

October 24, 2005

The Honorable David Dreier, Chairman
The Honorable Louise McIntosh Slaughter, Ranking Member
House Committee on Rules
H-312 Capitol Building
Washington, DC 20515

Dear Chairman Dreier and Ranking Member Slaughter:

On behalf of the undersigned organizations, we are writing in opposition to language to be included in a manager's amendment to H.R. 1461, the Federal Housing Finance Reform Act of 2005. The provision in question would disqualify nonprofit organizations from participating in a new Affordable Housing Fund – a fund that will increase the supply of affordable homes for very low and extremely low-income families – if the groups have engaged in nonpartisan voter registration, get-out-the-vote, other voter participation activities, or in some cases lobbying or grassroots lobbying, in the previous 12 months. Because this provision is unsound on both public policy and constitutional grounds, we strongly urge the Committee on Rules to allow an up-or-down vote on an amendment to strike the language from the bill.

The establishment of the Affordable Housing Fund in H.R. 1461 would be a critical, long-overdue step toward addressing the housing crisis that confronts very low and extremely low-income families across the nation. It provides grants to support the work of nonprofit organizations that provide the bulk of housing services for our poorest communities. For the first two years, money in the fund would be prioritized to rebuild housing in the areas that were devastated by Hurricane Katrina. The fund was supported by a majority of both parties in the House Committee on Financial Services, which reported H.R. 1461 on a 65-5 margin.

A provision in the proposed manager's amendment to H.R. 1461, however, would prevent many nonprofit organizations from participating in the Affordable Housing Fund. This provision would disqualify (1) any organization that has engaged in voter registration, voter identification or get-out-the-vote activity in the previous year; (2) certain organizations that have engaged in lobbying or grassroots lobbying during the same period; and (3) any organization that is "affiliated," a term defined very broadly, with any organization that has engaged in prohibited voter participation or lobbying activities.

The restrictions are unnecessary. We believe that the restrictions on the use of funds in H.R. 1461, both in the bill as reported by the Committee on Financial Services as well as under current law, provide sufficient safeguards to prevent the funds from being used for voter participation or advocacy purposes. These safeguards include a prohibition on lobbying with federal funds and, for 501(c)(3) organizations, a ban on partisan electoral activities. We support these restrictions, as we agree that money under the Affordable Housing Fund should be used exclusively for providing low-income housing to those who need it – and not to encourage voter turnout or for any other use.

Instead of simply prohibiting federal funds from being used for purposes not envisioned by H.R. 1461, however, the language in the proposed manager's amendment would prohibit grantees from using even their own funds to encourage citizens to exercise their right to vote – and would retroactively penalize organizations that have done so in the past, even if they no longer do when applying for grants. Such sweeping prohibitions are illogical, especially when the manager's amendment would exempt for-profit companies from the same restrictions.

The restrictions are likely unconstitutional. Prohibiting nonprofits from applying for Affordable Housing Fund grants, if they have used unrelated funds to engage in voter participation activities, strikes at the heart of core First Amendment values. Because voter registration, voter identification, get-out-the-vote efforts and lobbying are constitutionally protected activities, funding restrictions that would stifle such activities are constitutionally suspect and will likely be struck down if they are not adequately tailored to further an important government interest. For instance, when the Federal Communications Commission barred public television and radio stations that receive federal funds from using their own resources to broadcast editorial views, the Supreme Court struck down the regulation.

Ensuring that organizations spend federal funds only as Congress has intended is, in itself, a perfectly legitimate government objective. The extreme breadth of the language in the proposed manager's amendment, however, would do nothing to further this goal. It is inconceivable that retroactively prohibiting activities that took place before a grant cycle, disqualifying applicants based on their affiliations with organizations that do not receive any federal dollars, or restricting the use of other unrelated funds would somehow ensure that Affordable Housing Fund grants are used properly and in accordance with the law. Furthermore, there is clearly no legitimate governmental interest in preventing nonpartisan voter participation activities. As such, the restrictions in the proposed manager's amendment will face inevitable challenge and are likely to be struck down as unconstitutional.

The restrictions would conflict with the “Motor Voter” law. The National Voter Registration Act of 1993 (“Motor Voter law”) was enacted to facilitate voter registration, with the goal of increasing turnout on Election Day. In addition to requiring states to allow voter registration at motor vehicle agencies, the Motor Voter law also requires certain nonprofit organizations to provide voter registration forms as well as assistance in completing them. Because some of these same organizations would be prohibited from engaging in voter registration activities under the manager's amendment to H.R. 1461, the manager's amendment would force many organizations that provide housing and other services to people with disabilities to choose between their obligation to register voters and their ability to provide housing to individuals who need it most. No organization should be forced to make such a decision.

In conclusion, the restrictions on Affordable Housing Fund grants in the proposed manager's amendment are unnecessary, probably unconstitutional and would contradict existing law. It would be wrong to deny the receipt of badly needed housing funds simply on the basis that a group has also encouraged citizens to vote or to express their opinions to Congress. For these reasons, and because they can be deleted from H.R. 1461 without jeopardizing the goals of the Affordable Housing Fund in any way, we strongly urge you to allow a vote on an amendment to delete them. Thank you for your consideration.

Sincerely,

Advancement Project
Alliance for Healthy Homes
Alliance for Justice
American Association of Homes and Services for the Aging
American Association of University Women
American Counseling Association
American Federation of Labor-Congress of Industrial Organizations
American Federation of State, County and Municipal Employees
American Jewish Committee
American Jewish Congress
American Network of Community Options and Resources
Americans for Democratic Action
Anti-Defamation League
Asian American Legal Defense and Education Fund
Association of Community Organizations for Reform Now
Bazelon Center for Mental Health Law
Brennan Center for Justice at NYU School of Law
Center for Community Change
Center for Law and Social Policy
Center for Lobbying in the Public Interest
Center for Nonprofits and Voting
Center for Voting and Democracy
Cities for Progress
Common Cause
Consortium for Citizens with Disabilities
Corporation for Supportive Housing
Enterprise Foundation
Epilepsy Foundation
Housing Assistance Council
Human Rights Campaign
Lawyers' Committee for Civil Rights Under Law
Leadership Conference on Civil Rights
League of Women Voters of the United States
Local Initiatives Support Corporation
Lutheran Services in America
Mercy Housing
Mexican American Legal Defense and Educational Fund
NAACP
National AIDS Housing Coalition
National Alliance of HUD Tenants
National Alliance of Postal and Federal Employees
National Alliance on Mental Illness
National Association of Housing Cooperatives
National Association of Social Workers

National Black United Fund
National Coalition for the Homeless
National Coalition on Black Civic Participation
National Committee for Responsive Philanthropy
National Congress of American Indians
National Congress of Vietnamese Americans
National Council of Jewish Women
National Council of La Raza
National Council on Independent Living
National Disability Rights Network
National Fair Housing Alliance
National Gay and Lesbian Task Force
National Head Start Association
National Health Care for the Homeless Council
National Housing Conference
National Housing Law Project
National Housing Trust
National Law Center on Homelessness & Poverty
National Low Income Housing Coalition
National Student Campaign Against Hunger and Homelessness
National Urban League
NETWORK, A National Catholic Social Justice Lobby
OMB Watch
People For the American Way
Presbyterian Church (USA), Washington Office
RESULTS
Service Employees International Union
Sierra Club
Smart Growth America
Stewards of Affordable Housing for the Future
Arc of the United States
United Cerebral Palsy
United Church of Christ, Justice and Witness Ministries
United Food and Commercial Workers International Union
United Spinal Association
United States Student Association
United Steelworkers
USAction
U.S. Jesuit Conference
U.S. PIRG
Veterans for Common Sense
Women of Reform Judaism
Women's Committee of 100
Woodhull Freedom Federation
Workmen's Circle/Arbeter Ring
YWCA USA