

IN THE UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

DOROTHY GAUTREAUX, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
GEORGE W. ROMNEY,	)	No. 66 C 1460
Secretary of the Department	)	
of Housing and Urban Development)	)	
of the United States,	)	
	)	
Defendant.	)	

BRIEF OF AMICUS CURIAE IN SUPPORT OF PLAINTIFFS'  
MOTION FOR SUMMARY JUDGMENT

I. NATURE OF THE CASE

Plaintiffs, tenants of, or applicants for, public housing in the City of Chicago, have alleged that the Department of Housing and Urban Development (HUD) has participated in the carrying on of a segregated public housing system in Chicago in violation of the plaintiffs' right to equal protection of the laws. This Court on June 19, 1967, continued the instant case on its own motion pending disposition of the companion case (No. 66 C 1459) filed by plaintiffs against the Chicago Housing Authority (CHA).

This Court has now found in the companion case that CHA discriminated against the plaintiffs in its site selection

and tenant assignment practices, and has directed CHA to take all steps necessary to increase the supply of new public housing units on a nondiscriminatory basis.<sup>1</sup>

On October 31, 1969, plaintiffs filed their motion for summary judgment and supporting briefs. This brief is submitted by Petitioners as Amici Curiae in support of plaintiffs' motion.

## II. REASONS FOR THIS MOTION

The amici curiae are all organizations dedicated to the elimination of segregation in housing, and have been extensively involved in education and litigation directed toward the achievement of that goal. They have examined plaintiffs' motion for summary judgment and supporting brief, as well as the record in this case and the proceedings in the companion case. They are convinced not only that the position of the plaintiffs is sound but that the Court is presented with a unique opportunity to fashion an order which will afford a

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1. VII. CHA shall affirmatively administer its public housing system in every respect (whether or not covered by specific provisions of this judgment order) to the end of disestablishing the segregated public housing system which has resulted in CHA's unconstitutional site selection and tenant assignment procedures. Without limiting the foregoing,

- A. CHA shall use its best efforts to increase the supply of Dwelling Units as rapidly as possible in conformity with the provisions of this judgment order and shall take all steps necessary to that end, including making applications for allocations of federal funds and carrying out all necessary planning and developing; . . .

means of dealing with a major societal problem - the increasing segregation of the races in the Chicago metropolitan housing area. Accordingly, they are deeply concerned that plaintiffs' motion for summary judgment be granted, and that appropriate relief be fashioned in relation thereto.

The amici believe that their direct and continuing involvement with the elimination of segregated residential housing has given them insight into the nature of the problem and possible solutions to it, which may prove of assistance to this court in resolving the issues presented in the instant cause and in formulating appropriate relief. Therefore, amici have confined this brief to such matters and have not discussed the narrower questions presented by HUD's pending motion to dismiss (although, as indicated, amici also support plaintiffs with respect to such questions).

A brief description of each of the amicus organizations follows:

1. Lawyers' Committee for Civil Rights Under Law, National and Chicago Offices

The Lawyers' Committee for Civil Rights Under Law was organized on June 21, 1963, following a conference of lawyers at the White House called by President John F. Kennedy. The formal organization of the Lawyers' Committee is that of a non-profit private corporation whose principal purpose is to involve private lawyers throughout the country in the struggle to assure all citizens of their civil rights.



In the field of housing, both the national office and the local committees, with the assistance of a National Housing Force of lawyers with extensive experience in housing law, have taken on well over seventy-five projects to promote integration and equality in housing, including damage actions against real estate developers under Title VIII of the Civil Rights Act of 1968 (42 USC 3601 et seq.), comprehensive litigation against "blockbusting," drafting and securing the adoption of a bill of rights incorporating grievance procedures for public housing tenants, assisting community organizations to acquire and rehabilitate housing foreclosed on by the Federal Housing Agency and suing the Department of Housing and Urban Development to obtain access for neighborhood residents to the decision-making process in urban renewal.

The Chicago office of the Lawyers' Committee has devoted a considerable amount of its energies to the problem of discrimination in housing, and the serious lack of adequate low income housing in and around Chicago. The Committee has undertaken a number of projects designed to assist community organizations to take advantage of the opportunity to create adequate and non-discriminatory low income housing in those neighborhoods.

## 2. The Urban Coalition

On August 24, 1967, at an emergency convocation in Washington, D.C., a group of 1,200 persons issued an urgent appeal on the urban crisis to all concerned Americans. They

were men and women of diverse interests, and yet they joined together there in a national effort to mold a new political, social, economic and moral climate that would help to break the vicious cycle of the ghetto. This convocation was the beginning of The Urban Coalition.

In the spring of 1968, John W. Gardner, formerly Secretary of the Department of Health, Education and Welfare, became the Chairman and chief executive officer of The Urban Coalition. The Coalition is governed by a steering committee of national leaders: leaders of industry, mayors, labor leaders, church and civil rights leaders.

The emergency convocation called upon the nation to take bold and immediate action to provide "a decent home and a suitable living environment for every American family" with guarantees of equal access to all housing, new and existing. The Coalition has assembled a staff to carry through on that mandate and, as part of this effort, its task force on housing, reconstruction and investment has concentrated on the advocacy of appropriate public and private action to move toward these objectives.

3. NAACP Legal Defense and Educational Fund, Inc.

The NAACP Legal Defense and Educational Fund, Inc. is a non-profit membership corporation, incorporated in 1939, whose central purpose is to provide legal assistance to Negroes in cases involving equal opportunities in education, employment,

housing and public services and accommodation. In recent years the Legal Defense and Educational Fund, Inc. has devoted increasing attention to the need to make the federal government legally accountable for its contribution to the creation of segregated housing patterns, and the need to require the federal government to act affirmatively to eradicate the effects of its own past racial discrimination.

4. National Committee against Discrimination in Housing, Inc.

The National Committee against Discrimination in Housing, Inc. was established in June, 1950, to carry on the campaign of education and study which was recognized as essential for the development and carrying through of a program of public education aimed at bringing about an end to racial segregation in housing. From its inception it has had the support and participation of practically every major private national and local organization concerned with improvement, protection, and implementation of civil rights, organizations of the major religious groups, a number of large labor organizations, organizations active in the housing field, and many civic organizations dedicated to keeping our American democratic system strong and free.

Among other activities the Committee functions as the clearinghouse and nationwide service agency for more than 1,700 voluntary fair housing groups and community organizations



located in states throughout the country. The Committee's monthly publication, Trends in Housing, is the only national periodical devoted exclusively to the housing/civil rights field and is widely recognized as the standard resource.

In its report entitled, "The Impact of Housing Patterns on Job Opportunities," published in February, 1968, the Committee observed:

"... [O]ne overriding fact seems indisputable: the American city - the center of commerce and culture for the entire metropolitan region - is doomed to economic strangulation, physical decay, and social disruption unless solutions are sought and programs instituted on an inter-related regional basis. The most fervent attempts to improve the life of those confined in the nation's dark ghettos cannot eliminate poverty, deprivation and racial alienation unless the increasing movement of employment opportunities to suburban localities is taken into account, and unless workers - regardless of race - are able to live in reasonable proximity to their jobs." (p. 3)

### III. THE IMPORTANCE OF THIS CASE

The reasons why the issues raised in this case are important can be summarized as follows:

- (1) Negroes must have equal access to unsegregated housing if they are to have equal access to quality education, to employment opportunities, and to full participation in American Society;
- (2) truly equal access to unsegregated housing cannot be obtained within the limits of the City of Chicago but will be achieved only if the entire metropolitan area is recognized as the unitary housing market that it is, and is so treated;
- (3) these objectives cannot be achieved unless HUD uses all of its programs affirmatively, to secure the foregoing goals, because HUD is and has always been the agency most deeply involved in housing programs throughout the entire Chicago metropolitan area.

Petitioners will demonstrate in this brief that (a) it is essential that plaintiffs obtain relief on a metropolitan-wide basis, and (b) HUD's entire spectrum of programs be used to achieve such relief.

#### IV. EQUAL ACCESS TO HOUSING MUST BE PROVIDED ON A METROPOLITAN-WIDE BASIS

The entire Chicago metropolitan area must be used in locating the additional dispersed units of public housing called for by this court. Limiting the location of those units to the City of Chicago would foster the polarization of races between city and suburb. In order to effectively disestablish the currently segregated public housing system in the City of Chicago some of the future units of governmentally subsidized housing must be placed in white neighborhoods throughout the Chicago suburban area.



Adequate relief to the plaintiffs requires that they obtain housing in areas where they have equal access to quality education and, above all, to a source of employment. The Kerner Commission commented:

Most new employment opportunities do not occur in central cities, near all-Negro neighborhoods. They're being created in suburbs and outlying areas--and this trend is likely to continue indefinitely.<sup>2</sup>

Racial segregation in housing has excluded low-income Negroes from most suburban areas. Although Negroes have been unable to find homes in these areas, industries have been welcomed and have established small and large plants. Major corporations with factories and other facilities have moved out to the suburbs to avoid the growing cost of land in the central cities. The result is a substantial movement of job opportunities out of the central city to the suburbs. These job opportunities run the whole gamut from highly skilled, highly paid professional positions to unskilled labor in factories and service industries. But those who would be the source of supply for many of these positions, the low-income Negroes living in the ghettos, find themselves barred from applying for and accepting these positions because there are no living accommodations available to them in the suburbs near the new job opportunities. Only housing that is located near these employment opportunities can allow plaintiffs to achieve truly equal protection of the laws.

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2. Report, National Advisory Commission on Civil Disorders, p.392. Bantam Books ed. 1968.

Segregated public housing in Chicago has also denied other advantages to its residents, which would not be the case if such housing were dispersed throughout the entire metropolitan area. "The location of ones place of residence determines the accessibility and quality of many everyday advantages taken for granted by the mainstream of American society," the President's Committee on Urban Housing reported last year. "Among these commonplace advantages are public educational facilities for a family's children, adequate police and fire protection, and a decent surrounding environment, to name a few."<sup>3</sup>

V. THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT IS FINANCING HOUSING THROUGHOUT THE METROPOLITAN AREA

The federal government has played a significant role in the creation and maintenance of the racial ghetto through its programs designed to stimulate housing construction and home ownership. The rapid growth of segregated suburban housing since the 1930's has been accomplished primarily through Federal Housing Administration (FHA) and Veterans Administration (VA) financing. FHA insurance has been available almost exclusively in suburban areas; and, until 1948, FHA encouraged and enforced racial restrictive covenants in housing financed by it.<sup>4</sup>

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3. Report of the President's Committee on Urban Housing (Chairman, Edgar F. Kaiser), Dec. 11, 1968, P. 13.
  4. Report of the National Commission on Urban Problems (Chairman Paul H. Douglas) House Document No. 91-34, 1968, P. 101.



The Kerner Commission recognized this federal involvement and recommended that:

Federal housing programs must be given a new thrust aimed at overcoming the prevailing patterns of racial segregation. If this is not done, those programs will continue to concentrate the most impoverished and dependent segments of the population into the central city ghettos where there is already a critical gap between the needs of the population and the public resources to deal with them. (p. 28)

The harsh fact is that the pattern of black ghettos in our major cities is growing rather than abating, and the growing rings of lily white suburbs which enclose our central cities make it clear that there is an increasing urgency to mobilize every force of government to deal with the problem. The Federal devices which are at hand must be used now.

In recent years Congress has increasingly recognized the need for additional assistance for the construction of low and middle income housing, and Congressional authorization has been granted for a number of new programs directed toward this goal. Moreover, Congress has not only authorized an expanded set of low income housing programs to be administered by HUD, but has stated that it is the national policy to provide for fair housing throughout the United States (Civil Rights Act of 1968, Title VIII, Section 801), and has directed the Secretary of HUD to "administer the programs and activities relating to housing and urban development in a manner affirmatively to further the policies of this title." (Ibid. Section 808(e)(5); see also Jones v. Mayer Co., 392 U.S. 409 (1968). In addition, the Department has other housing resources not specifically



designed for low and middle income groups but which are available for the use of such groups.

At this stage of the proceedings it would be premature for petitioners to suggest the total nature of the action HUD might take in the circumstances of this case. However, the following list is illustrative of HUD programs which appear to offer obvious opportunities for providing low and moderate income housing to plaintiffs throughout the Chicago metropolitan area. (The Chicago metropolitan area has been defined by HUD for housing market purposes as the "Chicago, Illinois, Housing Market Area," consisting of six counties in northeastern Illinois: Cook, DuPage, Lake, McHenry, Kane and Will Counties. )

A. FHA Foreclosures

A source for additional housing suitable for plaintiff's occupancy may be provided by FHA foreclosures. There are a substantial number of these units throughout the Chicago metropolitan area. Methods could be devised to permit occupancy of such units by low-income Negro families.

B. Section 221(d)(3) Housing Program

The Section 221(d)(3) program is designed to offer 3% Federal Housing Administration insured mortgage financing to limited profit, nonprofit, or cooperative housing sponsors to

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5. Analysis of the Chicago, Illinois, Housing Market as of April 1, 1969. A report of the Department of Housing and Urban Development, Federal Housing Administration. January, 1969, p. 1

construct projects with rents appropriate for middle-income families. Rent supplements (which are generally available to those whose income is below the maximum established for public housing within a particular area) are available within such projects under Section 101 (j) (1) (A) of the Housing Act to enable low income families, such as the plaintiffs, to occupy units constructed under this section.

C. Section 236 Housing Program

Under Section 236, a program primarily designed for lower income families and to replace the Section 221(d) (3) program, FHA pays to the commercial mortgage lender of the sponsor, who may be either limited profit, nonprofit, or cooperative, interest assistance payments, which can reduce financing charges to those consistent with a 1% mortgage. Maximum income limits for tenants are set at 135% of those for public housing in the area. Rentals in 236 projects are appropriate primarily for families whose annual income ranges between \$4,000 and \$6,500.<sup>6</sup> Unlike the public housing program, the Section 236 program can be used in localities without local governmental approval.

Under Section 101 (j) (1) (D) of the Act 20% of the units in a 236 development may be occupied by tenants receiving rent supplement payments, i.e., low income families such as the plaintiffs.

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6. Report of the President's Committee on Urban Housing, Supra, p. 65

D. Section 235 Home Ownership Program

This section enables low income families, who have traditionally been able only to live in rental units to purchase new, substantially rehabilitated, or existing homes. This program is open to both profit and nonprofit sponsors. Monthly mortgage assistance payments are made to the mortgagee which, as in the 236 program, reduce interest costs to as low as 1%. Maximum income limits for prospective purchasers are set at 135% of the public housing limits. This housing should be available to those, including persons such as plaintiffs, in the broad range of incomes between \$3,000 and \$7,000 a year.<sup>7</sup> Like Section 236 programs, Section 236 housing can be built without local governmental approval.

E. Section 231 Program

Section 231 of the Act is designed to stimulate the production of housing for the elderly (i.e., those 65 years of age or older) through a program of FHA insurance of below market rate mortgages. However, since these favorable mortgage and interest terms are available if as little as a bare majority of a project's units are designed for occupancy by the elderly, this program affords an opportunity for substantial housing for low income families, such as the plaintiffs, as well. Section 231 projects may be occupied by rent supplement tenants under Section 101(j)(1)(B) of the Act when they are sponsored by a public instrumentality or by a private nonprofit organization.

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7. Ibid. p 66.



The programs outlined herein are not exhaustive. They merely illustrate the great potential for affirmative action by HUD to provide additional dwelling units to low income Negro families, thus advancing the Court's purposes, particularly respecting Article VII of the judgment order in the companion case.

VI. THIS COURT HAS THE POWER TO GRANT THE RELIEF SOUGHT HEREIN.

The involvement of HUD in the discrimination in housing which is the subject of the instant proceeding and its companion case is obvious. HUD has sanctioned this discriminatory program and has given financial support to this program. In Cooper v. Aaron, 358 U.S. 1, 19 (1958) the Supreme Court held it a violation of the equal protection clause for a state to support or participate in ostensibly private racial segregation "through any arrangement, management, funds, or property." Federal agencies themselves have taken the position that the Fifth Amendment bars them not only from themselves discriminating on the basis of race, but also from sanctioning discrimination. Thus the National Labor Relations Board has withdrawn certification to act as bargaining representatives under the National Labor Relations Act from unions engaging in racial discrimination. Independent Metal Workers Union Locals, No. 1 and No. 2 (Hughes Tool Co.) 147 N.L.R.B. 1573, 56 L.R.R.M. 1289 (1964).

To grant relief consisting merely of an order to HUD to deny further funds to CHA would, as this court has noted in

its opinion in the companion case, "damage the very persons this suit has brought to protect." (p. 20). This court clearly has the power to grant relief in the form of required remedial acts by HUD to correct the effects of a pattern and practice of racial discrimination. Louisiana v. U.S., 380 U.S. 145 (1965) U.S. v. Jefferson County Board of Education, 372 F.2d 836, 887 (C.A. 5, 1967); Clark v. Board of Education of Little Rock School District., 374 F.2d 569, (C.A. 8, 1967). The submission of a specific plan by HUD is an appropriate first step. Thereafter, if desired by the court, amici would consider providing assistance to the court in whatever manner the court deemed appropriate.

#### VII. CONCLUSION

In order to provide full relief from the denial of equal protection suffered by plaintiffs' additional housing units must be made available to them throughout the Chicago Metropolitan Area. The Department of Housing and Urban Development must provide meaningful assistance both in providing and in producing this needed housing through the variety of low and moderate income programs at its disposal. The Kerner Commission strongly recommended that Federal housing programs be expanded on a metropolitan basis to solve the problem of segregated public housing:

To date, housing programs serving low-income groups have been concentrated in the ghettos. Non-ghetto areas, particularly suburbs, for the most part have

steadfastly opposed low-income, rent supplement, or below-market interest rate housing, and have successfully restricted use of these programs outside the ghetto.

We believe that federally aided low and moderate income housing programs must be reoriented so that the major thrust is in nonghetto areas. Public housing programs should emphasize scattered site construction, rent supplements should, wherever possible, be used in nonghetto areas, and an intensive effort should be made to recruit below-market interest rate sponsors willing to build outside the ghettos.

The reorientation of these programs is particularly critical in light of our recommendation that 6 million low and middle-income housing units be made available over the next five years. If the effort is not to be counter-productive, its main thrust may be in nonghetto areas, particularly those outside the central city. (p. 482)

It has been widely observed that the court's judgment order in the companion case breaks new ground in fostering such a reorientation. The court now has an unparalleled opportunity to bring this preliminary work to its logical fruition.

Respectfully submitted,

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GEORGE W. ROMNEY, )  
Secretary of the Department )  
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Defendant. )

NOTICE

TO: Thomas P. Foran  
United States Attorney  
Room 1500, U.S. Courthouse  
Chicago, Illinois 60604

PLEASE TAKE NOTICE that on Thursday, December 4, 1969, at the opening of court or as soon thereafter as counsel may be heard, I will appear before Judge Richard B. Austin in the courtroom usually occupied by him in the United States Courthouse, 219 South Dearborn Street, Chicago, Illinois, or before such other judge who may be sitting in his place instead, and then and there move the court on behalf of the below designated persons for leave as amici curiae to file a brief in support of plaintiffs' motion for summary judgment, a copy of which motion and brief is attached hereto.

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Richard F. Babcock, Attorney for  
Lawyers' Committee for Civil  
Rights Under Law (National and  
Chicago Offices)  
The Urban Coalition  
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Educational Fund, Inc.  
National Committee Against Dis-  
crimination in Housing, Inc.

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Receive a copy of the above notice and the motion and brief therein referred to this \_\_\_\_\_ day of December, 1969.

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Assistant United States Attorney