Recvd 5-7-70
Judge Austin

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

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

PLAINTIFFS' BRIEF RESPONDING TO "REPLY OF GEORGE W. ROMNEY ... TO AMICUS CURIAE BRIEF FILED BY THE URBAN AFFAIRS COMMITTEE, CHICAGO BAR ASSOCIATION ..."

Alexander Polikoff
Charles R. Markels
Bernard Weisberg
Milton I. Shadur
Merrill A. Freed
Cecil Butler
Attorneys for Plaintiffs

Alexander Polikoff
109 N. Dearborn Street
Chicago, Illinois 60602
641-5570

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HUD's latest brief, purportedly in response to the amicus brief of the Urban Affairs Committee of the Chicago Bar Association, makes three points. These will be dealt with in the order in which they appear.

I? The Federal Jurisdictional Amount is Present (pages 2-4).

HUD says that the Court lacks jurisdiction over Count I because no plaintiff, singly, has an interest approaching $10,000, "their rentals being well below this sum." (p.3.)

The relief sought is to require that HUD's programs in the Chicago area be administered in such a way as to assist in righting the wrong which HUD and CHA have done to the plaintiffs. Such an order would have nothing to do with plaintiffs' rent. It would have to do with programs the administration of which obviously involves far in excess of $10,000. The desirable rule is that

"the test for determining the amount in controversy is the pecuniary result to either party which the judgment would directly produce." Ronzio v. Denver & R.G.W.R.R., 116 F.2d 604, 606 (10th Cir. 1940, emphasis supplied.) See, for example, Davis v. American Foundry Equipment Co., 94 F.2d 441, 443 (7th Cir. 1938 - "[T]he value of the right in dispute determines the jurisdiction."); Ridder Bros. v. Blethen, 142 F.2d 395, 399 (9th Cir. 1944 - "The value of the 'thing sought to be accomplished by the action' may relate to either or any party to the action."); and Government Employees Insurance Company v. Lally, 327 F.2d 568, 569 (4th Cir. 1964 - "[T]he amount in controversy is the pecuniary result to either party which that judgment would produce.") See also Hatridge v. Aetna Casualty & Surety Company, 415 F.2d 809, 815 (8th Cir. 1969).*

II. Jurisdiction Lies Under Title VI of the Civil Rights Act of 1964 (page 9).

HUD's second argument is that the Court lacks jurisdiction over Count II because plaintiffs are not entitled to sue

*Apart from its irrelevance HUD's assertion that the rental interest of each plaintiff is less than $10,000 is not supported by the record in this case. It does appear from an affidavit of Harry J. Schneider, CHA's Director of Management, filed in the companion case in October, 1966, that plaintiff Robert M. Fairfax has been a tenant in CHA housing since 1945. Even if Mr. Fairfax's rent since that time averaged only $50 per month, the total rent involved to date would be $15,000, let alone rent to come due over the period of time in the future during which effective relief would be fashioned.

HUD also makes the argument (pp. 4-8) that CHA is not HUD's agent. The relevance of this argument is not apparent.

HUD under Title VI of the Civil Rights Act of 1964. This issue has been discussed at length in the preceding briefs and nothing new is added by HUD's latest treatment.

III. HUD is Legally Responsible as a Joint Participant in CHA's Discrimination (pages 10-13).

With one extraordinary exception HUD's reargument adds nothing of substance to its previous discussion of the issue of its legal responsibility. The exception is the argument that nothing that happened before 1964 is relevant to a determination of HUD's legal responsibility. HUD says that prior to that year "the significance of site location in housing was lost upon the courts and Congress no less than upon the Secretary and the predecessor agencies of HUD." (p.10.) Therefore, the implicit argument runs, HUD's prior joint participation in CHA's discriminatory practices should be ignored!

The mere statement of the argument suffices for rebuttal. One might as well argue that in dealing with the problem of remedying segregated school systems, facts and actions dating prior to the Brown decision in 1954 should be ignored.

In addition, HUD implies that since 1964 it has not been a joint participant in CHA's discriminatory practices. HUD forgets that it approved the sites for CHA's 1965 and 1966 programs and that these approvals, permitting a massive extension of the segregationist pattern of public housing in Chicago, were

the very actions which precipitated the filing of the complaint in this case.

(HUD also persists in its refusal to recognize that it is its affirmative participation, by these approvals and other actions, as well as its financial assistance, that legally implicates HUD in CHA's discrimination (p.4); and it continues to speak as if we sought to halt HUD's annual contributions to CHA's existing projects. (pp. 11-12.) These matters are discussed in our Reply Brief at pages 12-18 and 28-29, respectively.)

Finally, HUD has also filed another affidavit expanding on its original Exhibit G. HUD said in its Answering Brief that Exhibit G "demonstrates clearly the defendant's commitment to voluntary action in support of the objectives of the Court decree against C.H.A." (p. 29-B.) Our comments on HUD's voluntary action appear at pages 18-28 of our Reply Brief, and the Court is respectfully referred to them. For the reasons given there we continue to believe that it would be wholly inappropriate for a court of equity to relegate plaintiffs to HUD's good intentions and voluntary efforts.*

*The affidavit affords no basis for judging HUD's intentions. Since it does not disclose the totality of HUD's activities in the Chicago area one cannot determine from it the net effect of HUD's activities in relation either to the decree in the companion case or to the affirmative contribution HUD might make to the achievement of the broad objectives of that decree. For example, although the affidavit says HUD gave CHA a reservation for 3,000 units, it does not disclose that CHA's request was for 10,000 units. The affidavit's listing of specific actions taken by HUD (some of which may be relevant and others of which are clearly irrelevant to the issues in this case) conveys no sense of whether the total effect of HUD's activities in the Chicago Metropolitan area is helpful or hurtful to the plaintiffs.

Respectfully submitted,

Alexander Polikoff
Charles R. Markels
Bernard Weisberg
Milton I. Shadur
Merrill A. Freed
Cecil Butler

By _____
Alexander Polikoff
Attorney for Plaintiffs
109 N. Dearborn Street
Chicago, Illinois 60602
641-5570

Dated: May , 1970

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NOTICE

TO: Mr. Jack B. Schmetterer
First Assistant United States Attorney
219 South Dearborn Street, Suite 1500
Chicago, Illinois

PLEASE TAKE NOTICE that we have this day filed with the Clerk of the Court in the above captioned matter Plaintiffs' brief responding to "Reply of George W. Romney ... to Amicus Curiae Brief Filed by the Urban Affairs Committee, Chicago Bar Association ...", a copy of which is hereby served upon you.

Alexander Polikoff
One of the Attorneys for Plaintiffs
109 N. Dearborn Street
Chicago, Illinois 60602
641-5570

CERTIFICATE OF SERVICE

The undersigned, one of the attorneys for plaintiffs, hereby certifies that he served a copy of the above Notice and brief referred to therein by mailing the same to Jack B. Schmetterer, First Assistant United States Attorney, 219 South Dearborn Street, Suite 1500, Chicago, Illinois.

Alexander Polikoff
One of the Attorneys for Plaintiffs
109 N. Dearborn Street
Chicago, Illinois 60602
641-5570

May 7, 1970

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