Local Nuisance Ordinances: Penalizing the Victim, Undermining Communities?

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I. Introduction

On September 2, 2014, the Borough of Norristown, Pennsylvania approved an agreement to pay $495,000 to a tenant and her attorneys to settle a federal lawsuit challenging a local nuisance ordinance that penalized landlords or resulted in tenants' evictions when they requested or received police assistance at their homes.[1] Norristown also agreed to repeal the ordinance completely. The American Civil Liberties Union (ACLU), the ACLU of Pennsylvania, and the law firm of Pepper Hamilton LLP filed the suit in 2013 on behalf of a domestic violence victim who had faced eviction pursuant to the ordinance after requesting police protection from an abusive ex-boyfriend.[2]

Soon after, the Secretary of the U.S. Department of Housing & Urban Development (HUD) filed a separate Fair Housing Act (FHA) complaint against Norristown. That complaint resulted in a conciliation agreement requiring the Borough to engage in fair housing training and outreach and made it subject to monitoring, reporting, and recordkeeping requirements.[3]

The lawsuit against Norristown is one of a number of successful challenges against local nuisance ordinances – also known as crime-free ordinances or disorderly house laws – that penalize properties when they are the site of a certain number of calls to the police or instances of criminal or disorderly activity. Although they may aim to address community well-being and local crime, these ordinances can actually undermine public safety by interfering with the ability of residents, particularly victims of domestic and sexual violence, to seek emergency and police assistance. They also give rise to numerous legal concerns.

This article will explain the growing trend of local nuisance ordinances and their often unintended consequences on both individuals and public safety as a whole. It will then discuss the legal liability municipalities can face when enforcing nuisance ordinances, outlining recent successful challenges to these kinds of local laws. Finally, it reviews best practices for municipalities to ensure the housing security of domestic violence survivors, guard against violating individuals' legal rights, and pursue alternative responses to recurrent crime or disorderly activity in a community.

II. Nuisance Ordinances and their Unintended Consequences

Housing security and access to police assistance in an emergency are essential to a stable, productive life. For victims of domestic violence, these necessities can take on even more importance. However, many municipalities have enacted laws that penalize tenants and property owners based on police response or criminal activity occurring on a property that inhibit individuals from calling the police in an emergency.

These ordinances typically identify certain conditions that make a property a "nuisance," including conduct like disorderly conduct, assault, harassment, and stalking. While some single out domestic violence specifically for penalty, others are broad and include any violation that occurs at the home. Still other ordinances include behavior that is vaguely defined, such as "suffering or permitting the premises to become disorderly, including suffering or permitting fighting," "disruptive conduct," or behavior "that detrimentally affects the quiet and reasonable use and enjoyment" of neighboring property.[5]

Troublingly, most of these nuisance ordinances apply regardless of whether the resident was a victim of the alleged

nuisance conduct or had no way of controlling it. The mechanisms by which these ordinances identify nuisance properties differ – some impose penalties on the first instance of nuisance activity, others adopt a three-strike method, while still others use a points-based approach, assigning different numbers of points to different types of conduct and a total point amount upon which a property will be cited. However, upon reaching an ordinance's given threshold, the result is generally the same. The landlord or property owner is given a choice: either "abate" the nuisance or face penalties that can include fines, revocation of required licenses, property forfeiture, or even imprisonment. Landlords are thus pressured or even required to evict tenants after multiple police calls have been made to their apartment, even if the tenants have not engaged in criminal activity

Characteristics of Local Laws That Threaten the Safety of Residents

- Defining a nuisance as any situation where an occupant, guest or invitee commits criminal activities, or engages in disorderly conduct on the premises, regardless of whether the tenant was the victim of that conduct or could not control it.
- Defining nuisances to include crimes that are commonly associated with domestic violence, such as assault, harassment, stalking, and sexual misconduct.
- Creating a point system, three-strike rule, or other mechanism by which tenants or landlords are penalized after multiple instances of "criminal activity" or calls to the police.
- Defining triggering activity based on arrests and/or police investigations.
- Failing to give residents notice and an opportunity to explain why a local law should not be enforced. (Note: this list is not exhaustive)

These laws end up hurting residents who need emergency assistance and crime victims, especially domestic violence survivors and other vulnerable communities. In many communities, calls regarding domestic violence make up the largest category of calls a police department receives.[6] As a result, local nuisance laws have been found to cite incidents of domestic violence far more frequently than the offenses they are typically intended to target, such as those related to drugs, property damage, and weapons.[7] Upon receipt of a citation or even a warning, landlords usually are required or pressured to evict domestic violence victims who request police protection, for this is the only sure way to "abate" the nuisance as required by the local ordinance.

In addition to their devastating impact on victims of crime and domestic violence victims in particular, nuisance ordinances can disproportionately impact and be disparately enforced against persons with mental disabilities and communities of color. Persons with disabilities may need emergency medical assistance with some frequency, risking eviction under ordinances that include any 911 call as the basis for citation. The inclusion of disorderly conduct as a nuisance offense can also implicate law enforcement's interaction with persons having psychiatric disabilities and can undermine the housing security of this population. Moreover, a study by scholars at Harvard and Columbia found that a local nuisance ordinance was disproportionately enforced against communities of color, compared to majority-white communities.

African- American women can be particularly impacted by these nuisance ordinances, as they may be subject to disproportionate enforcement on the basis of both race and domestic violence.[10]

By imposing penalties based on calls to the police, these laws deter the reporting of crime and place crime victims and those needing emergency assistance in heightened danger. This was the case for a domestic violence survivor in East Rochester, New York when police warned her that, pursuant to such an ordinance, her third call for help would result in eviction. Her ex- boyfriend, who was aware of the ordinance, continued to harass and stalk her with impunity.[11] The victim would not call the police because she feared losing the home she provided for herself and her children.[12] Stripped of any real right to police protection, this family was placed in ongoing jeopardy simply because the tenant was a victim—both of her abuser and the ordinance. This chilling effect can also extend to individuals facing other types of crimes such as larceny and assault unrelated to domestic violence. They have even been enforced against individuals who called 911 seeking help in a medical emergency.

Municipalities across the country have turned to nuisance ordinances as the "quick fix" for addressing crime in their communities. Ironically, there is no evidence that penalizing entire households for calls to the police or for activity on the property does anything to control crime. Instead, there is well-documented evidence that these policies impose penalties on innocent people and discourage calls to the police, undermining public safety.

In addition to impacting public safety, increased housing insecurity for vulnerable communities like domestic violence survivors and persons with mental disabilities can cost municipalities directly. Inability to maintain safe and secure homes can exacerbate the challenges that these individuals may already face. This can result in homelessness, increased need for social services, and inability to work – all of which have ripple effects on the local economy. Thus, when municipalities take proactive measures to ensure that efforts to address crime do not result in housing insecurity or limit access to police assistance, they benefit not only survivors but also entire communities.

III. Legal Liability for Municipalities that Enact and Enforce Nuisance Laws

Municipalities put themselves at risk of liability whenever they enforce a law that penalizes tenants and/or property owners for police calls. This can implicate federal laws which prohibit housing discrimination and establish affirmative obligations to promote access to safe and affordable housing. Enforcement of nuisance ordinances may also violate the First Amendment right to petition the government for a redress of grievances, the Fourteenth Amendment Equal Protection and Due Process guarantees, and the Fourth Amendment prohibition against unlawful seizure.

Finally, states are increasingly passing legislation that affirmatively protects individuals' rights to seek police or emergency assistance without penalty.

a. Fair Housing Protections and Requirements

Nuisance ordinances are very likely to

Continued on page 8

Local Nuisance Continued from page 7

conflict with two federal laws requiring nondiscrimination in housing: the FHA and the Violence Against Women Act (VAWA). Municipalities can also violate federal law when they fail to affirmatively further fair housing as required of all federal housing fund recipients.

i. The Fair Housing Act

The FHA prohibits housing discrimination based upon race, color, religion, sex, familial status, national origin, or disability, whether the discrimination is intentional or arises due to disparate enforcement or disparate impact on protected classes.

Domestic violence survivors may have claims under the FHA when they are evicted, denied housing, or otherwise discriminated against due to the violence they have experienced.[15] HUD has stated that discrimination against domestic violence survivors can constitute sex discrimination, as approximately four in five domestic violence survivors are women.[16] Even when discrimination is not explicit or intentional, policies that are disproportionately enforced against or have a disparate impact on domestic violence survivors will often constitute illegal gender discrimination.[17]

Municipalities can incur liability under the FHA for enacting and enforcing nuisance ordinances that explicitly list domestic violence as a nuisance activity or that are otherwise based on gender stereotypes about abused women.[18] Municipalities may be liable for disparate treatment when they enforce a nuisance ordinance more aggressively against incidents of domestic violence or incidents involving other protected classes.[19] FHA violations can also arise regardless of intent when a nuisance ordinance has a disparate impact on domestic violence survivors, minority communities, persons with disabilities, and other protected classes.[20]

ii. The FHA's Affirmatively Furthering Fair Housing (AFFH) Requirement

In addition to guarding against discrimination, municipalities may be obligated to take proactive steps to promote fair housing for domestic violence survivors.[21] This is mandated by the FHA's requirement that federally-funded housing programs be administered in a manner which "affirmatively furthers" FHA policies.[22] Under this "affirmatively furthering fair housing" (AFFH) obligation, municipalities and other affordable housing administrators must actively take steps to assure that affordable housing is "fully available to all residents of the community."[23] Municipalities are subject to the AFFH requirement if they receive certain types of federal funding, such as funding for public housing, community development block grants, or other funding for housing subsidies.

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Recipients of federal housing funds are required to assess impediments to fair housing and take proactive measures to overcome their effects.[24] Because approximately four in five domestic violence survivors are women,[25] affirmatively furthering equal access to housing on the basis of gender requires municipalities to consider their policies' impact on domestic violence survivors. Municipalities must analyze their fair housing environment, identify fair housing issues and their causes, set and prioritize fair housing goals, and plan meaningful actions to affirmatively further fair housing.[26]

Municipalities that affirm their progress in this area while simultaneously enforcing policies that imperil the housing security of domestic violence victims risk violating their AFFH obligations. If a federally-funded housing program refuses to comply with AFFH requirements, the federal government may file suit to require the program's cooperation,[27] or may withhold funds from the noncompliant entity.[28] The requirement to affirmatively further fair housing also has been the basis for complaints by private citizens and organizations under the FHA.[29] As such, it is important for municipalities to investigate the unintended consequences of policies like nuisance ordinances that, while not targeting domestic violence survivors and/or protected classes on their face, end up hurting them.[30]

iii. The Violence Against Women Act

VAWA is a federal law that provides affirmative protections for victims of domestic violence, sexual assault, dating violence, and stalking. The law specifically addresses the housing rights and needs of survivors.[31] VAWA provides that federally-funded housing providers (including municipalities[32] and others) may not deny assistance to, terminate from participation, or evict an applicant or tenant on the basis that he or she has been a victim of domestic violence, dating violence, sexual assault, or stalking.[33] Additionally, survivors may not be evicted from their homes based on criminal activity in or near the home if that criminal activity directly relates to domestic violence, dating violence, sexual assault, or stalking.

Municipal policies that direct private landlords to evict based on criminal and other activity on the premises may conflict with VAWA when enforced against domestic violence victims in federally subsidized housing. Even when a municipality's nuisance ordinance does not explicitly require eviction, these laws can pressure landlords to evict tenants who are the target of abuse. In doing so, these laws put landlords in the middle of two legal mandates: either they violate federal law by evicting a tenant on the basis of violence against her or they violate the local ordinance by not evicting the tenant, facing steep penalties.

b. Constitutional Rights and Protections

In addition to fair housing violations that can arise from nuisance ordinance

enforcement, municipalities have been subject to claims alleging violations of the First Amendment right to petition the government, Fourteenth Amendment guarantees to Due Process, and Fourth Amendment protections against unlawful search and seizure.

Individuals have a First Amendment right to petition the government. Several courts have interpreted this right to protect communications to law enforcement agencies, which in turn extends to (1) reporting physical assault, (2) reporting criminal activity, and (3) filing a complaint with law enforcement.[35] Nuisance laws may chill First Amendment rights when they impose or threaten penalties for tenants who need police aid. The impact on domestic violence survivors is significant because domestic violence is "the single largest category of calls received by police," amounting to up to 50 percent of all such calls.[36] This can have dire, even life-threatening, consequences for tenants who need police assistance. For example, in Norristown, Pennsylvania, a survivor of domestic violence repeatedly resisted calling the police after learning of the ordinance, begging her neighbors not to call, even when she had been stabbed in the neck by her abuser.

Enforcement of nuisance ordinances may also violate Fourteenth Amendment Due Process protections.[37] Nuisance ordinances frequently fail to provide notice of or opportunity to challenge a nuisance determination to all individuals who are impacted by a potential citation. Many provide no notice at all or only notify property owners or landlords that a property risks penalty.[38] As a result, tenants may receive no notice that their home could be in jeopardy and no indication that their activities have been deemed a nuisance.

Many nuisance ordinances also have little or no process in which tenants can contest a given strike or appeal a citation.[39] Tenants then have no opportunity to explain that they were the victims of an alleged nuisance activity or had no ability to control it. When this is the case, landlords are actually incentivized to evict tenants after a single incident of alleged nuisance, as this is the only sure way to avoid future penalty.

Nuisance ordinances may also implicate Fourth Amendment protections against unlawful search and seizure. Nuisance laws frequently authorize municipalities to penalize properties by condemning them or otherwise prohibiting use of the property for a certain time frame. They may also require property inspections. These provisions can violate constitutional prohibitions against unreasonable search and seizure when they empower municipalities to take action without giving tenants sufficient notice or process.[40]

c. State Laws

State legislatures have increasingly taken notice of the negative impact of local nuisance ordinances. Several states have enacted or introduced legislation that recognizes an individual's right to request police and emergency services or prohibits nuisance ordinances from being enforced against victims of crime. Minnesota and Pennsylvania have enacted laws that expressly prohibit municipalities from imposing penalties on tenants who exercise this right. Similar bills are pending in New York, Illinois, and Iowa.[42]

IV. Recent Challenges

There have been a number of successful challenges to local nuisance ordinances by private individuals and the federal government. These challenges have resulted in settlement and conciliation agreements requiring municipalities to pay significant monetary damages, repeal or amend the laws at issue, and provide additional equitable relief.

a. Federal Lawsuits

As referenced at the beginning of this article, in April 2013, the ACLU Women's Rights Project, the ACLU of Pennsylvania, and the law firm of Pepper Hamilton LLP filed a lawsuit against Norristown, Pennsylvania on behalf of a domestic violence victim who had faced eviction from her home after requesting police protection from an abusive ex-boyfriend. The plaintiff's claims included violations of the FHA, VAWA, the First Amendment, Due Process guarantees, and similar state protections.[43] After the plaintiff defeated a motion to dismiss, the parties settled, with Norristown agreeing to pay $495,000 to the plaintiff for damages and attorneys' fees.[44] Norristown repealed the ordinance and is obligated not to pass a similar measure in the future.[45]

Following this litigation, at least two other municipalities in Pennsylvania have been the subject of lawsuits. In Blakely, Pennsylvania, two cases were filed on behalf of landlords and impacted tenants, challenging enforcement of the city's nuisance ordinance against victims of domestic violence.[46] These lawsuits were settled in February 2015, with Blakely rescinding the ordinance and paying undisclosed compensatory damages and attorneys' fees.[47] The ACLU of Pennsylvania has another lawsuit pending against the city of Wilkes-Barre. This case alleges violations of the due process rights of landlords and tenants whose rental properties were seized by the city under an ordinance that authorizes officials to evict tenants immediately and prevent landlords from renting a property for six months if anyone is suspected of illegal activity on the premises.[48]

Two other federal lawsuits against similar ordinances in New York have settled favorably for the victims of crime. East Rochester, New York settled claims brought by two victims of domestic violence who alleged that, despite facing repeated violence from their abusers, they were chilled from calling the police for fear of being evicted under a local nuisance ordinance. East Rochester amended the law to exempt crime victims from penalty and paid the plaintiffs $100,000. Hornell, New York also settled a federal challenge to its ordinance that was brought by a survivor of domestic violence, amending the law to exempt victims of similar abuse and providing additional notice and process for impacted tenants.[50]

b. Federal Executive Action

HUD has expressly recognized nuisance ordinances as a fair housing issue, pursuing action in two states against municipalities whose local ordinances unlawfully discriminate against victims of domestic violence.[51]

Following the lawsuit in Norristown, the Secretary of HUD instituted a complaint against the Borough, alleging that its enforcement of the local ordinance amounted to discrim-

Continued on page 10

Local Nuisance Continued from page 9

ination on the basis of sex under the FHA.52 The Department entered a conciliation agreement with Norristown in September 2014, which required the Borough to engage in fair housing training, inform residents that the ordinance had been repealed and encourage them to call the police when needed, and comply with monitoring, reporting, and recordkeeping requirements.[53]

Shortly thereafter, in October 2014, HUD filed its second Secretary-initiated complaint regarding a local nuisance ordinance. The complaint alleged that Berlin, New Hampshire unlawfully discriminated against women by enacting and enforcing a nuisance ordinance that, while not explicitly targeting domestic violence, had a discriminatory impact on women. HUD subsequently entered a conciliation agreement with Berlin in January 2015, requiring that they amend their ordinance to address its potential impact on victims of domestic violence and engage in similar training and outreach as that required of Norristown.[54]

This recent activity documents an ongoing interest by HUD in the issue. Municipalities should note that HUD's jurisdiction extends to administration of AFFH requirements – and entities found in violation of their obligations might lose federal housing funds and/or be subject to legal action as a result.

V. Recommended Practices

To avoid costly legal consequences, municipalities should examine their municipal codes and eliminate nuisance laws that may have a discriminatory impact on protected classes. They should pursue more targeted approaches to addressing public safety concerns that avoid unintended consequences for domestic violence survivors, victims of crime, and other protected groups. The following are recommended practices for addressing municipalities' concerns about community wellbeing and local crime without punishing crime victims:

a. Assess Impact of Local Nuisance Ordinances

For municipalities with ordinances that are similar to those described here, it is essential to determine whether they are effectively targeting the problems that motivated their enforcement and assess the impact of these laws on their communities. Some ordinances have been adopted in response to one community member's complaints about a disruptive neighbor or establishment, extending enforcement to the entire community without an assessment of need. Others are adopted to address drug traffic in a community but include every crime in the federal and state code as nuisance offenses. Many more are adopted without an identified local problem, simply finding an appeal in the general concept of a ban on nuisance activity and the hypothesized reduction in crime and municipal cost.[55]

When closely analyzed, local ordinances have been revealed to have unintended consequences that far exceed the targeted crimes or neighborhood problems they are aimed to reduce. For example, a study of a nuisance ordinance in Milwaukee, Wisconsin found that domestic violence was the third most cited nuisance activity, far outpacing the offenses the ordinance was purported to target, such as those related to drugs, property damage, and weapons.[56] Another study of a points-based ordinance in Binghamton, New York found that incidents of domestic violence on average received more points than any other type of incident cited under the ordinance.[57]

Because these laws are structured to sweep up a large array of alleged nuisance behavior and typically have no exception for victims of crime or for requiring other emergency assistance, they are extremely likely to have unintended consequences going beyond the reasonable goals of public safety and crime reduction. Even where there may not be evidence of direct impact on protected classes, these ordinances can have a chilling effect on individuals' willingness or ability to report crime and can encourage landlords to discriminate against individuals they perceive as likely to be the subject of these laws. This undermines the very goals advanced by proponents of nuisance ordinances.

b. Pursue Targeted Implementation of Existing Law

Instead of a one-size-fits-all approach, municipalities should pursue targeted implementation of existing law. Municipalities typically already have sufficient tools to address the problems that are most often cited as the goals of nuisance ordinances, such as drugs, noise, and property damage. As compared to existing zoning and penal laws, nuisance ordinances can be inefficient and unwieldy to enforce, and often do not afford adequate due process. Enforcement of nuisance ordinances can require many more resources than lawmakers initially realize.

Merely adding a domestic violence exception to nuisance ordinances does not effectively address the concerns of overbroad enforcement. Many incidents that arise from domestic violence may not appear that way to first responders, especially when abusers intimidate victims from reporting what happened. For example, it is common during domestic violence incidents for a victim to call 911 and hang up, due to retaliation by their abuser. Police sent to the scene may be unable to determine the circumstances that led to the call, and may even characterize the call as frivolous. The ordinance also may encourage landlords to take inappropriate actions against victims of domestic violence before a police response to the home. Moreover, an ordinance that penalizes calls to the police continues to raise significant First Amendment concerns. Every resident in need of police or emergency assistance should be able to reach out for it, regardless of the criminal activity at issue.

When thinking through the changes that would be required for an ordinance to avoid legal liability under the many claims listed above, a number of municipalities have determined that their community is better served by a repeal of the ordinance or by declining to enact one in the first place.[58] This leaves them able to

pursue the same objectives through more targeted means, while ensuring the continued availability of police assistance to those who need it.

c. Protect Crime Victims' Access to Effective Police Assistance

In addition to ensuring that they are not chilling crime victims' right to seek police assistance (or penalizing them when they do), municipalities can pursue practices to protect crime victims' access to police assistance. Municipalities should examine their policies to ensure that police responses to domestic violence calls do not discourage victims from summoning assistance. This may require oversight to ensure that officers do not engage in discriminatory practices and understand how to respond to domestic violence calls effectively and without bias.[59] Municipalities should also scrutinize the policies of any federally-funded housing they operate to ensure that, among other topics, the policies on breach of lease and review of prospective tenants do not permit negative housing action against domestic violence victims. Municipalities may also wish to incorporate discussion of domestic violence-based discrimination and First Amendment protections into training for private landlords. Finally, municipalities should consider passing laws that affirm crime victims' right to seek police assistance, and that create an affirmative defense to proceedings penalizing tenants and landlords that arise from a tenant's status as a victim of domestic violence or requests for police assistance. These affirmative practices and others are outlined in the ACLU Women's Rights Project report, Safe Homes, Safe Communities: A Guide for Local Leaders on Domestic Violence and Fair Housing.[60]

VI. Conclusion

Where municipalities are actively involved in preventing housing discrimination on the basis of police calls, they will protect the housing rights of crime victims (and domestic violence victims in particular). They will also avoid costly legal penalties, both for themselves and for local landlords. Furthermore,

In addition to ensuring that they are not chilling crime victims' right to seek police assistance (or penalizing them when they do), municipalities can pursue practices to protect crime victims' access to police assistance.

policies ensuring that domestic violence survivors--and all crime victims--receive protection, not punishment, if they contact the police will lead to greater reporting, more productive relationships with law enforcement, and increased public safety overall.

(For more information on this issue, please refer to www.aclu.org/notanuisance.)

1. Release and Settlement Agreement, Briggs v. Borough of Norristown, No. 2:13- cv-02191-ER (E.D. Pa. Sep. 18, 2014), *available* at https://www.aclu.org/womens-rights/briggs-v-borough-norristown-et-al.
2. Sandra Park, *Shut Up or Get Out: PA City Punishes Domestic Violence Victims Who Call the Police*, Blog of Rights, American Civil Liberties Union (Apr. 24, 2013, 3:24 PM), https://www.aclu.org/blog/womens-rights-lgbt-rights-racialjustice-criminal-law-reform/shut-or-get-out-pa-city-punishes.
3. Housing Discrimination Complaint, Assistant Sec'y for Fair Hous. & Equal Opportunity v. Borough of Norristown, PA, No. 03-13-0277-8 (Dep't of Hous. & Urban Dev., Jun. 5, 2013) [hereinafter Norristown HUD Complaint], *available at* https://www.aclu.org/sites/default/files/assets/hud_complaint.pdf; Conciliation Agreement between Assistant Sec'y of the Office of Fair Housing and Equal Opportunity and Municipality of Norristown, Nos. 03-13-0277-8 and 03-13-0277-9 (Dep't of Hous. & Urban Dev., Sept. 17, 2014) [hereinafter Norristown Conciliation Agreement], *available at* https://www.aclu.org/sites/default/files/assets/hud_norristown_conciliation_agreement_2014_09_18.pdf.
4. *See* Emily Werth, Sargent Shriver Nat'l Ctr. on Poverty Law, *The Cost of Being Crime Free: Legal and Free Rental Housing and Nuisance Property Ordinances* 5-20 (Aug. 2013), *available at* http://povertylaw.org/sites/default/files/files/housing-justice/cost-of-being-crime-free.pdf.
5. *See*, e.g., Matthew Desmond & Nicol Valdez, Am. Sociological Rev. Online Supplement to Article in American So-

Continued on page 34



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Local Nuisance Continued from page 11

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6. Andrew Klein, U.S. Dept. of Justice, Nat'l Inst. of Justice, *Practical Implications of Current Domestic Violence Research: Judges* 1 (2008), available at https://www.ncjrs.gov/pdffiles1/nij/grants/222321.pdf.

7. *See* Desmond & Valdez, *Unpolicing the Urban Poor: Consequences of Third-Party Policing for Inner-City Women*, Am. Sociological Rev. vol. 78, no. 1, 131 (2013), *available at* http://scholar.harvard.edu/files/mdesmond/files/desmond.valdez.unpolicing.asr0.pdf (finding that domestic violence was the third most commonly cited offense under a nuisance ordinance in Milwaukee, Wisconsin); Soc. Science Research Council, *Technical Note: Nuisance Ordinance Enforcement in Binghamton, New York* 2 (2015) (on file with author) (finding that incidents of domestic violence received the largest share of points in enforcement actions under a nuisance ordinance in Binghamton, New York).

8. Desmond & Valdez, *supra* note 7, at 132 (finding that eviction was the most common abatement strategy in response to citation under the Milwaukee nuisance ordinance).

9. *Id.* at 125-130.

10. *Id.* at 138.

11. Second Amended Complaint, Grape v. Town/Village of East Rochester, No. 07- CV-6075-CJS (F) (W.D.N.Y. July 6, 2007) [hereinafter Grape Complaint], *available at* http://www.nhlp.org/files/Grape%20WDNY%20nuisance%20 2d%20compl.pdf.

12. *Id.*

13. *See* Desmond & Valdez, *supra* note 7, at 117; Soc. Science Research Council, *supra* note 7.

14. Carmela Decandia et al., Nat'l Ctr. on Family Homelessness, *Closing the Gap: Integrating Services For Survivors of Domestic Violence Experiencing Homelessness 2 (2013), available at* http://www.familyhomelessness.org/media/371.pdf; Ctrs. for Disease Control & Prevention, *Costs of Intimate Partner Violence Against Women in the United States* 18–19 (2003), *available at* http://www.cdc.gov/violenceprevention/pdf/IPVBook-a.pdf; National Alliance on
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16. *Id.*

17. *Id.* at 5. Currently, the U.S. Supreme Court is considering the question of whether disparate-impact claims are cognizable under the Fair Housing Act. Texas Dep't of Hous. Cmty. Affairs v. Inclusive Communities Project, 135 S. Ct. 939 (2015), motion granted, No. 13-1371 (S. Ct. Jan. 9, 2015).

18. *See* Complaint ¶ 39, Briggs v. Borough of Norristown, No. 2:13-cv-02191-ER (E.D. Pa. Apr. 29, 2013), ECF 9 [hereinafter Briggs Complaint], *available at* https://www.aclu.org/files/assets/2013.04.29 - verified_first_amended_complaint.pdf.

19. FHEO Guidance on Housing Discrimination Against Domestic Violence, supra note 15, at 4; *see, e.g.*, Soc. Science Research Council, *supra* note 7, at 2.

20. FHEO Guidance on Housing Discrimination Against Domestic Violence, supra note 15, at 5; *see*, e.g., Briggs Complaint, *supra* note 18.

21. Norristown HUD Complaint, *supra* note 3; Norristown Conciliation Agreement, *supra* note 3; Conciliation Agreement between Assistant Secretary of the Office of Fair Housing & Equal Opportunity and City of Berlin, New Hampshire, No. 01-15-0017-8 (Dep't of Hous. & Urban Dev., Jan. 29, 2015) [hereinafter Berlin Conciliation Agreement], *available at* http://portal.hud.gov/hudportal/documents/huddoc?id=TownBerlin.pdf.

22. 42 U.S.C. §§ 2918a(c)(3)(B), 3226(c)(3)(B)(xxi), 3608(e), 5304(b)(2), 5306(d)(7)(B), 12705(b)(15), 12872(c)(2)(E), 12873(c)(2)(E), 12892(c)(2)(E), 12893(c)(2)(E), 1437aaa-2(d)(2)(M), 1437c-1(d)(16); 24 C.F.R. §§ 91.225(a)(1),91.235(c)(4), 91.325(a)(1), 91.425(a)(1)(i), 91.520(a), 570.487(b), 570.421(a)(1)(iv), 570.601(a)(2), 570.704(b)(8)(v), 570.904, 903.1, 903.2(d), 903.7(o), 905.308(b)(1), 960.103(b), 982.53(c).

23. U.S. Dep't of Housing & Urban Dev., Office of Fair Hous. & Equal Opportunity, *Fair Housing Planning Guide* 5-4 (1996), *available at* http://www.hud.gov/offices/fheo/images/fhpg.pdf.

24. *Id.* at 4-3, 4-4.

25. Shannan Catalano, U.S. Dep't of Justice, *Special Report Intimate Partner Violence*, 1993-2010 3 (2012).

26. Affirmatively Furthering Fair Housing Assessment Tool: Solicitation of Comment—60-Day Notice, 79 Fed. Reg. 57,949, 57,950 (Sep. 26, 2014).

27. *See, e.g.,* Otero v. N.Y. City Hous. Auth., 484 F.2d 1122 (2d Cir. 1973); Shannon v. HUD, 436 F.2d 809 (3d Cir. 1970).

28. Affirmatively Furthering Fair Housing Proposed Rule, 78 Fed. Reg. 43,710, 43,712 (proposed July 19, 2013) (to be codified at 24 CFR pts. 5, 91, 92, 570, 574, 576, and 903).

29. *See, e.g.,* Complaint, U.S. ex rel. Lockey v. City of Dallas, Tex., No. 3:11-CV- 354-O (N.D. Tex. Jan. 23, 2013), 2013 WL 268371.

30. *See infra* Part V.

31. 42 U.S.C. § 14043e et seq.

32. Violence Against Women Reauthorization Act of 2013: Implementation in HUD Housing Programs, Docket No. FR-5720-P-02, 21 (proposed March 25, 2015) (to be codified at 24 CFR pts. 5, 92, 200, 574, 576, 578, 880, 882, 883, 884, 886, 891, 960, 966, 982-83), *available at* http://portal.hud.gov/hudportal/documents/huddoc?id=5720p02vawa2013proprule.pdf (defining covered housing provider to include "state or local government[s]" that have "responsibility for the administration and/or oversight of VAWA protections" and noting that "VAWA protections

and responsibilities are not limited to PHAs, owners, and managers of assisted housing.")
33. 42 U.S.C. § 14043e-11(a)–(b).
34. 42 U.S.C. § 14043e-11(b); 24 CFR § 5.2005.
35. *See* California Motor Transport Co. v. Trucking Unlimited, 405 U.S. 508 (1972); McDonald v. Smith, 472 U.S. 479, 482 (1985); Jackson v. New York State, 381 F. Supp. 2d 80 (N.D.N.Y. 2005) (holding that a plaintiff's actions in seeking enforcement of an order of protection was protected by the First Amendment); Anderson v. City of N.Y., 2000 WL 1010984 at *4 (E.D.N.Y. 2000) (finding that the right to petition "arguably extends to. . . [the] right to lodge complaints with the police."); Meyer v. Bd. of Cnty. Comm'rs of Harper Cnty., Okla., 482 F.3d 1232, 1243 (10th Cir. 2007) (quoting Morris v. Dapolito, 297 F. Supp. 2d. 680, 692 (S.D.N.Y. 2004)) (finding that "[f]iling a criminal complaint with law enforcement constitutes an exercise of 1st Amendment right to petition" . . . even an "attempt to report a criminal offense is protected by the First Amendment.").
36. Klein, *supra* note 6, at 7.
37. Mariemont Apartment Assn. v. Village of Mariemont, 2007 WL 120727 at *7-8 (Ohio Ct. App. Jan. 19, 2007) (finding a procedural due process violation because the ordinance did not provide for a pre-deprivation hearing, failed to establish a time frame for filing an appeal, and allowed for only a short stay of enforcement); Cook v. City of Buena Park, 126 Cal. App. 4th 1, 9 (Cal. Ct. App. 2005) (finding that a nuisance ordinance violated procedural due process by not mandating descriptions of the observed criminal activity upon which tenants could be evicted, giving a landlord just ten days to initiate an unlawful detainer action, and requiring the landlord to prevail in the unlawful detainer action).
38. Werth, *supra* note 4, at 19.
39. *Id.* at 19-20.
40. *See, e.g.*, Complaint, Peters v. City of Wilkes Barre, No. 3:2015-cv-00152 (M.D. Pa. Jan. 22, 2015), *available at* http://www.aclupa.org/our- work/legal/legaldocket/peters-v-wilkes-barre/.
41. Minn. Stat. § 504B.205, subdivisions 2, 3 ("preempts any inconsistent local ordinance" that requires an eviction or penalizes a landlord in response to calls for police or emergency assistance and protects tenants' right to call the police in response to any conduct at the property); 53 Pa. Cons. Stat. Ann. § 304 (provides protections for any resident, tenant, or landlord who faces penalty under a local ordinance because police or emergency services responded to abuse, crime, or an emergency at a property. It also authorizes remedies in court against any municipality that violates these protections.).
42. New York Assembly Bill A.1322 (2015), *available at* http://assembly.state.ny.us/leg/?default_fld=&bn=A01322&term=2015&Summary=Y&Actions=Y&Memo=Y&Text=Y; Illinois General Assembly Bill SB 1547 (2015), available at http://www.ilga.gov/legislation/billstatus.asp?DocNum=1547&GAID=13&GA=99&DocTypeID=SB&LegID=88215&SessionID=88; Iowa House Bill HF493(2015), available at https://legiscan.com/IA/bill/HF493/2015
43. Briggs Complaint, *supra* note 18.
44. Release and Settlement Agreement, *supra* note 1.
45. *Id.*
46. Complaint, Rizkalla v. Borough of Blakely, No. 3:14-cv-02433 (M.D. Pa. Dec. 22, 2014); Complaint, Hazleton v. Borough of Blakely, No. 3:14-cv-02473 (M.D. Pa. Dec. 24, 2014); Terrie Morgan-Besecker, *Domestic violence victims sues Blakely over "disruptive conduct" ordinance*, The Times Tribune, Dec. 24, 2014, *available at* http://thetimes-tribune.com/news/domestic-violence-victims-sues-blakely-over-disruptive-conduct-ordinance-1.1807608.
47. Terrie Morgan-Besecker, *Blakely settles disruptive ordinance lawsuit*, The Times Tribune, Feb. 14, 2015, *available at* http://thetimes-tribune.com/news/blakely-settles-disruptive-conduct-ordinance-lawsuit-1.183299.1.
48. Complaint, Peters v. City of Wilkes Barre, No. 3:2015-cv-00152 (M.D. PA., Jan. 22, 2015), *available at* http://www.aclupa.org/our-work/legal/legaldocket/peters-v-wilkes-barre/.
49. *See* Anna Stolley Persky, *A Call for Help: An Ordinance That Evicts Tenants for Seeking Police Aid Is Putting Abused Women Out on the Street*, ABA J., Sept. 2013, at 14, 15; Grape Complaint, *supra* note 11
50. Stipulation of Settlement and Discontinuation, Peeso v. City of Hornell, No. 6:11-cv-06306 (W.D.N.Y. filed Nov. 14, 2011).
51. Norristown HUD Complaint, *supra* note 3; Norristown Conciliation Agreement, *supra* note 3; Berlin Conciliation Agreement, *supra* note 21.
52. Norristown HUD Complaint, *supra* note 3.
53. Norristown Conciliation Agreement, *supra* note 3.
54. Berlin Conciliation Agreement, *supra* note 21.
55. *See* ACLU Women's Rights Project, *Nuisance Ordinances Undermine Law Enforcement Responses to Domestic Violence* (2015); Werth, *supra* note 4, at 12- 16.
56. Desmond & Valdez, *supra* note 7, at 131.
57. Soc. Science Research Council, *supra* note 7, at 2.
58. *See*, e.g., Release and Settlement Agreement, *supra* note 1; Kyle Wind, *Vandling council scraps sweeping proposed nuisance law*, The Times Tribune, Jul. 30, 2015, *available at* http://thetimes-tribune.com/news/vandling-council-scraps-sweeping-proposed-nuisance-law-1.1527957.
59. *See, e.g.*, U.S. Dep't of Justice, Civ. Rts. Div., *Investigation of the New Orleans Police Dep't* 44 (Mar. 2011), http://www.justice.gov/crt/about/spl/nopd_report.pdf (finding "Inadequate policies and procedures, deficiencies in training, and extraordinary lapses in supervision have contributed to a systemic breakdown in NOPD handling of sexual assault investigations. . . [as well as] domestic violence cases, although not to the degree evident in sex crimes."); U.S. Dep't of Justice, Civ. Rts. Div., *Investigation of the Puerto Rico Police Dep't* 57-58, 65-66, 100 (Sept. 2011), http://www.justice.gov/crt/about/spl/documents/prpd_letter.pdf (identifying department-wide failure to address domestic violence and sexual assault and identifying insufficient training as one cause of the pattern and practice of gender-biased policing).
60. ACLU Women's Rights Project, *Safe Homes, Safe Communities: A Guide for Local Leaders on Domestic Violence and Fair Housing* (2015) (available at www.aclu.org/safehomes). M.

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