

# NLC Decries Preemption Of City Authority At Fair Housing Hearing

by Cameron Whitman

City councilmember Carol Clark of East Orange, N.J., spoke for all cities last week when she told members of the House of Representatives, "I do not believe that you intended for the Fair Housing Act to eliminate the power of local municipal authorities to shape their communities while considering and balancing the needs of everyone."

Clark urged Congress to change federal laws to give cities greater flexibility and authority to deal with group homes.

Clark, a member of the NLC Board of Directors, said group homes are sited in residential neighborhoods in her community without any notification of elected officials. She communicated her frustration over this preemption of municipal authority to the House Judiciary Committee's Subcommittee on the Constitution at its hearing on H.R. 589, the Fair Housing Reform and Freedom of Speech Act of 1997. Also testifying before the Subcommittee on behalf of their cities were San Diego Mayor Susan Golding and Tom Burney, Village Attorney for Palatine, Illinois.

"You can help my City of East Orange and thousands of other cities throughout the country that are trying to balance the overall needs of their communities," Clark said. "My fear is that our city, which is struggling with a number of social and financial issues common to urban areas, is or will become the location of preference for group home facilities without our consent."

Clark asked the Subcommittee's members to "try to empathize with me for a moment about the anguish I feel when, as a local legislator, I can't have input in a matter so central to families and com-



Carol Clark

munities as the siting of group homes. I can't even find out how many homes are in my city nor does the state provide notice when it decides to issue a special use permit for a group home that will locate in my community."

In summarizing NLC's fair housing policy, Clark emphasized the importance city leaders place on fair and equal treatment for all persons. However, she explained, current federal laws and enforcement actions go so far to ensure fair treatment for certain individuals and groups that the results may be counter-productive.

"Cities are especially concerned where federal and state actions may interfere and preempt the right and authority of local governments to address the needs and safety of our constituents. This, I believe, is what has happened as a result of the Fair Housing Act."

The State of New Jersey issues use permits to group homes determined by a population-based formula. This is how the state arrives at the total number of persons who

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may live in the group homes in a community. The state provides no opportunity for local elected officials to consider the use and location of these homes. It is also impossible to find out from the state government how many homes have been licensed and sited in a particular community. This makes it very difficult for New Jersey municipalities to keep track of these facilities and to monitor them. It makes it impossible for them to balance the needs and priorities of all neighborhoods.

H.R. 589 would amend the Fair Housing Act to permit cities, in neighborhoods zoned to limit

land use to single family dwellings, to restrict the number of unrelated inhabitants in group home, allow proximity requirements for siting multiple group homes and to prohibit group homes in these single family areas that house persons with criminal records or those who are recovering drug addicts. The bill also would protect individual who engage in any lawful activity, including the filing or maintaining of a legal action, solely for the purpose of achieving or preventing action by a governmental or official, or receiving an interpretation of any provision of the law in a court of competent jurisdiction. The protection provisions were written in response to actions taken in the past by the Department of Housing and Urban Development (HUD) and

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Justice (DOJ). HUD and DOJ have filed charges of discrimination against elected officials, individuals, and groups for speaking out against the siting of group homes, and against individual who have filed law suits to protest the siting of group homes.

"I believe H.R. 589 would interject some common sense into a municipality's ability to decide on siting group homes in single-family neighborhoods," Clark said. "However, this would not provide much relief for East Orange as most of our neighborhoods are both single- and multi-family. Nonetheless, this change will be welcomed by thousands of cities, and if you broaden it as we have suggested, it will find even more support."

Clark concluded, "NLC believes that there is a need to

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balance considerations of a municipality, its residents, and a neighborhood with the benefits to the group homes' residents. We would encourage the Subcommittee to consider including language in H.R. 589 which would require fair and even distribution of group homes throughout a city's residential communities. This would help avoid concentration of these homes in particular areas."

Mayor Golding said her city has lost all control over regulating zoning and use as they pertain to the siting, function, number of persons, operating hours, parking requirements, etc. of group homes. She gave an example of a group home which was granted a permit to house eight unrelated persons. At a later date the home expanded its num-

ber of residents to 45 persons without requesting a new or amended permit from the city. The mayor explained that due to courts interpretations of the Fair Housing Act, her city was unable to require this group home to come back to the city for consideration of this change.

Palatine village attorney Tom Burney asked the Subcommittee to revisit the Fair Housing Act and provide clarification of what Congress meant by family, familial status, and handicap in the law. He explained that the Justice Department, through the courts, has expanded their definitions well beyond the actual intent of Congress.

NLC will work with Subcommittee staff to produce new legislative language. ■