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DISPLACED TENANTS FIND SHELTER IN THE
ELEVENTH CIRCUIT:
*WARD v. DOWNTOWN DEVELOPMENT
AUTHORITY*,
786 F.2d 1526 (11th CIR. 1986)

Redevelopment projects designed to rid America's older cities of slums and urban decay increasingly conflict with the rights of displaced tenants.¹ Federal courts grant constitutional protection against the "taking" of a leasehold in limited circumstances.² A minority of courts hold that a tenant-at-will, evicted from federally subsidized housing, retains a substantive property interest until the lessor complies with federal termination procedures.³ In *Ward v. Downtown Development*

1. See generally Comment, *Urban Redevelopment and the Fiscal Crises of the Central City*, 21 ST. LOUIS U.L.J. 820, 822 (1978) (discussion of conflicting goals between government sponsored redevelopment programs and low-income residents in target area); Comment, *Displacement of the Elderly: Policies and Strategies to Combat an Old Problem*, 16 GONZAGA L. REV. 723, 744 (1981) (efforts to revitalize cities often result in displacing low-income owners and renters).

2. See *infra* note 16 and accompanying text. The fifth amendment to the United States Constitution proscribes the taking of private property for public use without just compensation. U.S. CONST. amend. V. This comment focuses on the issue of a tenant's substantive property interest under the fifth amendment. For a general discussion of various aspects of the taking issue, see generally D.R. MANDEKER, *LAND USE LAW* 15-48 (1982).

In addition to judicial remedies, Congress passed the Uniform Relocation Assistance and Real Property Acquisition Act of 1970, 42 U.S.C. §§ 4601-4655 (1976) to aid persons displaced or those deprived of their real property by federal and federally assisted programs. See Comment, *Blight, Redevelopment and Relocation: A Recurring Pattern Under the Uniform Relocation Act*, 51 U.M.K.C. L. REV. 107, 126 (1982) (examines the effect of the Uniform Relocation Assistance Act on residents displaced by redevelopment projects).

3. See, e.g., *Joy v. Daniels*, 479 F.2d 1236, 1241 (4th Cir. 1973) (determining that the National Housing Act and the Housing and Urban Development Act of 1965 create a property right or entitlement to continue occupancy until cause to evict exists other than expiration of a tenant's lease); *Jeffries v. Georgia Residential Fin. Auth.*, 503 F. Supp. 610 (N.D. Ga. 1980), *aff'd*, 678 F.2d 919, 925 (11th Cir. 1982) (affirming the district court's finding that the statute establishing the Section 8 housing program is the source of a legitimate expectation by an at-will tenant that a landlord will not evict him or her without good cause); *Swann v. Gastonia Housing Auth.*, 675 F.2d 1342, 1346

Authority,⁴ the Eleventh Circuit Court of Appeals extended protection under the fifth amendment's taking clause⁵ to situations involving state regulatory guidelines.⁶ The court held that a tenancy-at-will is a protected property interest entitling the tenant to compensation when a state controlled redevelopment agency takes the tenant's interest without adhering to requirements established in the agency's legislative grant of authority.⁷

In *Ward* the Downtown Development Authority (DDA)⁸ purchased apartments as part of a renewal project.⁹ On the DDA's instruction, the apartment managers notified the residents, month-to-month tenants-at-will,¹⁰ to vacate their apartments within twenty days.¹¹ The tenants complied with the eviction notice and later filed suit in federal

(4th Cir. 1982) (a tenant receiving Section 8 housing subsidies has a constitutionally protected property interest in continued occupancy after the lease expires). *See infra* notes 28-57 and accompanying text.

4. 786 F.2d 1526 (11th Cir. 1986).

5. U.S. CONST. amend. V. *See supra* note 2 and *infra* note 16.

6. 786 F.2d at 1526.

7. *Id.* at 1530.

8. *Id.* at 1527. The Florida legislature created the DDA to "plan, construct and maintain public improvements and facilities within the central business district of Fort Lauderdale, Florida." *Id.* 1969 Fla. Laws ch. 69-1056.

9. 786 F.2d at 1527.

10. *Id.* A tenancy-at-will is defined in the RESTATEMENT (SECOND) OF PROPERTY § 1.6 (1977) as "one created to endure only so long as both the landlord and the tenant desire." *See* C.J. BERGER, *LAND OWNERSHIP AND USE* 205 (3d ed. 1983). At common law, one party could end the tenancy-at-will by giving notice of termination to the other. *Id.* State statutes, like the applicable Florida statute in *Ward*, modify this rule by requiring termination notice equal to, or a fraction of, the rent-paying period. *See, e.g.,* J.R. CRIBBET, *PRINCIPLES OF THE LAW OF PROPERTY* 56 (1962).

The tenants in *Ward* were paying monthly rent but had no lease. 786 F.2d at 1527. Therefore, Florida law required the lessors to give fifteen days notification prior to terminating their lessees' tenancies. FLA. STAT. ANN. § 83.03 (West Supp. 1985).

11. 786 F.2d at 1527. The DDA hired the former apartment owners as managing agents. Their employment contracts required them to have every tenant sign a statement saying that he or she had no other right than to possess the apartment in accordance with any existing lease or oral agreement, and that said interest would expire on or before October 30, 1985.

Tenants received notice to vacate on October 11, 1982. The DDA failed to hold a public hearing or provide relocation assistance, requirements the DDA must meet prior to approving a renewal project. *See* 1969 Fla. Laws ch. 69-1056 § 21.

The court stated that the agreement that the tenants signed only limited the right of property possession to the lease terms. 786 F.2d at 1528. No contract created a property interest binding the tenant to remain in possession of the apartment until October 30, 1985. Consequently, the court found no breach of contract. *Id.*

court under the taking clause of the fifth amendment seeking compensation for their lost property interests.¹² The district court dismissed the tenants' complaint, ruling that a tenant-at-will's expectation in continued occupancy of his or her apartment is too uncertain to be a compensable property interest under the Constitution.¹³ On appeal, the Eleventh Circuit reversed, holding that a that a tenant-at-will has a protectable property interest.¹⁴ The court determined that the DDA took this interest by terminating the tenancies without either conducting a public hearing or providing the relocation assistance outlined in the state statute authorizing the agency's operations.¹⁵

The fifth amendment to the United States Constitution provides in part that private property "shall not be taken for public use without just compensation."¹⁶ Although the amendment proscribes takings of property, it neither creates nor defines the substantive rights protected.¹⁷ Federal courts traditionally find a property interest when a

12. 786 F.2d at 1527. The tenants also alleged procedural due process violations under 42 U.S.C. § 1983 (denial of relocation assistance without due process of law), equal protection violations (charging that tenants similarly situated received the benefit of relocation assistance under the DDA act), 786 F.2d at 1532, and pendent state law claims for specific violations of the DDA act because of the agency's failure to follow statutory guidelines prior to approving the renewal project. *Id.* at 1527.

13. *Id.* The absence of a compensable property interest also doomed the due process claim. The district court dismissed the tenants' § 1983 claim, determining that § 1983 only provides a cause of action for violations of rights guaranteed by the United States Constitution. Additionally, absent valid federal claims, the district court refused to exercise pendent jurisdiction over the tenants' state law claims. *Id.* See *infra* notes 78-82 and accompanying text.

14. 786 F.2d at 1533.

15. *Id.* at 1530. See *infra* notes 72-82 and accompanying text.

16. U.S. CONST. amend. V. As early as 1897, the Supreme Court recognized that the fifth amendment applies to the states through operation of the fourteenth amendment. See *Chicago, B & Q Ry. Co. v. City of Chicago*, 166 U.S. 226 (1897) (prohibiting a state from taking a person's property without due process of law). See also *Morton Grove Park Dist. v. American Nat'l Bank and Trust Co.*, 78 Ill. 2d 353, 399 N.E.2d 1295 (1980) (the federal constitutional guarantee that private property shall not be taken for public use without just compensation applies to the states through the fourteenth amendment); *Foster v. City of Detroit*, 254 F. Supp. 655 (E.D. Mich. 1966), *aff'd*, 405 F.2d 138 (6th Cir. 1968) (the fifth amendment requirement providing just compensation for the taking of private property for public use applies to the states and is incorporated into the due process meaning of the fourteenth amendment).

17. See *Board of Regents v. Roth*, 408 U.S. 564, 577 (1972) ("Property interests, of course, are not created by the Constitution." The interests come from independent sources [state laws] which secure certain benefits and support claims of entitlement to those benefits). See *e.g.*, *Bishop v. Wood*, 426 U.S. 341, 344 (1975) (a property interest in employment may be created by ordinance or by an implied contract); *Webb's*

person has an expectation in the continued use or enjoyment of property, arising from a legitimate claim of entitlement.¹⁸ Often, the sources of legitimacy for claims of entitlement are state and local laws.¹⁹

Historically, a tenant's expectation in the continued occupancy of a leasehold depended upon the terms of any unexpired lease.²⁰ Consequently, the government must compensate a leaseholder when it takes her land for public use prior to the lease's expiration.²¹ A tenant-at-will, however, has no expectation of continued occupancy beyond the

Fabulous Pharmacies, Inc. v. Beckwith, 449 U.S. 153, 161 (1980) (the Constitution does not create property interests, citing with approval *Roth*, 408 U.S. at 577). See generally C.J. BERGER, *LAND OWNERSHIP AND USE* 3-14 (3d ed. 1983) (discussing what constitutes "property").

18. *Roth*, 408 U.S. at 577 (for a property interest to exist, a person must have more than an "abstract need or desire for it." He or she must have a legitimate claim of entitlement to the property interest). See also *Webb's Fabulous Pharmacies*, 449 U.S. at 161 (1980) (a mere unilateral expectation or abstract need is not a property interest entitled to protection); *Goldberg v. Kelley*, 397 U.S. 265 (1970) (welfare recipients have a claim of entitlement to benefits based on the statute defining eligibility requirements); *Ressler v. Pierce*, 692 F.2d 1212, 1214 (9th Cir. 1982) (applicants for Section 8 housing subsidies have a protectable claim of entitlement to benefits based on the limiting language of the regulations for admissions and selections of the program); *Geneva Towers Tenants Org. v. Federated Mortgage Investors*, 504 F.2d 489 (9th Cir. 1974) (the tenants' interest in avoiding rent increases lies in their statutorily created expectations that they will continue to receive the benefits of low cost housing).

19. See *Chavey v. City of Santa Fe Housing Auth.*, 606 F.2d 282, 284 (10th Cir. 1979) (rules, understandings, and independent sources such as state law, created property interests); *Richmond Elks Hall Assoc. v. Richmond Redev. Agency*, 561 F.2d 1327, 1330 (9th Cir. 1977) (in determining what property rights exist and are, therefore, subject to taking under the fifth amendment, federal courts look to state law); *U.S. v. Certain Property*, 306 F.2d 439, 444 (2d Cir. 1962) (to determine what constitutes a "taking", the court should look to the law of the state where the property is located).

20. See *A.W. Duckett & Co. v. U.S.*, 266 U.S. 149, 151 (1924) (compensation required for the value of lessee's interest when the United States, although not taking the fee, took control of piers where lessees operated an on-going business under a lease with one and one-half years remaining). See also *Alamo Land & Cattle Co. v. Arizona*, 424 U.S. 295, 303 (1975) (government must compensate the holder of an unexpired leasehold interest in land for the value of the interest under the fifth amendment); *Devines v. Maier*, 655 F.2d 138, *rev'd on other grounds*, 728 F.2d 876, 880 (1984) (leasehold interests are property interests protected by the fifth amendment).

21. *Alamo*, 424 U.S. at 303. See, e.g., *U.S. v. Petty Motor Co.*, 327 U.S. 372 (1946). In *Petty*, the court determined that condemnation of all interests in a leasehold should be treated like condemnation of all interests in a fee. *Id.* at 378. Consequently, tenants with a written year-long lease containing a renewal option had compensable property interests because the renewal option created an expectation of continued occupancy. *Id.* at 380.

statutorily guaranteed termination notice period,²² therefore, the government need not compensate the tenant-at-will under the fifth amendment.²³

Federal courts began to acknowledge situations in which a tenant-at-will may retain a constitutionally protected interest despite receiving statutorily sufficient notice of termination.²⁴ In *Joy v. Daniels*,²⁵ a landlord receiving rent subsidies from the Federal Housing Administration (FHA)²⁶ followed South Carolina notice procedures to evict an at-will tenant.²⁷ The Fourth Circuit determined that, according to FHA regulations and custom, a property right or entitlement in continued occupancy exists until a cause to evict arises from a condition other than the lease's expiration.²⁸ The federal government's participation in the housing project, combined with the state's eviction procedures, led the court to conclude that the landlord's actions were not "purely private."²⁹ The court determined that sufficient state action existed to invoke the fourteenth amendment's protections.³⁰ Yet, the court noted

22. See *Petty*, 327 U.S. at 380. The Court held that the month-to-month tenants-at-will displaced by the same condemnation proceeding lacked compensable property interests. The Court stated that once the tenants received the requisite fifteen days notice, they received no further entitlement. *Id.* at 380.

23. *But see* *Pensacola Scrap Processors v. State Road Dept.*, 188 So. 2d 38, *cert. denied*, 192 So. 2d 494 (Fla. 1966). Under the Florida Constitution, a tenant-at-will is a property owner. Therefore, if the state condemns only part of the tenant's leasehold for highway use, the tenant should receive the state's statutory compensation. *Id.* at 43. The court, however, specifically limited its holding to this "partial taking" instance. *Id.* at 43.

24. See *infra* notes 27, 40 and accompanying text.

25. 479 F.2d 1236 (4th Cir. 1973).

26. *Id.* at 1238-1239. The FHA grants rent subsidies, paid directly to the landlord, for low-income residents under the Housing and Urban Development Act of 1965, 12 U.S.C. § 1701(b) (1978).

27. 479 F.2d at 1238. The landlord gave the tenant thirty days notice to vacate her apartment without giving her the reasons for her eviction. South Carolina law requires that a landlord show cause to evict and that the landlord prove these reasons in court. *Id.* at 1242. Prior to *Joy*, the Fourth Circuit held in *Johnson v. Tamsberg*, 430 F.2d 1125, 1127 (4th Cir. 1970) that "public housing tenants are not actually ejected until basic due process requisites are satisfied." *Joy*, 479 F.2d at 1242.

28. 479 F.2d at 1241.

29. *Id.* at 1239. The court stated that these actions had "so far insinuated [the state] into a position of interdependence with the [landlord]" that the landlord's actions were not so purely private as to fall outside the fourteenth amendment. *Id.*

30. *Id.* State action is necessary to invoke the fourteenth amendment protections because the amendment does not inhibit the conduct of individuals acting in a purely private capacity. 479 F.2d at 1238 (citing *Adickes v. S.H. Kress & Co.*, 398 U.S. 144,

that because the South Carolina laws adequately protected the tenant's due process rights by providing the same good-cause notice that the FHA requires, the federal court had no reason to retain jurisdiction.³¹ The court explained that states traditionally regulate landlord-tenant law and that like their federal counterparts, state judges must demand compliance with the fourteenth amendment's due process clause.³²

In subsequent cases, the Fourth and Eleventh Circuits³³ interpreted *Joy v. Daniels*³⁴ to require that once a court holds the fourteenth amendment applicable to the state action involved, it must determine whether a constitutionally protected property interest exists, thus affording relief to a tenant-at-will for deprivation of that interest.³⁵ In *Swann v. Gastonia Housing Authority*³⁶ the Fourth Circuit applied the *Joy* rationale where a Section 8 tenant's³⁷ lease provided for termination on thirty days notice along with a provision for automatic annual renewal unless the landlord follows the proper termination procedures.³⁸ The court reasoned that before the fourteenth amendment ap-

166 (1970)). See also *Jeffries v. Georgia Residential Fin. Auth.*, 678 F.2d 919, 922 (11th Cir. 1982) (there is no precise formula for determining whether conduct constitutes solely private or state action); *Burton v. Wilmington Parking Auth.*, 365 U.S. 715, 722 (1961) (to constitute state action, the state, in any of its manifestations, must be significantly involved in the private conduct); *Jackson v. Metro. Edison Co.*, 419 U.S. 345, 351 (1974) (the relevant inquiry is "whether there is a sufficiently close nexus between the state and the challenged action of the regulated entity so that the action of the latter may be fairly treated as that of the state itself").

31. 479 F.2d at 1243. The South Carolina eviction laws require good cause notice and failure to give such notice provides the tenant with the right to a trial by jury before the landlord may evict the tenant.

32. 479 F.2d at 1243.

33. See *Swann v. Gastonia Housing Auth.*, 675 F.2d 1342 (4th Cir. 1982); *Jeffries v. Georgia Residential Fin. Auth.*, 678 F.2d 919 (11th Cir. 1982). See *infra* notes 35-57 and accompanying text.

34. 479 F.2d 1236 (4th Cir. 1973).

35. See *Swann*, 675 F.2d at 1345-1346, *Jeffries*, 678 F.2d at 922-925.

36. 675 F.2d 1342 (4th Cir. 1982).

37. See Housing and Community Development Act of 1974 § 8, 42 U.S.C. § 1437 (1976). Section 8 of the Act provides rent subsidies to landlords of lower income families, whose incomes are below fifty percent of the median family income in the area. *Id.* at § 1437a(2). The federal government pays the subsidies through Public Housing Authorities (PHAs) to private landlords participating in the Section 8 program. *Id.* at § 1437f(b).

38. 675 F.2d at 1344. Along with giving the tenant the thirty days notice, the landlord must send a copy of the notice to the housing agency for its approval in compliance with federal regulation. See 42 U.S.C. § 1437f (1982) and 24 C.F.R. part 882 (1987). The regulations also provide that tenants may object to their eviction within twenty

plies a Section 8 tenant must have an interest in continued occupancy and the eviction procedure must constitute state action.³⁹ The court found that the lease's automatic renewal feature justified the tenant's expectation of continued occupancy, which endured absent a good cause notice for eviction.⁴⁰ The *Swann* court found that the eviction constituted state action to support the plaintiff's fourteenth amendment claim.⁴¹ Following the reasoning in *Joy*,⁴² however, the Fourth Circuit concluded that the state court system sufficiently protected the tenant's property rights.⁴³

In a situation analogous to *Swann*,⁴⁴ the Eleventh Circuit retained federal jurisdiction without considering the adequacy of a state court remedy.⁴⁵ In *Jeffries v. Georgia Residential Finance Authority (GRFA)*⁴⁶ a private landlord attempted to evict tenants receiving federal subsidies under the existing Section 8 housing program administered by a state agency⁴⁷ for the Department of Housing and Urban

days of the notice. The Swanns requested the Georgia Housing Authority (GHA) to disapprove the termination of their tenancy, and at the very least, hold a hearing before making a decision. The GHA, after holding an informal conference, refused to change its policy of allowing landlords to evict tenants with or without good cause. *Id.* at 1344.

39. 675 F.2d at 1345-46.

40. *Id.* at 1344-46. The court interpreted the federal housing statute to require that the Georgia Housing Authority make a finding of good cause before approving the termination of the tenancy. No provision in the statute, however, required the agency to hold a full-fledged hearing before eviction. Rather, the due process clause of the fourteenth amendment affords the tenant a right to a hearing before the GHA because without receiving good cause notice, the statute assures the tenant he may remain in his home. The due process clause protects this statutory entitlement. *Id.* at 1346. *See, e.g., Goldberg v. Kelly*, 397 U.S. 254 (1970) (holding a recipient's entitlement to welfare benefits is a constitutionally protected property interest).

41. The eviction constituted state action because the federal government helps subsidize the tenancy, the landlord submits to federal regulation, and the local public housing authority determines if good cause exists to terminate a tenancy. *Swann*, 675 F.2d at 1346.

42. *See* 479 F.2d 1236, 1242-43 (4th Cir. 1973). *See also supra* notes 30-32 and accompanying text.

43. *See* 675 F.2d at 1347. The court found the South Carolina eviction statute in *Joy* indistinguishable from the North Carolina statute in *Swann*. Consequently, the state court would adequately protect the tenants' due process rights. *Id.* *See supra* notes 25-32 and accompanying text.

44. *See* 675 F.2d 1342 (4th Cir. 1982).

45. *See* *Jeffries v. Georgia Residential Fin. Auth.*, 678 F.2d 919 (11th Cir. 1982).

46. *Id.*

47. *Jeffries*, 678 F.2d at 921. HUD delegated its administrative authority to the Georgia Residential Finance Authority.

Development (HUD).⁴⁸ The landlord gave the tenants a thirty-day termination notice in compliance with the terms of their lease.⁴⁹ Nevertheless, the court determined that the notice given to the tenants was inadequate to terminate their interest given the connection between the state and private action which triggered the fourteenth amendment's prohibitions.⁵⁰

The *Jeffries* court extended the reasoning in *Joy*⁵¹ and *Swann*,⁵² concluding that the federal government's provision of subsidies gave Section 8 tenants a constitutionally protected property interest.⁵³ The court ruled that a property interest arises where a landlord may withdraw a government benefit only for cause.⁵⁴ In this case, the federal government's program vested the tenant with a property interest.⁵⁵ Although the private landlord gave the tenants sufficient termination notice under their lease, the state agency's involvement coupled with the federal regulations required good cause for termination of the tenancy.⁵⁶ The court concluded that the federal statute creating the Section 8 program was the primary source for the tenants' legitimate

48. *Id.* at 921, 922. Section 8 subdivides housing into four separate programs: Section 8 New Construction, Section 8 Substantial Rehabilitation, Section 8 Moderate Rehabilitation, and Section 8 Existing. Housing and Community Development Act of 1974, § 8, 42 U.S.C. § 1437 (1976). The Department of Housing and Urban Development (HUD) administers the existing Section 8 housing program. *Id.* See *supra* note 37.

49. *Id.* at 925. The tenant's lease provided for termination on thirty days notice by either party.

50. *Jeffries*, 678 F.2d at 923. The court here utilized the language of the Fourth Circuit in *Joy v. Daniels*, 479 F.2d 1236, 1238 (4th Cir. 1973), concluding that the statutory prescriptions of the Section 8 regulations established the responsibility for lease termination and eviction with the state. Therefore, the private landlord could not act without state approval to terminate the lease. *Jeffries*, 678 F.2d at 924.

51. 479 F.2d 1236 (4th Cir. 1973).

52. 675 F.2d 1342 (4th Cir. 1982).

53. See *Jeffries v. Georgia Residential Fin. Auth.*, 678 F.2d 919, 925-926 (11th Cir. 1982). See *supra* notes 43-49 and accompanying text.

54. *Jeffries*, 678 F.2d at 925. In *Joy* and *Swann*, the Fourth Circuit determined the protected property interests at issue arose from the failure of a state agency to establish good cause before evicting the tenants in accordance with federal regulations. See *supra* text and accompanying note 43.

The *Jeffries* court, however, viewed the federal regulations as the primary source of the tenants' property interest in continued occupancy of their apartments because they had a legitimate expectation that they would not be evicted without good cause as the Section 8 program provides. 42 U.S.C. § 1437 (1970). *Jeffries*, 678 F.2d at 925.

55. *Id.* at 925.

56. *Id.*

expectation in continued occupancy, protected by the fourteenth amendment from deprivation without due process of law.⁵⁷ The court failed to consider whether the at-will tenants, once deprived of their property interests, could recover compensation under the fifth amendment's taking clause.⁵⁸

In *Joy*,⁵⁹ *Swann*,⁶⁰ and *Jeffries*,⁶¹ the courts evaluated the existence of constitutionally protected property interests only after they determined that sufficient state action existed.⁶² Soon after the *Jeffries* decision, the Fifth Circuit delivered a different interpretation of state action in a situation involving a federal housing program.⁶³ The court in *Miller v. Hartwood Apts., Ltd.*⁶⁴ acknowledged that federal regulations established the guidelines with which Section 8 lessors must comply.⁶⁵ Nevertheless, the court determined that landlords act as private owners on a daily basis.⁶⁶ The court affirmed the district court's dismissal of

57. *Id.*

58. See 678 F.2d 919. The court dealt solely with the tenants' property interest as it related to the due process clause of the fifth amendment, as the tenants did not sue for compensation under the taking clause. See U.S. CONST. amend V. Courts determine, however, whether a substantive property interest exists without considering the remedy to protect that interest. See 678 F.2d 919, 925-926. The issue is whether the tenants legitimately expected continued occupancy. The *Jeffries* court answered this question affirmatively. *Id.*

59. 479 F.2d 1236 (4th Cir. 1973).

60. 675 F.2d 1342 (4th Cir. 1982).

61. 678 F.2d 919 (11th Cir. 1982).

62. See *supra* notes 29, 30, 35, 50 and accompanying text.

63. See *Miller v. Hartwood Apts., Ltd.*, 689 F.2d 1239 (5th Cir. 1982).

64. 689 F.2d 1239 (5th Cir. 1982).

65. *Id.* at 1244.

66. *Id.* The court found that the private landlord's connection to the federal Section 8 housing program was not a "sufficient nexus" to hold the federal government responsible for the landlord's action. *Id.* at 1243. Nor did the court find any state officials or state laws involved in the day-to-day operations of the apartments. *Id.* at 1243, 1244.

The *Miller* court based its state action analysis on the Supreme Court's decision in *Blum v. Yaretsky*, 457 U.S. 991 (1982). 689 F.2d at 1243. The decision in *Blum* followed only two weeks after the Eleventh Circuit's opinion in *Jeffries v. Georgia Residential Fin. Auth.*, 678 F.2d 919 (11th Cir. 1982). See *supra* notes 44-57 and accompanying text. In *Blum*, Medicaid patients challenged a private nursing home's decision regarding the patients' discharge or reduction in level of care. 457 U.S. at 1005-09. The Court found the nursing home's activities failed to constitute sufficient state action to invoke fourteenth amendment protections. *Id.* Although a state agency implemented the federal Medicaid program, the State is not responsible for the nursing home's decisions at issue. *Id.* A professional makes these decisions according to a patient's medical condition. *Id.* The *Blum* Court stated that despite the federal statutory

the claim,⁶⁷ holding that the federal government had not denied the tenants' constitutional rights.⁶⁸ The Court stated that a different issue may arise if government employees operate the apartments or if governmental eviction procedures are in question.⁶⁹

In *Ward v. Downtown Development Authority*⁷⁰ the Eleventh Circuit extended federal court protection under the taking clause to tenants-at-will not receiving federal housing subsidies.⁷¹ In *Ward*, applying reasoning similar to the *Jeffries*⁷² rationale, the court concluded that tenants-at-will possess a constitutionally protected property interest.⁷³ The court initially recognized that, according to Florida law, a month-to-month tenancy-at-will is a compensable property interest protected

requirement that states provide funding for skilled nursing services, the statute failed to require the states to provide services or to make daily administrative decisions. *Id.* at 1011. Finding that the patients failed to establish "state action" in the nursing home's decisions, the Supreme Court held that the patients also failed to prove a violation of any rights secured by the fourteenth amendment. *Id.* at 1012.

67. 689 F.2d at 1244.

68. *Id.* at 1243. The court rejected the tenants' argument "that the federal government, by and through Hartwood Apartments, acted to violate their constitutional rights." *Id.* For this argument to succeed, the court must determine that the federal government was "actually involved in the activity that causes the injury." *Id.*

See generally Payne, From the Courts, 12 REAL EST. L.J. 172, 173 (1983) (interpreting *Miller* to imply that the government's general regulatory involvement in Section 8 programs was too minimal to support a fifth amendment claim under any circumstances).

69. 689 F.2d at 1243. This statement by the court was unaccompanied by any further explanation. Moreover, the court failed to distinguish other cases involving Section 8 tenants. *See Id.* at 1244.

See generally Payne, supra note 68, at 172-73, in which the author distinguishes *Miller* from *Jeffries* on the basis of the portion of the Section 8 program involved. In *Miller* the claim of public involvement arose under the "new construction" section, while in *Jeffries* the "existing housing" portion was at issue. As the existing housing program regulation required the landlord to give the tenant good cause notice prior to eviction, the court determined the public agency had a substantive role in the landlord's actions. The new construction portion of the Section 8 housing program contained no such provision. The lease in *Miller*, however, limited evictions to "cause." This implies that "had the tenants not defaulted in state eviction proceedings, it appears that they could have challenged their evictions on the merits, achieving the same result in a different forum than they sought by federal action."

70. 786 F.2d 1526 (11th Cir. 1986).

71. *Id.* at 1530.

72. *See* 678 F.2d 919 (11th Cir. 1982). *See supra* notes 45-57 and accompanying text.

73. 786 F.2d at 1529-30.

by the state's constitution.⁷⁴

Turning to the Development Authority's argument,⁷⁵ the court agreed that if the landlord had been private, the tenants could not receive compensation for any interest extending beyond the notice period.⁷⁶ Stating that the case was similar in all relevant aspects to *Jeffries*,⁷⁷ the court concluded that because the landlord was a state agency, the tenants retained a protected property interest until the DDA complied with all of the enabling act's requirements.⁷⁸ The court held that the DDA's failure both to conduct a public hearing and to provide relocation assistance to the displaced tenants vested the tenants with a legitimate expectation in continued occupancy.⁷⁹ The DDA deprived the tenants of this expectation when it forced the tenants to vacate their apartments.⁸⁰

74. *Id.* at 1529 (citing *Pensacola Scrap Processors, Inc. v. State Road Department*, 188 So. 2d 38, cert. denied, 192 So. 2d 494 (Fla. 1966)). See *supra* note 23.

75. See *Ward*, 786 F.2d at 1529. The DDA argued that it provided the plaintiffs with sufficient statutory notice to terminate their tenancies. According to Florida law, a month-to-month tenant-at-will is entitled only to a fifteen-day notice of termination and any compensable interest terminated at the end of the notice period. FLA. STAT. ANN. § 83.03 (West Supp. 1986).

76. 786 F.2d at 1529.

77. *Id.*

78. *Id.* at 1520, 1530. Prior to approving a renewal project, the DDA must comply with Section 21 of the DDA Act, 1969 Fla. Laws Ch. 69-1056. As stated by the *Ward* court, Section 21 requires the DDA to:

- 1) [D]etermine by resolution that the area affected is a slum or blighted area;
- 2) [S]ubmit the renewal plan to the city planning board for review and recommendations as to the conformity of the renewal project with the general plan for development of the city;
- 3) [H]old a public hearing on the renewal project; and
- 4) [F]ind that "a feasible method exists for the location of families who will be displaced from the renewal area in decent, safe, and sanitary dwelling accommodations within their means and without undue hardship to such families."

786 F.2d at 1529.

The DDA failed to hold a hearing or to determine whether a feasible relocation method existed. *Id.* at 1529.

79. 786 F.2d at 1529-30. The court in *Ward* recognized that the existence of a property interest in *Jeffries* resulted from the Housing Authority's ability to evict only for cause, and not because its authority was conditional. The tenants in *Ward* retained a protected property interest because the DDA could initiate a renewal project only after compliance with § 21 of the DDA Act.

The tenants in *Ward* had a legitimate claim of entitlement to continued occupancy because the DDA failed to comply with statutory authority. The court found this situation indistinguishable from *Jeffries*. *Id.* at 1530.

80. *Id.*

Based on the determination that the tenants had a compensable property interest protected by the fifth and fourteenth amendments, the court remanded the case to the district court to determine whether the DDA violated any of the tenants' rights under the Civil Rights Act of 1871, 42 U.S.C. § 1983.⁸¹ Judge Clark also directed the district court to determine whether the DDA's failure to provide the displaced tenants relocation assistance deprived them of equal protection under the law.⁸² Moreover, because the district court originally ruled that it lacked jurisdiction in the absence of a federal question, the appellate court suggested reconsideration of pendent jurisdiction over the tenants' state law claims.⁸³

Ward v. Downtown Development Authority is important for recognizing that a tenant-at-will possesses a compensable property interest.⁸⁴ The decision is also significant for extending a federal forum to a tenant to whom the state court system may deny adequate relief.⁸⁵ The rea-

81. *Id.* at 1532. The district court based its dismissal on its determination that § 1983 provides a right of action only for violation of those rights secured by the United States Constitution and not for a denial of state-created rights. *Id.* at 1531.

The court of appeals reversed the district court's conclusion. *Id.* at 1531. The court stated that it could not dismiss a § 1983 action for a procedural due process violation solely because the interest at stake is state-created. *Id.* See *supra* notes 17 and 18. The court must inquire into whether state law invests the plaintiff with a legitimate claim of entitlement protected by the due process clause. 786 F.2d at 1531.

The court's finding that a tenancy-at-will is a substantive property interest meant that the state could not eliminate the tenants' entitlement to relocation assistance without due process of law. The court concluded that if on remand the district court determines that the tenants could relocate to "decent, safe, and sanitary accommodations within their means," the court will deny monetary relief for relocation assistance because they "suffered no real loss." *Id.* at 1532.

For further discussion of § 1983 litigation in modern courts, see Madsen and De Meo, 42 *U.S.C. Section 1983 as an Emerging Remedy Against Unconstitutional Local Government Land Use Policies*, 59 *FLA. B.J.*, August 1985, at 77-81 (§ 1983 is an "effective tool" for property owners to defend their constitutional rights against local government land use policies).

82. 786 F.2d at 1532. The district court failed to address the tenants' claim that the DDA provided other tenants with relocation assistance while denying similar assistance to the plaintiffs because the court found no protected property interest. See *supra* note 80. Judge Clark rejected the district court's analysis, stating: "It is fundamental that the Constitution secures equal protection of the laws. That a complaint alleges arbitrary application of a State law does not render the cause any less Constitutional." 786 F.2d at 1532.

83. *Id.* at 1532, 1533. The tenants alleged specific violations of the DDA Act along with the federal question claims.

84. *Id.* at 1530.

85. *Id.* But see *Joy v. Daniels*, 479 F.2d 1236 (4th Cir. 1973); *Swann v. Gastonia*

soning the court used to reach its conclusion, however, warrants criticism.

The court's reliance on *Jeffries*⁸⁶ to the exclusion of contrary authority weakens the impact of *Ward*⁸⁷ on future decisions. The courts in both *Ward* and *Jeffries* determined that a state agency's failure to follow statutorily prescribed guidelines creates a protected property interest in an at-will tenancy.⁸⁸ In *Jeffries*, unlike *Ward*, a federal statute created the tenant's substantive interest and protected against a taking without due process protections.⁸⁹ The state statute in *Ward* vested the tenants with their property interests, protected by the court under both the due process clause and by the fifth amendment's just compensation clause.⁹⁰ In light of the Fourth Circuit's decisions in *Joy*⁹¹ and *Swann*,⁹² the *Ward* court should have considered the adequacy of state procedures to protect the tenant's rights to compensation.⁹³ If the court in *Jeffries* retained jurisdiction because of the federal government's participation in establishing eviction guidelines,⁹⁴ then the *Ward* court's sole reliance on *Jeffries* fails to adequately distinguish the situation from those in *Joy* and *Swann*.⁹⁵

Housing Auth., 675 F.2d 1342 (4th Cir. 1982); see also *supra* notes 31, 32, and 43 and accompanying text. In both *Joy* and *Swann*, the Fourth Circuit determined that federal housing statutes vested the tenants with a substantive property interest. Nevertheless, both courts found that the judicial systems in their respective states afforded the tenants sufficient protection.

86. 678 F.2d 919. See *supra* notes 44-57 and accompanying text.

87. 786 F.2d 1526.

88. In *Ward* the court found that, because the DDA failed to follow the state's prescribed guidelines prior to approving a renewal project, the tenants retained a compensable property interest. *Id.* at 1530; see *supra* notes 7, 74-79 and accompanying text. The *Jeffries* court determined that the GRFA's failure to follow Section 8 guidelines to terminate the tenancies created the substantive interests. 678 F.2d at 925, see *supra* notes 45-54 and accompanying text.

89. *Jeffries*, 678 F.2d at 925. See *supra* note 88.

90. *Ward*, 786 F.2d at 1529-1530. See *supra* note 88.

91. *Joy v. Daniels*, 479 F.2d 1236 (4th Cir. 1973); see *supra* notes 29-32 and accompanying text.

92. *Swann v. Gastonia Housing Auth.*, 675 F.2d 1342 (4th Cir. 1982); see *supra* note 43 and accompanying text.

93. While recognizing that under Florida law, month-to-month tenancy-at-will is a compensable property interest, the court in *Ward* made no inquiry into the sufficiency of a state court remedy for the plaintiffs. 786 F.2d at 1528-1529. But see *supra* notes 31, 32, 44, 85 and accompanying text.

94. See 678 F.2d 919.

95. See *supra* notes 58, 93 and accompanying text.

Additionally, the Eleventh Circuit in *Ward*, unlike the court in *Jeffries*,⁹⁶ failed to conduct a state action test to determine the applicability of the fourteenth amendment's protection for the tenants' substantive property interest.⁹⁷ Given the Fifth Circuit's narrow state action analysis in *Miller*,⁹⁸ the *Ward* court's interpretation of the DDA's status as a governmental landlord creates uncertainty whether another court will reach the same conclusion in an analogous situation.⁹⁹

The holding in *Ward*¹⁰⁰ exemplifies the continuing trend toward affording greater constitutional protections and procedural safeguards to displaced tenants. Unfortunately, the absence of a more thoroughly supported rationale may cast doubt on its precedential value. For the near future at least, courts may proceed on the assumption that landlord-tenant law remains within "the province of the states."¹⁰¹

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96. See *Jeffries v. Georgia Residential Fin. Auth.*, 678 F.2d 919 (11th Cir. 1982); see *supra* notes 44-57 and accompanying text.

97. See *Ward*, 786 F.2d 1526.

98. See *Miller v. Hartwood Apts., Ltd.*, 689 F.2d 1239 (5th Cir. 1982); see *supra* notes 64-69 and accompanying text.

99. *Miller*, 689 F.2d 1239. In *Miller*, the court concluded that "state action" did not automatically exist where a federal Section 8 housing statute imposed guidelines on private landlords. *Id.* at 1243. The *Jeffries* decision, conversely, found sufficient state action existed to protect the tenants' substantive property interest. *Jeffries*, 678 F.2d at 922-925.

Ward fails to distinguish the two cases because the court did not conduct a state action analysis. See *Ward*, 786 F.2d 1526. The court in *Jeffries* concluded that a substantive property interest existed only after finding sufficient state action to invoke the fourteenth amendment's protections. *Jeffries*, 678 F.2d at 922-925. If the *Jeffries* court had held similarly to the court in *Miller*, no substantive property interest protected in the federal forum would exist for tenants-at-will. Consequently, *Ward's* sole reliance on *Jeffries* to conclude that a tenancy-at-will is a compensable interest would have little foundation.

100. *Ward*, 786 F.2d at 1530.

101. See *Joy v. Daniels*, 479 F.2d 1236, 1243 (4th Cir. 1973).