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

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

BRIEF OF URBAN AFFAIRS COMMITTEE AS AMICUS CURIAE IN SUPPORT OF THE CONSTITUTIONAL RIGHTS ASSERTED BY PLAINTIFFS IN THEIR MOTION FOR SUMMARY JUDGMENT.

This brief is filed on behalf of the Urban Affairs Committee, a standing committee of the Chicago Bar Association, in support of the constitutional rights asserted by plaintiffs in their motion for summary judgment.[1/] The filing reflects the commitment of the Committee and the Chicago Bar Association to accept the responsibility which the organized bar has to work to alleviate the urban crisis now facing Chicago.

1/ The Urban Affairs Committee was formed by resolution of the Board of Managers in the summer of 1968. The Statement of Policy accompanying the Committee's creation stated that -

> "A preeminent concern of the Committee shall be those problems which weigh most heavily on racial and ethnic urban minorities and to which the 'Kerner Commission' has attributed a great share of the responsibility for the pent-up violence and alienation which has, in the recent past, erupted into wide-scale civil disorder."

Interest of Urban Affairs Committee in these Proceedings.

These proceedings are concerned with "the most basic" of the forces underlying the urban crisis: "the accelerating segregation of low income, disadvantaged Negroes within the ghettos of the largest American cities." Report of the National Advisory Commission on Civil Disorders (1968), p. 389 (hereinafter sometimes referred to as the Kerner Report). A redirection of the federal housing programs is essential, the Committee believes, if the accelerating segregation is to be stopped.[1/] The matter is analyzed in detail in the Kerner Report, concluding as follows at p. 474:

> "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. This can only continue to compound the conditions of failure and hopelessness which lead to crime, civil disorder and social disorganization."

1/ Chicago is no exception to the accelerating segregation. Since 1950 the Negro population in Chicago has at least doubled. "Unless there are sharp changes in the factors influencing Negro settlement patterns within the metropolitan areas, there is little doubt that the trend toward Negro majorities will continue. Even a complete cessation of net Negro in-migration to central cities would merely postpone this result for a few years." Kerner Report p. 243, 391-2.

In working toward a solution of these problems the Committee is also concerned that the judicial process should maintain its capacity to fashion effective relief for those whose rights have been violated, especially where constitutional rights are involved. The Committee has thus been particularly disturbed by the suggestions in the brief of the Secretary of the Department of Housing and Urban Development (hereinafter sometimes referred to as HUD) that this Court is unable to fashion meaningful remedies for plaintiffs in this case. This Court has already shown the contrary, in the companion case of Gautreaux v. Chicago Housing Authority, 296 F.Supp.907 and we believe and urge that this Court is no less able to secure plaintiffs' rights by appropriate relief in the present action.

Because of the urgency of these concerns, the Urban Affairs Committee presents the following brief as an amicus curiae, in support of plaintiffs' motion for summary judgment.

The position of the Committee is as follows: (1) in the companion case this Court has already found that CHA violated plaintiffs' constitutional rights, in connection with its low income housing program, and granted relief against CHA;

(2) HUD is equally as responsible as CHA for the violation of plaintiffs' rights and plaintiffs are equally entitled to relief against HUD; (3) the public interest, as well as the full protection of plaintiffs' rights, makes relief against HUD essential.[1/]

I. HUD Is Equally As Responsible As CHA For The Existing Segregated Public Housing Patterns in Chicago.

The decision of this Honorable Court of February 10, 1969 in Gautreaux v. Chicago Housing Authority, makes the substantive issues in this case relatively simple. The allegations of discrimination in the complaint in that case and this are identical. CHA has violated plaintiffs' rights to equal protection of the laws by segregating the bulk of the city's low income housing and locating it in the predominately black areas of the city and by following tenant assignment policies that completed the segregation of CHA's tenants on the basis of race. As a joint participant with CHA, HUD - which knowingly approved the sites chosen and financed construction - is equally responsible for these violations of plaintiffs' rights.

The facts as found by the Court in the earlier suit are clear: CHA, as of July 1968, had housing projects in operation

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1/ This brief is addressed to certain of the substantive issues presented in this proceedings. It does not treat the preliminary issues such as standing, exhaustion of administrative remedies or jurisdictional questions.

or development at 64 sites in Chicago, comprising 30,848 units in all. Four of these projects were segregated White - Trumbull, Lathrop, Lawndale and Bridgeport. These were 93%, 96%, 94% and 99% respectively occupied by Whites; a token quota only for Negroes was allowed in each project. The remaining projects of the CHA were 99% occupied by Negroes and these projects were all located in Negro areas - that is, areas where the residents were at least 50% Negro, with the number of Negro residents increasing. Two-thirds of these projects were located in areas that were already 95% Negro.

The foregoing pattern of site selections was not the result of chance. Initial site selections were made by the CHA but were subject to approval by the Chicago City Council. Ill.Rev.Stat. (1969) ch. 67-1/2, sec. 9. The Court found that over 99-1/2% of the units proposed for location in White areas were vetoed by aldermanic opposition, but only 10% of those on Negro sites were vetoed. It automatically followed that the structures were heavily concentrated in Negro areas. This pattern showed to a near certainty that the City Council was following a policy of racial segregation and this Court so found. In addition,

certain high CHA officials "with commendable frankness" (Gautreaux v. Chicago Housing Authority, supra, p. 912) admitted to the truth of what the statistics implied. The Court found, on both the statistical grounds and the admissions of the CHA Officials, that the plaintiffs were entitled to a judgment, as a matter of law, that the sites had been selected - in important part - on the grounds of race, in violation of plaintiffs' rights.

It should be noticed that CHA's fault here was not that of itself actively discriminating as to site selection. Rather, in the words of this Court, it was that of

> "participating in a policy of maintaining existing patterns of residential separation of the races." Gautreaux v. Chicago Housing Authority, supra, p. 915.

An identical finding should be made against HUD.

This is not to impute to HUD the discriminatory intent of CHA, as HUD's brief (pp. 2-9) suggests, but rather to find that both of them had the same unlawful intent of knowingly cooperating in the maintenance of the City Council's policy of racial segregation. In light of HUD's actions, despite its guide lines, site selection criteria, and the complaints of individual HUD officials (cf. HUD brief, pp. 8-9, 12-13), that knowing cooperation cannot seriously be

disputed, and HUD makes no effort to dispute it in its brief. The case is in all material respects parallel to Hicks v. Weaver, 302 F.Supp. 619, 62 (D.C. La. 1969) where HUD's own conduct - in approving and funding construction on discriminatory sites selected by local authority - was also found to be discriminatory in violation of plaintiffs' rights in that case.

No doubt both HUD and CHA were reluctant to acquiesce in the discriminatory site selection. No doubt HUD officials were and are as innocent of racist attitudes as this Court found the CHA officials to be. Both nevertheless felt compelled to go along with what they presumably deemed to be the practical politics of furthering their program. In effect HUD subordinated to other concerns, plaintiffs' constitutional rights to non-discriminatory site selection and non-discriminatory tenant assignment policy. In so doing HUD violated the constitutional rights of all residents of the city, as well as those of plaintiffs, since all residents of the city have a right to housing patterns not racially segregated by state action. It locked the city into segregated patterns of housing even more firmly than before - potentially for the entire useful life of the brick and concrete buildings that acquiesence produced. HUD could scarcely have chosen a more effective way of nullifying all the good intentions its brief now claims.

II. Plaintiffs Are Entitled To A Remedy Against HUD.

Because plaintiffs' constitutional rights have been impaired by HUD, plaintiffs are as entitled to a remedy against HUD as they are against CHA. On the undisputed facts, therefore, we submit that no further showing is needed to establish that relief should be granted.

HUD, however, endeavors to suggest that even if it has wronged plaintiffs no remedy should be entered against it. It argues that "plaintiffs have obtained all the relief to which they are entitled." (HUD brief, p. 1). It points to the broad discretion that is conferred on the secretary of HUD and conjures up visions of this Court's attempting "to wrest control of these vast civil rights responsibilities from the Secretary." HUD brief, p.20). With this is mixed an argument of contrary implication, that no order should be entered against HUD because HUD "has undertaken to cooperate in the achievement of the objectives of . . . [the] decree" against CHA. (HUD brief, p. 20). The Urban Affairs Committee respectfully submits that all of this obscures the simple but important point - that plaintiffs, having been wronged by this defendant, are entitled to their remedy against it.

The fact that HUD may have voluntarily ceased its discriminatory conduct of course does not foreclose relief against

it. Cf. United States v. W. T. Grant Co., 345 U.S. 629, 632. As a Committee of Lawyers, we cannot accept defendant's assertion that plaintiffs should simply rely in the future on defendant's good intentions, internal regulations and the Secretary's discretion. Plaintiffs have sought court action precisely because HUD has failed to administer its program consistently with plaintiffs' constitutional rights and it is inconceivable - at this stage in the proceedings - that plaintiffs should be protected with nothing more than statements of HUD's future good intentions. Since at least 1954 HUD has in effect been carrying on a discriminatory housing program in Chicago. Plaintiffs should not now be relegated to HUD's promises that the effects of its past actions will be remedied by some unspecified, future, voluntary acts on its part. The judicial process was meant for the fashioning of more effective relief than that.

We recognize of course that discretionary decision making is necessary in urban renewal planning. But this does not mean that the controversies that arise lie beyond judicial cognizance. As stated in Norwalk Core v. Norwalk Redevelopment Agency, 395 F.2d 920, 929 (2d Cir. 1968):

> "Case by case inquiry is necessary, with due regard for the need for judicially discoverable and manageable standards for resolving problems to be undertaken, and with recognition of the role played by the coordinate branches of the Federal Government in the planning and implementation of urban renewal. . ." (Emphasis added).

When constitutional rights are involved, as here, the courts have an essential and central role to play, as the pre-eminent branch of the Federal Government, in such cases.

Courts of equity are characterized by broad discretion and flexibility in shaping remedies to fit the facts and circumstances of each case. They -

> ". . . may, and frequently do, go much further both to give and withhold relief in furtherance of the public interest than they are accustomed to go when only private interests are involved." Mr. Justice Stone in Virginian R.Co. v. Federation, 300 U.S. 515 552 (1937) (emphasis added).

A legal system that can provide remedies to desegregate school systems (Brown v. Board of Educ., 349 U.S. 294 (1955) and cases following) and to require legislative reapportionment (Baker v. Carr, 369 U.S. 186 (1961) and cases following) is clearly capable of providing remedies for the protection of plaintiffs here.

There is concern in many areas over what is perceived as a breakdown of law and order. It would fortify the confidence of inner-city residents in the law, as a living and constructive reality in their lives, if they see that full and proper relief is accorded to them, without fear or favor, whether against city or state agencies or even against federal agencies who have violated their rights.

III. Relief Against HUD Is Essential In The Public Interest As Well As To Protect The Rights of Plaintiffs.

As this Honorable Court has already pointed out -

> "Existing patterns of racial separation must be reversed if there is to be a chance of averting the desperately intensifying division of Whites and Negroes in Chicago . . . The President's Commission on Civil Disorders estimates that Chicago will become 50% Negro by 1984. By 1984, it may be too late to heal racial divisions." Gautreaux v. Chicago Housing Authority, 296 F.Supp. 907, 915.

The countrywide audit of the Federal housing programs, made by the U.S. Commission on Civil Rights, supports the foregoing conclusion. As summed up in the letter of the Staff Director, U.S. Commission on Civil Rights, submitted to this Court in Gautreaux v. Chicago Housing Authority:

> ". . . The tax monies of all the people are largely being spent, even to this day, for low income housing that bonds into brick and mortar a nation that is racially separate and unequal." (Letter of June 2, 1969. Emphasis added).

The reason for the failure to provide equal protection, as suggested by the Civil Rights Commission Director in the foregoing letter, is that the Federal low-income housing system has never put equal protection as a first priority. Instead, it has developed a system of second class, high volume, high density housing structures that are unacceptable to those

urban neighborhoods that are able to protect themselves, in the cities across the country. These structures have thus been forced into second class, powerless neighborhoods, particularly the urban, ghetto communities. It is precisely for these reasons that relief is essential here, against HUD as well as CHA, in order that the constitutional right of equal protection of the laws shall be established as an essential prerequisite in all phases of the Federal/State low income housing system.

Difficulties are admittedly involved in breaking down the existing patterns of urban residential segregation - established all too often by unlawful action such as that involved here.[1/] But a dissolution of these patterns may well be essential if we are to survive as a free people. For, as indicated at p 2 above, residential segregation is the root cause of the growth in this country of two societies, one Negro and one White, separate and unequal. It immeasurably complicates the problems of access to equal, non-segregated schools and to equal employment opportunities. It concentrates in the deteriorating inner city those most in need of social services, with

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1/ See for example the restrictive racial covenants outlawed in Shelley v. Kraemer, 334 U.S. 1 (1948); also the destructive real estate practice known as "block busting", made unlawful in Illinois in 1967. Ill.Rev.Stat. (1969) ch. 38, sec. 70-51 (An Act to prohibit the solicitation or inducement of sale or purchase of real estate on the basis of race, color, religion or national origin or ancestry. Approved August 26, 1967).

a shrinking tax base and with relatively less income to meet the residents' rising expectations, fostered by the evident growing affluence of the suburbs surrounding them.

It may well be that the achievement of an integrated residential pattern in metropolitan Chicago is at stake in this case. On that achievement hinges the realization, for all of us, of the most fundamental values in our society - individual dignity, freedom, equality of opportunity. Thus the protection of the public interest as well as the vindication of private rights are clearly involved here. They both require the recognition that injustice has been done to the class of the poor represented by plaintiffs in this case - by HUD as well as by CHA - and the entry of an appropriate order against both HUD and CHA "which will so far as possible eliminate the discriminatory effects of the past as well as bar like discrimination in the future." Louisiana v. U.S., 380 U.S. 145, 154 (1965).

CONCLUSION

For the foregoing reasons the Urban Affairs Committee requests that plaintiffs' motion for summary judgment be granted and that appropriate proceedings then be had to work out a suitable decree.

Respectfully submitted,

URBAN AFFAIRS COMMITTEE,
CHICAGO BAR ASSOCIATION

By _____
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IN THE UNITED STATES DISTRICT COURT
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Docket entry shows leave to file granted, March 13, 1970.

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

MOTION OF URBAN AFFAIRS COMMITTEE FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE IN SUPPORT OF THE CONSTITUTIONAL RIGHTS OF PLAINTIFFS IN THEIR MOTION FOR SUMMARY JUDGMENT.

NOW COMES the Urban Affairs Committee of the Chicago Bar Association, by its attorneys, and moves this Honorable Court for leave to file its brief, attached hereto, as amicus curiae in support of the constitutional rights asserted by plaintiffs in their pending motion for summary judgment. The Urban Affairs Committee has identified in the attached brief its interest in these proceedings and the reasons why it seeks leave to file this brief.

Respectfully submitted,

URBAN AFFAIRS COMMITTEE
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By Edward H. Hecker

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NOTICE OF MOTION

PLEASE TAKE NOTICE that on Friday, March 13, 1970, at 10:00 A.M., or as soon thereafter as counsel may be heard, the undersigned will appear before the Honorable Richard B. Austin, or before whoever may be sitting in his place and stead, in the United States District Courthouse, at 219 South Dearborn Street, Chicago, Illinois, and will then and there present the attached motion, a copy of which is served upon you herewith. At which time and place you may appear if you see fit.

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