STATE OF WISCONSIN
IN CIRCUIT COURT
DANE COUNTY

NORTHPORT APARTMENTS (American Baptist Management) 1714 Northport Drive Madison, WI 53704, Petitioner vs. EQUAL OPPORTUNITIES COMMISSION CITY OF MADISON 351 W. Wilson Street Madison, WI 53703 and DIANE CAREY 2614 S. Stoughton Road Madison, WI 53716, Respondents	MEMORANDUM DECISION Case No. 80 CV 2680

This is an action to review by writ of certiorari a decision and order issued by the Madison Equal Opportunities Commission (Respondent) finding against Northport Apartments (Petitioner) on a discrimination complaint filed by Diane Carey (Complainant).

The facts are relatively simple. Complainant was a tenant of Petitioner under a year lease from May 1973 to April 1974. She apparently held over or was permitted to remain until June 1974. She made all monthly rental payments when due except for that for May 1974. That month she paid her rent instead to an escrow account established by the Packers and Northport Tenant Organization (PANTO), as part of a rent strike then being conducted against Petitioner. With that exception, Complainant committed no material breach of her lease.

On August 13, 1976, Complainant applied to once again rent from Petitioner. Her application was subsequently rejected. Respondent concluded that the only valid, non-pretextual reasons for this rejection related to Complainant's previous tenancy, specifically her participation in the rent strike. On October 20, 1976, Complainant filed a complaint with Respondent charging housing discrimination by Petitioner because of her political beliefs under the Madison Equal Opportunities Ordinance, sec. 3.23, Madison General Ordinances. On December 15, 1979, a hearing examiner for Respondent issued recommended findings of fact, conclusions of law, order and memorandum finding that Petitioner had discriminated against Complainant and ordering Petitioner to offer to rent to Complainant and to enter into a stipulation of damages. After Petitioner's appeal to the Equal Opportunities Commission, Respondent upheld the hearing examiner's conclusion in full. Petitioner now petitions for writ of certiorari to review this determination.

Additional facts will be stated below as needed.

I. Petitioner initially contends that the order of the Equal Opportunities Commission in this action is invalid because rendered after the expiration of the time limit set forth in the ordinance. When the complaint was filed in this action, section 3.23(10)(c)2, Madison General Ordinances, provided that "[a]ll complaints must be processed by the Commission within two (2) years." The complaint in this action was filed on October 20, 1976. On October 30, 1978, after the discrimination hearing, Petitioner moved the hearing examiner to dismiss the action, relying upon sec. 3.23 (10)(c)2. The hearing examiner took this motion under advisement, finally denying it in his decision on the merits, issued on December 15, 1979. In the interim, on July 10, 1979, sec. 3.23(10)(c)2 had been revealed.

Petitioner argues that the 2 year time limit was mandatory and jurisdictional, that its reveal was not retroactive in effect, and therefore that the Commission acted without jurisdiction in finding for complainant herein. Because I disagree with the contention that the time limit was mandatory and jurisdictional, I need not reach the question of retroactivity in upholding the validity of the order rendered by the Commission.

Petitioner relies upon City of Madison v. Community Action Commission for the County of Dane and City of Madison, Inc., Dane County Circuit Court Case No. 161 291 (August 31, 1979), in which the Court found that a Commission decision rendered after the expiration of the two year period was void as outside the jurisdiction of the Commission. I disagree with the conclusion reached in that decision. As noted by Judge Currie in a later case,

> "The Court is satisfied that it was not the intent of the Madison Common Council in enacting sec. 3.23(10)(c)2 that the two year period be in the nature of a statute of limitations for the benefit of claimed violators of the ordinance so as to create a substantive or vested right in them. Rather, the obvious intent was that the two year period requirement was merely a procedure to put pressure on the Commission to render timely decisions." State ex. rel.
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> Badger Produce Co., Inc. v. Equal Opportunity Commission, City of Madison, Dane County Circuit Court Case No. 79CV4405,
> September 2, 1980, page 5.

I believe that the conclusion reached in Community Action Commission, supra, is refuted by Wisconsin case law interpreting statutes setting time limits on administrative action. The most oft quoted passage on this subject is found in State v. Industrial Commission, 233 Wis. 461, 466 (1940):

> "... as a rule, a statute prescribing the time within which public officers are required to perform an official act is merely directory, unless it denies the exercise of power after such time, or the nature of the act, or the statutory language, shows that the time was intended to be a limitation."

The analysis in Community Action Commission, supra, relied exclusively on the nature of the language used in the ordinance in question. The decision correctly distinguished the use of "shall" from "must," see Milwaukee Police Association v. City of Milwaukee, 92 Wis. 2d 175, 181 (1979), but failed to examine the other factors set forth in State v. Industrial Commission, supra. In that case, the Supreme Court applied the above test to sec. 102.18(3), 1939 Stats., which provided:

> "Within 10 days after the filing of [the petition for review of the hearing examiner's decision], with the commission the commission shall either affirm, reverse, set aside or modify such findings or order in whole or in part, or direct the taking of additional testimony..."

The Court concluded that even after the passing of the ten day time limit,

> "[t]he commission is still functioning and a full membership has the duty and power to consider the petition for review. The failure of the commission to act within ten days is not jurisdictional. It is merely the violation of a directory provision." Id. at 466.

Three years earlier, the Supreme Court had reached the same conclusion with respect to the same statutory provision, noting,

> "Certainly the statute in its present form contains no express description of the consequences of delay beyond ten days." Milwaukee v. Industrial Commission, 244 Wis. 302, 307 (1937).

A number of other Wisconsin decisions principally have looked to the consequences specified for, or which would naturally flow from, failing to meet a statutory time limit in determining whether the time limit is mandatory and jurisdictional. In Will v. Department of Health and Social Services, 44 Wis. 2d 507 (1969), the Court construed a provision requiring a hearing on AFDC benefits within a specified time as directory only, noting that

> "[h]ere there is neither expressed nor to be implied any cutoff of the power of the department to act following the expiration of the time limits set forth in the manual. Such cutoff in the right to proceed would be destructive of the purposes of the hearing and the categorical aid program to which such hearings relate. ... In the case before us, not only is there no cutoff of the right to proceed, but no penalty is placed upon failing to meet the schedule set forth." Id. at 518.

In Worachek v. Stephenson Town School District, 270 Wis. 116 (1954), the Court reasoned that

> "[a] ... proper factor to be considered in determining whether a time provision in a statute is mandatory or directory is the consequences which would follow from adopting one or the other construction." Id. at 122.

Karow v. Milwaukee County Civil Service Commission, 82 Wis. 2d 565 (1978), represents the only Wisconsin Supreme Court decision in which a statutory time limit not by its own terms jurisdictional was found to deprive the agency of the power to act after the expiration of the time specified. The statute under scrutiny in u required the agency to hold a dismissal hearing within 3 weeks of a civil servant's suspension on charges filed. While noting that mandatory language does not necessarily render a time limit jurisdictional, and that the statute in question did not specify the consequences of letting the time limit lapse, the Court concluded that the injury that would flow from construing the limit as directory only evinced a legislative intent that it be construed as mandatory and jurisdictional. The Court reasoned that were the time limit construed as merely directory, the employee would remain suspended, without pay, while the agency delayed the final determination of the charges for dismissal.

The Court underscored the presumption against finding a time limit jurisdictional in Muskego-Norway Consolidated Schools Joint School District No. 9 v. Wisconsin Employment Relations Board, 32 Wis. 2d 478 (1967). There the Court explicitly overruled its prior ruling in the same case which found the WERB's statutory 60-day time limit jurisdictional. On rehearing, the Court looked primarily to the underlying purpose of the employment relations statutes, and noted:

> "[n]o ... language prohibiting power after the expiration of sixty days can be found in [the limiting statute]. Moreover, there is no substantial reason why the decision rendered cannot be made after the sixty day limitation as well as before." Id. at 485c-d.

The Muskego-Norway decision is particularly instructive here because of the similarity between the statute construed there and the ordinance before the Court here. The Muskego-Norway Court noted that the administrative function in question was "adjudicative" and analogized to the statutory time limit placed on deliberations by circuit courts. Sec. 270.33, 1965 Stats., which required decision by the court within 60 days "after submission of the cause," was found to be directory and non jurisdictional in Merkley v. Schramm, 31 Wis. 2d 134 (1966). Like the Muskego-Norway statute and the circuit court statute, the ordinance at bar sets a time limit for the court or agency to render a decision. In all three cases, exceeding the time limit could be exclusively the fault of the agency or court, and not at all the fault of either party. To hold such a limitation jurisdictional would indeed be absurd. It would subject one party or the other to denial of recovery because of delay totally beyond its control.

Furthermore, I find that sec. 3.23(10)(c)2. falls squarely within the reasoning of the other cases cited above which found statutory time limits on administrative action non-jurisdictional. The ordinance contained no language expressly or implicitly denying the exercise of power after the expiration of two years. There appears no substantial reason why decisions could not have been rendered after two years as opposed to before. Any "injury" inflicted by exceeding the time limit would be borne by the party seeking to continue jurisdiction, the complainant.

Finally, the underlying purpose of the Equal Opportunities Ordinance, to provide a forum for the peaceful resolution of complaints of discrimination so as to avoid civil strife, is better met by recognizing continued jurisdiction rather than setting an arbitrary cutoff date. I agree with Judge Currie that the Madison Common Council must never have intended that the EOC lose jurisdiction after two years. Sec. 3.23(10)(c) 2 was an inartfully drafted attempt to speed along deliberations by the EOC, not to deny it jurisdiction and discrimination complainants recovery.

II. Petitioner next contends that the EOC's order must be overturned because the term "political beliefs" does not include membership in a tenants' union or belief in tenant unionism, and because the term "political beliefs" as construed by the EOC is unconstitutionally vague.

While I need not reach either of these issues in deciding as I do below that the EOC erred in finding Complainant's participation in a rent strike protected as a manifestation of a "political belief," I believe some introductory comments may be useful in applying the "political beliefs" standard in the future. First, I agree with the Hearing Examiner that the common cleaning of "political beliefs" includes belief in tenant unionism. Petitioner attempts to restrict the meaning of this term to "those convictions and conclusions relating to governmental policy in the affairs of state which are held by a person." I believe that the common understanding of the term "politics" reaches far beyond government matters. In my mind, as supported by the dictionary definitions cited by Respondent, "politics" is present wherever there is power struggle between competing interest groups for valued social goods or resources. The concepts of "politics" and the private economy simply cannot be divorced; it is certainly within common understanding that there is a "politics" of the workplace, a "politics" of education, and a "politics" of the various marketplaces, including that for housing.

Furthermore, the subsequent definition of "political beliefs" by the Madison Common Council clearly seems to include belief in tenant unionism. Section 3.23(2)(v), MGO, now reads:

> "'Political beliefs' shall mean one's opinion, manifested in speech or association, concerning the social, economic and governmental structure of society and its institutions. This ordinance shall cover all political beliefs, the consideration of which is not preempted by state or federal law."

Referring to this language, the Madison City Attorney wrote to the Common Council on October 5, 1977:

> "There has been some uncertainty as to what is covered by discrimination because of 'political beliefs.' The definition that is proposed is a very broad one. It would include, for example, pro-union or anti-union sympathies, or opinions supporting or disapproving tenant organizations. These are two examples of beliefs which have already been the subject of complaints. ... State and federal labor laws ... do not prohibit discrimination in housing ... based on this type of belief, and therefore, the City would be free to prohibit it."

As to Petitioners challenge to the constitutionality of the EOC's interpretation and the Ordinance's definition of the term "political beliefs," I agree with Judge Torphy that "the term 'political beliefs' is not so vague or uncertain that the ordinance should be found to be unconstitutional on its face." State ex. rel. Northport Apartments Corporation v. Equal Opportunities Commission of the City of Madison et. al., Dane County Circuit Court, Case No. 163 429, July, 1978.

Although I have concluded that belief in tenant unionism constitutes a "political belief" under the Equal Opportunities Ordinance, I do not think that each and every manifestation or expression of such a belief is protected against discrimination. A bona fide manifestation of a bona fide political belief may also be a bona fide grounds for denial of employment, housing, credit or other benefit covered under the Madison Equal Opportunities Ordinance. This is true, as shall be discussed more fully below, both because of the discrimination law doctrines of "business necessity" and "reasonable accommodation," and because of overriding state law recognizing failure to pay rent as a breach of the lease contract.

First, it is important to note the express grounds for the EOC's finding of discrimination in the instant case. In the initial determination, the EOC investigator found probable cause for discrimination based upon political beliefs, concluding that:

> "It is this Investigator's belief that Complainant's participation in the rent strike was the factor which caused Respondent to deny her housing."

The Hearing Examiner, in findings of fact and conclusions of law affirmed in full by the EOC, found that Complainant was active in PANTO and the Madison Tenants' Union in 1973 and 1974, that the only time Complainant was late with her rent under her lease with Petitioner was during the PANTO rent strike, when she paid her rent to the escrow fund, and that "[Petitioner] refused to rent to Complainant because of her participation in PANTO and its rent strike;" and concluded that:

> "[i]f a Responder is aware of Complainant's political beliefs, those beliefs are in conflict with Respondent's and Respondent refuses to [rent, etc.] ... at least in part as [sic] the basis of that knowledge, [it] constitutes a violation of Madison General Ordinances 3.23 (4),"

and that:

> "... [Petitioner] did indeed have knowledge of Complainant's involvement with the Packers and Northport Tenants Organization, had previously had conflicts with PANTO, refused to rent to Complainant, and ... the reason for that refusal was Complainant's involvement with PANTO."

In his Memorandum Decision, the Hearing Examiner stated that the awareness or knowledge element referred to above was met in this case, despite Petitioner's contention to the contrary, because the apartment complex manager testified that he had checked Complainant's past rental records, which indicated that Complainant had paid her May, 1974 rent to the PANTO escrow account. The Memorandum then concludes:

> "[Petitioner] admits that this participation in the rent strike was part of the reason for rejection of [Complainant's] application . ... They assert, however, that it was the lateness of the payment in and of itself, and not the fact that it was part of a rent strike which they considered relevant to the decision as to whether complainant would be a good tenant. However, paying rent into a strike escrow account and then having it paid over to the landlord by the tenants organization at the end of the strike does not reflect on complainant's reliability in meeting financial obligations but only, and directly, on the participation in the strike. Consequently, the decision to refuse to rent to [Complaindnt] was to a significant degree based on her past association with PANTO and, therefore, discriminatory on the basis of political beliefs."

It thus appears that Complainant's belief in tenant unionism as manifested in her participation in the PANTO rent strike formed the sole basis for the EOC's finding of both Petitioner's knowledge of Complainant's political beliefs and its discrimination based on her political beliefs. Indeed, there is no substantial evidence in the record of any other

manifestation of Complainant's political beliefs on which the EOC could have relied. Complainant introduced newsletter articles and other documentary evidence of her activities in the Madison Tenants' Union and PANTO, but there is no evidence whatsoever that Petitioner was aware of these activities prior to the commencement of this action, or that Petitioner's refusal to rent to Complainant was based upon these activities.

The question thus presented is whether a tenant's participation in a past rent strike against a landlord is an unlawful grounds for that landlord's subsequent refusal to rent to that tenant under the Madison Equal Opportunities Ordinance's "political beliefs" standard. As noted above, I have concluded that such a manifestation of a political belief is not protected against discriminatory retaliation.

Applying the anti-discrimination statutes of various jurisdictions, many courts have recognized that some employment, housing, etc. practices, while facially neutral, have a disparate impact based upon membership in a protected class, such as a racial minority, a religious sect, or here, believers in tenant unionism. See Griggs v. Duke Power Co., 401 U.S. 424 (1971). In the instant action, Petitioner's practice of subsequently refusing to rent to former tenants who once failed to pay their rent on time because of participation in a rent strike, while facially neutral under the Equal Opportunities Ordinance, may have a disparate impact on believers in tenant unionism, assuming such persons are more likely to participate in rent strikes.

However, the disparate impact theory is qualified by a "business necessity" exception. In Griggs, supra at 431, the Supreme Court concluded that Title VII of the Federal Civil Rights Act of 1964

> "... proscribes not only overt discrimination but also practices that are fair in form, but discriminatory in operation. The touchstone is business necessity. If an employment practice which operates to exclude Negroes cannot be shown to be related to job performance, the practice is prohibited."

Applying this rationale to the instant facts, I find that refusal to rent based upon past participation in a rent strike, though arguably having a disparate impact on believers in tenant unionism, is justified by business necessity. Clearly, payment of rent on time goes to the essentials of the landlord/tenant relationship. This case is analogizable to the employment situation where a former employee refused to work because of a religious conviction.

My conclusion in this regard is not altered by the "reasonable accommodation" doctrine. In American Motors Corp. v. DILHR, 93 Wis. 2d 14, 28 (1979), the Wisconsin Court of Appeals concluded:

> "We hold that the Wisconsin Fair Employment Act requires employers to make reasonable accommodations to their employees' religious practices, that the burden of proving that a reasonable accommodation cannot be made is upon the employer, and that the burden is not met by showing inconvenience to the employer. It may be that a possible accommodation may be made at no expense or inconvenience to the employer but that it would result in considerable inconvenience to other employees. It may be that a possible accommodation could adversely affect customer or contractual relations. Whether accommodation under those or other circumstances would be reasonable will depend upon the circumstances of each case.
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> "We recognize that 42 U.S.C.S. sec. 2000e(j) of the Equal Employment Opportunity Act incorporates a test of 'undue hardship on the conduct of the employer's business.' Whether such a test should be incorporated into this state's reasonable accommodation requirement is a question we need not and do not reach since the record of this case shows no hardship to anyone from the accommodation here imposed."

I hold that as a matter of law, in the absence of legal authority to withhold rental payments, participation in a rent strike is a manifestation of a political belief which need not be accommodated by a landlord. Clearly, forcing landlords to accommodate such activity rises above the level of "inconvenience" and would impose an "undue hardship."

Even disregarding these traditional discrimination law doctrines, interpreting the Madison Equal Opportunities Ordinance as the EOC does here would bring that local law into conflict with state law, and therefore would render it invalid to the extent of the conflict.

Chapter 704, Stats., the Wisconsin Landlord and Tenant Act, provides in pertinent part:

> "Tenancies under a lease for one year or less, and year-to-year tenancies. If a tenant under a lease for a term of one year or less, or a year to year tenant, fails to pay any installment of rent when due, his tenancy is terminated if the landlord gives the tenant notice requiring him to pay rent or vacate on or before a date at least 5 days after the giving of the notice and if the tenant fails to pay accordingly. If a

> tenant has been given such a notice and has paid his rent on or before the specified date, or been permitted by the landlord to remain in possession contrary to such notice, and if within one year of any prior default in payment of rent for which notice was given the tenant fails to pay a subsequent installment of rent on time, his tenancy is terminated if the landlord, while the tenant is in default in payment of rent, gives the tenant notice to vacate on or before a date at least 14 days after the giving of the notice." Sec. 704.17(2)(a), Stats.
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> "Untenantability because of damage by fire, water or other casualty, or hazard to health. If the premise becomes untenantable because of damage by fire, water or other casualty or because of any condition hazardous to health, the tenant may remove from the premises unless the landlord proceeds promptly to repair or rebuild or eliminate the health hazard; or the tenant may remove if the inconvenience to the tenant by reason of the nature and period of repair, rebuilding or elimination would impose undue hardship on him. If the landlord proceeds to repair or rebuild the premises or eliminate the hazard to health, and the tenant remains in possession, rent abates to the extent the tenant is deprived of the full normal use of the premises. If the tenant justifiably moves out under this subsection, the tenant is not liable for rent after the premises become untenantable and the landlord must repay any rent paid in advance apportioned to the period after the premises become untenantable. This subsection is inapplicable if the damage or condition is caused by negligence or improper use by the tenant." . Sec. 704.07(4), Stats.

These sections together provide that failure to pay rent is a material breach of a lease, and that to be excused from the obligation to pay rent under a claim of untenantability, the tenant must first move out.

A number of decisions of the Wisconsin Supreme Court further clarify Wisconsin law regarding, the obligation to pay rent and the tenant's recognized remedies for the landlord's failure to maintain and repair the premises. The landmark decision in Pines v. Perssion, 14 Wis. 2d 590 (1961), first recognized the implied warranty of habitability in residential leases in Wisconsin. There the Court held that:

> "[The tenant's] covenant to pay rent and [the landlord's] covenant to provide a habitable house were mutually dependent, and thus a breach of the latter by [landlord] relieved [tenant] of any liability under the former, id. at 596;

and qualified this holding with the observation that in such a case,

> "[tenant's] only liability is for the reasonable rental value of the premises during the time of actual occupancy." Id. at 597.

In Earl Millikin, Inc. v. Allen, 21 Wis. 2d 497 (1963), the Court concluded that in the event the landlord breaches the covenant of fitness for intended use, the tenant may refuse to take possession of the premises and may sue for damages.

In Dickhut v. Norton, 45 Wis. 2d 389 (1970), the Court supported the right of tenants to seek remedy of poor housing conditions through enforcement of housing codes, by recognizing the doctrine of retaliatory eviction. The Court observed that

> "... the legislature intended that housing code violations should be reported. If a landlord could terminate a tenancy solely because his tenant had reported a violation the intention of the legislature would be frustrated." Id. at 397.

The Dickhut decision concluded that

> "... a landlord may terminate a tenancy ... for any legitimate reason or no reason at all, but he cannot terminate such tenancy simply because his tenant has reported an actual housing code violation as a means of retaliation." Id. at 399.

However, in Posnanski v. Hood, 46 Wis. 2d 172 (1970), the Court refused to extend the tenant's remedies to include rent withholding.

> "The issue defendant ... raised is whether the legislature and common council of the city of Milwaukee intended that the housing code be an implied covenant mutually dependent with a tenant's covenant to pay rent, and thereby utilize rent withholding as a means of enforcing the housing code." Id. at 178.

In Posnanski, the Court noted the general, discretionary terms of housing codes, the lack of standards for differentiating between consequential and inconsequential violations, the administrative procedures provided for enforcement, and the potential havoc of judicial, case-by-case interpretation of the housing codes, and concluded that

> "... the common council had indicated an intent that the housing code be enforced administratively and not by terms implied in a lease." Id. at 182.

Rent withholding remedies, the Court stated, are properly the province of legislative bodies.

> "Some states recognize rent withholding, in considering the problems of substandard housing; however, those states have done so by legislation. Neither the legislature nor the common council of Milwaukee has adopted any legislation from which this court can infer an intent that rent withholding under an oral month to month lease agreement be utilized as a means of enforcing the housing code." Id. at 183.

As noted at 58 Marquette Law Review, 191, 201,

> "Despite the fact that the Wisconsin Supreme Court in Pines v. Perssion afforded the tenant relief under the implied warranty of habitability theory, it seems, in light of Posnanski and the [small claims eviction] statutes, that a tenant who withholds rent in an attempt to force a landlord to repair and maintain the leased premises puts himself in the position of possibly being evicted."

In State ex. rel. Michalek v. LeGrand, 77 Wis. 2d 520 (1976), the Supreme Court recognized the authority of municipalities to adopt rent withholding ordinances in furtherance of enforcement of their housing codes. The Court found that such ordinances did not conflict with state statutes authorizing landlords to terminate tenancies "when a tenant fails to pay rent when due." Michalek reasoned that a rent withholding ordinance permitting a tenant to pay rent into an escrow fund in case of building code violations was further defining "default" and "payment of rent when due." Such an ordinance would not conflict, but rather would complement tenant remedies recognized under state law.

The ordinance analyzed in Michalek authorizes rent withholding only when recorded building code violations in the rented premises remain uncorrected, and the rent is deposited in an escrow account maintained by city officials. The gloss given the Equal Opportunities Ordinance by EOC would in essence authorize rent withholding whenever undertaken as part of an organized tenant rent strike. Neither official violations nor even private disputes as to compliance with lease terms would need be cited in order for a tenant to escrow his or her rental payment without fear of reprisal. There is absolutely nothing in the record to distinguish the instant factual situation from one in which a tenant escrows rental payments without citing any cause therefor, and then files a "political beliefs" discrimination complaint for the landlord's subsequent termination of the tenancy under sec. 704.17(2)(a), Stats. To my mind, such an interpretation of the Equal Opportunities Ordinance conflicts with the Wisconsin Landlord and Tenant Act.

It is worthy of note that, subsequent to the facts of this case, the Madison Common Council enacted a rent withholding ordinance along the lines of the one upheld in State ex. rel. Michalek v. LeGrand, supra. Sec. 32.06, Madison General Ordinances. That ordinance contains an express prohibition against evictions or other retaliation taken in response to a tenant's building code complaints or rent withholding under the ordinance. Sec. 32.06(6)(a), Madison General Ordinances. Section 32.06 appears not to be materially distinguishable from the ordinance upheld in Michalek.

I therefore conclude that, prior to the enactment of. sec. 32.06, Madison General Ordinances, refusal to rent or other retaliation taken by a landlord in response to rent withholding by a tenant was not discriminatory under the Madison Equal Opportunities Ordinance. Just because an act is a manifestation of a political belief does not cloak it with immunity under that ordinance. Pursuing legally unauthorized, self help remedies is clearly an exercise of civil disobedience. Though civil disobedience is a time honored tradition in America, those who partake in it cannot run for shelter to "political beliefs" antidiscrimination statutes. Such statutes cannot be read to overcome other legal restrictions on personal freedom; that conclusion would lead to anarchy. Even Thoreau had to face the consequences.

The order of the Equal Opportunities Commission in this matter is therefore vacated. The Equal Opportunities Commission shall enter an order finding no discrimination on the part of Petitioner herein, and dismissing the Complaint with prejudice.

So ordered.

Dated: March 12, 1981.

BY THE COURT:
P. CHARLES JONES, CIRCUIT JUDGE
DANE COUNTY CIRCUIT COURT III