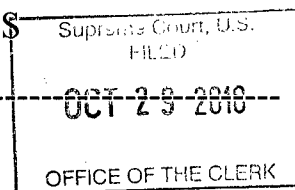


18-6529 ORIGINAL
No. _____

In The
THE SUPREME COURT OF THE UNITED STATES



Don Kozich, Individually,
Petitioner

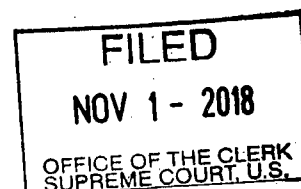
v.

Ann Deibert, Individually and as
Chief Executive Officer (CEO) of the Broward County Housing Authority (PHA)
and its Subsidiaries (collectively BCHA), et al.,
Respondent(s)

**On Petition for Writ of Certiorari
To The 11th Circuit Court of Appeals**

PETITION FOR WRIT OF CERTIORARI

Don Kozich, pro se Petitioner
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Fort Lauderdale, FL 33303
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QUESTIONS PRESENTED

Neither the Rooker-Feldman nor Mootness doctrines nor the Anti-Injunction Act apply to the facts of this unlawful tenant eviction case from HUD Section 8 and Low Income Housing Tax Credit (LIHTC) federally subsidized housing based on the Public Housing Authority's secret emails (APP.F.) to the state court judge with no hearings or trial in state court.

This is a case of a retired disabled veteran being evicted from his Low Income Housing Tax Credit (LIHTC) apartment community under two (2) federally subsidized housing programs, LIHTC under 26 USC § 42 [Extended Low Income Housing Agreement (ELIHA) recorded in the public records and therefore a land use restriction] and Section 8 HUD-Veterans Administration Supported Housing Choice Voucher (Section 8 HUD-VASH HCV) under 24 CFR 982.552 and HUD Section 8 Housing Choice Vouchers: Revised Implementation of the HUD-VA Supportive Housing Program, 77 FR 17086 [Docket FR-5596-N-01] (March 23, 2012), each of which independently adopted the HUD Tenancy Addendum, HUD-51641-A, which mandates the same "No-Cause Eviction Protection," evidence of good cause for eviction and lease non-renewal and a due process hearing or trial before eviction. The recorded ELIHA, the HUD Tenancy Addendum, HUD-51641-A, and these federal subsidy programs provide for the tenant's right of enforcement: 24 CFR 982.308(a) and (f)(2), 24 CFR 982.456(b)(2) and 24 CFR 982.552.

The tenant's Petition for Writ of Certiorari to the 11th Circuit Court of Appeals here follows and the questions presented are:

**NEITHER THE ROOKER-FELDMAN NOR MOOTNESS DOCTRINES
NOR THE ANTI-INJUNCTION ACT ARE APPLICABLE TO THIS
UNLAWFUL TENANT EVICTION CASE FROM SECTION 8
HUD-VASH HCV AND LOW INCOME HOUSING TAX
CREDIT (LIHTC) FEDERALLY SUBSIDIZED HOUSING**

Whether the Rooker-Feldman and Mootness Doctrines and the Anti-Injunction Act apply, with no discovery in state or federal court, to a tenant in Section 8 HUD-VASH HCV and Low Income Housing Tax Credit (LIHTC) federally subsidized housing mandating "No-Cause Eviction Protection" who was forcefully evicted in state court in retaliation for his advocating for safer and healthier living conditions as a result of the Public Housing Authority's conclusionary non-renewal notice with no evidence of "good cause," legally insufficient complaint, "fake" lease, and secret emails to the state judge with no due process mandated hearings or trial resulting in an ex parte non-final Default Final Judgment for Removal which is currently on appeal in state court?

**CONTINUING LIVE CONTROVERSY AND IRREPARABLE
HARM TO SECTION 8 HUD-VASH HCV AND LOW INCOME
HOUSING TAX CREDIT (LIHTC) TENANT**

Whether live controversy and irreparable harm to the Section 8 HUD-VASH HCV and Low Income Housing Tax Credit (LIHTC) tenant continues when in further retaliation and relying upon the non-final Default Final Judgment for Removal from state court which is currently on appeal, the Public Housing Authority failed to utilize due process mandated practices and procedures as required by HUD Section 8 Housing Choice Vouchers:

Revised Implementation of the HUD-VA Supportive Housing Program, 77 FR 17086

[Docket FR-5596-N-01] (March 23, 2012), to then permanently terminate the tenant's Section 8 HUD-VASH HCV, thereby depriving him of his voucher and affordable housing?

PARTIES TO THE PROCEEDINGS

PETITIONER:

Don Kozich, Individually

RESPONDENTS:

Ann Deibert, Individually, and as CEO of the Broward County Housing Authority (PHA) and Secretary of its Affiliates and Subsidiaries (collectively BCHA);

Broward County Housing Authority (PHA), Building Better Communities Inc (BBC), Broward Workforce Communities Inc (BWC), and Reliance-Progresso Associates Ltd (RPA) (collectively "BCHA");

Michael S. Long, Individually and as former Chairman of the Board of Commissioners of Broward County Housing Authority (PHA); former President of Broward Workforce Communities, Inc. (BWC) and former President of Building Better Communities, Inc. (BBC);

Florida Housing Finance Corp. (FHFC);

Bernard E Smith, Individually and as Chairman of the Board of Florida Housing Finance Corp. (FHFC);

Respondents below this line were served with process late by the US Marshall in District Court and were not required to plead, made no appearance in Kozich's 11th Circuit Appeal, and may or may not be Respondents here:

Professional Management Inc (PMI);

US Dept. of Veteran Affairs (VA); and

US Dept. of Housing and Urban Development (HUD).

DEFINITIONS

1. **"BCHA."** Broward County Housing Authority (PHA) is chartered under Chapter 421, Fla.Stat., as a public housing authority. Because of their legally recognized identity of interest and symbiotic relationship Respondents Reliance-Progresso Associates (RPA), Broward County Housing Authority (PHA), Broward Workforce Communities, Inc. (BWC), and Building Better Communities, Inc. (BBC) are here collectively referred to as "BCHA." RPA, BBC and BWC are all interlocking, interconnected and blended symbiotic subsidiaries of PHA. RPA, BBC, and BWC are ultimately owned and controlled by PHA under the autocratic and dictatorial control of CEO Ann Deibert (Deibert) and Board Chairman Michael Long (Long). See Note 1. to Excerpt of PHA's Bi-annual September 30, 2012 and 2013 Audited Consolidated Financial Statement that PHA ultimately owns and controls BBC, BWC and RPA and correspondingly PP. The subsidiaries of PHA have a legally recognized identity of interest and symbiotic relationship with sharing the same officers, directors, commissioners, registered agent, employees, street address, offices, furniture, fixtures, equipment, phone number, fax number, _____@BCHAfl.org email addresses, attorney(s), webmaster, and website. These subsidiaries are also public entities: publishing notice of their public meetings, their agendas and their meeting minutes; holding public meetings consecutively on the same day each month; and maintain an "Official Record," being a CD recording, of each meeting. The acts and failure to act of all of these public entities are considered State Actions subject to Federal law.

2. "**ELIHA**" refers to the undisclosed "Extended Low Income Housing Agreement" executed between RPA and the FHFC which is recorded in the public records of Broward County and is therefore a land use restriction. The ELIHA provides for the renewal of Kozich's lease as a protected property right and requires evidence of good cause not to renew Kozich's lease.

3. "**FHFC**" refers to the Florida Housing Finance Corporation which is a quasi-state agency chartered under Chapter 420, Fla.Stat., pursuant to IRS 26 USC § 42 to oversee and issue Federal tax credits to LIHTC properties such as PP here and to oversee and inspect LIHTC communities, for which it receives a monthly fee, for compliance with LIHTC requirements and to report any deficiencies to IRS, which it has never done.

4. "**HUD-VASH HCV**" refers to the HUD Section 8 Housing and Urban Development-Veteran Affairs Supported Housing - Housing Choice Voucher (Section 8 HUD-VASH HCV) program by which a veteran such as Kozich here obtains federally supported housing which is incidental to his healthcare, and which makes Chapter 83, Florida Landlord Tenant Law, inapplicable, Fla.Stat. 83.42(1). "VASH" refers to the Veteran Affairs Supportive Housing (VASH) program of the U.S. Department of Veteran Affairs (VA), which is funded by Congressional special appropriation, overseen by the VA, implemented by HUD through its HCV program and administered by BCHA. See, HUD Section 8 Housing Choice Vouchers: Revised Implementation of the HUD-VA Supportive Housing Program, 77 FR 17086 [Docket FR-5596-N-01] (March 23, 2012).

5. “**Lease**” refers to the alleged written agreement executed on March 7, 2014 between Kozich and RPA for Unit 408 at PP, 619 North Andrews Avenue., Fort Lauderdale, FL 33311, and which is supposed to but does not include the Tenancy Addendum, HUD-51641-A; PHA’s March 17, 2014 Housing Assistance Letter and the Housing Assistance Payment (HAP) Contract, HUD-52641 (not executed by the tenant), all of which take precedence over the terms of the lease. The "lease" that BCHA filed in state court is incomplete, incomprehensible and a "fake."

6. “**LIHTC**” refers to Low Income Housing Tax Credit subject to IRS Code 26 USC § 42 which provides that tenants' right to lease renewal is a protected property right and requires evidence of good cause for not renewing a lease. In order to obtain and maintain its LIHTC status, RPA entered into an undisclosed Extended Low Income Housing Agreement (ELIHA) with FHFC which is recorded in Broward County and also provides for the renewal of Kozich’s lease as a protected property right and requires evidence of good cause not to renew Kozich’s lease. In their agreement with the "investors" in PP, BCHA gets to keep all of the cash income and is responsible for management and to make up any deficits. As *quid pro quo* the "investors" get the tax credits which are allocated by FHFC.

7. “**PMI**” refers to Professional Management, Inc. which entered into a management contract with BCHA for managing PP. However and contrary to law, BCHA never published any Requests for Proposals (RFP) for the management of PP or any of its LIHTC properties. For undisclosed reasons, PMI has the exclusive monopoly to manage

all of BCHA's properties and receives an approximate 19.6% management fee which equates to 2 months rent for each apartment that PMI manages at PP, an extraordinary management fee.

8. “**PP**” refers to Progresso Point which is an 8-story apartment community comprised of 76 studio and 1-bedroom apartments located at 619 North Andrews Avenue, Fort Lauderdale, Broward County, FL. LIHTC requires that PP be 100% leased to low-income tenants, but it is only about 90% leased to low-income tenants. In all respects and in accordance with its contracts with PMI, BCHA is secretly in control of PP and has the right to intervene, overrule and control in any matter relating to PP. It is such a well kept secret that not even the Fort Lauderdale Housing Authority or the Pompano Beach Housing Authority knew that PHA owned and controlled PP. The reason for the secrecy is that by its State Charter under Chapter 421, Fla.Stat., PHA is prohibited from operating in a municipality that has a housing authority.

9. “**RPA**” refers to Respondent Reliance-Progresso Associates Ltd which at all times relevant was the de jure record owner of PP. BCHA misrepresents that "Broward Workforce Communities (BWC) is the co-general partner of the Landlord (RPA)" when actually at all times relevant RPA, the record title owner of PP, is a secret and undisclosed wholly owned subsidiary of BWC which in turn is a secret and undisclosed wholly owned subsidiary of BBC which in turn is a secret and undisclosed wholly owned subsidiary of PHA thus making RPA also a secret wholly owned subsidiary and alter ego of PHA. PHA owns .1% of RPA which is 10 times greater than the .01% that

the housing authority owned in the Frenchman Hill LIHTC apartment community. See, Mendoza v. Frenchman Hill Apartments, 2005 US Dist LEXIS Ct 47373, 2005 WL 6581642 (E.D. Wash., Jan. 20, 2005).

10. For definitions of other terms Kozich adopts and incorporates herein by reference those definitions contained in the Tenancy Addendum, HUD-51641-A, which by its terms takes precedence over the terms and conditions of the lease, and those definitions found in the HUD Handbook 4350.3.

RECORD WITH NO DISCOVERY

The proceedings in state court were conducted under Florida Summary Procedure statute, Fla.Stat. 51.011, which allowed only five (5) days from service for Kozich to file his responsive pleadings. The Court is reminded that at this stage of the proceedings, because of the shortness of time there has been no discovery in either state or federal court, Barrington Cove Ltd. Part'shp v. Rhode Island Housing and Mtg. Fin. Corp., 246 F.3d 1 (1st Cir. 2001), and that many of the documents are in the sole custody, possession and control of BCHA. The documents upon which Kozich relies were mostly obtained through public and judicial record requests. Although Kozich has a \$135 outstanding credit with BCHA, as of the first of 2016 BCHA cut him off from access to any of its public records.

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January 11, 2018	<u>Kozich v Deibert</u> , 708 Fed.Appx 644 (11th Cir. 2018) (Mootness Doctrine), <u>aff'g on other grounds</u> , 15-CV-61386 (DC SD Fla. 2016) (Rooker-Feldman Doctrine)	A, 1-4
October 20, 2015	<u>Kozich v Deibert</u> , 15-CV-61386 (DC SD Fla. 2016) (Rooker-Feldman Doctrine), <u>aff'd on other grounds</u> , 708 Fed. Appx 644 (11th Cir. 2018) (Mootness Doctrine)	B, 5-12
June 1, 2018	11th Circuit Court Order denying Rehearing	C., 13-14
November 18, 2015	District Court Order denying Rehearing	D., 15-16
May 20, 2015	Kozich's Notice of Appeal. <u>RPA v Kozich</u> , State Court Eviction Case No. COCE1500473511;	E., 17-24
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May 20, 2015	Kozich's Notice of Filing BCHA's secret ex parte emails to State Judge Skolnik; fn.1.	F., 25-37

fn.1. BCHA actually sent its secret emails to pskolnik@hotmail.com which is former State Judge Peter Skolnik's personal email address. (As Judge Skolnik is no longer a judge and his personal email address is in the public domain it is no longer exempt from disclosure). Kozich obtained former State Judge Skolnik's private email address independently from the other documents from his Judicial Records Request, Fla.R.Jud. Admin. 2.420.

DOCUMENT DATE	DOCUMENT DESCRIPTION	(APP."_", AND PAGE NO'S_)
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I. OPINIONS AND ORDERS BELOW

In Kozich v Deibert, 15-CV-61386 (D.C. S.D. Fla. 2016), the District Court dismissed Kozich's complaint for declaratory judgment and a temporary restraining order based on the Rooker-Feldman Doctrine (APP.B.).

In Kozich v Deibert, 708 Fed.Appx 644 (11th Cir. 2018), the 11th Circuit affirmed the dismissal of Kozich's complaint on the basis of the Mootness doctrine (APP.A.).

II. JURISDICTIONAL STATEMENT

For Kozich's Petition for Writ of Certiorari this court's jurisdiction is based on 28 USC § 1254(1).

Jurisdiction will support claims founded under federal common law and as well as those of a statutory origin. Franchise Tax Bd. V. Const. Laborers Vacation Trust, 463 US 1, 27-28 (1983). Federal statutory and common law provide that the plaintiff's right to relief [in state court] necessarily depends on resolution of a substantial question of federal law. Grable & Sons Metal Prods., Inc. v Dare Egg's & Mfg., 545 US 308, 312 (2005). Federal question jurisdiction exists if the defendant's right to relief in state court depends on resolution of a substantial question of federal law.

This Court has jurisdiction to enjoin and set aside state court judgments that were obtained by BCHA through fraud on the state court and surreptitious secret ex-parte communication (APP.F.) with the state court judge, with no hearing or trial whatsoever, where Kozich had no opportunity whatsoever to present his defenses and claims. Exxon

Mobil Corp. v. Saudi Basic Industries Corp., 544 US 280, 292, 125 S.Ct. 1517, 161 L. Ed. 2d 454 (2005); Long v. Shorebank Development Corp., 182 F.2d 548 (7th Cir. 1999); McNeill v. N.Y.C. Housing Auth., 719 F. Supp. 233 (SDNY 1989) and Caulder v. Durham Housing Auth., 433 F.2d 998 (4th Cir. 1970).

Where applicable, this Court has supplemental jurisdiction to review Kozich's claims under Florida law pursuant to 28 USC § 1367(a).

III. CONSTITUTIONAL PROVISIONS

This petition involves in part the First, Fifth and Fourteenth Amendments to the United States Constitution.

The First Amendment in relevant part states, "Congress shall make no law ... abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." This Amendment extends to the States pursuant to U.S. Const. Amend. XIV, § 1.

The Fifth Amendment in relevant part states, "No person shall be ... deprived of life, liberty, or property, without due process of law; ..."

The Fourteenth Amendment in relevant part states, "Section 1. ... No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

IV. STATEMENT OF FACTS AND CASE

Because Defendants PMI, HUD and VA were late served with process by the US Marshall and did not file any response to Kozich's complaint in District Court, the order of Dismissal from District Court may not apply to them. They made no appearance before the 11th Circuit and may or may not be Respondents here.

Kozich is a 72-year old retired disabled veteran living on fixed low income social security and VA disability pension. Utilizing his Section 8 HUD-VASH HCV Kozich resided in a Low Income Housing Tax Credit (LIHTC) apartment community, Progresso Point (PP), titled in RPA which is ultimately owned and controlled by its "parent," the PHA, through its various symbiotic subsidiaries, collectively BCHA.

PHA is chartered under Chapter 421, Fla.Stat., as a Public Housing Authority, and therefore BCHA's actions and failure to act are "state actions." It is well established that public housing authorities are government agencies whose actions are subject to due process and equal protection requirements. "The Housing Authority ... is a government agency ... its actions are state action within the meaning of the Fourteenth Amendment." "The government as landlord is still the government... [U]nlike private landlords, it is subject to the requirements of due process of law...."

This is a tenant eviction case from federally subsidized housing arising out of a non-final order (APP.E.pg.19) determining the right to immediate possession of property, Fla.R.App.P. 9.130(a)(3)(C)(ii). Herrell v Seyforth, Shaw, Fairweather & Geraldson, 491 So. 2d 1173 (Fla. 1st DCA 1986). The order is non-final because there

remains unfinished business in state court. Finn v Finn, 68 So.3d 424 (Fla., 4th DCA 2011). The non-final order remains on appeal (APP.E.) in state court, Broward County Case No. CACE16001144(AP), and is fully briefed as of September 10, 2018.

Utilizing RPA as a symbiotic subsidiary, on March 5, 2015, BCHA filed suit against Kozich in state court styled Reliance Progresso Associates Ltd. v Don Kozich, Case No. COCE15004735 (55), seeking to illegally evict Kozich from his Low-Income Housing Tax Credit (LIHTC) apartment community in which he also resided under a Section 8 HUD-VASH HCV. BCHA, being a state actor and the artful dodger that it is, purposely did not disclose to the state court that its eviction action is governed by 26 USC § 42 as well as the Tenancy Addendum, HUD-51641-A, both of which independently mandate "No-Cause Eviction Protection".

Kozich answered in state court that he is a disabled retired veteran and that BCHA refused to renew Kozich's lease in retaliation for Kozich's advocating for better, safer, healthier and more efficient living conditions at PP, organizing and promoting a Progress Point Tenants Organization (PPTO) and publishing and distributing a newsletter "Broward County Housing Authority Exposed" advocating for better, safer, healthier and more efficient living conditions, i.e. no air-conditioning in the enclosed apartment building for six (6) months during the long hot summers of 2014 and 2015 and currently there exists water intrusion and mold and mildew at PP which BCHA refuses to fix; to paraphrase BCHA's Chief Operating Officer, Parnell Joyce, infamously stating, "Being non-profit we have no obligation to fix anything."

Kozich was living in a Low Income Housing Tax Credit (LIHTC) apartment community, PP, under two federally subsidized programs; Low Income Housing Tax Credit (LIHTC) under 26 USC § 42 and Section 8 HUD-VASH HCV under 24 CFR 982.552 and HUD Section 8 Housing Choice Vouchers: Revised Implementation of the HUD-VA Supportive Housing Program, 77 FR 17086 [Docket FR-5596-N-01] (March 23, 2012). Both of these federal programs as well as the undisclosed but recorded ELIHA independently adopted the HUD Tenancy Addendum, HUD-51641-A, which mandates due process, Elements of Due Process, HUD Legal Opinion GCH-0078 (September 4, 1992), requiring a hearing or trial and "No Cause Eviction Protection" requiring evidence of good cause not to renew a lease, and provide for the tenant's right of enforcement, 24 CFR 982.552, 24 CFR 982.308(a) and (f)(2), and 24 CFR 982.456(b)(2).

The property, Progresso Point (PP), which is the subject of BCHA's eviction Complaint, is a Low Income Housing Tax Credit (LIHTC) apartment community, Progresso Point (PP), titled in Reliance-Progresso Associates Ltd (RPA). RPA is secretly but ultimately owned and controlled by PHA which is Chartered under Chapter 421, Fla.Stat., as a Public Housing Authority which makes RPA a state actor. Through its various symbiotic subsidiaries PHA ultimately owns .1% of RPA which is 10 times greater than the housing authority's .01% ownership in Frenchman Hill. See, Mendoza v. Frenchman Hill Apartments, 2005 WL 6581642 (E.D. Wash., Jan. 20, 2005) [rejecting housing authority's argument that it only held a minute [approximately .01% (1/100th of 1 percent)] interest in the LIHTC apartment community which is less than BCHA's .1%

ownership interest in RPA, the de jure record owner of PP]. And by its contract with the investors, National Equity Fund (NEF), PHA controls RPA and PMI. Thus BCHA's acts and failure to act, and consequently RPAs and PMI's acts and failure to act, are grossly negligent state actions.

Because of BCHA's secret email to the state judge's personal email address (APP.F,pgs.27-33), the state judge ex parte, without a hearing or trial, struck Kozich's Answer but not his Affirmative Defenses (APP.E.pg.20). The state judge then ex parte entered the non-final Default Final Judgment for Removal (APP.E.pg.19) and BCHA forcefully evicted Kozich. Kozich appealed in state court, CACE16001144(AP) (APP. E.), which is fully briefed as of September 10, 2018.

PHA also controls and issues the Section 8 HUD-VASH HCV but their excuse for not issuing Kozich's Section 8 HUD-VASH HCV is that Kozich has no lease, its policy being no lease, no voucher. On the one hand PHA as the "parent" and by contract has the authority to order its symbiotic subsidiary, RPA, to renew Kozich's lease. On the other hand PHA is refusing to issue Kozich's Section 8 HUD-VASH HCV because it will not order RPA to renew Kozich's lease. These are retaliatory circular state actions; analogous to a dog chasing its tail. To reiterate, **NO AUTHORIZATION, NO RENEWAL, NO LEASE, NO SECTION 8 HUD-VASH HCV, NO HOUSING**, and on and on in a circle. But because PHA refused to order RPA to renew Kozich's lease in retaliation for his constitutionally protected activities Kozich had been made homeless and sustained irreparable harm.

Tracking the pleadings from Mendoza, on July 2, 2015 Kozich filed his complaint in Federal District Court (Southern District of Florida, Case No. 15-CV-61386-Dimitrouleas), for Declaratory and Injunctive Relief. The District Court dismissed Kozich's complaint citing the Rooker-Feldman doctrine. Kozich timely appealed to the 11th Circuit, Case No. 15-15628-EE.

During the pendency of Kozich's federal District Court case, BCHA then utilized Kozich's illegal eviction in state court to unlawfully permanently terminate his Section 8 HUD-VASH HCV (APP. G.) in order to permanently deprive him of affordable housing. Without his Section 8 HUD-VASH HCV Kozich has been deprived of his constitutionally protected property right to affordable housing. Again BCHA's actions are in retaliation for Kozich exercising his constitutionally protected rights.

In Kozich v Deibert, 708 Fed.Appx 644 (11th Cir. 2018) (Mootness Doctrine), aff'g on other grounds, 15-CV-61386 (DC SD Fla. 2016) (Rooker-Feldman Doctrine), the 11th Circuit ignored DeFunis v. Odegaard, 416 US 312, 318-19, 94 S.Ct. 1704, 40 L. Ed 2d 164 (1974); Basco v. Machin, 514 F.3d 1177 (11th Cir 2008) and Sims v. Florida Dept. of Highway Safety and Motor Vehicles, 862 F.2d 1449 (11th Cir. 1989) and expanded "voluntarily vacated" to include "evicted". The 11th Circuit cited to Ware v. Deutsche Bank (In re Ware), 562 F.App'x 850, 853 (11th Cir. 2014) (The bank had already obtained a default final judgment in state court and by the time the case got to federal court had already foreclosed on the property making the case moot) and upon which Philippeaux v Apt. Inv. & Mgt. Co., 598 F.App'x 640, 643 (11th Cir. 2015) (In a

declaratory and injunctive relief action, after filing suit the tenant reached a settlement with the landlord and voluntarily "vacated" his apartment making the case moot) later relied. Both of these cases are distinguished and have no application here. The 11th Circuit erroneously found that Kozich had voluntarily "vacated" his apartment and dismissed his appeal as being moot. However and referencing Black's Law Dictionary, the 11th Circuit misused the term voluntarily "vacated" as being synonymous with forcefully "evicted." In this case there is no settlement agreement in either state or federal court, and BCHA forcefully evicted Kozich; he did not voluntarily vacate, surrender, leave, or abandon his federally subsidized housing. Therefore this case is not moot.

The renewal of Kozich's lease is a constitutionally protected property right, his right to free speech is a constitutionally protected civil right and his right to trial is a constitutionally protected due process right.

Kozich's Petition for Writ of Certiorari to the 11th Circuit Court of Appeals follows.

V. REASONS FOR GRANTING THE WRIT

A. PROLOGUE

To ease the court's understanding of the facts here, Kozich was a tenant at PP under two federal programs: his Section 8 HUD-VASH HCV and, following the IRS's adoption of HUD policies and regulations, LIHTC apartment communities under 26 USC § 42.

Each of these federally subsidized housing programs independently adopted and mandates the same or similar HUD requirements such as requiring "No-Cause Eviction

Protection" with evidence of good cause not to renew a lease and requiring a hearing or trial before eviction to meet due process requirements. One federal program does not rely on the other federal program for "No-Cause Eviction Protection."

In its simplest form and for purposes of this petition, Kozich's tenancy at PP falls under two different and independent but related types of federal subsidized housing:

1. TENANT BASED FEDERAL SUBSIDIZED HOUSING. Kozich's Section 8 HUD-VASH HCV federal subsidy at PP. These subsidies stay with the tenant and are portable.

2. PROJECT BASED FEDERAL SUBSIDIZED HOUSING. Kozich's residency in PP, a LIHTC apartment community under 26 USC 42 and the Extended Low Income Housing Agreement (ELIHA). These subsidies stay with the project and are not portable.

HUD regulations, 26 USC § 42, and the HUD Tenancy Addendum, HUD-51641-A, actually make Kozich a tenant until expiration of the ELIHA. So long as there is no evidence of good cause not to renew Kozich's lease and so long as Kozich pays his 30% portion of the rent and meets the requirements for the Section 8 HUD-VASH HCV and the LIHTC federal subsidy programs his lease has to be renewed and is one for the duration of the ELIHA.

The State court erred as a matter of law in ignoring Kozich's objections, ex parte striking Kozich's answers but not his affirmative defenses (APP.E.,pg. 20) and granting

BCHA non-final Default Final Judgment for Removal of Tenant (APP.E.,pg.19) when Kozich is the beneficiary and recipient of federally supported programs for his housing. The notice of termination for violations other than non-payment of rent must be specific with federally subsidized housing. The HUD Handbook, 4350.3 REV-1, Section 8-6, paragraph A. 3, requires that the violations be described specifically including the date, location and names of persons involved. For a well-researched and succinct analysis of the legal sufficiency of a termination notice in federally subsidized housing, See, Asbury Arms, Inc. v. Lynar, Online Reference: FLWSupp 2305ASBU, Circuit Court Case No. 05-2013-CA-039015 (Fla. 18th Judicial Circuit, May 28, 2015) [Circuit Court Judge Lisa Davidson's *Order Granting Defendant's (tenant's) Motion for Summary Judgment and Dismissing Plaintiff's (landlord's) Claims for Eviction*, [conclusionary notice of eviction in a federally subsidized HUD supportive housing for the elderly case]. See also, Goldberg v. Kelly, 397 US 254, 90 S.Ct. 1101, 25 L.Ed 2d 287 (1970), and its progeny (federal benefits are statutory entitlements rather than privileges, established Fourteenth Amendment procedural due process requirements for the denial of government benefits, and mandates a full evidentiary hearing before denying benefits).

Kozich still qualifies for both of these federal programs, and after being forcefully evicted from PP in retaliation for exercising his constitutional right it is his intent with the court's assistance to get his Section 8 HUD-VASH HCV reinstated and to gain re-tenancy at PP and for other causes of action, and damages from BCHA.

B. THIS CASE IS OF EXCEPTIONAL IMPORTANCE, GREAT PUBLIC INTEREST AND LIKELY TO RECUR.

"Cases raising the issue of the legality of 'no cause evictions should not be rendered moot since they are capable of repetition, yet evading review', DeFunis v. Odegaard, 416 US 312, 318-19, 94 S.Ct. 1704, 40 L. Ed 2d 164 (1974); ... tenants facing such evictions are likely to relocate rather than run the risk of summary eviction in order to preserve the justiciability of their federal lawsuit [T]he **voluntary** cessation of allegedly illegal conduct does not deprive the tribunal of power to hear and determine the case, i.e. does not make the case moot. DeFunis, 416 US at 318; moreover, ... it suggests that 'no cause evictions may surface in respect to other ... properties.'" Linares v Jackson, 548 F.Supp. 2d 21 (E.D.N.Y. 2008) (internal citations omitted). The doctrine of "capable of repetition yet evading review" takes precedence over mootness issues. Sims v. Florida Dept. of Highway Safety and Motor Vehicles, 862 F.2d 1449 (11th Cir. 1989). The mootness doctrine does not destroy jurisdiction when the question before the court is of great public interest or is likely to recur. Enterprise Leasing Co. v Jones, 789 So.2d 964, 965-66 (Fla. 2001). See also, Mendoza v. Frenchman Hill Apartments, 2005 WL 6581642 (E.D. Wash., Jan. 20, 2005) (Because the landlord had not as yet fully complied with the IRS "No-Cause Eviction Protection" Ruling 2004-82 and that the landlord's alleged violations of 26 USC § 42 may continue in the interim, the court found that the issue is not moot and that a live controversy still existed, that the good cause eviction of tenants from LIHTC properties is governed by the due process clause and that the landlord is required to provide the

tenant with timely and adequate notice detailing the reasons for a proposed termination or eviction). In Mendoza, the court strictly dealt with the facts and law as they related to a LIHTC apartment community, not with the facts and law as they relate to Section 8 HUD-VASH HCV or Section 8 HUD-HCV recipients.

This is a case of exceptional importance, great public interest and is likely to recur because:

1. Prison population would be reduced by 1.8% if veterans can find and maintain affordable housing;¹
2. More than 9% of American children (6.8 million) were not only living in poverty in 2009 but in extreme poverty, or at less than 50% of the federal poverty level;²
3. There is a critical shortage of affordable housing in the United States;
4. It's not enough to have something written into law; if a law isn't enforced, it might as well not exist. And if ordinary citizens, such as BCHA's tenants, are too scared

¹ Veterans Resource Guide For The [Florida] State Court System (2014):

Page 9; "... veterans account for nine [9%] of every 100-hundred individuals in United States jails and prisons."

Page 10: "... one in five [20%] incarcerated veterans were experiencing long-term homelessness prior to being admitted to jail."

But for being homeless 1.8% (20% of 9%) of the prison population would not be in prison. This equates to the prison population being reduced by 1.8% with veterans having found affordable housing.

² Out In The Cold: The Failure of Tenant Enforcement of the Low-Income Housing Tax Credit (LIHTC), 82 U.Cin.L.Rev 1079, Desiree C. Hensley, 2014, fn. 9. National Center for Children in Poverty (2011) (A well reasoned, well-researched and succinct study on the disastrous Eastmoor Estates LIHTC housing community costing taxpayers \$1 Billion to clean-up the cesspool).

of what would happen to them if they exercised their rights, such as their being evicted or arrested or jailed (all of which BCHA twice did to Kozich including his spending four (4) days over Thanksgiving 2016 in jail but the state prosecutor dropped both cases), then they don't really have those rights at all (Paraphrasing Merriam-Webster Dictionary definition of "de jure"). As evidence of BCHA's dictatorship and stranglehold on tenants, only a total of 2-3 tenants, at the very most, ever appeared over the total of five (5) years and approximately fifty (50) public meetings that Kozich has attended at BCHA. BCHA's retaliation went so far as to have its bankruptcy lawyers email the members of the Federal Bankruptcy Bar not to take on Kozich's representation in his effort to stay his eviction;

5. Chapter 83, Fla.Stat., Florida Residential Landlord Tenant law, favors landlords who can afford the great cost of a strong lobby in Tallahassee to make one-sided law favoring landlords especially in instances of retaliatory eviction as here where the landlord breached its warranty of habitability and then refused to renew the tenant's lease in retaliation for, among other tenant rights, the tenant publishing a newsletter, forming a tenants organization and complaining to government authorities;

6. Florida landlords, including BCHA, know that Chapter 83, Fla.Stat., is one-sided, favors them and take advantage of that favoritism;

7. Neither Chapter 83, Florida Landlord-Tenant Law (eviction) nor Fla.Stat. 82.04 (unlawful detainer) are applicable to the facts of Kozich's state case or to Section 8 HUD-VASH HCV recipients. Fla.Stat. 83.42(1) makes Chapter 83, Florida

Residential Landlord Tenant law, inapplicable to Kozich because he is a Section 8 HUD-VASH HCV recipient with his housing being incidental to his health care (health care is the first and primary requirement for entry into the VASH program) and Fla.Stat. 82.04 (unlawful detainer) does not apply to residential property, Fla.Stat. 82.04(2). As neither Chapter 83, Florida Residential Landlord Tenant law (eviction) nor Fla.Stat. 82.04 (unlawful detainer) are applicable to Kozich's eviction case in State Court, the State court lacked subject matter jurisdiction over BCHA's eviction complaint. See, Fla.Stat. 34.011(1) and (2).

8. Without a means to enforce landlord tenant laws and resolve legitimate landlord-tenant issues in the courts, tenants have no recourse against unscrupulous landlords;

9. **THE SHELL GAME.** Through its various secret and undisclosed symbiotic subsidiaries BCHA is sitting on over \$25,000,000 (\$25 million) in cash yet there is an epidemic shortage of affordable housing in Broward County. As expressed by its immediate past Chairman, Michael Long (Long) (and a Respondent here), BCHA is "building a brand" so that it is known as the best housing authority in the nation and that other housing authorities will call upon it for guidance, but at what cost to Broward County residents. Would it not be a greater legacy to say, "We have \$0 in the bank but everyone in Broward County has a roof over their head"?

10. **THE CONTINUING SHELL GAME.** While McCan Communities, Inc. (McCan) has no tangible assets or liabilities it holds over \$7.5 million in cash which it

receives in unexplained "contributions" from unidentified persons (most probably from BCHA's LIHTC properties and other symbiotic subsidiaries of BCHA. Utilizing the example of the (illegal) practice of a private developer it met at the recent FARO Conference, BCHA utilizes McCan as a shell to keep its cash out of the reach of HUD. However, BCHA is not a private developer. BCHA is a state agency and comparing BCHA's organizational chart from 2013 to that of 2018 after Kozich raised the issue of McCan's \$7.5 million cash as an issue, now shows McCan as an "orphan" off by itself with no ties to BCHA. Deibert mistakenly thinks that by erasing a line from BCHA's organizational chart that she could sever McCan's symbiotic ties to BCHA. BCHA has no explanation for McCan's \$7.5 million cash and for its 2019 Operating Budget, McCan shows zero income for 2017, 2018 and 2019 in contributions from the other BCHA symbiotic subsidiaries. From the August 21, 2018 BCHA meeting, without any justification BCHA is arbitrarily increasing rents by approximately 5% at five (5) of its non-LIHTC apartment communities totaling 111 units. Deibert indicated the approximately \$59,220 additional annual income from the rent increases will be siphoned off, but no line item, to fill McCan's coffers. BCHA created McCan and with sharing corporate officers, offices, etc. McCan has a legally recognized symbiotic relationship to BCHA thereby also making it a state agency. HUD regulations require that BCHA not hoard cash and "spend 50% of its cash." Kozich believes BCHA utilizes McCan as a shell to secretly hoard cash.

11. "All governmental entities in Florida are subject to the requirements of the Sunshine Law unless specifically exempted." Sarasota Citizens for Responsible Government v. City of Sarasota, 48 So. 3d 755, 762 (Fla. 2010). BCHA continues to misrepresent that RPA is "privately-owned" and "not a state actor" when actually RPA was created by and is secretly owned and controlled by PHA which makes all of RPA's actions and failure to act "state actions." See also, Mendoza v. Frenchman Hill Apartments, 2005 WL 6581642 (E.D. Wash., Jan. 20, 2005) (rejecting housing authority's argument that it only held a minute [approximately .01% (1/100th of 1 percent)] interest in the LIHTC apartment community which is ten times less than BCHA's .1% ownership interest in RPA, the de jure record owner of PP). As required by Federal and Florida law for "state actors," BWC a/k/a RPA d/b/a PP publishes notices of its public meetings, holds its meetings out to the public and as required by law allows time for public comment. As further evidence of BWC a/k/a RPA d/b/a PP being a "state actor," as required by Fla.Stat. 286.011 back on July 18, 2018 BWC a/k/a RPA publicly noticed and held a closed "shade session" with its Commissioners and lawyers to discuss this case and Kozich's state case.

12. Private owners of federally assisted housing are subject to constitutional restrictions because of their close involvement with the federal government. Geneva Towers Tenants Org. v Federated Mortgage Inv., 504 F.2d 482, 487-88 (9th Cir. 1974).

13. A 14th Amendment due process evidentiary hearing is mandated, with an opportunity to examine witnesses, before recipient of government welfare benefits (a

statutory entitlement rather than merely a privilege) is deprived of such benefits. Goldberg v. Kelly, 397 US 254, 90 S.Ct. 1011, 25 L.Ed. 2d 287 (1970), affirming, 294 F.Supp. 893 (S.D. N.Y. 1968). The doctrine of "capable of repetition yet evading review" takes precedence over mootness issues. DeFunis v. Odegaard, 416 US 312, 318-19, 94 S.Ct. 1704, 40 L. Ed 2d 164 (1974); Sims v. Florida Dept. of Highway Safety and Motor Vehicles, 862 F.2d 1449 (11th Cir. 1989) and Linares v Jackson, 548 F.Supp. 2d 21 (E.D.N.Y. 2008).

14. Tenants who receive federal rent subsidies under Section 8 have "constitutionally protected property rights in an expectation of continued occupancy and receipt of rent and utility subsidies." Jeffries v. Georgia Residential Finance Authority, 678 F.2d 919 (11th Cir. 1982). A tenant's right in a federally supported program to renewal of his lease is a constitutionally protected property right. Ruffin v. Housing Authority, 301 F.Supp. 251, 253 (E.D. La. 1969) (holding that "the right of a tenant to public housing is no less 'property' under the Fifth and Fourteenth Amendments than the right of a student to remain in school."); Ressler v. Pierce, 692 F.2d 1212 (9th Cir. 1982) (holding applicants for federal rent subsidies have constitutionally protected property interests); and Joy v. Daniels, 479 F.2d. 1236, 1241 (4th Cir. 1973) (holding that low-income tenant in private housing with a federal rent subsidy has cognizable property interest in continuing his tenancy absent good cause to terminate).

15. Housing authorities cannot terminate tenancies unless they have followed the procedural rules prescribed by HUD. Thorpe v Hous. Auth. of Durham, 386 US 670

(1967), on remand, 393 US 268 (1969). Section 8 "tenants may claim procedural due process rights under the due process clause if they have a substantial property interest in continued occupancy." Jeffries at 925.

16. The HUD Tenancy Addendum (HUD-51641-A); LIHTC under 26 USC § 42; the ELIHA; Section 8 HUD-VASH HCV under 24 CFR 982.552; HUD Section 8 Housing Choice Vouchers: Revised Implementation of the HUD-VA Supportive Housing Program, 77 FR 17086 [Docket FR-5596-N-01] (March 23, 2012) and IRS Ruling 2004-82 (adopting the HUD Tenancy Addendum) all mandate "No Cause Eviction Protection," proof and evidence of good cause not to renew a lease and a due process mandated hearing and trial.

17. RPA entered into an undisclosed but recorded Extended Low Income Housing Agreement (ELIHA) with FHFC which is recorded in Broward County and therefore a land use restriction or regulation which runs with the land, similar to that of a deed restriction. A & P Investment Group, Inc. v. The Circle Property Owners Assoc., Inc., 741 So.2d 1139 (Fla. 4th DCA 1998). "A covenant running with the land differs from a merely personal covenant in that the former concerns the property conveyed and the occupation and enjoyment thereof, whereas the latter covenant is collateral or is not immediately concerned with the property granted. If the performance of the covenant must touch and involve the land or some right or easement annexed and appurtenant thereto, and tends necessarily to enhance the value of the property or renders it more convenient and beneficial to the owner, it is a covenant running with the land." Palm Beach Cty. v

Cove Club Investors, Ltd., 734 So.2d 379, 382 n.4 (Fla. 1999) and Alternative Networking, Inc. v Solid Waste Auth. of Palm Beach Cty., 758 So.2d 1209, 1211 (Fla. 4th DCA 2000). Under Florida law, where a party seeks an injunction to prevent the violation of a restrictive covenant, the party need not allege or show irreparable injury. "Appropriate allegations showing the violation are sufficient and the violation itself amounts to irreparable injury." Stephl v Moore, 94 Fla. 313, 114 So. 455 (1927). The rule excusing proof of irreparable harm also avoids the need for the party seeking to enforce a restrictive covenant to demonstrate the absence of an adequate remedy at law. Autozone Stores, Inc. v Northeast Plaza Venture, LLC., 934 So.2d 670, 673 (Fla. 2d DCA 2006). LIHTC tenants have the right to enforce restrictive covenants that, among other things, do not allow a state credit allocation agency to terminate a property from the program for an owner's noncompliance. Nordbye v. BRCP/ GM Ellington, 266 P.3d 92 (Ore. Ct. App., 2011) (a well reasoned study and opinion on the tenant's right of enforcement of the LIHTC program).

18. BCHA committed fraud on the court when it purposely failed to disclose the existence of the recorded ELIHA that it executed with FHFC relating to Progresso Point (PP) in order to obtain 26 USC § 42 LIHTC status and tax credits. The recorded ELIHA provides for the renewal of Kozich's lease as a protected property right and requires evidence of good cause not to renew Kozich's lease. The undisclosed ELIHA by which the FHFC allocated tax credits to RPA provides: (1) For tenant right of enforcement [Sec. 9. last para.]; (2) Mandates [para. (r)(ii)] that RPA conform to HUD Policy Handbook

4350.3 which incorporates the HUD Tenancy Addendum, HUD-51641-A; (3) Mandates "No-Cause Eviction Protection" [para. (c)] which requires evidence of good cause not to renew a lease; and (4) Mandates that RPA implement and maintain seven (7) Resident Programs which it has never been done.

The recorded ELIHA requires that BCHA budget, implement and continuously maintain seven (7) on-site Resident Programs for its LIHTC tenants: Homeownership Opportunity Program, Literacy Training, Job Training, Health Care, Health and Nutrition Classes, Resident Activities, and Financial Counseling. As part of BCHA's gross negligence and although it is paid monthly fees from HUD and receives all of the income from the rentals, BCHA has never budgeted or implemented any of the required on-site Resident Programs in any of its LIHTC communities. And although FHFC receives a monthly administrative fee and conducts (annual) "inspections", it has never reported any deficiencies on BCHA's LIHTC communities to the IRS as is required by IRS regulations and 26 USC § 42.

19. In secretly depriving Kozich of any hearings and trial in state court, BCHA deprived Kozich of his 14th Amendment constitutionally protected right to due process, and is in violation of HUD regulations, Elements of Due Process, HUD Legal Opinion GCH-0078 (September 4, 1992), requiring a court hearing or trial to meet due process requirements as defined in HUD Section 8 Housing Choice Vouchers: Revised Implementation of the HUD-VA Supportive Housing, 77 FR 17086 [Docket FR-5596-N-01] (March 23, 2012), and under the U.S. and Florida Constitutions.

20. HUD Section 8 Housing Choice Vouchers: Revised Implementation of the HUD-VA Supportive Housing Program, 77 FR 17086 [Docket FR-5596-N-01] (March 23, 2012) requires that "Section 8 HUD-VASH vouchers ... are administered in accordance with ... 24 CFR part 982."; and waives 42 USC 1437d(s); 42 USC 13661(a), (b) and (c); and 24 CFR 982.552 and 982.553 in regard to denial of admission and prohibits PHAs from screening any potential eligible family members or deny assistance for any grounds permitted under 24 CFR 982.552 (broad denial for violations of HCV program requirements). After illegally "evicting" Kozich by secret email, in further retaliation for Kozich exercising his constitutional rights to free speech advocating for better, healthier and safer living conditions, for promoting a tenant's organization and for publishing a monthly newsletter, and contrary to HUD Section 8 Housing Choice Vouchers: Revised Implementation of the HUD-VA Supportive Housing Program, 77 FR 17086 [Docket FR-5596-N-01] (March 23, 2012), BCHA utilized its illegal "eviction" to then illegally permanently terminate Kozich's Section 8 HUD-VASH HCV (APP. G.) so that now he has no voucher with which to even find affordable housing. All of Kozich's actions are Fair Housing Act and Civil Rights activities protected by 28 USC § 1443 and also his disability and free speech and free association activities are protected under the First, Fifth and Fourteenth Amendments to the U.S. Constitution. Knight v. Sanford Hous. Auth., No. 97-1225-CIV-ORL-19B (M.D. Fla. Jan. 30, 1998) and McQueen v. Druker, 438 F.2d 781, 785 (1st Cir. 1992).

21. Opinions on appeals from state county court to state circuit court are seldom published and any published opinions are usually ignored by other circuits and the district courts.

22. Any opinion of this court will affect these large numbers of tenants, prison inmates, landlords and housing authorities alike.

For the reasons given this case is of exceptional importance, of great public interest and is likely to recur, and the non-final Default Final Judgment for Removal of Tenant should be reversed nunc pro tunc and Kozich's Section 8 HUD-VASH HCV along with his housing at PP reinstated.

C. INTER-CIRCUIT AND INTRA-CIRCUIT CONFLICT

With its Opinion in Kozich v Deibert, 708 Fed.Appx 644 (11th Cir. 2018) (Mootness Doctrine) citing to Ware v. Deutsche Bank (In re Ware), 562 F.App'x 850, 853 (11th Cir. 2014) (The bank had already obtained a default final judgment in state court and by the time the case got to federal court had already foreclosed on the property making the case moot) and upon which Philippeaux v Apt. Inv. & Mgt. Co., 598 F.App'x 640, 643 (11th Cir. 2015) later relies (In a declaratory and injunctive relief action, after filing suit the tenant reached a settlement with the landlord and voluntarily vacated his apartment making the case moot), and created intra-circuit and inter-circuit conflict. Both of these cases are distinguished and have no application here because the 11th Circuit erroneously found that Kozich had voluntarily "vacated" his apartment and dismissed the tenant's appeal as being moot. However and referencing Black's Law

Dictionary, the 11th Circuit misused the term voluntarily "vacated" as being synonymous with forcefully "evicted."

According to Black's Law Dictionary, 10th Ed., 2014, the correct definition of "vacate" reasons that the tenant voluntarily left or gave up the occupancy of the house or room before the lease expired as the tenant had in Philippeaux. And placing the definition of "surrender" in the context of "vacate", "vacate" takes on a definition specific to this case being: "A tenant's relinquishment of occupancy or possession before the lease has expired, allowing the landlord to take possession and treat the lease as terminated." With that correct definition of "vacate" in mind there is no way that Kozich vacated his apartment but BCHA forcefully evicted him after the lease had expired.

In this case there is no settlement agreement in either state or federal court, and Kozich was forcefully evicted by BCHA; he did not voluntarily vacate, leave, or abandon his LIHTC and HUD -VASH HCV Section 8 federally subsidized housing. Therefore, in ignoring Jeffries, Sims, McArthur, Basco and Yarbrough and instead relying on Ware and Philippeaux, the 11th Circuit's opinion created intra-circuit conflict within its own circuit. And in ignorng DeFunis, Goldberg, Linares, Escalera and Mendoza and instead relying on Ware and Philippeaux, the 11th Circuit created inter-circuit conflict with the other federal circuits and the U.S. Supreme Court.

With Philippeaux the 11th Circuit recognized that the tenant's damages were independent of his other claims for injunctive and declaratory relief but would not allow the tenant's claim for damages to go forward because the tenant failed "to allege that he

engaged in statutorily protected activity." Again and being distinguished from Philippeaux, here Kozich alleged that he engaged in statutorily and constitutionally protected activity and his claims for damages are independent of his other claims and are not nominal.

1. INTER-CIRCUIT CONFLICT WITH OTHER DISTRICT COURTS, OTHER CIRCUIT COURTS AND THE UNITED STATES SUPREME COURT

Based on the facts and law applicable to this case the 11th Circuit Court's opinion is in conflict with other District Courts, Other Circuit Courts and the United States Supreme Court as follows:

a. United States Supreme Court conflict:

"Cases raising the issue of the legality of 'no cause evictions should not be rendered moot since they are capable of repetition, yet evading review', DeFunis v. Odegaard, 416 US 312, 318-19, 94 S.Ct. 1704, 40 L. Ed 2d 164 (1974); ... tenants facing such evictions are likely to relocate rather than run the risk of summary eviction in order to preserve the justiciability of their federal lawsuit [T]he voluntary cessation of allegedly illegal conduct does not deprive the tribunal of power to hear and determine the case, i.e. does not make the case moot." DeFunis, 416 US at 318.

Goldberg v. Kelly, 397 US 254, 90 S.Ct. 1011, 25 L.Ed. 2d 287 (1970), affirming, 294 F.Supp. 893 (SD NY 1968), and its progeny (A consolidated case of 20 welfare beneficiaries wherein, without prior notice or hearing, some but not all of the beneficiaries' payments were terminated, but none of the underlying factual issues relating to eligibility

were settled). The seminal case mandating a 14th Amendment due process hearing, with an opportunity to examine witnesses, be held before recipient of welfare benefits (a statutory entitlement rather than merely a privilege) is deprived of such benefits.

b. Other Circuit Courts:

Escalera v New York City Housing Auth., 425 F.2d 853 (2nd Cir. 1970) (a consolidation of 4 tenant eviction cases from federally subsidized housing in the form of class actions where apparently 2 named tenants were evicted and the other 2 named tenant cases were voluntarily postponed pending the outcome of the Circuit Court appeal). Relying heavily on Goldberg, the 2nd Circuit held that the tenants were deprived of their due process rights secured by the 14th Amendment and reversed the dismissal and grant of summary judgment.

c. District Courts from other circuits:

Mendoza v. Frenchman Hill Apartments, 2005 WL 6581642 (E.D. Wash., Jan. 20, 2005) (The district court found that because the landlord had not as yet fully complied with the IRS "No-Cause Eviction Protection" Ruling 2004-82 and that the landlord's alleged violations of 26 USC § 42 may continue in the interim, the court found that the issue is not moot and that a live controversy still existed, that the good cause eviction of tenants from LIHTC properties is governed by the due process clause and that the landlord is required to provide the tenant with timely and adequate notice detailing the reasons for a proposed termination or eviction).

24 CFR § 247.10 is facially unconstitutional because it impermissibly deprived and continued to deprive tenants of HUD-owned properties their rights under the Due Process Clause. Linares v Jackson, 548 F.Supp. 2d 21 (E.D.N.Y. 2008). Section 8 tenants alleged due process violations due to HUD's use of "no cause eviction" proceedings under 24 FR 247.10 (apparently similar to No-Fault Eviction under 24 CFR 982.553 and not to be confused with "No-Cause Eviction Protection", 24 CFR 982.552, as here). HUD's mootness argument failed because, although two of the tenants were no longer subject to 24 CFR § 247.10 since they had moved to non-HUD housing, the legality of no cause evictions under 24 CFR § 247.10 were capable of repetition, yet evading review, and HUD's voluntary cessation of no-cause eviction with respect to the HUD properties at issue did not limit the potential evictions to surface with respect to other HUD properties

2. INTRA-CIRCUIT CONFLICT WITHIN THE 11th CIRCUIT

Based on the facts and law applicable to this case the 11th Circuit Court's opinion is in conflict with other opinions within its own Circuit as follows:

Tenants who receive federal rent subsidies under Section 8 have "constitutionally protected property rights in an expectation of continued occupancy and receipt of rent and utility subsidies." Jeffries v. Georgia Residential Finance Authority, 678 F.2d 919 (11th Cir. 1982).

The doctrine of "capable of repetition yet evading review" takes precedence over mootness issues. Sims v. Florida Dept. of Highway Safety and Motor Vehicles, 862 F.2d 1449 (11th Cir. 1989).

McArthur v. Firestone, 817 F.2d 1548 (11th Cir. 1987) (reversing District Court's dismissal upon finding of case not being moot because proceedings were pending before the Florida Election Commission). Likewise Kozich's case is not moot because the Default Final Judgment for Removal is a non-final appealable order determining the right to immediate possession of property, Fla.R.App.P. 9.130(a)(3)(C)(ii), and because Kozich's appeal (APP.E.) of the non-final order (APP.E.pg.19) is ongoing with the appeal being fully briefed as of September 10, 2018.

Basco v. Machin, 514 F.3d 1177 (11th Cir 2008) (a criminal No-Fault Eviction case reversing summary judgment terminating tenants' housing subsidy for criminal activity pursuant to 24 CFR 982.553 and 982.555) [fn 7., Goldberg v. Kelly (requiring a 14th Amendment Due Process hearing) ... "applies with equal force to public housing assistance provided pursuant to Section 8, where eligible participants rely on subsidies to meet their basic need for housing). Likewise Kozich's HUD-VASH HCV is Section 8 Housing with his civil No-Cause Eviction Protection governed by 24 CFR 982.552.

Ervin v. Hous. Auth. Of the Birmingham Dist., 281 Fed. Appx. 938 (11th. Cir. 2008) (relying on Basco, a No-Fault Eviction case reversing summary judgment terminating tenant's housing subsidy for criminal activity pursuant to 24 CFR 982.553 and 982.555) (the housing authority had terminated the tenant's Section 8 federal subsidy).

Yarbrough v. Decatur Hous. Auth., ___ F.3d ___, 2018 U.S. App. LEXIS 28020, 2018 WL 4765257 (11th Cir., October 3, 2018) (again, relying on Basco for precedent, a No-Fault Eviction case reversing summary judgment terminating tenant's housing subsidy for criminal activity pursuant to 24 CFR 982.553 and 982.555) (the housing authority postponed the termination of benefits until a court date or decision was rendered).

D. AS KOZICH'S STATE CASE IS ON APPEAL AND THEREFORE NOT FINAL, THE ROOKER-FELDMAN AND MOOTNESS DOCTRINES ARE INAPPOSITE HERE.

1. THE INAPPLICABILITY OF THE MOOTNESS DOCTRINE.

A case is not moot when the issues presented are 'live' or the parties have a legally cognizable interest in the outcome. Powell v McCormack, 395 U.S. 486, 23 L.Ed. 2d 491, 89 S.Ct. 1944 (1969).

A case becomes moot only when it is impossible for a court to grant any effectual relief whatever to the prevailing party. Chafin v. Chafin, 568 U.S. 165, 133 S.Ct. 1017, 185 L.Ed. 2d 1 (2013). As long as the parties have a concrete interest, however small, in the outcome of the litigation, the case is not moot. Even the availability of a partial remedy is sufficient to prevent a case from being moot. Id. at 172.

Mootness demands that the tenant's personal interest in the lawsuit (standing) continue to the lawsuit's end. Sims v. Florida Dept. of Highway Safety and Motor Vehicles, 862 F.2d 1449 (11th Cir. 1989). In Sims, the doctrine of "capable of repetition yet evading review" took precedence over mootness issues because the state could deliver the documents for a gray market vehicle at any time, even after trial, resulting in

the lawsuit's dismissal. Here and because of BCHA's conclusionary non-renewal notice, incomprehensible and "fake" lease, and secret email to the State Judge with no due process mandated evidentiary hearing or trial, resulting in Kozich being evicted on the basis of a non-final Default Final Judgment of Removal which is currently on appeal in state court and his Section 8 HUD-VASH HCV being permanently terminated, the case is not moot because Kozich has a personal interest in the lawsuit to regain his Section 8 HUD-VASH HCV, re-tenancy in his apartment, and damages.

Lachcik v Maricopa Cnty. Bd. Of Comm'rs, 2017 U.S. Dist. LEXIS 22365, 2017 WL 633146 (DC Ariz. 2017) [a tenant evicted case from a Section 8 HCV program under 24 CFR 982 (the same as Kozich here) where, citing to Goldberg and Ressler, the court granted summary judgment to the housing authority because the tenant failed to identify any violations that rose to the level of a denial of due process]. Distinguishing Kozich's case here because he identified numerous violations, i.e. conclusionary notice, secret emails, no trial, etc., that rose to the level of a denial of due process.

2. THE INAPPLICABILITY OF THE ROOKER-FELDMAN DOCTRINE IN LIGHT OF THE ONGOING STATUS OF KOZICH'S STATE APPEAL (APP.E.) AND DENIAL OF DUE PROCESS WITH NO HEARING OR TRIAL IN STATE COURT

Kozich's appeal (APP.E.) in state court remains open with the appeal being fully briefed as of September 10, 2018. Therefore the state court proceedings were ongoing at the time that Kozich filed this case and are still ongoing making Rooker-Feldman inapposite. Exxon Mobil Corp. v. Saudi Basic Industries Corp., 544 US 280, 292, 125

S.Ct. 1517, 161 L. Ed. 2 454 (2005) and Fincher v South Bend Housing Auth., 606 F.3d 331 (7th Cir. Ct. App. 2010), affirming, 612 F. Supp 2d 1009 (Dist. Ct. N.D. Indiana).

Distinguishing this case from the cases cited by BCHA in Circuit Court "supporting" the Rooker-Feldman Doctrine, all of the cases that BCHA referenced were concluded with a final judgment against the tenant and no appeal was taken or the tenant had a "reasonable opportunity to raise his federal claim in state proceedings." Distinguishing, Salmon v. Aurora Loan Svcs., LLC., 2016 US Dist. LEXIS 21854 (M.D. Fla. Feb. 23, 2016) (no appeal taken) and Casale v Tillman, 558 F.3d 1258, 1260 (11th Cir. 2009) (hearing or trial held in state court).

In the state case there were no hearings or trial and Kozich was denied due process thereby making Rooker-Feldman inapposite. Exxon Mobil Corp.; Long v. Shorebank Development Corp., 182 F.2d 548 (7th Cir. 1999); McNeill v. N.Y.C. Housing Auth., 719 F. Supp. 233 (SDNY 1989) and Caulder v. Durham Housing Auth., 433 F.2d 998 (4th Cir. 1970).

E. BCHA FOLLOWED-UP ITS ILLEGAL RETALIATION IN EVICTING KOZICH WITH PERMANENT TERMINATION OF KOZICH'S SECTION 8 HUD-VASH-HCV, AND KOZICH IS ILLEGALLY BEING DENIED THE USE OF HIS SECTION 8 HUD-VASH HCV AND ACCESS TO AFFORDABLE HOUSING

HUD Section 8 Housing Choice Vouchers: Revised Implementation of the HUD-VA Supportive Housing Program, 77 FR 17086 [Docket FR-5596-N-01] (March 23, 2012) in relevant part with emphasis added states,

SUMMARY: This notice establishes the policies and procedures for the administration of tenant-based Section 8 Housing Choice Voucher (HCV)

rental assistance under the HUD-Veterans Affairs Supportive Housing (HUD-VASH) program administered by public housing agencies (PHAs) that partner with local Department of Veterans Affairs (VA) medical facilities. ...

[Page 17087]

I. Background

... The HUD-VASH program combines HCV rental assistance for homeless veterans with case management and clinical services provided by the VA through its community medical centers. ...

II. Special Rules for the HUD-VASH Voucher Program

... HUD-VASH vouchers under this part are administered in accordance with the HCV tenant-based rental assistance regulations set forth at 24 CFR part 982.

... Unless expressly herein, all regulatory requirements and HUD directives regarding the HCV tenant-based program are applicable to HUD-VASH vouchers, including the use of **all** HUD required contracts and other forms. The PHA's local discretionary policies adopted in the PHA's written administrative plan apply to HUD-VASH vouchers, unless such local policy conflicts with the requirements of the HUD-VASH vouchers outlined herein.

[Page 17088]

a. Family Eligibility and Selection

... VA HUD-VASH case managers will screen all families in accordance with VA screening criteria. By agreeing to administer the HUD-VASH program, the PHA is relinquishing its authority to determine the eligibility of families in accordance with regular HCV program rules and PHA policies. Specifically, under the HUD-VASH program, PHAs will not have the authority to screen any potentially eligible family members or deny assistance for any grounds permitted under 24 CFR 982.552 (broad denial for violations of HCV program requirements) and 982.553 (specific denial for criminals and alcohol abusers), ... Accordingly, the Department is exercising its authority to waive 42 USC 1437d(s); 42 USC 13661(a), (b) and (c); and 24 CFR 982.552 and 982.553 in regard to denial of admission, with the exception of § 982.553(a)(2)(i), which requires denial of admission to certain registered sex offenders.

... Civil rights requirements cannot be waived. The HUD-VASH program is administered in accordance with applicable Fair Housing

Requirements. These include applicable authorities under 24 CFR 5.105(a) and 24 CFR 982.53 including, but not limited to, the Fair Housing Act, Section 504 of the Rehabilitation Act of 1973, Title VI of the Civil Rights Act of 1964, the Americans with Disability Act, and the Age Discrimination Act. These requirements prohibit discrimination on the basis of race, color, religion, familial status, national origin, age, or disability.

In furtherance of its retaliation for Kozich exercising his constitutional rights, complaints to government agencies, organizing a tenants organization, publishing a Newsletter, etc., PHA further retaliated with permanently terminating Kozich's Section 8 HUD-VASH HCV (APP.G.) thereby permanently denying Kozich access to affordable housing.

Kozich cannot seek other subsidized affordable housing because in violation of HUD Section 8 Housing Choice Vouchers: Revised Implementation of the HUD-VA Supportive Housing Program, 77 FR 17086 [Docket FR-5596-N-01] (March 23, 2012) PHA permanently terminated Kozich's Section 8 HUD-VASH HCV (APP.G.) after it had illegally "evicted" Kozich from PP (APP.E., pg 19). Therefore, Kozich has no voucher with which to even find affordable housing.

F. KOZICH'S TENANCY UNDER FEDERALLY SUPPORTED PROGRAMS AND "NO-CAUSE EVICTION PROTECTION."

Each of Kozich's federally supported programs independently mandates the same "No-Cause Eviction Protection" requirements.

Kozich's Section 8 HUD-VASH HCV "No-Cause Eviction Protection" is found in four (4) places: (1) the Housing Assistance Payment (HAP) contract, HUD-52641, supposedly executed between PHA and RPA; (2) the Tenancy Addendum, HUD-51641-

A, which by its terms takes precedence over BCHA's lease and which BCHA was supposed to have executed and included word for word attached to Kozich's lease but was not filed in state court; (3) HUD Housing Choice Voucher Program Guidebook 7420.10G; and (4) BCHA's October 1, 2013 Administrative Plan for the Housing Choice Voucher Program.

Kozich's LIHTC "No-Cause Eviction Protection" is found in three places: 1) 26 USC § 42(h)(6)(B) and (E); 2) IRS Ruling 2004-82; and 3) the undisclosed ELIHA executed between FHFC and BCHA which is recorded in the public records of Broward County and therefore a land use restriction or regulation which runs with the land. IRS Revenue Ruling 2004-82, Answering 12 Questions About Low-Income Housing Credit under I.R.C. Section 42, in relevant part states,

"A-5 ... Section 42(h)(6)(B)(i) requires that an extended low-income housing commitment include a prohibition during the extended use period against (1) the eviction or the termination of tenancy (other than for good cause) of an existing tenant of any low-income unit **(no-cause eviction protection)** ..."

The Court will note that with the IRS ruling relating to 26 USC § 42 that the IRS adopted the same "No-Cause Eviction Protection" policies and procedures as that implemented and utilized by HUD and that by its terms "No-Cause Eviction Protection" takes precedence over the terms of the lease.

Housing authorities cannot terminate tenancies unless they have followed the procedural rules prescribed by HUD. Thorpe v Hous. Auth. of Durham, 386 US 670 (1967), on remand, 393 US 268 (1969). Section 8 "tenants may claim procedural due process rights under the due process clause if they have a substantial property interest in

continued occupancy." Jeffries v. Ga. Residential Fin. Auth., 678 F.2d 919, 925 (11th Cir. 1982). It has already been established that tenants, such as Kozich here and also being a Section 8 HUD-VASH HCV recipient in a LIHTC apartment community, have a substantial property interest in continued occupancy and therefore both Thorpe and Jeffries are applicable and Kozich has a federal right of action.

Under these federally supported programs a tenant's right to renewal of his lease is a constitutionally protected property right. Ruffin v. Housing Authority, 301 F.Supp. 251, 253 (E.D. La. 1969) (holding that "the right of a tenant to public housing is no less 'property' under the Fifth and Fourteenth Amendments than the right of a student to remain in school."); Ressler v. Pierce, 692 F.2d 1212 (9th Cir. 1982) (holding applicants for federal rent subsidies have constitutionally protected property interests); and Joy v. Daniels, 479 F.2d. 1236, 1241 (4th Cir. 1973) (holding that low-income tenant in private housing with a federal rent subsidy has cognizable property interest in continuing his tenancy absent good cause to terminate).

24 CFR 982.308(a) and (f)(2); and 982.456(b)(2) also provide for tenant right of enforcement including that of the lease, the Tenancy Addendum (HUD-51641-A), and the Housing Assistance Payment (HAP) contract (HUD-52641). The Tenancy Addendum is supposed to be but is not executed between Kozich and BCHA, and is supposed to be but is not attached to BCHA's "fake" lease upon which BCHA illegally gained possession of Kozich's apartment.

But remember that being the “artful dodger” that it is, BCHA purposely evaded pleading or disclosing to the state court that Kozich’s residency is in a LIHTC apartment which pursuant to 26 USC § 42 requires "No-Cause Eviction Protection" [A-5]. BCHA also purposely evaded pleading or disclosing to the state court that Kozich is the recipient of Section 8 HUD-VASH HCV which pursuant to the Tenancy Addendum, HUD-51641-A [para. 8] also has “No-Cause Eviction Protection.” And continuing with its fraud on the state court, BCHA purposely failed to attach a true and correct copy of the lease to its Complaint which consisted of an incomplete and unexecuted Housing Assistance Payment (HAP) contract, HUD-52641, and no Tenancy Addendum, HUD-51641-A.

G. IN A LOW INCOME HOUSING TAX CREDIT (LIHTC) APARTMENT COMMUNITY SUCH AS PP, INTERNAL REVENUE CODE, 26 USC § 42, MANDATES "NO-CAUSE EVICTION PROTECTION" AND REQUIRES A HEARING AND EVIDENCE OF GOOD CAUSE NOT TO RENEW KOZICH’S LEASE.

1. THE LIHTC LAW.

26 USC § 42(h)(6) in relevant part states,

...

(B) Extended low-income housing commitment

For purposes of this paragraph, the term “extended low-income housing commitment” means any agreement between the taxpayer and the housing credit agency—

- (i) which requires that the applicable fraction (as defined in subsection (c)(1)) for the building for each taxable year in the extended use period will not be less than the applicable fraction specified in such agreement and which prohibits the actions described in subclauses (I) and (II) of subparagraph (E)(ii), [below]

...

(E) Exceptions if foreclosure or if no buyer willing to maintain low-income status

...

(ii) Eviction, etc. of existing low-income tenants not permitted The termination of an extended use period under clause (i) shall not be construed to permit before the close of the 3-year period following such termination—

(I) the eviction or the termination of tenancy (other than for good cause) of an existing tenant of any low-income unit, or

(II) any increase in the gross rent with respect to such unit not otherwise permitted under this section. (emphasis added)

The substance of LIHTC is that upon meeting certain 26 USC 42 requirements FHFC administers the sale of tax credits from BCHA to third parties [the National Equity Fund (NEF) in this instance], BCHA gets all the income and the third parties utilize the tax credits to offset other income. Similar to the facts of Mendoza, although BCHA retains a small [approximately .1% (1/10th of 1 percent)] ownership in PP, receives all of the income and is responsible to make up any deficit; it ultimately controls and is responsible for management of PP. However, BCHA is illegally diverting income from PP to fund other projects and is not maintaining reserves for repairs or keeping up with maintenance, i.e. there was no air-conditioning in the enclosed 8-story PP for six (6) months during the long hot summers of 2014 and 2015, and PP has water intrusion and mold and mildew; BCHA's excuse being that, and although they are illegally diverting income from PP to fund McCan and other projects, to paraphrase BCHA's Chief Operating Officer, Parnell Joyce, infamously stating, "Being non-profit we have no obligation to fix anything."

2. REQUIRED LIHTC PROGRAM AND RECORDED LAND-USE REGULATIONS WHICH RUN WITH THE LAND.

Fla.Stat. 193.017. Low-income housing tax credit, in relevant part states,

---- Property used for affordable housing which has received a low-income housing tax credit from the Florida Housing Finance Corporation (FHFC), as authorized by s. 420.5099, shall be assessed under s. 193.011 and, consistent with s. 420.5099(5) and (6), pursuant to this section.

...
(4) If an extended low-income housing agreement [ELIHA] is filed in the official public records of the county in which the property is located, the agreement, and any recorded amendment or supplement thereto, shall be considered a land-use regulation and a limitation on the highest and best use of the property during the term of the agreement, amendment, or supplement. (emphasis added).

Fla.Stat. 420.5099. Allocation of the low-income housing tax credit, in relevant part states,

(1) The Florida Housing Finance Corporation is designated the housing credit agency for the state within the meaning of s. 42(h)(7)(A) of the Internal Revenue Code of 1986 and shall have the responsibility and authority to establish procedures necessary for proper allocation and distribution of low-income housing tax credits and shall exercise all powers necessary to administer the allocation of such credits.

...
(6) For the further purpose of implementing this program in Florida and in assessing the property for ad valorem taxation under s. 193.011, any extended low income housing agreement [ELIHA] and all amendments and supplements thereto which are recorded and filed in the official public records of the county where the property is located shall be deemed a land use regulation during the term of any such agreement, amendment, or supplement. (emphasis added)

The undisclosed ELIHA is a land use restriction or regulation which runs with the land, similar to that of a deed restriction. A & P Investment Group, Inc. v. The Circle Property Owners Assoc., Inc., 741 So.2d 1139 (Fla. 4th DCA 1998). A covenant running

with the land differs from a merely personal covenant in that the former concerns the property conveyed and the occupation and enjoyment thereof, whereas the latter covenant is collateral or is not immediately concerned with the property granted. If the performance of the covenant must touch and involve the land or some right or easement annexed and appurtenant thereto, and tends necessarily to enhance the value of the property or renders it more convenient and beneficial to the owner, it is a covenant running with the land. Palm Beach Cty. v Cove Club Investors, Ltd., 734 So.2d 379, 382 n.4 (Fla. 1999) and Alternative Networking, Inc. v Solid Waste Auth. of Palm Beach Cty., 758 So.2d 1209, 1211 (Fla. 4th DCA 2000).

Under Florida law, where a party seeks an injunction to prevent the violation of a restrictive covenant, the party need not allege or show irreparable injury. "Appropriate allegations showing the violation are sufficient and the violation itself amounts to irreparable injury." Stephl v Moore, 94 Fla. 313, 114 So. 455 (1927). The rule excusing proof of irreparable harm also avoids the need for the party seeking to enforce a restrictive covenant to demonstrate the absence of an adequate remedy at law. Autozone Stores, Inc. v Northeast Plaza Venture, LLC., 934 So.2d 670, 673 (Fla. 2d DCA 2006).

It is "rights, not the broader or vaguer 'benefits' or 'interests,' that may be enforced under the authority" of section 1983. Mendoza v. Frenchman Hill Apartments, 2005 WL 6581642 (E.D. Wash., Jan. 20, 2005), quoting, Gonzaga University v. Doe, 536 US 273, 283, 122 S.Ct. 2268, 153 L.Ed.2D 309 (2002). In Mendoza, the court makes no mention of having seen or reviewed any ELIHA which distinguishes

Mendoza from this case in that the ELIHA for PP along with Kozich being a Section 8 HUD-VASH HCV recipient and HUD Federal Regulations 24 CFR 982.308(a) and (f)(2), and 982.456(b)(2) provide for federal tenant right of enforcement.

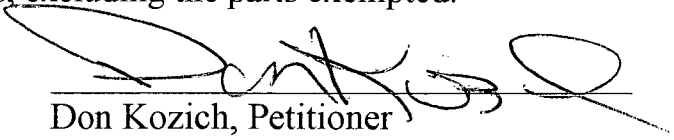
The BCHA also purposely failed to disclose that in administering 26 USC § 42 LIHTC apartment communities that the IRS adopted HUD's policies, rules and procedures relating to federally supported Tenant Based Housing.

VI. CONCLUSION

Therefore and for the reasons stated Kozich respectfully requests this Court grant certiorari to review the opinion of the 11th Circuit Court of Appeals and the decision of the District Court for the Southern District of Florida, or other relief the court deems just and equitable.

VII. CERTIFICATE OF COMPLIANCE

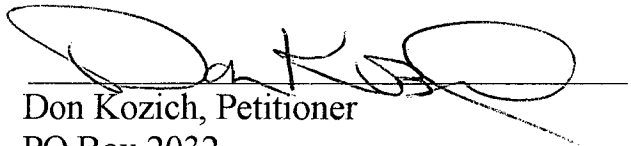
I HEREBY CERTIFY that this document complies with S.Ct. Rules 21, 29, 30 and 33.2 and consists of no more than 40 pages, excluding the parts exempted.



Don Kozich, Petitioner

VIII. CERTIFICATE OF FILING

I HEREBY CERTIFY that the foregoing was filed with the Court by First Class Mail via USPS on October 29, 2018.



Don Kozich, Petitioner

PO Box 2032

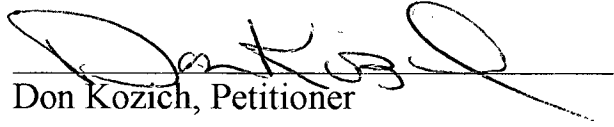
Fort Lauderdale, FL 33303

954.709.0537

dtkctr@gmail.com

IX. VERIFIED PROOF OF SERVICE

I HEREBY CERTIFY under penalty of perjury that a true and correct copy of the foregoing was served on all counsel or parties of record in accordance with the Service List attached.



Don Kozich, Petitioner