

No. _____

**In The
Supreme Court of the United States**

_____ ♦ _____

CHATEAU FOGHORN LP,
Petitioner,

v.

WESLEY HOSFORD,
Respondent.

_____ ♦ _____

**ON PETITION FOR WRIT OF CERTIORARI TO
THE COURT OF APPEALS OF MARYLAND**

_____ ♦ _____

PETITION FOR WRIT OF CERTIORARI

_____ ♦ _____

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QUESTION PRESENTED

Section 1437f(d)(1)(B)(iii) of Title 42 of the United States Code provides that leases for HUD-assisted project-based housing must contain a clause stating “any drug-related criminal activity on or near such premises, engaged in by a tenant of any unit, any member of the tenant's household, or any guest or other person under the tenant's control, shall be cause for termination of tenancy.”

In *Dep't of Hous. & Urban Dev. v. Rucker*, 535 U.S. 125, 122 S. Ct. 1230 (2002), this Court interpreted the authority conferred by the anticrime provision in 42 U.S.C. § 1437d—all but identical to 42 U.S.C. § 1437f, applicable here—that governs leases for HUD-assisted public housing. This Court affirmed, in stark terms, the federal government's authority to prevent crime in HUD-assisted housing by permitting housing providers to evict tenants when they, or persons they have allow access to their units, commit drug-related crimes.

The question presented is whether 42 U.S.C. § 1437f(d)(1)(B)(iii) and its implementing regulations preempt statutory elements of Maryland law that authorize a judge or jury to supersede a landlord's federally-authorized discretion to evict a HUD-assisted project-based housing tenant who has engaged in drug-related criminal activity on or near the housing project.

PARTIES TO THE PROCEEDING

Petitioner Chateau Foghorn LP was the appellant in the proceeding below. Respondent Wesley Hosford was the appellee below.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 29.6 of the Rules of this Court, petitioner Chateau Foghorn LP states the following:

Chateau Foghorn LP does not have any parent corporations and no publicly held company owns 10% or more of Chateau Foghorn LP's stock.

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PETITION FOR A WRIT OF CERTIORARI

Chateau Foghorn LP (“Foghorn”) respectfully petitions for a writ of certiorari to review the judgment of the Court of Appeals of Maryland in this case.

OPINIONS BELOW

The opinion of the Court of Appeals of Maryland (App. 1a) is reported at 455 Md. 462, 168 A.3d 824 (2017). The opinion of the Court of Special

Appeals of Maryland (App. 79a) is reported at 229 Md. App. 499, 145 A.3d 616 (2016). The order of the Circuit Court for Baltimore City declining to alter or amend judgment (App. 122a) is unreported. The Order of the Circuit Court for Baltimore City granting summary judgment (App. 138a) is unreported. The memorandum opinion of the Circuit Court for Baltimore City granting summary judgment (App. 122a) is unreported.

JURISDICTION

The judgment of the Court of Appeals of Maryland was entered on August 28, 2017. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257.

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

The relevant provisions of the United States Code, the Code of Federal Regulations and the Maryland Code are reproduced in the Appendix to this Petition (App. 140a -180a).

STATEMENT OF THE CASE

The federal Housing Choice Voucher Program, formerly known as “Section 8,” is divided into two major categories: the tenant-based program, authorized by 42 U.S.C. § 1437d, and the project-based program, authorized by 42 U.S.C. § 1437f. The federal agency that oversees the program is the Department of Housing Urban Development (“HUD”).

In 1988, Congress amended the Housing Act, 42 U.S.C. § 1437, *et seq.*, by enacting the Anti-Drug Abuse Act of 1988. Pub. L. No. 100-690, 102 Stat. 4181 (1988). The Act contained the following Congressional findings:

The Congress finds that—

- (1) the Federal Government has a duty to provide public housing that is decent, safe and free from illegal drugs;
- (2) public housing projects in many areas suffer from rampant drug-related crime;
- (3) drug dealers are increasingly imposing a reign of terror on public housing tenants;
- (4) the increase in drug-related crime not only leads to murders, muggings, and other forms of violence against tenants, but also to a deterioration of the physical environment that requires substantial governmental expenditures; and
- (5) local law enforcement authorities lack the resources to deal with the drug problem in public housing, particularly

in light of the recent
reductions in Federal aid to
cities.

102 Stat. 4295, 4301 (1988), renamed 42 U.S.C.
§ 11901. Accordingly, Congress revised 42 U.S.C.
§ 1437d (governing public housing) to include the
following provision,

Each public housing agency shall
utilize leases which—

provide that...any drug-related
criminal activity on or off such
premises, engaged in by a public
housing tenant, any member of the
tenant's household, or any guest or
other person under the tenant's
control, shall be cause for
termination of tenancy.

42 U.S.C. § 1437d(l)(6).

Shortly thereafter, in 1998, Congress passed
the Quality Housing and Work Responsibility Act,
which extended a substantively identical statutory
requirement to those participating in the project-
based program. The new requirement revised 42
U.S.C. § 1437f (governing privately owned housing) to
include, in pertinent part, the following provision:

Contracts to make assistance payments entered into by a public housing agency with an owner of existing housing units shall provide (with respect to any unit) that—

during the term of the lease...any drug-related criminal activity on or near such premises, engaged in by a tenant of any unit, any member of that tenant's household, or any guest or other person under the tenant's control, shall be cause for termination of tenancy[.]

See 42 U.S.C. § 1437f(d)(1)(B)(iii) (hereinafter, “§ 1437f(d)(1)(B)(iii)”). HUD implemented this statute. *See* 24 C.F.R. § 5.852, What discretion do I have in screening and eviction actions? (App. 155a-157a); 24 C.F.R. § 5.858, What authority do I have to evict drug criminals? (App. 158a); 24 C.F.R. § 5.861, What evidence of criminal activity must I have to evict? (App. 159a); 24 C.F.R. § 982.310, Owner termination of tenancy (App. 161a-168a); 24 C.F.R. § 983.257, Owner termination of tenancy and eviction (App. 169a).

In the instant matter, Foghorn is the private owner of an apartment building located in Baltimore City, Maryland known as Ruscombe Gardens Apartments (“Ruscombe”). App. 5a. Foghorn provides housing for low-income elderly and disabled tenants at Ruscombe through the project-based rental subsidy program. *Id.* Tenants who reside at Ruscombe pay

thirty percent of their adjusted income, and the federal government pays the difference between the tenant payment and the market rent. App. 41a.

Respondent Wesley Hosford (“Hosford”) has lived at Ruscombe since 1989. App. 5a. Hosford’s lease, the Model Lease for Subsidized Programs, renews annually and, as required by § 1437f(d)(1)(B)(iii), contains a provision stating:

23. Termination of Tenancy

- c. The Landlord may terminate this Agreement for the following reasons:

(3) drug-related criminal activity engaged in on or near the premises, by any tenant, household member, or guest, and any such activity engaged in on the premises by any other person under the tenant’s control;

App. 82a.

Hosford also signed as an addendum to his lease a Drug-Free Housing Policy which provided, in pertinent part,

DRUG-FREE HOUSING POLICY

IN CONSIDERATION
of the execution or renewal of
the lease of the dwelling unit
identified in the lease, Owner
and Tenant agree as follows:

1. Tenant [...] shall not
engage in or facilitate criminal
activity on or near the project,
including, but not limited to,
violent criminal activity or
drug-related criminal activity.

2. Tenant [...] shall not
engage in any act intended to
facilitate criminal activity,
including drug-related
criminal activity on or near the
project premises.

3. Tenant [...] will not
permit the dwelling unit to be
used, or to facilitate, criminal
activity, including drug-
related criminal activity or
possession of drug
paraphernalia [...].

4. Tenant [...] will not
engage in the manufacture,
sale, or distribution of illegal
drugs at any location, whether

on or near project premises or otherwise.

6. VIOLATION OF THE ABOVE PROVISIONS SHALL BE A MATERIAL VIOLATION OF THE LEASE AND GOOD CAUSE FOR TERMINATION OF TENANCY. A single violation of any of the provisions of this policy shall be deemed a serious violation and a material noncompliance with the lease. Unless otherwise provided by law, proof of violation shall not require criminal conviction, but shall be by a preponderance of the evidence.

App. 5a-7a. (emphasis in original.)

In 2014, Ruscombe hired an extermination company to treat Hosford's unit for bedbugs. App. 7a. On June 10, 2014, two exterminators entered Hosford's unit to treat the unit, and observed a marijuana plant in his bathtub, along with a "grow light," typically used for marijuana cultivation. *Id.* The exterminators reported their observation to Ruscombe. *Id.* The police were summoned and an officer responded and confiscated the plant. *Id.* The officer also issued Hosford a criminal citation for

possession of marijuana in violation of Section 5-601(a)(1) of the Criminal Law Article of the Maryland Code. *Id.* Hosford was subsequently charged in the District Court of Maryland for Baltimore City with possession of less than ten grams of marijuana. App. 8a. Ultimately, a *nolle prosequi* was entered as to that charge. *Id.* Nevertheless, a police chemist tested the confiscated plant and concluded that it was marijuana. App. 7a-8a.

Foghorn thereafter exercised its discretion afforded by the Model Lease for Subsidized Programs and gave Hosford a Notice of Lease Termination, which included the specific allegations of breach, as well as the terms of the lease he was alleged to have violated. App. 8a. In accordance with the lease and the law, Hosford was alerted in the notice that if he did not vacate within 30 days', legal action would be initiated to terminate his tenancy. *Id.* Hosford did not vacate his unit within 30 days' of the notice, and Foghorn initiated an eviction action by filing a Complaint and Summons Against Tenant in Breach of Lease pursuant to Section 8-402.1 of the Real Property Article of the Maryland Code ("RP § 8-402.1") in the District Court of Maryland for Baltimore City on July 25, 2014. *Id.*

In order for a housing provider to repossess leased property under RP § 8-402.1, the court must find by a preponderance of the evidence:

(1) the tenant breached the terms of the lease;
and

(2) that the breach was substantial; and

(3) [that the breach] warrants an eviction.

See Md. Code Ann., Real Prop., § 8-402.1(b)(1).

Hosford thereafter filed a prayer for a jury trial, and the case was transferred to the Circuit Court for Baltimore City (the “Circuit Court”) on or about September 5, 2014. App. 10a.

On February 13, 2015, Foghorn filed a Motion for Summary Judgment in the Circuit Court. *Id.* In its Motion, Foghorn asserted: (1) there was no genuine dispute to the fact that Hosford possessed, cultivated and/or used marijuana illegally in his unit, (2) such conduct was a material breach of the lease permitting Foghorn to terminate the lease, and (3) to the extent that RP § 8-402.1 would allow a Maryland court or jury to supersede Foghorn’s discretion in choosing to terminate the lease and evict Hosford for engaging in drug-related criminal activity, by finding that his breach was not substantial or did not warrant an eviction, the statute is preempted by federal law as it frustrates the federal purpose behind § 1437f(d)(1)(B)(iii) to promote drug-free federally-subsidized housing. App. 126a.

Hosford opposed Foghorn’s Motion arguing: (1) there were genuine disputes of fact concerning whether he possessed marijuana in his unit at all; (2) even if he did possess marijuana in his unit, the conduct was not criminal because possession of small amounts of marijuana was no longer criminal¹ or

¹ On October 1, 2014, Maryland decriminalized possession of less than 10 grams of marijuana. Not only is this inapplicable to the instant case since this change occurred four months *after*

because the criminality of the offense was negated by asserting an affirmative medicinal use defense; and (3) RP § 8-402.1 was not preempted and Hosford must be given an opportunity to convince a jury either that any breach was not substantial or that it did not warrant eviction. *Id.*

Following oral argument, on March 23, 2015, the Circuit Court issued a written order granting summary judgment in favor of Foghorn, as well as entering a judgment for restitution of possession of Hosford's unit. App. 12a.

In its opinion, the Circuit Court concluded that there was not a genuine dispute of material fact that a marijuana plant was found growing in Hosford's unit. App. 127a-129a; that, under federal law, marijuana remains a Schedule I controlled substance², and therefore Hosford's possession of marijuana was a crime. App. 129a-131a; and the requirement in RP § 8-402.1 that a judge or jury must determine that a tenant's breach is "substantial and warrants eviction" before awarding a judgment of possession "is preempted by federal law to the extent that it would permit a judge or jury either to exercise discretion *de novo* or to review the landlord's exercise of discretion in deciding the proceed with an eviction." App. 131a-137a.

Hosford was charged with possession, but the Maryland law did not decriminalize an individual growing his or her own marijuana plant.

² See 21 U.S.C. § 812(c)(c)(10).

In reaching this conclusion, the Circuit Court cited to and aligned with the prior decisions of the high courts of Massachusetts³, Wisconsin⁴ and, and the District of Columbia Court of Appeals⁵:

Scarborough, *Cobb*, and *Garcia* are all persuasive here. All three courts recognized that, although federal law vests a landlord renting subsidized housing with discretion not to pursue eviction in all instances of criminal activity, state *courts* cannot be given discretion to overrule the landlord's exercise of discretion. *Garcia* is particularly apt because the judicially created "special circumstances" element of Massachusetts law is very similar to the statutory requirement in Maryland that the conduct "warrants an eviction." RP § 8-402.1(b)(1). Based on these cases, this Court concludes that the Maryland requirement is preempted by federal law to the extent it would permit a judge or jury either to exercise discretion *de novo* or to review the landlord's exercise of discretion in decision to proceed with eviction. In this context, the role of the court, whether judge or jury, is limited

³ *Boston Hous. Auth. v. Garcia*, 449 Mass. 727, 871 N.E.2d 1073 (2007).

⁴ *Milwaukee City Hous. Auth. v. Cobb*, 361 Wis.2d 359, 860 N.W.2d 267 (2015).

⁵ *Scarborough v. Winn Residential L.L.P./Atlantic Terrace Apartments*, 890 A.2d 249 (D.C. 2006).

to determining the terms of the lease that permit eviction and whether the conduct provided is a violation of those terms.

[...] Chateau Foghorn LP has proved by undisputed facts that Defendant Hosford possessed marijuana in his residential unit. That conduct violates federal law and therefore constitutes “drug related criminal activity engaged in or on or near the premises, by any tenant” in violation of § 23.c.3 of the Lease, which permits termination of the Lease. Plaintiff therefore established the grounds for eviction by undisputed facts and is entitled to judgment as a matter of law.

(footnote omitted). App. 136a-137a.

Hosford subsequently filed a motion seeking to alter or amend the judgment, which the Circuit Court denied. App. 122a-123a.

Thereafter, Hosford noted an appeal to the Court of Special Appeals of Maryland (the “CSA”). The CSA agreed that there was no dispute of material fact that Hosford was in possession of marijuana on the day that his apartment was inspected, and that Maryland’s decriminalization of possession of small amounts of marijuana does not change the fact that possession of any amount of marijuana is a violation of the federal Controlled Substances Act. App. 90a.

However, on this issue of preemption, the CSA reversed the judgment of the Circuit Court. *Id.* The CSA found that RP § 8-402.1 and its subsequent judicial interpretation in *Brown v. Hous. Opportunities Comm'n*, 350 Md. 570, 584, 714 A.2d 197, 203 (1998) “grants to courts the authority to consider equitable and similar factors before granting a landlord’s request for an eviction.” App. 88a.

The CSA’s analysis of § 1437f(d)(1)(B)(iii), the implementing regulations, and the HUD guidelines, lead it to the following conclusions:

First, a landlord does not have to consider equitable factors in determining whether to pursue eviction for drug-related conduct. A state law that would require landlords to do so would be preempted.

Second, a landlord cannot effect an eviction by itself—it must go to court and obtain a judgment entered in accordance with non-pre-empted state law.

Moreover, a state law that allows the court to consider equitable factors is, in our view, consistent with the basic purpose of the Section 8 program itself, that is, providing decent housing for a class of people who otherwise would not have it. To require a state court, *as a matter of law*, to evict a disabled

member of that class out of the home he had resided in for 24-25 years for having one marijuana plant in his bathtub, for his own medical use, with no evidence of distribution or attempted distribution, furthers no Congressional intent that we have been able to identify.

App. 111a-112a.

The CSA relied extensively on the preemption analysis in *Eastern Carolina Reg'l Hous. Auth. v. Lofton*, 238 N.C. App. 42, 767 S.E.2d 63 (2014), *aff'd on other grounds*, 369 N.C. 8, 789 S.E.2d 449 (2016)⁶, in reaching its conclusion that “a state court’s consideration of equitable and related factors in an eviction action does not stand as an obstacle to the federal goal of providing low-income housing that is decent, safe, and free from illegal drugs.” App. 117a. In recapitulating its holding, the CSA noted that it agreed with its North Carolina colleagues that “exercise of discretion on the part of a trial court in an eviction action *is not* preempted by the federal law.” App. 119a.

⁶ In *Lofton*, a North Carolina law that authorized courts to rule in a landlord’s favor only if “enforcing the forfeiture was not unconscionable” was challenged. The intermediate appellate court concluded that permitting a court to exercise this discretion would not frustrate Congress’ goals and purposes. However, the state high court rejected the intermediate appellate court’s analysis, holding that the decision to evict lies in the landlord’s discretion, “which the courts will not second-guess,” thereby rendering the intermediate court’s analysis a nullity. 369 N.C. at 14, 789 S.E.2d at 454.

The CSA further found that RP § 8-402.1 “must do ‘major damage’ to ‘clear and substantial’ federal interests before the Supremacy Clause will demand that state law will be overridden,” according to *Hisquierdo v. Hisquierdo*, 439 U.S. 572, 581, 99 S. Ct. 802, 808 (1979), because landlord-tenant law is traditionally within the domain of the states. App. 92a.

Arguably, the CSA’s opinion created a new framework within which housing providers offering federally-assisted project-based housing were to operate:

We believe that courts can strike the proper balance between federal policy and state law by presuming that drug-related criminal activity is a breach that *ordinarily* warrants eviction under RP § 8-402(b)(1), but that this presumption may be rebutted by equitable factors that arise in a given case. This approach gives proper weight both to the exercise of the landlord’s discretion accorded under federal law to seek eviction, and to Maryland’s public policy, embodied in RP § 8-402.1(b), that tenants—especially impoverished and disabled ones—not be evicted automatically when good reasons are presented and credited to show that such eviction would be not only unduly harsh but not necessary to accommodate the Federal objectives.

App. 119a-120a.

Foghorn petitioned for a writ of certiorari to review the judgment of the CSA, which the Court of Appeals of Maryland (“COA”) granted on December 2, 2016. App. 21a.

Although the COA found that the CSA improperly relied on *Lofton* and declined to endorse the “major damage” standard applied by the CSA, the COA confirmed that the CSA’s finding that a heightened presumption against federal preemption should be applied. App. 23a, 75a n.27.

In its preemption analysis, the COA considered the congressional intent behind the mandate in § 1437f(d)(1)(B)(iii) that all federally-assisted project-based housing must include a lease provision which provides that “any drug-related criminal activity on or near [the project] premises, engaged in by a tenant of any unit, any member of the tenant’s household, or any guest or other person under the tenant’s control, shall be cause for termination of tenancy.” App. 49a-70a. The Court reached the following conclusion regarding the congressional intent behind the mandatory lease provision:

First, Congress’ broad intent was to reduce drug-related crime in federal-subsidized housing that threatens resident safety and causes deterioration of the condition of housing that requires significant government expenditures. This is clear from the congressional findings that accompanied the enactment of the ADAA and the original mandatory lease provision statute in 42

U.S.C. § 1437d(l)(6). *See* Anti-Drug Abuse Act, 102 Stat. 4295, 4301 (1988) [...].

In those findings, Congress also stated that “the Federal Government has a duty to provide public housing that is decent, safe, and free from illegal drugs.” *Id.* However, it is clear that Congress recognized that “duty” was an aspirational one. Congress described “rampant drug-related crime” and a “reign of terror” imposed by drug dealers in public housing projects, and noted that there had been substantial reductions in federal aid to cities to address drug-related crime. *Id.* Congress could not have expected the mandatory lease provision to resolve such entrenched problems.

Thus, contrary to Foghorn’s assertions, in enacting the ADAA and later expanding it to Section 8 housing, Congress recognized that drug-related criminal activity was a long-term, systemic problem, and did not intend to “achieve” housing that was entirely free from illegal drugs. Rather, Congress intended to **reduce** drug-related crime in public housing projects and federally-subsidized housing, particularly drug-related crime that threatened resident

safety or the maintenance of housing facilities.

App. 51a-53a.

Given the COA's conclusion that Congress did not intend to entirely eliminate drug-related criminal activity, the COA found that RP § 8-402.1(b)(1) does not pose an obstacle to the congressional intent behind § 1437f(d)(1)(B)(iii), because not every tenant who engages in drug-related criminal activity need be subject to eviction "without any consideration of equitable factors." App. 56a. Rather, the COA held, "Congress was most concerned about drug-related criminal activity that threatened the health or safety of residents, or threatened to do significant damage to housing properties." *Id.* In reaching this conclusion, the COA opined:

The judicial review mandated in RP § 8-402.1(b)(1) will not conflict with those core congressional concerns: If the illegal conduct of a tenant, household member, or guest in federally-subsidized housing involves a violent drug-related crime, or the distribution of drugs from a rental unit, or significant property damage caused by drug-related activity, such conduct would surely be both "substantial" and "warrant eviction." We agree with the view expressed by our intermediate appellate court brethren that

Maryland trial courts are entirely capable of balancing equitable considerations that may merit leniency against the need to protect the safety of others in the housing project and the integrity of the housing project.

App. 56a-57a.

REASONS FOR GRANTING THE WRIT

I. THE COURT OF APPEALS OF MARYLAND DECIDED AN IMPORTANT QUESTION OF FEDERAL LAW IN A WAY THAT CANNOT BE RECONCILED WITH THIS COURT'S DECISION IN *RUCKER*.

In reaching its decision on this issue, the COA has decided an important question of federal law that should be settled by this Court. The decision of the COA cannot be reconciled with this Court's decision in *Rucker*, and therefore review is imperative.

This Court has repeatedly held that state law must yield where it “stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.” *Geier v. Am. Honda Motor Co.*, 529 U.S. 861, 873, 120 S. Ct. 1913, 1921 (2000) (citations omitted). Here, the question is whether elements of state law that have the effect of superseding a landlord's discretion to evict a tenant who has engaged in drug-related criminal activity in federally-subsidized housing stand as an obstacle to

Congress' purpose and objective in enacting § 1437f(d)(1)(B)(iii).

In *Rucker*, public housing tenants sued the local and federal housing authority, stating that 42 U.S.C. § 1437d did not permit evictions from public housing for drug-related criminal activity which was unknown to a tenant. 535 U.S. at 128. This Court disagreed, confirming federal law gives local public housing agencies discretion to evict tenants for drug-related criminal activity, whether or not the tenant was aware of the activity. *Id.* at 129.

In reaching the aforementioned holding, this Court maintained that a landlord is generally in “the best position to take account of, among other things, the degree to which the housing project suffers from rampant drug-related or violent crime, the seriousness of the offending action, and the extent to which the leaseholder has . . . taken all reasonable steps to prevent or mitigate the offending action[.]” *Id.* at 134 (citations and internal quotation marks omitted). Moreover, leaving such discretionary authority with the housing provider of federally-assisted housing is integral to the accomplishment of the congressional objective because “[s]trict liability maximizes deterrence and eases enforcement difficulties.” *Id.* The COA nonetheless held otherwise:

[...] *Rucker* does not stand for the proposition that Congress intended local public housing authorities have **absolute** discretion to evict tenants under 42 U.S.C. § 1437d(l)(6), and that a state court must merely rubberstamp the

landlord's decision. Further, to the extent that *Rucker* may conflict with our holding today, we note that it involved an interpretation of 42 U.S.C. § 1437d governing public housing projects, and not § 1437f governing the type of Section 8 project-based housing that is at issue before us.

App. 60a.

The COA's holding is in direct conflict with *Rucker* as there are no significant differences between 42 U.S.C. § 1437d, governing public housing, and 42 U.S.C. § 1437f, governing project-based housing, that would preclude the application of *Rucker* in project-based housing.

II. THE MARYLAND COURT OF APPEALS DECIDED AN IMPORTANT FEDERAL QUESTION IN A WAY THAT CONFLICTS WITH THE DECISIONS OF A FEDERAL COURT OF APPEAL AND THREE STATE HIGH COURTS.

Most cases construing Section 1437f(d) and related statutes and regulations arise in state, not federal, court because issues concerning residential eviction are brought in state court. There is division among the states as to whether Section 1437f(d) and its implementing regulations preempts statutory elements of state law that have the effect of superseding a landlord's discretion to evict a tenant who has engaged in drug-related criminal activity in federally-subsidized housing.

The COA's decision is at odds with the decisions of the other state courts of last resort and a federal court of appeals that have held that statutory elements of state law that have the effect of superseding a landlord's discretion to evict a tenant who has engaged in drug-related criminal activity in federally-funded housing is preempted if that law in conflicts with Congress' goal and method of providing decent, safe and drug-free housing. The COA's decision creates a split between Maryland, and the District of Columbia, Massachusetts, Wisconsin and North Carolina. The COA's construction of § 1437f(d)(1)(B)(iii) conflicts with the interpretation of the same statute by the District of Columbia Court of Appeals. The COA's construction of § 1437f(d)(1)(B)(iii) also conflicts with the interpretation of the analogous Section 1437d(l) by the Supreme Judicial Court of Massachusetts, the Supreme Court of Wisconsin, and the Supreme Court of North Carolina. *See Scarborough*, 890 A.2d at 257 (holding that the state "right to cure" provision to avoid eviction is preempted); *Garcia*, 449 Mass. at 734 (holding that the state "special circumstances" defense against eviction is preempted); *Cobb*, 361 Wis.2d at 385 (holding that the state "right to remedy" provision to avoid eviction is preempted); *Lofton*, 789 S.E.2d at 454 (holding reliance on the equitable defense of unconscionability is not appropriate because the decision to evict lies in landlord's discretion, which courts will not second guess).

The COA's decision also creates a split among state intermediate appellate courts, which have properly refused to permit statutory elements of state

law to supplement federal law and supersede a landlord's discretion to evict a tenant who has engaged in drug-related criminal activity in federally-funded housing. *See Ross v. Broadway Towers, Inc.*, 228 S.W.3d 113, 124 (Ct. App. Tenn. 2006) (holding that the state "estoppel" defense against eviction is preempted); *Hous. Auth. and Urban Redevelopment Agency of City of Atlantic City v. Spratley*, 327 N.J. Super. 246, 255, 743 A.2d 309, 314 (1999) (holding that the state statute prohibiting eviction of "blameless tenants" is preempted because "state nullification of a federally-mandated lease provision based upon a finding of unreasonableness would tear at the very roots of [the] federal system."); *City of South San Francisco Hous. Auth. v. Guillory*, 41 Cal. App. 4th Supp. 13, 19-20, 49 Cal.Rptr.2d 367 (1995) (holding that the state statute that created a "reasonable cause" standard for eviction is preempted, and "drug-related activity by any member of a tenant household is cause *per se* for termination of the lease where, as here, the [housing provider] receives federal funds").

The COA instead aligned itself with Ohio courts which have held "federal law on terminating a public housing tenancy of a guest does not preempt the equity authority of the court." *See Cuyahoga Metro. Hous. Auth. v. Harris*, 139 Ohio Misc.2d 96, 99-100, 861 N.E.2d 179, 181-82 (Cleveland Munic. Ct. Hous. Div. 2006); *Dayton Metro. Hous. Auth. v. Kilgore*, 194 Ohio App.3d 767, 772-73, 958 N.E.2d 187, 190-92 (2011); *Cuyahoga Metro. Hous. Auth. v. Davis*, 197 Ohio App.3d 411, 415-16, 967 N.E.2d 1244, 1248-49 (2011). The intermediate appellate court in Kentucky has also adopted this view. *See also Hous.*

Auth. of Covington v. Turner, 295 S.W.3d 123 (Ky. Ct. App. 2009) (in a 2:1 decision, the Kentucky Court of Appeals concluded that a state statute that included a right to remedy provision was not preempted because the right to remedy illegal drug activity is consistent with the federal objective to discourage illegal drug use on public housing premises).

A. District of Columbia
Scarborough v. Winn Residential
L.L.P./Atlantic Terrace
Apartments, 890 A.2d 249 (D.C.
 2006)

In *Scarborough*, the District of Columbia Court of Appeals considered whether federal law prevailed over D.C. Code § 42-3505.01(b), which states in relevant part that “[a] housing provider may recover possession of a rental unit where the tenant is violating an obligation of tenancy and fails to correct the violation within 30 days after receiving from the housing provider a notice to correct the violation or vacate.” 890 A.2d at 259. Applying principles of conflict preemption, the Court considered whether application of the District’s cure opportunity in cases involving criminal violations that threaten the safety or peace of other tenants by a HUD-assisted tenant stood “as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.” *Id.* at 255.

Scarborough’s tenancy was subject to the conditions imposed by § 1437f(d)(1)(B)(iii). *Id.* The federal Court of Appeals relied on this Court’s decision in *Rucker*, which affirmed that Congress’

authorized housing providers to conduct evictions of HUD-assisted tenants who engaged in drug-related criminal activity, regardless of whether the tenant knew or had reason to know of the activity or for any reason was unable to control it, as a means of preventing crime in federally-assisted housing. *Id.* at 256. Ultimately, Court concluded:

Applying the cure provision of D.C.Code § 42-3505.01(b) would stand as a pronounced obstacle to the exercise of this authority. Not for nothing are lease provisions of the kind involved here described as manifesting a federal “One-Strike Policy.” The only way to make sense of the idea of “correct [ing]” criminal activity would be to require the tenant not to engage in such activity again. But, as HUD points out in the government’s brief *amicus curiae*, “this interpretation quickly renders the eviction provision a virtual nullity, because the grounds for eviction—the criminal act—would be washed away by a simple promise not to commit another crime.” The very ease of thwarting the landlord’s right to evict for commission of such a crime would frustrate the purpose of an anticrime provision that permits eviction for “any” criminal activity threatening in the sense defined.

Id. at 257.

The Court properly acknowledged that, while HUD has granted housing providers the discretion of whether to exercise the right of eviction, the cure opportunity provided by § 42-3505.01(b) had the effect of “substitute[ing] for the landlord’s discretion a mandatory second-strike opportunity for a tenant to stay eviction by discontinuing, or not repeating, the criminal act during the thirty days following notice.” *Id.* Given that § 1437f(d)(1)(B)(iii) did not evidence any intent by Congress to allow this “second strike,” the court of appeals concluded that § 1437f(d)(1)(B)(iii) “authorizes eviction based on specified criminal activity, without limitation by, or balancing or consideration of, any other factors,” and the proper role of reviewing courts is limited to “insuring proper notice and opportunity to defend,” and “determin[ing] whether the ground relied upon for eviction exists.” *Id.* at 259.

B. Massachusetts
Boston Hous. Auth. v. Garcia, 449
 Mass. 727, 871 N.E.2d 1073
 (2007)

In *Garcia*, the Supreme Judicial Court of Massachusetts considered whether G.L. c. 121B, § 32, stating in relevant part that “[t]he tenancy of a tenant of a housing authority shall not be terminated without cause...” was preempted by federal housing law. 449 Mass. at 728-29. The Court had previously held, in a case pre-dating *Rucker*, that the requirement of cause in § 32 “provides relief from termination when special circumstances indicate that the tenant could not have foreseen the misconduct or was unable to prevent it by any available means,

including outside help.” *Id.* at 728 (quoting *Spence v. Gormley*, 387 Mass. 258, 279, 439 N.E.2d 741 (1982)). When *Garcia* came before the Court in 2007, the Court held that in light of the *Rucker* decision, federal housing law preempts Massachusetts law that would otherwise permit a public housing tenant to defeat a lease termination based on the acts of a household member, but establishing that he or she could not have foreseen or prevented the misconduct. *Id.* at 729.

The notice of termination for cause sent by the Boston Housing Authority alleged that Garcia had violated her lease when her adult sons, who were members of her household, engaged in drug-related criminal activity. *Id.* at 731. Both sons had been found with and charged with possession of marijuana. *Id.* at 730-31. Garcia cited § 32 as a defense arguing that she had no control over the alleged behavior of her sons or any reason to know about the behavior. *Id.* at 730. The trial court ruled for Boston Housing Authority, declining to admit evidence that Garcia could not have foreseen or prevented the drug-related criminal conduct of her sons because whether she could control or had knowledge of her sons’ illegal activity was not germane according to this Court’s decision in *Rucker*. *Id.*

On appeal, the Supreme Judicial Court of Massachusetts acknowledged that this Court had held the following in *Rucker*:

[...] 42 U.S.C. § 1437d(l)(6)
 “unambiguously” required that the
 leases at issue contain “lease terms that
 vest local public housing authorities

with the discretion to evict tenants for the drug-related activity of household members and guests whether or not the tenant knew, or should have known, about the activity,” *Id.* at 130, 122 S. Ct. 1230.

[...] there were “no ‘serious constitutional doubts’ about Congress’ affording public housing authorities the discretion to conduct no-fault evictions for drug-related crime.” *Id.* at 135, 122 S. Ct. 1230, quoting *Reno v. Flores*, 507 U.S. 292, 314 n. 9, 113 S. Ct. 1439, 123 L. Ed. 2d 1 (1993).

[...] while the statute does not require (and Congress did not intend) the eviction of every tenant who violates such lease terms, it does require that local housing authorities retain the discretion to “evict a tenant who had no knowledge of the drug-related activity,” *Rucker, supra* at 132–134, 122 S. Ct. 1230.

Id. at 732-33. The Court determined that the only issue left for it to resolve was whether Congress intended Federal law to make inoperative any state law that limits the exercise of discretion by local housing authorities to evict tenants who engaged in, or whose household members engaged in, drug-

related criminal activity. *Id.* Doing so, the Court considered whether § 32 constituted an “obstacle to the accomplishment and execution of the full purposes and objectives of Congress,” in a “field admittedly subject to parallel regulation by both sovereigns.” *Id.* at 733 (quotations omitted).

The Court concluded that the “special circumstances” defense promulgated in *Gormley*, permitting a judge to supersede the use of that discretion based on evidence regarding a tenant’s knowledge or control, “would run afoul of and substantially interfere with the congressional objective.” *Id.* at 734. As a result, the Court held the “special circumstances” defense was preempted. *Id.* Relying on *Rucker*, the Court opined:

If it were not, a judge could permit a tenant to demonstrate that she was an “innocent tenant” and consequently determine that eviction was not appropriate. The housing authority would thus have lost the ability to terminate a tenant who violated her lease by not preventing her household member from engaging in drug related criminal activity, an ability Congress intends to preserve for housing authorities “who are in the best position to take account of, among other things, the degree to which the housing project suffers from ‘rampant drug-related or violent crime,’ 42 U.S.C. § 11901(2) (1994 ed. and Supp. V), ‘the seriousness of the offending action,’ 66 Fed. Reg., at

28803 [codified at 24 C.F.R.
 § 966.4(1)(5)(vii) (B)], and ‘the extent to
 which the leaseholder has ... taken all
 reasonable steps to prevent or mitigate
 the offending action. [*Id.*]’ “ *Rucker*,
supra at 134, 122 S. Ct. 1230. (citations
 omitted).

Id.

The Supreme Judicial Court of Massachusetts employed the obvious stipulation that eviction was required by federal law only if the trial court was convinced that the tenant did, in fact, engage in drug-related criminal activity⁷, stating:

Massachusetts law still requires “cause” before a public housing tenancy may be terminated, and a housing authority’s decision to terminate a tenant’s lease is not beyond challenge in the Housing Court, based on the claim that the decision was made “without cause” under § 32, or otherwise constituted an unlawful abuse of discretion (because, for example, it was unsupported by sufficient facts or carried out in violation of due process).

Id. at 736.

Ultimately, Massachusetts held that its state law, which had the effect of superseding a landlord’s

⁷ The COA disregarded this line of argument by Foghorn, instead reproaching Foghorn’s attempt to have state courts “rubberstamp” a landlord’s decision to evict on several occasions.

discretion to evict a tenant as permitted by federal law, is preempted, in line with *Rucker* and *Scarborough*.

C. Wisconsin
Milwaukee City Hous. Auth. v. Cobb, 361 Wis.2d 359, 860 N.W.2d 267 (2015)

In *Cobb*, the Supreme Court of Wisconsin considered whether Wis. Stat. § 704.17(2)(b), which provides in relevant part that a tenant must be given an opportunity to “take[] reasonable steps to remedy the default,” was preempted by federal housing law. 361 Wis.2d at 362-64. The Court held that § 704.17(2)(b) is preempted by 42 U.S.C. § 1437d(l)(6) when a tenant is evicted for engaged in drug-related criminal activity, because federal housing law does not provide a right to cure or remedy for a tenant who engaged in drug-related criminal activity. *Id.* at 281.

The Milwaukee City Housing Authority brought an eviction action against Cobb, alleging that he violated the terms of his lease by engaging in “drug-related criminal activity” – specifically, he smoked marijuana inside of his apartment. *Id.* at 363. The eviction notice did not provide Cobb with an opportunity to remedy the lease violation. *Id.* at 366. Cobb cited § 704.17(2)(b) as a defense and argued that the notice of eviction was required to provide him with an opportunity to remedy his lease violation and avoid eviction. *Id.* 363-64. Relying on *Rucker* and *Scarborough*, the trial court held that “Cobb had no right to remedy his lease violation because federal housing law preempted the right to remedy under

Wis. Stat. § 704.17(2)(b).” *Id.* at 271. The intermediate appellate court reversed the trial court’s decision, holding § 704.17(2)(b) was not preempted. *Id.*

On appeal, the Supreme Court of Wisconsin considered whether permitting Cobb to avoid eviction by promising to cease his illegal drug use “would run afoul of and substantially interfere with the congressional objective” of providing drug-free affordable housing. *Id.* at 380 (citations omitted). In concluding that it would, the Court relied on this Court’s reasoning in *Rucker*:

Tenants will have an incentive not to use illegal drugs in the first instance if they can be evicted for, and given no right to cure, drug-related criminal activity. The potential to be evicted for any drug-related criminal activity, including a first offense, provides a powerful incentive to avoid such activity. [...] By contrast, if a landlord were required to give a “free pass” on a tenant’s first drug offense, tenants would have little incentive not to use illegal drugs because if they are caught, they can just promise not to do it again. For the other tenants of the building, this after-the-fact promise is far from a remedy for completed criminal activity and “‘stan[ds] as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.’” [...] The objective of Congress is to

provide safe, drug-free public housing, not to provide housing that allows criminal drug activity so long as the offender promises not to do it again.

Id. at 277 (internal citations omitted).

In addition to finding the state statute conflict with Congress' goal of providing drug-free affordable housing, the Court also found that the state statute conflicts with Congress' chosen method of achieving that goal, by allowing housing providers to evict tenants for engaging in any drug-related criminal activity. *Id.* at 381. In noting the "additional conflict militates in favor of preemption," the Court opined:

The right to cure under state law removes the Housing Authority's discretion to evict afforded under federal law and instead requires that the Housing Authority allow a tenant a second chance. Simply stated, Wis. Stat. § 704.17(2)(b)'s right to cure undermines the federal law's intent to vest the power to evict in the Housing Authority. Section 704.17(2)(b)'s right to cure is thus preempted in the present case.

Id.

Ultimately, Wisconsin fell in line with *Rucker*, *Scarborough*, and *Garcia*, and held that the state law, § 704.17(2)(b), is preempted because the right to cure a lease violation in federally-subsidized housing that constitutes drug-related criminal activity conflicts

with the federal Anti-Drug Abuse Act, and therefore “stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.” *Id.* at 379. (citations omitted).

D. North Carolina
Eastern Carolina Reg’l Hous.
Auth. v. Lofton, 369 N.C. 8, 789
 S.E.2d 449 (2016)

In *Lofton*, the Eastern Carolina Regional Housing Authority terminated Lofton’s tenancy, alleging that she had breached her lease because of drug-related criminal activity that occurred in her apartment by a person under her control, when her guest was arrested for outstanding child support warrants in her apartment, and found in possession of marijuana. 369 N.C. at 10-11. The intermediate appellate court denied the eviction, concluding that under North Carolina law, the landlord was required to prove that evicting Lofton was not unconscionable. *Id.* at 11.

The North Carolina Supreme Court disagreed when it opined that “[c]ontrary to the Court of Appeals’ decision, the equitable defense of unconscionability is not a consideration in summary ejectment proceedings.” *Id.* Specifically, the Supreme Court noted:

Federal statutes and regulations govern federally subsidized public housing and require public housing authorities to incorporate certain provisions into their leases. In its role as the final forum for

review of government housing decisions, the Court is not to second-guess or replace plaintiff's discretionary decisions but to ensure procedural and substantive compliance with the federal statutory framework.

Id.

With its decision in *Lofton*, North Carolina joined *Rucker*, *Scarborough*, *Garcia*, and *Cobb*, holding that the state law requiring a landlord to prove evicting a tenant was not unconscionable, thereby potentially superseding the landlord's discretion to evict, is preempted.

III. THE MARYLAND COURT OF APPEALS INTERPRETED A FEDERAL LAW AND ITS IMPLEMENTING REGULATIONS IN A MANNER INCONSISTENT WITH CONGRESS AND HUD'S OWN INTERPRETATION.

The COA's decision is at odds with core principals of administrative law recognized by this Court, since the COA's decision rested on its own conclusions about the appropriate interpretation of § 1437f(d)(1)(B)(iii) and its implementing regulations, rather than deference to HUD's interpretation.

The fact that this case involves an agency's interpretations of § 1437f(d)(1)(B)(iii), specifically HUD's interpretation, made the COA's judicial interpretation very difficult. It is well-settled that, when an agency charged with enforcing a statute has

arrived at and implemented a “permissible construction,” a court may not substitute its judgment for that of the agency. *Chevron, U.S.A. v. Natural Res. Def. Council*, 467 U.S. 837, 843, 104 S. Ct. 2778, 2782 (1984). Under this Court’s rulings, the court below was obligated to at least give weight to, if not heed, HUD’s explanation of its own intent with regard to interpretation of its implementing regulations. For example, in *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 496, 116 S. Ct. 2240, 2255 (1996), this Court emphasized that, because federal agencies that administer the law are “uniquely qualified to determine whether a particular form of state law” frustrates federal objectives, their views on preemption are entitled to considerable weight. This Court reaffirmed that principle in *Geier*, where the Court, in evaluating an implied preemption claim, placed considerable reliance on the views of the Department of Transportation, noting that “the agency’s own views should make a difference.” 529 U.S. at 883, 120 S. Ct. at 1926. To borrow from the Court’s reasoning in *Geier*, “Congress has delegated to the...[Department of Housing and Urban Development] authority to implement the statute; the subject matter is technical; and the relevant history and background are complex and extensive. The agency is likely to have a thorough understanding of its own regulation and its objectives and is ‘uniquely qualified’ to comprehend the likely impact of state requirements.” 529 U.S. at 883 (citations omitted).

When HUD issued regulations that closely track the text of Section 1427f(d), it acknowledged a specific Congressional intent to ensure that housing

projects receiving government funds were making every effort to ensure residents' safety.

In *Scarborough, supra*, the D.C. Court of Appeals asked for HUD's interpretation of § 1437f(d)(1)(B)(iii). *See* Excerpts from Brief for the United States as Amicus Curiae (App. 170a-180a). The United States on behalf of HUD, as *amici*, stated that "while landlords may consider an unlimited range of factors in deciding whether to in fact evict a family that it has cause to evict, landlords are not required to consider any particular factors, and therefore, courts have no regulatory requirement or standard by which to review a landlord's decision." App. 178a. (emphasis in the original). The United States went on to conclude that "federal law would preempt any provision of local law, or any principle of state common law, that would purport to give a state court authority to review, for abuse of discretion or otherwise, a HUD-assisted landlord's decision to eviction, separate and apart from the direct review of whether the asserted grounds for eviction exist." *Id.* The justification for this conclusion was that "[a]ny further inquiry would necessarily limit the landlords full exercise of their federally-founded authority, and therefore, any purported authority for such judicial inquiry would be pre-empted by federal law." App. 180a.

The decision of the COA depletes much of the meaning and significance from § 1437f(d)(1)(B)(iii), and the implementing regulations issued by HUD. As a result, private owners participating in the project-based subsidy program are deprived of an important tool to achieve safe and livable low-income housing for

other tenants, despite Congress finding those protections to be of utmost importance.

The COA also held that, even where the basis for lease termination is drug-related criminal activity, HUD's regulations contemplate that tenants may invoke state or local protections such as RP § 8-402.1(b)(1) to avoid eviction. In particular, the court pointed to 24 C.F.R. § 880.607(b)(1)(iv), which provides that all terminations must be in accordance with state and local landlord-tenant law:

The owner may not terminate any tenancy except upon the following grounds:

Other good cause, which may include the refusal of a family to accept an approved modified lease form (see paragraph (d) of this section). No termination by an owner will be valid to the extent it is based upon a lease or a provisions of State law permitting termination of a tenancy solely because of expiration of an initial or subsequent renewal term. All terminations must also be in accordance with the provisions of any State and local landlord tenant law.

There is no indication that, with this one subsection, HUD intended for judicial review superseding a landlord's exercise of discretion to somehow complement a landlord's statutory right to evict for drug-related criminal behavior. When it adopted a related regulation, 24 C.F.R. § 247.6, regarding

evictions from subsidized projects, HUD made clear their intent when referring to a tenant's reliance on "State or local law":

This rule requires the landlord to advise the tenant, in a termination notice, that the tenant is entitled to a court proceeding pursuant to state or local law at which he or she may present a defense to the eviction. The landlord is prohibited from resorting to "self help" evictions or any non-judicial process, even where these actions are authorized by State or local law. *This rule is procedural only, and does not alter in any way the grounds for which the landlord may terminate a tenancy.*

48 Fed. Reg. 22913 (1983) (discussing 24 C.F.R. Part 450, redesignated as Part 247 in 49 Fed. Reg. 6712, 6713 (1984) (emphasis added)).

While prohibiting self-help and requiring owners to seek eviction in state judicial proceedings, there is no indication by HUD that 24 C.F.R. § 880.607(b)(1)(iv) limits the grounds on which eviction may be sought in those proceedings, nor the landlord's right to evict for drug-related criminal acts. In fact, a "procedural" right to a second chance to refrain from drug-related criminal activity would conflict fundamentally with 42 U.S.C. § 1437f(d)(1)(B)(iii).

IV. THIS CASE PRESENTS A RECURRING QUESTION OF NATIONAL IMPORTANCE

The COA's unwillingness to apply the clear language of § 1437f(d)(1)(B)(iii) will inevitably have a negative impact on the innocent, law-abiding residents of housing projects whom Congress sought to protect. While it may be tempting to look at the circumstances of this case through the lens of empathy for Hosford, an elderly, long term tenant of Ruscombe, and to view his actions in isolation without regard to their potential effect on his fellow tenants or his housing provider, to do so ignores the compounding consequences of this approach to drug-related crime. Indulging in the temptation to reach an "equitable" result that allows Hosford to continue his use, possession and cultivation of an illegal drug in his unit also undermines Congressional intent to protect all of the other tenants who must coexist with him.

The large majority of individuals residing in project-based housing are elderly, disabled or single mothers; some of our nation's most vulnerable citizens. The inescapable consequences of drug-related crime on tenants of HUD-assisted housing has long been acknowledged. *See The Drug Problem and Public Housing: Hearings Before the House Select Comm. On Narcotics Abuse and Control*, H.R. Rep. No. 101-1019 (1989). Those such as the elderly and disabled residents at Ruscombe, who are individuals too poor to move elsewhere, "must walk the streets that the rest of us avoid or never confront." *Crime in America: Three Ways to Prevent It, Hearings on H.R. 3 Before the Subcomm. on Crime of the House Comm.*

On the Judiciary, 104th Cong., 1995 WL 20741, at 9 (Jan. 30, 1995) (statement of John J. Dilulio, Jr.). “For crime-plagued inner-city housing tenants, the only real choice is between being homeless and coping with crime.” *Id.*

Section 1437f(d)(1)(B)(iii) was Congress’ deliberate but measured response to the serious problems resulting from drug-related criminal activity in and near many housing projects. Congress highlighted the significant detriment caused by federally-assisted housing tenants who engage in drug-related criminal activity when it noted its findings upon adopting the Anti-Drug Abuse Act. “[P]ublic and other federally assisted low-income housing in many areas suffers from rampant drug-related or violent crime.” 42 U.S.C. § 11901(2). “[D]rug dealers are increasingly imposing a reign of terror on public and other federally assisted low-income housing tenants.” *Id.* at § 11901(3). “[T]he increase in drug-related and violent crime not only leads to murders, muggings, and other forms of violence against tenants, but also to a deterioration of the physical environment that requires substantial government expenditures.” *Id.* at § 11901(4). These findings are equally, if not more, pertinent today as we live within the throes of the opioid epidemic.

Besides eliminating an effective tool for combatting drug-related crime in HUD-assisted housing, the COA’s reference to Congress’ own stated duty as an “aspiration,” creates a slippery slope for housing providers and tenants alike to deviate from compliance with the regulations associated with federally-assisted housing. Congress was clear when

it established that “the Federal Government **has a duty** to provide public and other federally assisted low-income housing that is decent, safe, and free from illegal drugs.” 42 U.S.C. § 11901(1) (emphasis added). To lessen the significance of that statement as the COA did in its opinion, opens the door for HUD-assisted housing providers and tenants nationwide to apply that interpretation to other duties associated with federally-subsidized housing. For example, HUD-assisted housing providers and tenants are required to engage in an annual recertification process to ensure tenants receiving subsidies are eligible based on their household composition and income. Based on the case law enunciated by the COA, a court could conclude that Congress did not intend to “achieve” complete and strict compliance with income guidelines or household composition requirements, but rather aspired for such compliance and merely intended to *reduce* the numbers of housing providers and tenants engaged in housing fraud.

The COA’s holding diametrically differs from other states’ construal of Congress’ intent and creates uncertainty among not only Maryland’s HUD-assisted housing providers, but all HUD-assisted housing providers nationwide, as to when and under what circumstances their decision to evict a tenant engaged in drug-related criminal activity will be upheld by a court.

The question presented by this case is of such importance that this case clearly merits this Court’s plenary review.

CONCLUSION

The Court should grant this petition for a writ of certiorari.

Respectfully submitted,

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