action evictions.¹⁰³

1. Overbreadth of the Law

The overbreadth doctrine provides that a statute prohibiting constitutionally unprotected behaviors in certain contexts violates substantive due process rights under the Fourteenth Amendment if its broadness infringes on other constitutionally protected rights.¹⁰⁴ Despite the mootness of an overbreadth challenge on the issue of § 1437d(l)(6)'s constitutionality, the overbreadth argument illustrates the concern that no-fault, third-party-action evictions under § 1437d(l)(6) infringe on tenants' free association rights under the First Amendment.¹⁰⁵

The United States Supreme Court, in 1982 in *Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, articulated the standard to be used in evaluating an overbreadth challenge to a law.¹⁰⁶ The Court stated that an overbreadth challenge requires a showing that a statute infringes on constitutionally protected conduct.¹⁰⁷ Moreover, the

realize its specific housing objectives and therefore their actions are subject to the Fourteenth Amendment as state actors); *Owens v. Hous. Auth. of the City of Stamford*, 394 F. Supp. 1267, 1273 (D. Conn. 1975) (reasoning that the activities of housing authorities are governed by due process constraints because of the amount of state regulation involved in their creation, operation, and management).

¹⁰¹ See *infra* note 104–143 and accompanying text.

¹⁰² See *supra* notes 87–90 and accompanying text.

¹⁰³ See *infra* notes 104–143 and accompanying text.

¹⁰⁴ LAURENCE H. TRIBE, *AMERICAN CONSTITUTIONAL LAW* § 12-24, at 710–11 (1978).

¹⁰⁵ See *supra* notes 87–91 and accompanying text; *infra* notes 106–114 and accompanying text.

¹⁰⁶ 455 U.S. at 489. The case involved a village ordinance prohibiting sale of any items designed or marketed for use with illegal cannabis or drugs. *Id.* at 492. A store owner who sold merchandise for marijuana use sued alleging that the ordinance was unconstitutionally vague and overbroad. *Id.* at 491–93.

¹⁰⁷ *Id.* at 489.

United States Supreme Court in 1973 in *Broadrick v. Oklahoma* applied the overbreadth doctrine to First Amendment rights by stating that a law may be unconstitutionally overbroad if its application significantly impairs constitutionally protected rights under the First Amendment.¹⁰⁸ In cases of overbreadth, the law is not invalidated but restricted in its application against constitutionally protected rights.¹⁰⁹

In analyzing no-fault, third-party-action evictions under § 1437d(h)(6) from the perspective of tenants and third parties engaging in illegal activities, one opponent of the law notes that these criminal and drug-related activities are not constitutionally protected behaviors.¹¹⁰ Therefore, the statute's prohibition of drug-related and other illegal activities by leasehold tenants or third parties does not implicate substantive due process issues of overbreadth because these illegal activities are not constitutionally protected rights.¹¹¹

Alternately, if the focus of the overbreadth analysis is shifted from the criminal behaviors of tenants and third parties to the rights of tenants uninvolved in, or unaware of, the illegal activities of others, arguably, the right of these tenants to freely associate with others is impaired by no-fault, third-party-action evictions.¹¹² The First Amendment provides for freedom of association, which protects the right to enter into and maintain personal relationships, by stating that no law shall be made that abridges "the right of the people peaceably to assemble."¹¹³ Thus, based on the *Broadrick* Court's application of the overbreadth doctrine to the First Amendment, no-fault, third-party-action evictions under § 1437d(h)(6) implicate substantive due

¹⁰⁸ See 413 U.S. 601, 611-12 (1973) (stating that litigants are permitted to challenge a statute for overbreadth based on a judicial prediction or assumption that the statute's very existence impairs constitutionally protected speech or expression rights). *Broadrick* involved Oklahoma state employees challenging a state statute regulating the political activities of state employees on grounds of overbreadth and vagueness. *Id.* at 602.

¹⁰⁹ *TRIBE*, *supra* note 104, § 12-24, at 711 (stating that only if the protected activity is a significant part of the law's target, and no satisfactory method exists by which to sever the law's constitutional application from its unconstitutional one, will the law be found overbroad).

¹¹⁰ Cazenave, *supra* note 7, at 142.

¹¹¹ See *id.*

¹¹² *Id.* (stating that it is unclear when the focus should be on the drug-related criminal activities of one under the control of the tenant or on the conduct of a tenant).

¹¹³ U.S. CONST. amend. I; see *NAACP v. Alabama*, 357 U.S. 449, 460-61 (1958) (stating that freedom to engage in association for the advancement of ideas and beliefs is an inseparable aspect of due process under the Fourteenth Amendment); *NOWAK & ROTUNDA*, *supra* note 14, § 16.41, at 1063 (stating that freedom to associate includes the right to enter into highly personal associations with others such as the freedom to choose one's spouse and to maintain a relationship with members of one's family).

process issues because a tenant's right to associate with others may be substantially impaired by fears that a guest's actions could lead to eviction.¹¹⁴

2. Vagueness of § 1437d(h)(6)

In 1966, in *Giaccio v. Pennsylvania*, the United States Supreme Court held that a law violates substantive due process rights if it is so vague and standardless that the public is uncertain as to the conduct it prohibits or the statute leaves tribunals free to decide, without any fixed standards, what is prohibited in each case.¹¹⁵ Despite the mootness of a substantive due process vagueness challenge to no-fault, third-party-action evictions, a vagueness challenge illustrates the concern that the absence of specific enforcement standards permits arbitrary and discriminatory third-party-action evictions under § 1437d(h)(6).¹¹⁶

In 1972, the United States Supreme Court in *Grayned v. City of Rockford* articulated the standard by which a court should evaluate a vagueness challenge to a law.¹¹⁷ The Court noted that laws must "give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly."¹¹⁸ In addition, the Court emphasized that laws must provide explicit standards of enforcement because "a vague law impermissibly delegates matters to policemen, judges and juries for resolution on an ad hoc and subjective basis," and such vagueness may lead to arbitrary and discriminatory application.¹¹⁹

Arguably, the plain text of § 1437d(h)(6) does not provide HUD with explicit standards for enforcing evictions under the statute.¹²⁰ Furthermore, HUD is authorized to set forth detailed regulations to

¹¹⁴ See 413 U.S. at 611-12; Cazenave, *supra* note 7, at 142.

¹¹⁵ 382 U.S. at 402-03. *Giaccio* involved the imposition of court costs on an individual who was acquitted in a criminal proceeding based on a Pennsylvania statute imposing costs of criminal prosecution on defendants even if acquitted. *Id.* at 400.

¹¹⁶ See *supra* notes 87-91 and accompanying text; *infra* notes 117-126 and accompanying text.

¹¹⁷ 408 U.S. 104, 108-09 (1972). *Grayned* involved the conviction of an individual for violating a city anti-picketing ordinance prohibiting a person from willfully making noise or diversion that disturbs the peace near a school. *Id.* at 107. The picketer was one of several hundred protesting on behalf of "negro students at the school" when school officials took no action in response to their grievances. *Id.* at 105.

¹¹⁸ *Id.* at 108 (reasoning that individuals are free "to steer between lawful and unlawful conduct" and vague laws may trap the innocent by not providing fair warning).

¹¹⁹ *Id.* at 108-09.

¹²⁰ See 42 U.S.C. § 1437d(h)(6) (1994); Cazenave, *supra* note 7, at 144.

be followed by local authorities in enforcing the law, but HUD regulations provide almost no guidance to local housing authorities.¹²¹ Section 1437d(h)(6) simply leaves the decisions to evict tenants for violations of the § 1437d(h)(6) lease provision to the judgment of public housing agencies after consideration of "all the circumstances relevant to a particular case."¹²²

This absence of enforcement standards for no-fault, third-party-action evictions under § 1437d(h)(6) conflicts with the principles articulated in *Grayned* because arbitrary actions that violate substantive due process are facilitated.¹²³ To illustrate, one opponent of the law states that neither Congress nor HUD provides local housing authorities with any standards concerning the level of proof of a guest's drug-related activity that is needed to evict a tenant.¹²⁴ Thus, a tenant at odds with management may be evicted on minimal evidence because of local management's hopes of expelling an undesirable tenant.¹²⁵ The absence of explicit standards for enforcing § 1437d(h)(6)'s third-party-action evictions facilitates arbitrary and discriminatory evictions because another tenant, not at odds with management, may not face eviction in similar circumstances.¹²⁶

3. Personal Responsibility Challenge to No-Fault, Third-Party-Action Evictions Under § 1437d(h)(6)

In 1961, in *Scales v. United States*, the United States Supreme Court stated, "in our jurisprudence guilt is personal" and noted that the concept of substantive due process implies that liability only be imposed on a person for that individual's own acts or omissions.¹²⁷ Based on this doctrine, opponents of no-fault, third-party-action evictions challenged the evictions as violations of substantive due process rights because the law imposes liability on tenants based solely on

¹²¹ See Public Housing Lease and Grievance Procedure, 24 C.F.R. § 966.4(h)(5)(vii)(B) (1999); Cazenave, *supra* note 7, at 144.

¹²² 24 C.F.R. § 966.4(h)(5)(vii)(B).

¹²³ See 408 U.S. at 108-09; Cazenave, *supra* note 7, at 144.

¹²⁴ Cazenave, *supra* note 7, at 144 (questioning whether the wrongdoer must be arrested for drug-related crimes or convicted before eviction proceedings can be initiated against the public housing tenant).

¹²⁵ See *id.*

¹²⁶ *Id.*

¹²⁷ 367 U.S. at 224. *Scales* involved a statute that made it a felony to acquire or hold knowing membership in any organization advocating the overthrow of the United States government. *Id.* at 205. An individual was indicted for being a member of the Communist Party. *Id.* at 205-06.

their associations with third parties behaving illegally.¹²⁸ Despite the mootness of substantive due process challenges to no-fault, third-party-action evictions under § 1437d(h)(6), the personal responsibility challenge illustrates the unfairness of holding tenants to strict liability and the inherent problem with the statute's standard of liability.¹²⁹

In 1988, in *Long Grove Country Club Estates v. Village of Long Grove*, the United States District Court for the Northern District of Illinois stated that a valid substantive due process claim against public housing authorities under the Fourteenth Amendment requires that tenants show that they were: (1) deprived of property (2) for an irrational or invidious purpose.¹³⁰ Concerning property deprivation, the United States Supreme Court in 1982 in *Greene v. Lindsey* recognized that public housing tenants who did not receive notice of eviction proceedings until default judgments had been entered against them had been deprived of a significant interest in property.¹³¹ Therefore, because public housing tenants have an interest in continued residence in their homes, § 1437d(h)(6) no-fault, third-party-action evictions that take away this housing interest are governed by substantive due process protections.¹³²

Arguably, the absence of a personal responsibility requirement for evictions under § 1437d(h)(6) fulfills the irrational or invidious purpose element of a substantive due process claim because there is no causal relationship between the evicted tenant and the acts of a third party that led to eviction.¹³³ This was the reasoning applied by the New Jersey Superior Court in 1999 in *Housing Authority of Jersey City v. Thomas*, where the court refused to uphold the eviction of a tenant

¹²⁸ See, e.g., *Tyson v. New York City Hous. Auth.*, 369 F. Supp. 513, 516 (S.D.N.Y. 1974) (pre-ADAA case challenging a tenant's eviction based on her son's arrest for engaging in narcotics and gambling activities on the housing premises, despite the fact that he had not lived with her for three years); see also Mock, *supra* note 1, at 1523 (stating that it is fundamentally unfair to punish an innocent person).

¹²⁹ See *supra* notes 87–91 and accompanying text; *infra* notes 130–143 and accompanying text.

¹³⁰ 693 F. Supp. 640, 657 (N.D. Ill. 1988). The case involved a country club owner seeking to invalidate a village ordinance alleging that the ordinance's limitations on the use and development of the land deprived him of his land. *Id.* at 652–53.

¹³¹ 456 U.S. 444, 445–46, 456 (1982). A Kentucky statute permits service of process by posting a summons in a conspicuous place on the premises of a defendant if the defendant or a member of defendant's family over sixteen years of age cannot be found on the premises. *Id.* Individuals challenged the statute, after service was made on them by posting a summons on the door to their apartments, alleging that the notice procedures violated the Due Process Clause of the Fourteenth Amendment. *Id.*

¹³² See Mock, *supra* note 1, at 1523.

¹³³ See *id.* at 1523–24.

when the tenant's son, who resided in the household, was arrested for possession of cocaine.¹³⁴ The court stated that it simply would be unfair to remove the tenant, who was unaware of the drug-related activity, from her residence for the criminal activity of another individual.¹³⁵

Although *Thomas* involved the criminal activity of a household member, § 1437d(h)(6) also authorizes a tenant to be evicted for the actions of non-household members, guests and other persons under the tenant's control.¹³⁶ Evicting tenants for the activities of non-household members seemingly strengthens the argument that no-fault, third-party-action evictions under § 1437d(h)(6) violate the substantive due process principle of personal responsibility because there is even less of a causal relationship when tenants are evicted for the actions of individuals with whom they do not live.¹³⁷ The United States District Court for the Southern District of New York in 1974, in *Tyson v. New York City Housing Authority*, refused to uphold a tenant's eviction brought because the tenant's adult son, who had not lived with her for three years, was arrested for engaging in drug-related activities on the premises.¹³⁸ The court held there was no causal nexus between liability and the tenant's conduct and that imposing culpability on an individual on the basis of association is antithetical to the concepts of personal guilt and individual responsibility.¹³⁹

Furthermore, an opponent of no-fault, third-party-action evictions implies the existence of an inherent problem with § 1437d(h)(6)'s standard of liability.¹⁴⁰ To illustrate, in 1992, the United States Court of Appeals for the Fifth Circuit in *Chavez v. Housing Authority* upheld a tenant's eviction for her son's disruptive activity.¹⁴¹ Housing authorities evicted the tenant even though the tenant argued that her son did not live with her, was not a guest of hers when

¹³⁴ 723 A.2d 119, 119 (N.J. Super. Ct. App. Div. 1999).

¹³⁵ *Id.* at 120.

¹³⁶ 42 U.S.C. § 1437d(h)(6) (1994); 723 A.2d at 119-20.

¹³⁷ *Tyson*, 369 F. Supp. at 518-19.

¹³⁸ *Id.* at 516, 518.

¹³⁹ *Id.* at 519 (stating that the mere existence of the parent-child relationship is insufficient for a causal nexus of wrongdoing where the parent is evicted for acts of the child).

¹⁴⁰ See Mock, *supra* note 1, at 1523 (stating that courts upholding no-fault, third-party-action evictions did not require any standard of liability for the tenant).

¹⁴¹ 973 F.2d 1245, 1247, 1249 (5th Cir. 1992) (holding that the tenant's argument that she is losing her apartment because of her familial relationship with her son lacks merit because the tenant is not being punished for the actions of her son, but rather, for failing to ensure that her guests do not disturb or endanger others in the complex).

the incident occurred and the tenant was unaware of his presence at the complex.¹⁴² One opponent of no-fault, third-party-action evictions under § 1437d(l)(6) criticized such a result because it is simply unfair to evict tenants who had no practical means whatsoever to prevent the criminal activities that result in their evictions.¹⁴³

B. Support for No-Fault Evictions Under § 1437d(l)(6)

In *Rucker*, the United States Supreme Court upheld no-fault, third-party-action evictions under § 1437d(l)(6) because the lease provision was required by Congress and affirmatively agreed to by tenants.¹⁴⁴ Prior to the *Rucker* decision, several state and lower federal courts upheld no-fault, third-party-action evictions under similar contract law, refusing to look beyond the four corners of the lease.¹⁴⁵ In addition, supporters of § 1437d(l)(6) reason that no-fault, third-party evictions are necessary to achieve the law's primary objective of improving the general welfare of public housing communities.¹⁴⁶

1. Contract Law

Before the *Rucker* decision, several state and lower federal courts refused to look beyond the four corners of the lease clause and concluded that no-fault, third-party-actions evictions under § 1437d(l)(6) did not violate tenants' substantive due process rights.¹⁴⁷ Although evictions for the actions of others appear as if the courts are imposing liability on innocent tenants, this is not the rationale courts apply to uphold no-fault, third-party-action evictions.¹⁴⁸ Contractual responsibility for acts of a unit occupant is a conventional tool of landlord-tenant law that facilitates housing management.¹⁴⁹ Thus, courts only determine whether a tenant breached an obligation in the lease for which the prescribed sanction of eviction is imposed and refrain from

¹⁴² *Id.* at 1248.

¹⁴³ Mock, *supra* note 1, at 1523-24 (stating that the tenant is serving as "involuntary surrogate" for the guilty party).

¹⁴⁴ See *supra* notes 76-91 and accompanying text.

¹⁴⁵ See *infra* notes 147-156 and accompanying text.

¹⁴⁶ See *infra* notes 157-183 and accompanying text.

¹⁴⁷ Johnson, *supra* note 9, at 55.

¹⁴⁸ *Memphis Hous. Auth. v. Thompson*, No. 02A01-9812-CV-00356, 1999 Tenn. App. LEXIS 506, at *12 (Tenn. Ct. App. July 29, 1999) (relying on contract law to uphold a tenant's eviction and stating that the language of the provision is clear and unambiguous); Johnson, *supra* note 9, at 70.

¹⁴⁹ Public Housing Lease and Grievance Procedures, 56 Fed. Reg. at 51,560 § 3.3.1 (Oct. 11, 1991) (codified at 24 C.F.R. pt. 966).

inquiring about the wisdom of the contractual terms.¹⁵⁰ Because a tenant signs a lease that has incorporated the ADAA's mandatory provision, a tenant may not be excused from contractual liability merely by arguing that the tenant did not know, could not foresee, or was unable to control the criminal behaviors of others.¹⁵¹

Furthermore, courts upholding no-fault, third-party-action evictions under contract law address substantive due process issues by concluding that there is some personal fault by the tenant.¹⁵² These courts concede that tenants being evicted are innocent of the criminal activity that is the cause of the lease termination.¹⁵³ Nevertheless, as the Tennessee Court of Appeals held in 1999 in *Memphis Housing Authority v. Thompson*, the lease gives a tenant an affirmative obligation to prevent illegal activity and the tenant simply is being sanctioned for failing to live up to this contractual obligation.¹⁵⁴ Similarly, in 1966, in *City of South San Francisco Housing Authority v. Guillory*, the California Superior Court dismissed the argument that substantive due process rights require tenants to have knowledge of another's conduct before eviction.¹⁵⁵ The court reasoned that the eviction did not violate Fourteenth Amendment rights because the tenants were evicted not for the conduct of another, but for failing to meet their own obligation of preventing illegal activities by others as agreed to in the public housing lease.¹⁵⁶

2. Accomplishing Legislative Intent

In addition to contract law, supporters of no-fault, third-party-action evictions under § 1437d(h)(6) argue that the termination of tenancy, even if a tenant was uninvolved in or unaware of illegal activi-

¹⁵⁰ Johnson, *supra* note 9, at 70-71.

¹⁵¹ See *id.* at 71.

¹⁵² *City of S. San Francisco Hous. Auth. v. Guillory*, 49 Cal. Rptr. 2d 367, 372 (App. Dep't Super. Ct. 1995).

¹⁵³ See *id.*; Johnson, *supra* note 9, at 68 (providing a list of cases that recognized the innocence of the tenants for the third-party activity for which they were evicted).

¹⁵⁴ 1999 Tenn. App. LEXIS 506, at *12 (stating that the tenant was properly evicted for failing to cause one of her guests to refrain from engaging in drug-related criminal activity in violation of the lease provision).

¹⁵⁵ 49 Cal. Rptr. 2d at 372. The police department found the tenant's son in possession of drugs during a search of his bedroom and the public housing agency initiated eviction proceedings against the tenant and household members. *Id.* at 369. In addition, the court distinguished the case before it with *Tyson*, 360 F. Supp. at 518, by stating that *Tyson* involved the conduct of those not living in the tenant's household while the son in this case was a member of the household. *Guillory*, 49 Cal. Rptr. 2d at 372.

¹⁵⁶ *Guillory*, 49 Cal. Rptr. 2d at 372.

ties, is supported by the ADAA's legislative intent of improving the general welfare of public housing communities.¹⁵⁷ HUD supports no-fault, third-party-action evictions under § 1437d(h)(6) because tenants not seeking to control illegal activities in public housing are threats to other residents in their respective communities.¹⁵⁸ Similarly, one supporter of no-fault, third-party-action evictions under § 1437d(h)(6) argues that the expansion of tenant rights after the mid-1960s hobbled the ability of housing authorities to combat the drug crisis and, therefore, less protection of tenants' due process rights is necessary to improve public housing conditions effectively.¹⁵⁹

HUD concludes that if tenants can be evicted for any criminal activity by household members or guests, tenants will not engage in illegal conduct and will prevent such behavior by others.¹⁶⁰ Thus, HUD reasons that prohibiting no-fault, third-party-action evictions under § 1437d(h)(6) undercuts tenants' motivation to prevent illegal activities by others, thereby harming public housing communities.¹⁶¹ In *Rucker*, the Supreme Court accepted HUD's legislative intent argument by noting that public housing tenants who do not seek to control crime by others are threats to other residents in the project.¹⁶²

One supporter of no-fault, third-party-action evictions further justifies the law on grounds that managerial discretion is necessary for effective public housing reform.¹⁶³ Prior to the mid-1960s, the federal government vested substantial power in local housing agencies to manage complexes freely, helping to maintain the quality of public housing.¹⁶⁴ Housing authorities possessed wide discretion over admissions, evictions and rules of resident conduct.¹⁶⁵ Building managers actively discriminated in public housing admissions by judging desirability based on racial and economic preferences.¹⁶⁶ Tenants were evicted for no reason, or based on subjective conclusions as having become "undesirable."¹⁶⁷ Management also imposed rules relating to

¹⁵⁷ See *infra* notes 158-183 and accompanying text.

¹⁵⁸ Public Housing Lease and Grievance Procedures, 56 Fed. Reg. at 51,560 § 3.3.1 (Oct. 11, 1991) (codified at 24 C.F.R. pt. 966).

¹⁵⁹ See *infra* notes 163-183 and accompanying text.

¹⁶⁰ Public Housing Lease and Grievance Procedures, 56 Fed. Reg. at 51,560.

¹⁶¹ *Id.*

¹⁶² See 535 U.S. at 134.

¹⁶³ See Smyers, *supra* note 42, at 613.

¹⁶⁴ *Id.* at 586.

¹⁶⁵ *Id.* at 578, 581, 583.

¹⁶⁶ *Id.* at 579.

¹⁶⁷ *Id.* at 581-82 (stating that public housing tenants in the past had almost no protection against eviction).

tenant conduct and sanctioned tenants failing to comply with the regulations.¹⁶⁸ This discretionary management "unquestionably helped maintain the order and quality of public housing" by allowing managers to protect the projects they supervised from dangerous and disruptive tenants.¹⁶⁹ As a result, public housing complexes in the past were well maintained and sources of pride in many communities.¹⁷⁰

Arguably, this discretionary system of public housing management did not survive the "due process revolution," when courts, beginning in the mid-1960s, determined that tenants were entitled to greater protection against the actions of housing authorities by "virtue of their constitutionally guaranteed due process rights."¹⁷¹ During this time, courts invalidated desirability policies and mandated standardized admissions procedures that opened public housing to many high-risk applicants who would not have been admitted in the past.¹⁷² Courts also upheld public housing evictions only if there was "good cause."¹⁷³ This "good cause" requirement for evictions invalidated many of the traditional justifications for evicting public housing tenants, such as poor housekeeping, and thus, troublesome tenants who would have been evicted or threatened with eviction in the past became nearly judgment proof.¹⁷⁴ Moreover, courts invalidated sanctions for violations of tenant rules and regulations without notice and hearings, and housing agencies abandoned the use of tenant regulations to avoid the costs of these court-mandated procedures.¹⁷⁵

The due process revolution made public housing authorities ill prepared to handle the dramatic rise in the availability and use of drugs, especially crack cocaine, in public housing during the late 1970s and 1980s.¹⁷⁶ The policy changes in admissions, evictions and enforcement of tenant rules hobbled the ability of public housing agencies to effectively and efficiently deal with problematic tenants

¹⁶⁸ Smyers, *supra* note 42, at 583. Rules of tenant conduct were often enforced with an "iron hand" by managers and governed many aspects of daily public housing life such as housekeeping standards and unit inspections. *Id.*

¹⁶⁹ *Id.* at 586.

¹⁷⁰ *Id.*

¹⁷¹ *Id.* at 587.

¹⁷² *Id.* at 589, 593.

¹⁷³ See Smyers, *supra* note 42, at 595.

¹⁷⁴ *Id.* at 596; see *Cordrey v. Hous. Auth. of Holyoke*, No. 80-C-881, 1980 U.S. Dist. LEXIS 17835, at *10-12 (stating that a public housing tenant's failure to keep the apartment clean did not constitute good cause for eviction).

¹⁷⁵ See Smyers, *supra* note 42, at 597.

¹⁷⁶ *Id.* at 603; see *supra* notes 41-48 and accompanying text.

engaging in drug-related activities.¹⁷⁷ Thus, many public housing authorities lost control of their projects to drug dealers, and the conditions in the complexes deteriorated.¹⁷⁸

Because of the inability of housing authorities to combat drug-related activities, a consensus developed in the late 1980s that the effects of the due process revolution were complicating efforts to make public housing communities safe and decent places to live.¹⁷⁹ There was a sense that the legal system was overvaluing the rights of individual tenants over the needs of neighbors and communities.¹⁸⁰ As a result, initiatives were undertaken to attempt to restore some of the helpful management practices of the earlier years, a "due process counter-revolution."¹⁸¹ The ADAA was one such measure, enacted to restore managerial discretion and reform public housing by streamlining the evictions of problematic tenants.¹⁸² Thus, this commentator supports no-fault, third-party-action evictions under § 1437d(l)(6), because some individual rights must be limited by the competing demands of the public housing community by giving housing authorities the discretion to manage public housing complexes freely.¹⁸³

IV. A PROPOSED AMENDMENT TO § 1437d(l)(6)

In 2002, the United States Supreme Court in *Department of Housing & Urban Development v. Rucker* upheld the constitutionality of no-fault, third-party-action evictions under § 1437d(l)(6) of the Housing Act.¹⁸⁴ The Court's holding, however, did not address historic and substantive due process concerns with no-fault, third-party-action evictions under § 1437d(l)(6).¹⁸⁵ Congress should amend the law to reach an effective solution that balances these concerns while upholding the law's intended reform of public housing. Accordingly, Congress should require a tenant's actual or constructive notice, based on an objective standard, of a non-household member's prohibited activities before eviction. A notice requirement for third-party action evictions effectively addresses the substantive due process and historical con-

¹⁷⁷ See Smyers, *supra* note 42, at 603.

¹⁷⁸ *Id.* at 606.

¹⁷⁹ *Id.* at 608.

¹⁸⁰ *Id.*

¹⁸¹ *Id.* at 609.

¹⁸² Smyers, *supra* note 42, at 610.

¹⁸³ *Id.* at 615.

¹⁸⁴ See *supra* notes 76–94 and accompanying text.

¹⁸⁵ See *supra* notes 104–143 and accompanying text.

cerns with § 1437d(l)(6).¹⁸⁶ Moreover, distinguishing between household and non-household members and evaluating a tenant's actual or constructive notice, based on an objective test, effectively balances the notice requirement with § 1437d(l)(6)'s intended public housing reform.¹⁸⁷

A. Substantive Due Process Concerns and History Compel a Notice Requirement for Third-Party-Action Evictions Under § 1437d(l)(6)

1. Substantive Due Process Concerns Compel a Notice Requirement for Third-Party-Action Evictions

The substantive due process challenges to no-fault, third-party-action evictions under § 1437d(l)(6) illustrate significant concerns with the law that are not addressed by the mere fact of its constitutionality.¹⁸⁸ Amending § 1437d(l)(6) to require a tenant's notice of another's illegal conduct before eviction effectively addresses concerns related to no-fault, third-party-action evictions raised by the substantive due process challenges to the statute for overbreadth, vagueness and personal responsibility.¹⁸⁹

A notice requirement effectively would address concerns that tenants' free association rights are impaired by no-fault, third-party-action evictions under § 1437d(l)(6).¹⁹⁰ In 1973, in *Broadrick v. Oklahoma*, the United States Supreme Court held that a law would be found overbroad in violation of substantive due process rights if its application significantly impairs other constitutionally protected rights.¹⁹¹ Arguably, the overbreadth challenge to § 1437d(l)(6) shows that tenants' free association rights are impaired by no-fault, third-party-action evictions because public housing tenants may be reluctant to associate with others or entertain guests because of fears that a guest's actions may lead to eviction.¹⁹² Despite the constitutionality of § 1437d(l)(6), this infringement on association rights should be addressed because public housing residents rely on outside personal networks for support and these valuable relationships should be left

¹⁸⁶ See *infra* notes 188–214 and accompanying text.

¹⁸⁷ See *infra* notes 215–239 and accompanying text.

¹⁸⁸ See *supra* notes 97–143 and accompanying text.

¹⁸⁹ See *infra* notes 190–204 and accompanying text.

¹⁹⁰ See *infra* notes 191–194 and accompanying text.

¹⁹¹ See *supra* note 108 and accompanying text.

¹⁹² See *supra* notes 104–114 and accompanying text.

intact.¹⁹³ Therefore, requiring tenants to have notice of a third party's illegal activities before initiating eviction proceedings mitigates tenants' fears of associating with others because tenants will only avoid associating with individuals whom the tenants know engage in illegal activities.¹⁹⁴

In addition, amending § 1437d(h)(6) to require notice of a third party's illegal activities before eviction also addresses concerns regarding arbitrary and discriminatory evictions under § 1437d(h)(6).¹⁹⁵ One opponent of no-fault, third-party-action evictions under § 1437d(h)(6) notes in a vagueness challenge that the law lacks specific enforcement standards because decisions to evict under the § 1437d(h)(6) are left to the judgment of local housing authorities after consideration of all the circumstances of a case.¹⁹⁶ This discretion permits potentially arbitrary and discriminatory evictions because between two tenants unaware of their guests' illegal activities, only one may be evicted based on factors such as that tenant being at odds with management.¹⁹⁷ Despite the constitutionality of no-fault, third-party-action evictions under § 1437d(h)(6), arbitrary and discriminatory practices should not be tolerated because public housing residents face grave consequences, such as homelessness, in the event of eviction.¹⁹⁸ Thus, a regulation requiring notice of a third party's illegal activities reduces arbitrary and discriminatory evictions by providing housing authorities with a specific standard for enforcing third-party-action evictions under § 1437d(h)(6).

Furthermore, requiring tenants to have notice of a third party's illegal activities before eviction addresses problems with § 1437d(h)(6)'s standard of liability.¹⁹⁹ Opponents of the law challenged no-fault, third-party-action evictions under § 1437d(h)(6) as violating the substantive due process principle of personal responsibility because of the absence of a causal relationship between the evicted tenant and third-party-action that led to eviction.²⁰⁰ In *Rucker*, however, the Supreme Court held that a causal nexus does exist between a tenant's conduct and liability because tenants are at fault for failing to

¹⁹³ See *supra* notes 37–39 and accompanying text.

¹⁹⁴ See *supra* note 114 and accompanying text.

¹⁹⁵ See *supra* notes 115–126 and accompanying text.

¹⁹⁶ See *supra* notes 120–126 and accompanying text.

¹⁹⁷ See *supra* notes 124–126 and accompanying text.

¹⁹⁸ See *supra* notes 37–39 and accompanying text.

¹⁹⁹ See *infra* notes 200–204 and accompanying text.

²⁰⁰ See *supra* notes 127–143 and accompanying text.

prevent others from engaging in prohibited activities in violation of a contractual obligation.²⁰¹ Arguably, however, there exists an inherent problem with § 1437d(1)(6) because no-fault, third-party-action evictions hold tenants to an impractical standard of liability to which few tenants can comply.²⁰² For example, in 1992, the United States Court of Appeals for the Fifth Circuit in *Chavez v. Housing Authority* upheld the eviction of a tenant for her son's actions even though the tenant was unaware of her son's presence at the complex and her son was neither a household member nor a guest of the tenant at the time of the incident.²⁰³ Public housing residents, therefore, are cast out onto the streets despite having no practical means whatsoever to prevent the illegal activities of others.²⁰⁴ Requiring tenants to have notice of another person's wrongful activities addresses this concern by providing a practical standard of liability so tenants are evicted only for activities they knew about and could have prevented.

2. History Compels a Notice Requirement for Third-Party-Action Evictions

A historical review of public housing conditions before and after the expansion of tenant rights in the mid-1960s supports measures such as the ADAA to reform public housing by streamlining the evictions of problematic residents.²⁰⁵ This same review of history, however, also supports amending § 1437d(1)(6) to require tenants to have notice of a third party's illegal activities before eviction to prevent the discriminatory and arbitrary practices by housing authorities that were pervasive in the past.²⁰⁶

One supporter of § 1437d(1)(6) argues that the contrast between the state of public housing before the mid-1960s and its current deteriorated and dangerous conditions after the due process revolution shows that the due process revolution's creation of centralized systems of admissions, evictions, and tenant rules left housing authorities unable to combat the drug crisis by evicting the most problematic tenants.²⁰⁷ In response to this problem, measures such as the ADAA were

²⁰¹ See *supra* notes 84-91 and accompanying text.

²⁰² See *supra* notes 140-143 and accompanying text.

²⁰³ See *supra* notes 141-142 and accompanying text.

²⁰⁴ See *supra* notes 141-143 and accompanying text.

²⁰⁵ See *supra* notes 164-178 and accompanying text.

²⁰⁶ See *infra* notes 207-214 and accompanying text.

²⁰⁷ See *supra* notes 163-183 and accompanying text.

implemented, as part of the due process counterrevolution, to provide managerial discretion for effective public housing reform.²⁰⁸

Although the due process revolution hobbled the ability of housing authorities to respond quickly and effectively to public housing's problems, the revolution minimized many of the discriminatory and arbitrary practices of the past.²⁰⁹ Prior to the due process revolution, management possessed discretionary power over all facets of public housing life and often evicted tenants for discriminatory and wholly subjective reasons.²¹⁰ The due process revolution sought to address these concerns because eviction poses serious consequences for public housing tenants and their families who are often forced into homelessness or temporary shelter housing.²¹¹

Currently, the ADAA's lack of enforcement standards provides housing officials with discretionary authority over evictions comparable to the power held by managers prior to the due process revolution.²¹² Relying solely on the judgment of local housing authorities to evict tenants under § 1437d(l)(6) for the actions of third parties is a step backward because discriminatory and arbitrary evictions that the due process revolution sought to eliminate may be once again facilitated.²¹³ Requiring tenants to have notice of a third party's illegal activities before eviction preserves the benefits of the due process revolution by providing housing authorities with a standard for eviction that minimizes arbitrary and discriminatory practices.²¹⁴

B. *A Necessary Distinction Between Household and Non-Household Members Engaging in § 1437d(l)(6)'s Prohibited Activities*

In *Rucker*, tenants against whom housing authorities instituted eviction proceedings for the illegal activities of third parties argued that § 1437d(l)(6) does not permit the eviction of tenants uninvolved in, or unaware of, the illegal conduct of others.²¹⁵ Two cases involved the eviction of tenants for the drug-related activities of household members while a third involved drug possession by several guests.²¹⁶

²⁰⁸ See *supra* notes 179–183 and accompanying text.

²⁰⁹ See *supra* notes 165–175 and accompanying text.

²¹⁰ See *supra* notes 164–168 and accompanying text.

²¹¹ See *supra* note 171 and accompanying text.

²¹² See *supra* notes 121–122, 164–170 and accompanying text.

²¹³ See *supra* notes 164–175 and accompanying text.

²¹⁴ See *supra* notes 171–175 and accompanying text.

²¹⁵ See *supra* notes 76–78 and accompanying text.

²¹⁶ See *supra* note 93 and accompanying text.

In holding that no-fault, third-party-action evictions are constitutional, the Supreme Court made no distinction between the criminal activities of household and non-household members that could lead to eviction.²¹⁷

This Note proposes that Congress amend § 1437d(1)(6) to require a tenant to have notice only of a non-household member's wrongful activities before eviction. This distinction is necessary because the substantive due process concerns regarding overbreadth and personal responsibility that compel a notice requirement for non-household members do not support requiring notice for the actions of household members.²¹⁸ In addition, holding household members to strict liability for the lease obligation achieves the effective public housing reform intended by § 1437d(1)(6).²¹⁹

The overbreadth challenge to § 1437d(1)(6) supports a notice requirement for the activities of non-household members but not for the conduct of household members.²²⁰ The overbreadth challenge to § 1437d(1)(6) shows that tenants' free association rights are impaired by no-fault, third-party-action evictions because tenants may not associate with others for fear that a guest's actions may lead to eviction.²²¹ This infringement of free association rights is a concern because public housing tenants rely on outside personal and support networks and these valuable relationships should be left intact.²²² This concern for tenants' free association rights, however, clearly does not support a requirement that tenants have notice of another household member's illegal activities because tenants obviously already associate with other members of the household.

Similarly, the personal responsibility challenge to no-fault, third-party-action evictions under § 1437d(1)(6) supports a notice requirement for the activities of non-household members but not for household members.²²³ The substantive due process challenge for personal responsibility illustrates the inherent problem with § 1437d(1)(6)'s standard of liability because tenants may be evicted despite having no means whatsoever to prevent the activity that lead to eviction.²²⁴ This

²¹⁷ See *supra* notes 92-94 and accompanying text.

²¹⁸ See *infra* notes 220-226 and accompanying text.

²¹⁹ See *infra* notes 227-229 and accompanying text.

²²⁰ See *infra* notes 221-222 and accompanying text.

²²¹ See *supra* notes 104-114 and accompanying text.

²²² See *supra* note 39 and accompanying text.

²²³ See *infra* notes 224-226 and accompanying text.

²²⁴ See *supra* notes 127-143 and accompanying text.

concern is effectively addressed by a notice requirement for the activities of third parties by providing a practical standard of liability to which tenants can comply.²²⁵ This reasoning, however, is less applicable in the context of household members because tenants clearly have more of an opportunity to prevent household members from engaging in illegal activities. In contrast to a case such as *Chavez*, where a tenant was evicted for her son's actions even though she was unaware of his presence at the complex and he was neither a household member nor a guest, tenants clearly have the opportunity to prevent those they live with from engaging in prohibited acts.²²⁶

In addition to the inapplicability of substantive due process concerns to household members, requiring tenants only to have notice of the prohibited activities of non-household members provides for the efficient and effective public housing reform intended by the ADAA.²²⁷ Section 1437d(l)(6) was enacted to give housing authorities the ability to control drug-related activities in public housing by swiftly dealing with problematic residents.²²⁸ Requiring tenants to have notice of a household member's illegal activities impedes the ADAA's intent because it allows problematic residents to stay in their homes and remain threats to other residents merely because the tenant was unaware of the prohibited conduct.²²⁹ Holding household members to strict liability, however, achieves the ADAA's objective of decreasing drug-related activities in public housing by giving managers the discretion to rid complexes of the most troublesome households that create and perpetuate public housing's problems.

C. Legislative Intent Supports an Actual or Constructive Notice Requirement and an Objective Standard for Evaluating Notice

With § 1437d(l)(6), Congress intended to reform public housing through the eviction of problematic households by making leasehold tenants guarantors of third-party conduct.²³⁰ The historical and substantive due process concerns to no-fault, third-party-action evictions under § 1437d(l)(6), however, support amending the law to require a tenant's notice of a non-household member's illegal activities before

²²⁵ See *supra* notes 199–204 and accompanying text.

²²⁶ See *supra* notes 140–143 and accompanying text.

²²⁷ See *infra* notes 228–229 and accompanying text.

²²⁸ See *supra* notes 48–58 and accompanying text.

²²⁹ See *supra* notes 67–71 and accompanying text.

²³⁰ See *supra* note 58 and accompanying text.

eviction.²³¹ A notice requirement does not frustrate Congress's intent; and requiring a tenant's actual or constructive notice, based on an objective standard, addresses standard of proof issues to achieve effective public housing reform.²³²

Requiring tenants to have notice of a non-household member's illegal activities does not frustrate third-party-action evictions intended by § 1437d(l)(6).²³³ The Supreme Court in *Rucker* justified no-fault, third-party-action evictions under § 1437d(l)(6) on the grounds that tenants who cannot control criminal activities of associates are threats to other residents in the complex.²³⁴ Requiring tenants to have notice of a non-household member's illegal activities before eviction, however, addresses historical and substantive due process concerns with the law.²³⁵ Requiring a tenant's notice does not undercut § 1437d(l)(6)'s intended allowance for third-party-action evictions because housing authorities still can evict tenants for the actions of non-household members if they knowingly fail to prevent illegal activities by non-household members.²³⁶

Although a notice requirement addresses concerns with § 1437d(l)(6) and does not frustrate third-party-action evictions, it has practical implications for HUD that are effectively addressed by requiring a tenant's actual or constructive notice, based on an objective standard, of a non-household member's illegal activities.²³⁷ In supporting no-fault, third-party-action evictions, HUD states that evicting tenants on a showing of fault bars effective reform of public housing because of the difficulties in proving a tenant's knowledge of, or ability to foresee, criminal activities.²³⁸ Requiring a tenant's actual or constructive notice of a non-household member's illegal activities, however, addresses this concern because HUD can evict a tenant for a non-household member's illegal activity based on what the tenant should have known, rather than undertake the difficult task of proving what the tenant actually knew. In addition, an objective standard of evaluating a tenant's actual or constructive notice further alleviates HUD's concern over difficulties of proof.²³⁹ Under an objective stan-

²³¹ See *supra* notes 188–214 and accompanying text.

²³² See *infra* notes 233–238 and accompanying text.

²³³ See *infra* notes 234–236 and accompanying text.

²³⁴ See *supra* notes 84–86 and accompanying text.

²³⁵ See *supra* notes 104–143 and accompanying text.

²³⁶ See *infra* notes 238–239 and accompanying text.

²³⁷ See *supra* notes 233–236 and accompanying text.

²³⁸ See *supra* notes 69–71 and accompanying text.

²³⁹ See *supra* notes 69–71 and accompanying text.

dard, HUD can evict tenants based on what a reasonable person in the tenant's position knew or should have known, rather than undertake a subjective standard of proving knowledge or foreseeability from the tenant's point of view.

CONCLUSION

Section 1437d(l)(6) of the Housing Act nobly seeks to eliminate the dangerous conditions in America's public housing complexes by providing housing authorities with the ability to combat the drug crisis through streamlined third-party-action evictions. Nevertheless, Congress must balance public housing reform with the interests of the fragile public housing population. Both history and substantive due process challenges to the law reveal significant problems with providing management with broad discretion to evict tenants uninvolved in or unaware of a third party's illegal activities. Despite the 2002 United States Supreme Court decision in *Department of Housing & Urban Development v. Rucker*, a mere holding of § 1437d(l)(6)'s constitutionality did not address significant concerns with the law.

Congress should amend § 1437d(l)(6) to require public housing tenants to have actual or constructive notice, based on an objective standard, of a non-household member's prohibited activities in order to be evicted. A notice requirement minimizes § 1437d(l)(6)'s infringement of tenants' rights of association, avoids arbitrary and discriminatory evictions, and holds tenants to a practical standard of liability. Holding household members to strict liability under § 1437d(l)(6) provides housing authorities with the muscle to rid public housing complexes of the most troublesome households. Furthermore, requiring actual or constructive notice, based on an objective standard, alleviates the difficult burden on housing authorities to prove what a specific tenant knew or could foresee. Amending § 1437d(l)(6) to require a tenant's actual or constructive notice, based on an objective standard of proof, of a non-household member's illegal activities before eviction effectively balances tenant interests with legislative intent to achieve efficient, effective and fair public housing reform.

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