file

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 71-1073

DOROTHY GAUTREAUX, et al.,

Plaintiffs-Appellants,

v.

GEORGE W. ROMNEY,

Defendant-Appellee.

On Appeal from the Judgment of the United States
District Court for the Northern District of Illinois

CONSENT TO FILING OF BRIEF AMICUS CURIAE

The undersigned attorneys for Plaintiffs-Appellants and Defendant-Appellee in the above matter hereby consent to the filing on March 12, 1971, of the brief amicus curiae of The Lawyers' Committee for Civil Rights Under Law, The National Urban Coalition, The League of Women Voters of Illinois and The League of Women Voters of the United States.

Alexander Polikoff
One of the Attorneys for Plaintiffs-Appellants.

William J. Bauer, United States Attorney
One of the Attorneys for Defendant-Appellee.

March 10, 1971

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

William J. Bauer, United States Attorney
219 S. Dearborn Street
Chicago, Illinois 60604
353-5333

In The

United States Court of Appeals

For The Seventh Circuit

DOROTHY GAUTREAUX, et al.,
Plaintiffs-Appellants,

vs.

GEORGE W. ROMNEY, Secretary of the Department of Housing and Urban Development of the United States,
Defendant-Appellee.

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AMICUS CURIAE BRIEF OF

The Lawyers' Committee for Civil Rights Under Law, National Office

The Lawyers' Committee for Civil Rights Under Law, Chicago Office

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The League of Women Voters of Illinois

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AMICUS CURIAE BRIEF OF

The Lawyers' Committee for Civil Rights Under Law, National Office

The Lawyers' Committee for Civil Rights Under Law, Chicago Office

The National Urban Coalition

The League of Women Voters of the United States

The League of Women Voters of Illinois

I.

THE INTEREST OF THE AMICI

The *amici* are all organizations dedicated to the proposition that if America's social problems are not addressed through sensitive and responsible administration of the law by all branches of government, public respect for legal institutions and for the law itself may deteriorate irreversibly. More specifically, although we remain confident that America's remorseless cycle of racial separation and hostility can be interrupted, we are convinced that it cannot be done without affirmative government action to undo the effects of generations of racial separation in housing.

The dimensions of the problem have been urgently stated by every governmental commission which has studied it. The Kerner Commission, for instance, has warned us that we are "well on the way" to becoming "a divided nation."[1]

The Kaiser Committee, after investigating the broad range of our housing problems, recommended that

> "[s]trong measures should be taken to remove barriers which prevent ghetto dwellers from leaving the ghetto."[2]

This conviction was echoed by the Douglas Commission after its investigation of our urban quandary. One of its conclusions was that ghetto residents are

1. Report of the National Advisory Commission on Civil Disorders, at 220 (March 1, 1968).

2. *A Decent Home,* Report of the President's Committee on Urban Housing, at 70 (Dec. 11, 1968).

> "imprisoned in slums by the white suburban noose around the inner city, a noose that says 'Negroes and poor people not wanted'."[3]

Finally, the Violence Commission (chaired by Dr. Milton Eisenhower) concluded that

> "poverty and social isolation of minority groups in central cities is the single most serious problem of the American city today."[4]

Being in complete agreement with these conclusions, and convinced that our legal system must respond to the imperatives they express, the *amici* support the position of Appellants in the case at bar and respectfully urge reversal of the judgment below.

A brief description of each of the *amici* follows:

A.

Lawyers' Committee For Civil Rights Under Law, National Office.

The Lawyers' Committee for Civil Rights Under Law was organized at the request of President John F. Kennedy. It is a non-profit private corporation whose principal purpose is to involve private lawyers from throughout the country in the effort to assure all citizens their civil rights. The membership of the National Committee includes eleven past presidents of the American Bar Association, two former Attorneys General, and a number of law school deans, as well as many of the nation's leading attorneys.

3. *Building the American City,* Report of the National Commission on Urban Problems, at 1 (Dec. 12, 1968).

4. *To Establish Justice, To Insure Domestic Tranquility,* Final Report of National Commission on Causes and Prevention of Violence, at 49 (Dec. 10, 1969).

The premise of the Lawyers' Committee is that the American legal system has within it a great potential for contributing to the achievement of a just society, and that the realization of this potential is both the challenge and the responsibility of lawyers.

Since 1964, the National Committee has operated a law office in Jackson, Mississippi, which has handled more than 2,000 civil rights cases. Over 150 attorneys from all parts of the United States have served as unpaid volunteers in the Jackson office in aid of the permanent staff there. There are autonomous local Lawyers' Committee offices in twelve urban centers throughout the country. These offices and the national office in Washington have actively engaged the services of over a thousand members of the private bar in addressing a range of legal problems in such areas as education, housing, employment, economic development and the administration of justice.

B.

Lawyers' Committee For Civil Rights Under Law, Chicago Office.

The Chicago office of the Lawyers' Committee for Civil Rights Under Law is an autonomous branch of the National Committee. It is comprised of representatives of sixteen major Chicago law firms, a number of prominent Black attorneys and the Dean of the University of Chicago Law School. A number of the more than 60 projects undertaken by the Chicago Lawyers' Committee since its formation in 1969 have been concerned with the problems of discrimination in housing and the serious lack of low and moderate income housing in and around Chicago.

C.

The National Urban Coalition

On August 24, 1967, at an emergency convocation in Washington, D.C., a group of 1,200 persons issued an urgent appeal to all concerned Americans. They were men and women of diverse interests, joining together in a national effort to mold a new political, social, economic and moral climate to help break the vicious cycle of urban poverty in the ghetto. This convocation began The National Urban Coalition.

The Coalition is governed by a steering committee of industry, civil rights, labor and church leaders and city mayors.

The emergency convocation called upon the nation, among other things, to take bold and immediate action to provide "a decent home and a suitable living environment" for every American. The Coalition has advocated appropriate public and private action to move toward this objective, and has provided technical assistance to local urban coalitions, particularly to make the public housing program a focus of national and local reform efforts.

D.

The League Of Women Voters Of The United States

The League of Women Voters is a non-partisan organization whose purpose is to encourage the informed and active participation of all citizens in government and politics. It is open to all women citizens 18 years or older, and has a membership of 157,000 in more than 1,275 Leagues in all 50 states, the District of Columbia,

the Commonwealth of Puerto Rico and the Virgin Islands. From its inception in 1920 the League has worked at national, state and local levels on various governmental issues selected by the members for study, decision and action. Since 1964, concerted attention has been directed to the goal of equal opportunity. At every level of government, League members are working toward this goal, striving to achieve an American society in which all people will have a genuine choice about where they live, including full opportunity to live in communities where good schools, jobs, transportation and recreation are reasonably accessible and where economic and racial isolation do not exist.

E.

The League Of Women Voters Of Illinois

The League of Women Voters of Illinois is a non-partisan voluntary organization, embracing 83 local chapters with an aggregate membership of approximately 10,000 Illinois citizens. It is affiliated with The League of Women Voters of the United States. The general purpose of the League is to encourage informed and active participation of citizens in democratic governmental processes. To this end, the League has undertaken numerous studies on issues of public interest and has taken action as a result of these studies, including appearance as *amicus curiae* in judicial proceedings involving important public questions. Among the subjects to which the national, state and local Leagues have devoted extensive study is the impact of inequality in employment, education and housing in the United States, Illinois and local municipalities. The League has concluded that residential segregation is among the primary causes for lack of opportunity in the critical areas of employment and education. This, in turn, underlies the overriding national problem of poverty among large segments of the population. In January, 1969, the League stated that its members believe the Federal government shares with other levels of government the responsibility to provide equality of opportunity in education, employment and housing for all persons in the United States. Fundamental to this belief is the necessity for expanded federal efforts to prevent and remove discrimination in housing.

The *amici* believe that their direct and continuing involvement with the problems of eliminating residential segregation has given them some insight into the nature of these problems, and that they may be of assistance to this Court in evaluating the issues of this case in the context of the government's legal and Constitutional responsibility affirmatively to promote equality in American life.

II.

THE AGENCY OVER WHICH DEFENDANT PRESIDES HAS FAILED AFFIRMATIVELY TO FULFILL ITS OBLIGATIONS UNDER THE CONSTITUTION AND LAWS OF THE UNITED STATES.

The *amici* respectfully request that this Court direct the District Court to require the defendant, in his capacity as Secretary of the Department of Housing and Urban Development ("HUD"), to fulfill his affirmative obligations under the Constitution and those Federal laws

which prohibit racial discrimination in Federally-assisted housing programs in the metropolitan Chicago area.

In the companion case of *Gautreaux* v. *Chicago Housing Authority*[5] the District Court has already found that the joint actions of CHA and HUD have contributed to an increase in unconstitutional residential racial segregation in the Chicago area. In its order in that case the District Court required CHA affirmatively to remedy the unconstitutional consequences of its past decision-making processes.[6] Neither the opinion in that case, nor the memorandum of dismissal below in this one, provides any valid basis for the conclusion that HUD's obligations should be any the less. On the contrary, the "full equitable relief to which [plaintiffs] . . . are entitled"[7] will not become truly "full" relief unless and until HUD is placed under the same affirmative action obligation as was imposed upon CHA. Nothing less than such full relief is required here for the realization of the District Court's observation that:

> "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."[8]

The same statutory pattern which compelled the District Court's orders against CHA applies with even greater force with respect to HUD. In Title VIII of the Civil Rights Act of 1968, the Congress declared:

5. 296 F. Supp. 907 (N.D. Ill. 1969); 304 F. Supp. 736 (N.D. Ill. 1969).
6. 304 F. Supp. 736, 737 *et seq.* (N.D. Ill. 1969).
7. *Ibid,* 737.
8. 296 F. Supp. 907, 915 (N.D. Ill. 1969).

> "It is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States."[9]

HUD's role in the effectuation of this policy requires it to:

> "administer the programs and activities relating to housing and urban development in a manner affirmatively to further the policies of this subchapter."[10]

These 1968 legislative pronouncements simply clarified the long-standing Congressional directives to the defendant and his predecessors charged with implementation of our national housing policy. The Housing Act itself provivdes that:

> "The Department of Housing and Urban Development . . . shall exercise [its] powers, functions, and duties under this or any other law . . . in such manner as will encourage and assist . . . development of well-planned, *integrated,* residential neighborhoods."[11] (Emphasis supplied).

HUD's responsibility to implement these Congressional directives fully and affirmatively has recently been defined by the Court of Appeals for the Third Circuit in *Shannon* v. *HUD.*[12] That Court found a violation of these provisions in HUD's participation in discriminatory housing programs which contributed to increasing racial polarization in metropolitan areas. The site of the violation found in *Shannon* was Philadelphia. The site of the wrong in this case is Chicago. In both cities, as elsewhere, HUD's action and inaction can be characterized

9. 42 U.S.C. § 3601 (1968).
10. 42 U.S.C. § 3608(d)(5) (1968).
11. 42 U.S.C. § 1441 (1949), as amended.
12. No. 18,397 (3rd Cir. Dec. 30, 1970).

as falling short of Constitutional standards. In still another housing case, a Federal court found HUD to have

> "sanctioned the violation of plaintiffs' rights and [to have been] . . . an active participant since it could have halted the discrimination at any step in the program."[13]

For many years agents responsible for administration of Federal housing programs were subject to explicit directives to discriminate. The regulations of the Federal Housing Administration prior to the Supreme Court's decision in *Shelley* v. *Kraemer,*[14] in which the Court forbade judicial enforcement of racially restrictive covenants, specifically provided that one of the qualifications for Federal assistance was

> "conformity of . . . prospective tenants to the needs and characteristics of predominant ethnic groups nearby [and] probable long term immunity of the neighborhood from adverse influences."[15]

Any ambiguity as to the meaning of "adverse influences" was clarified by paragraph 310 of the FHA's *Underwriting Manual,* which provided in 1935:

> "Important among adverse influences [is] . . . infiltration of inharmonious racial or nationality groups."[16]

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13. *Hicks* v. *Weaver,* 302 F. Supp. 619, 623 (E.D. La. 1969). In *Hicks,* Judge Heebe enjoined Secretary Romney and HUD from making further payments in support of the Bogalusa (Louisiana) Housing Authority's building projects.

14. 334 U.S. 1 (1948).

15. 24 C.F.R. § 536.2(c) (1939).

16. FHA *Underwriting Manual,* ¶ 310 (1935).

FHA was thus directly responsible for the encouragement of racial polarization before the interposition of the judicial ruling in *Shelley.*

HUD's present participation in the Constitutional and statutory violations found to exist in Philadelphia and Chicago, however, has violated even its own current guidelines, as set forth in the *Low-Rent Housing Manual.* This Manual directs HUD employees to find acceptable only those public housing sites which

> "afford the greatest opportunity for inclusion of eligible applicants of all groups regardless of race, color, creed, or national origin, thereby affording members of minority groups an opportunity to locate outside of areas of concentration of their own minority group."[17]

The Third Circuit found an inconsistency between this HUD promise and HUD's actions in the Philadelphia area.[18] In *Gautreaux* v. *CHA,* the District Court found what amounts to the same inconsistency in HUD's performance in Chicago. Like findings indicate the appropriateness of like relief.

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17. *Low-Rent Housing Manual,* § 205.1 ¶ 4(g).

18. Even though the language quoted above from the *Low-Rent Housing Manual* was not directly applicable to the rent supplement context before the *Shannon* Court (Slip Op. at 18), it *is* aimed precisely at the low-rent public housing program before the Court in this case.

III.

WHERE OTHER BRANCHES OF GOVERNMENT HAVE FAILED IN THEIR DUTY TO ENFORCE THE LAW, FEDERAL COURTS HAVE THE POWER AND DUTY TO EFFECTUATE RIGHTS WHICH THE LAW ESTABLISHES.

This case is by no means the first to present a Federal court with a citizen's demand for relief from the failure of government to fulfill its Constitutional or statutory responsibilities. The Federal courts have been ready to frame effective relief when a state or local government unit has been found in violation of its Constitutional or statutory obligations. More particularly, there is ample authority in the host of decisions dealing with school desegregation for the form of relief requested here—an affirmative action obligation to remedy the consequences of past wrongs.[19] The decision in the companion case, *Gautreaux* v. *CHA, supra,* demonstrates the appropriateness of similar relief in the housing area. The opinion and order in that case imply the District Court's recognition of the interrelationship between segregated housing patterns and segregated education patterns, a nexus which has been increasingly highlighted by courts dealing with

19. *Brown* v. *Board of Education,* 347 U.S. 483 (1954); *Green* v. *County School Board,* 391 U.S. 430 (1968); *Alexander* v. *Board of Education,* 396 U.S. 19 (1969); *Hobson* v. *Hansen,* 269 F. Supp. 401 (D. D.C. 1967); *Spangler* v. *Pasadena City Board of Education,* 311 F. Supp. 501 (C.D. Calif. 1970).

eradication of segregated education.[20] Where these patterns result from governmental action or failure by government to bear its legal responsibilities, the legal issues, at root, are one and the same, and the Constitutional mandates underlying them require parallel relief. It is immaterial for this purpose whether the government involved is state or Federal. It would therefore be especially unfortunate should the District Court's reluctance to provide truly "full" relief in this case go unremedied by this Court.

Just as the school cases demonstrate the need for affirmative relief against racial separation in housing, a variety of other cases make clear the power and duty of Federal courts to require Federal officials and their agencies to honor Constitutional and statutory directives. Whether framed in "affirmative" or "injunctive" terms, judicial assurance of Executive compliance with the law is a long and honorable tradition. In *Youngstown Sheet and Tube Co.* v. *Sawyer,*[21] the Supreme Court enjoined the President himself from seizing private property in violation of Constitutional strictures. In *Aptheker* v. *Secretary of State,*[22] the Court required the Secretary of State to issue a passport which he had theretofore withheld on an unconstitutional basis. More recently, a dis-

20. See, *e.g., Swann* v. *Charlotte-Mecklenburg Board of Education,* 431 F. 2d 138, 141 (4th Cir. 1970); *Henry* v. *Clarksdale Municipal Separate School Dist.,* 409 F. 2d 682, 689 (5th Cir. 1969); *Brewer* v. *School Board of the City of Norfolk, Virginia,* 397 F. 2d 37, 41 (4th Cir. 1968).

21. 343 U.S. 579 (1952).

22. 378 U.S. 500 (1964).

trict court has required the Secretary of the Treasury to cease his unconstitutional extension of tax benefits to segregated private schools in the South.[23] In *Environmental Defense Fund* v. *Ruckelshaus,*[24] the District of Columbia Circuit has very recently ordered the Administrator of the Federal Environmental Protection Agency to take the affirmative action of issuing notices of intention to suspend Federal registration of the insecticide DDT. Finally, and most pertinent to the facts of this case, the Third Circuit in *Shannon* v. *HUD, supra,* has now affirmatively ordered HUD to develop and implement an "institutionalized method" for appraising the racial consequences of site selection decisions in Philadelphia.

The necessity for such judicial action with regard to all aspects of racial segregation is clear.[25] The *amici* recognize that, if possible,

> "[i]t would be far better indeed for these great social and political problems to be resolved in the political arena by other branches of government."[26]

But resolution elsewhere in the Federal system has not proved possible for citizens aggrieved by the operation of Federally-assisted housing programs in Chicago. That is why these plaintiffs have undertaken to submit their

23. *Green* v. *Kennedy,* 309 F. Supp. 1127 (D. D.C. 1970).

24. No. 23,813 (D.C. Cir. Jan. 7, 1971).

25. See, *e.g.,* Commission reports cited in Part I hereof.

26. *Hobson* v. *Hansen, supra* at 517.

grievance to the courts. For where other branches have failed,

> "the judiciary must bear a hand and accept its responsibility to assist in the solution where constitutional rights hang in the balance."[27]

Without a clear directive for the execution of affirmative relief in this case, citizens already in despair over the unresponsiveness of their Government will have cause for further despair and a further tendency to turn their backs on our legal system. The question from their view is not the semantic one of whether "affirmative" or "injunctive" action is appropriate. It is simply, and more correctly, whether the Government itself, like everyone else, must obey the Constitution and the law. Such an inquiry must have but one answer.

27. *Id.*

Respectfully submitted,

CHARLES A. BANE,

ALLISON S. DAVIS,

CHARLES W. DAVIS,

JAMES L. HARRIS,

ALBERT E. JENNER, JR.,

DANIEL M. PIERCE,

EDWIN A. ROTHSCHILD,

JOHN J. WALDRON,

Attorneys for
Lawyers' Committee for Civil
Rights Under Law,
Chicago Office,
53 West Jackson Boulevard,
Suite 1634,
Chicago, Illinois 60604

JOHN W. DOUGLAS,

LOUIS F. OBERDORFER,

Attorneys for
Lawyers' Committee for Civil
Rights Under Law,
National Office,
Woodward Building, Suite 520,
733 Fifteenth Street, N.W.,
Washington, D.C. 20005

HERBERT M. FRANKLIN,

Attorney for
The National Urban Coalition,
2100 M Street, N.W.,
Washington, D.C. 20037

R. STEPHEN BROWNING,

Attorney for
The League of Women Voters of
the United States,
1730 M Street, N.W.,
Washington, D.C. 20036

R. STEPHEN BROWNING,

Attorney for
The League of Women Voters
of Illinois,
Room 2105,
67 East Madison Street,
Chicago, Illinois 60603