



July 11, 2014

Louisville Metro Housing Authority
c/o Tim Barry, Executive Director
420 South Eighth Street
Louisville, KY 40203
fax: (502) 569-3459
email: barry@hal1.org

Via first-class and electronic mail and facsimile transmission

RE: *Public Comments Regarding Rent Reform Study*

Dear Mr. Barry,

On behalf of the ACLU OF KENTUCKY, I write to express our concerns regarding the proposed Housing Choice Voucher Rent Reform Study commissioned by the U.S. Department of Housing and Urban Development (“HUD”), and to request that the Louisville Metro Housing Authority refuse to participate in the study. Specifically, the ACLU OF KENTUCKY believes that the random selection of participants in the rent reform study implicates equal protection considerations because the interests purportedly served by the study will be untethered to the manner in which participants are selected, and because it will result in the unequal distribution of government assistance to similarly situated individuals based upon a random (and thus arbitrary) selection process.

While the government may, in some contexts, randomly select individuals for differential treatment, we do not believe that it may do so when arbitrarily conditioning the receipt of public benefits (or imposing taxes) so as to create unreasonable inequalities between similarly situated individuals. *See Hooper v. Bernalillo Cnty. Assessor*, 472 U.S. 612, 618 (1985) (“When a state distributes benefits unequally, the distinctions it makes are subject to scrutiny under the Equal Protection Clause of the Fourteenth Amendment.”); *Village of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000) (*per curiam*); *Allegheny Pittsburgh Coal Co. v. Co. Comm’n of Webster Co., W.V.*, 488 U.S. 336, 345-46 (1989) (“The equal protection clause ... protects the individual from state action which selects him out for discriminatory treatment by subjecting him to taxes not imposed on others of the same class.”) (quoting *Hillsborough v. Cromwell*, 326 U.S. 620, 623 (1946)). In *Allegheny*, for example, the Supreme Court struck down a tax assessor’s property

ENID TRUCIOS-HAYNES, PRESIDENT | RANDY STROBO, VICE PRESIDENT | ERIN KENNEDY, SECRETARY
LEE LOOK, TREASURER | CHERIE DAWSON-EDWARDS, NATIONAL BOARD REPRESENTATIVE
MICHAEL ALDRIDGE, EXECUTIVE DIRECTOR | AMBER DUKE, COMMUNICATIONS MANAGER
ANNE MCKUNE, DEVELOPMENT DIRECTOR | KATE MILLER, PROGRAM DIRECTOR
NANCY RANKIN, OFFICE MANAGER & LEGAL INTAKE COORDINATOR
DEREK SELZNICK, REPRODUCTIVE FREEDOM PROJECT DIRECTOR | WILLIAM E. SHARP, STAFF ATTORNEY

AMERICAN CIVIL LIBERTIES UNION OF KENTUCKY
315 GUTHRIE STREET SUITE 300 LOUISVILLE, KY 40202-3820 | T 502-581-9746 | F 502-589-9687 | WWW.ACLU-KY.ORG

valuations because the methodology for doing so resulted in a “significant and persistent disparity” between the petitioners’ property and other, similarly situated properties. 488 U.S. at 342, 343. And in *Olech*, the Court held that a plaintiff stated a cause of action when she alleged that the locality demanded a larger easement from her than it did of other residents in order to connect to the municipal water supply, and where she further alleged that the demand was “irrational and wholly arbitrary.” 528 U.S. at 565. In doing so, the Court stated that the allegations “*quite apart from the Village’s subjective motivation*, are sufficient to state a claim for relief under traditional Equal Protection analysis.” *Id.* (emphasis added).

Here, participants in the proposed Rent Reform Study will be “randomly selected from the eligible vouchers through a computer generated random selection program.” [Louisville Metro Housing Authority: FY 2015 Annual MTW Plan (“LMHA Plan”), p. 58.] Once selected, participants will either be included in the Rent Reform Group or the Control Group. [*Id.* at 26.] For those in the Rent Reform Group, their total tenant payments (TTP) will be calculated under a new formula in which they will be required to pay either 28% of their gross income *or* \$75, whichever is greater. [*Id.* at 27.] By contrast, the Control Group’s TTP will continue to be assessed pursuant to existing policy which contains no minimum amount and is calculated at 30% of *adjusted* gross income. [*Id.* at 26-27, 30.] Thus, both in its design and intended effect, the rent study will impose *higher* rent contributions upon those individuals who are randomly chosen to participate in the Rent Reform Group. Regardless of the state’s interest in measuring any impact the new rent calculation formula will have, we do not believe that conducting this type of social experiment in which public benefits are unequally distributed on a random (and thus arbitrary) basis rationally promotes those interests. *See Olech*, 528 U.S. at 564 (“Our cases have recognized successful equal protection claims ... where the plaintiff alleges that she has been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment.”). We therefore respectfully request that the Louisville Metro Housing Authority elect *not* to participate in the rent reform study.

Thank you in advance for your consideration of our concerns, and please feel free to contact me if you have any questions.

Sincerely,



William E. Sharp, Staff Atty.
ACLU OF KENTUCKY
315 Guthrie Street, Suite 300
Louisville, KY 40202
(502) 581-9746

cc: Cathy Hinko, Exec. Director
Metropolitan Housing Coalition