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AIR MAIL

Mr. Kenneth J. Carrick
Clerk, United States Court of Appeals
for the Seventh Circuit
219 South Dearborn Street
Chicago, Illinois 60604

Re: Dorothy Gautreaux, et al. v. George W. Romney, etc. (No. 71-1073)

Dear Mr. Carrick:

Enclosed for filing are 25 copies of our brief in the above-captioned matter. A signed certificate of service appears on the last page of the brief.

Yours very truly,

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By:

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No. 71-1073

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

DOROTHY GAUTREAUX, ET AL.,

Plaintiffs-Appellants,

v.

GEORGE W. ROMNEY, Secretary of
the Department of Housing and Urban Development,

Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

BRIEF FOR THE APPELLEE

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I N D E X

CITATIONS

Cases:

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DOROTHY GAUTREAUX, ET AL.,

Plaintiffs-Appellants,

v.

GEORGE, W. ROMNEY, Secretary of
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ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

BRIEF FOR THE APPELLEE

STATEMENT OF ISSUES PRESENTED

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1. Whether an action alleging that HUD has assisted racially discriminatory practices of a local housing authority is moot because the practices challenged have been enjoined.

2. Whether, because its consistent, affirmative efforts to end the discrimination alleged failed in some respects, HUD violated any rights of Negro housing project tenants and applicants under the Fifth Amendment or the 1964 Civil Rights Act.

STATEMENT OF THE CASE

1. Nature of the Case

This action against the Secretary of the Department of Housing and Urban Development (HUD) has been brought by Negro tenants in and applicants for public housing projects in Chicago, Illinois (App. 6). On behalf of themselves and all other Negroes similarly situated (App. 6), plaintiffs seek a declaration that the Secretary has "assisted in the carrying on and * * * continues to assist in the carrying on, of a racially discriminatory public housing system within the City of Chicago, Illinois" (App. 28). Plaintiffs also sought to enjoin the Secretary "from making available to the [Chicago Housing] Authority any Federal financial assistance to be used in connection with or in support of the racially discriminatory aspects of the [Chicago] public housing system" or "any sites which have been selected in a racially discriminatory manner or which will have the effect of continuing and strengthening existing patterns of Negro residential and school segregation" in Chicago (App. 19-20). In the district court, however, plaintiffs conceded the inappropriateness of an injunction barring further funding (App. 36).

The district court dismissed all four counts of the complaint. Count I alleged a violation of the Fifth Amendment. The court held, however, that "the Fifth Amendment in the circumstances here alleged" did not authorize the suit (App. 43). The dismissal of Count II, which alleged violation 42 U.S.C. 2000(d), was based upon the court's finding that HUD's financial assistance

did not make it a joint participant in the discriminatory practices of the Chicago Housing Authority (CHA) and the Chicago City Council. Counts III and IV were dismissed because they failed to allege CHA's conduct had been deliberately discriminatory. Plaintiffs appeal from this order and attack primarily the dismissal of Counts I and II of the complaint. (See, Apt. Br., p. 10).

2. Statement of Facts

A. Discriminatory Practices of CHA and and the Chicago City Council

In the companion case of Gautreaux v. Chicago Housing Authority, 265 F. Supp. 582 (N.D. Ill., 1967), 296 F. Supp. 907 and 304 F. Supp. 736 (N.D. Ill., 1969), 436 F. 2d 306 (C.A. 7, 1970) (affirming unreported order of July 20, 1970), certiorari denied, 39 U.S.L.W. 3451 (April 19, 1971), the district court found that CHA imposed racial quotas limiting the number of Negro tenants in four housing projects located in predominantly white areas of Chicago. 296 F. Supp. at 909. Until 1968, these four projects were listed on CHA tenant selection forms as appropriate for whites only.

The court found that CHA employed an informal pre-clearance procedure which "result[ed] in the veto of substantial numbers of sites on racial grounds" 296 F. Supp. at 913. Under Illinois law, the Chicago City Council has the power to veto the acquisition of any site selected by CHA. Ill. Rev. Stat., Ch. 67 1/2, § 9. CHA followed the practice of submitting each purposed family housing site to the Chicago City Council

alderman in whose ward the site was located for the alderman's approval prior to submitting the site for the City Council's approval. Between 1955 and 1966, CHA initially selected forty-one sites in white areas and sixty-two sites in Negro areas. Only two of the white sites, however, achieved the necessary approval by the alderman and the City Council while forty-nine Negro sites were approved. The court concluded (296 F. Supp. at 912):

> No criterion, other than race, can plausibly explain the veto of over 99 1/2% of the housing units located on the White sites which were initially selected on the basis of CHA's expert judgment and at the same time the rejection of only 10% or so of the units on Negro sites.

The result, as found by the district court, was that "given the trend of Negro population movement, 99 1/2% of CHA family units [other than the four projects in which racial quotas were imposed] are located in areas which are or soon will be substantially all Negro." 296 F. Supp. at 910. Of the tenants in CHA's family housing projects, ninety percent are Negro and if the four projects with racial quotas are excluded, this figure rises to ninety-nine percent. In addition, ninety percent of the 13,000 people on the waiting list for family projects are Negro. The number of white families eligible for public housing (188,000), however, is more than twice as great as the number of eligible Negro families (76,000).

Public housing for the elderly, as opposed to the family projects, is not confined to predominantly Negro areas. Of the 5,050 units operated by CHA, 54 1/2 percent are located

in white areas. At one time, CHA's tenant selection for these projects was based upon a "proximity rule," i.e., applicants who resided close to the projects were granted a priority over the other applicants. The proximity rule was abandoned after the Commissioner of the Public Housing Administration informed CHA in 1963 that its continued use would result in a loss of federal funds.

To remedy the discriminatory site selection and tenant selection practices it found, the district court entered an injunction requiring specified affirmative action by CHA. 304 F. Supp. 736. CHA was ordered to build its next 700 units and, thereafter, seventy-five percent of its new construction in areas of Cook County located at least one mile from areas having a Negro population of thirty percent or more. Concentration of public housing units was limited by three requirements. First, no project can be designed for occupancy by more than 120 persons where possible, and in no event for more than 240 persons. Second, the percentage of CHA public housing units cannot exceed fifteen percent of all dwelling units in the same census tract. Third, units for families with children and at least eighty percent of non-family units leased by CHA cannot be above the third story. CHA was also directed to develop a new tenant assignment plan to include certain provisions specified by the court. Further, CHA was ordered to submit detailed reports to the Department of Justice and to HUD's regional office describing every project it approved in the future.

In addition, CHA was ordered to "affirmatively administer

its public housing system in every respect * * * to the end of disestablishing the segregated public housing system * * *." 304 F. Supp. at 741. To that end, CHA was ordered to use its best efforts to increase the supply of public housing units.[1/] The pre-clearance procedure and all other forms of invidious racial discrimination were enjoined. Finally, the order stated that upon actual notice, its terms would be binding upon the Chicago City Council members and all other persons "in active concert or participation"with CHA. 304 F. Supp. at 741.

B. HUD's Actions

In the district court, plaintiffs admitted that HUD has made "numerous and consistent efforts * * * to persuade the Chicago Housing Authority to locate low-rent housing projects in white neighborhoods" (App. 44). The court found HUD has "made efforts to correct the activity complained of, succeeded in some respects, but continued funding knowing of the possible action the City Council would take" (App. 48).

Some of the affirmative actions regarding this problem taken by HUD in administering not only the family public housing program but many of its other programs as well, are documented by the uncontradicted affidavits filed in the

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1/ This portion of the order was modified on July 20, 1970, to require CHA to submit to the City Council sites for 1500 units. See 436 F. 2d at 311.

district court. The former Assistant Regional Administrator for Housing Assistance stated:

> Numerous and consistent efforts have been made since 1950, first by the Public Housing Administration and then by HUD to persuade the Chicago Housing Authority to locate low rent housing projects in white neighborhoods. I personally recollect a meeting in the early 1950's which I attended with the then Mayor of Chicago, Martin Kennelly, and others where we attemped to enlist the Mayor's assistance in having project sites located in white neighborhoods. [Affidavit of William E. Bergeron, dated December 31, 1969].

In 1963, the Public Housing Administration's threatened withdrawal of federal funds led CHA to abandon the "proximity rule" in selecting elderly tenants for public housing. 296 F. Supp. at 912. The PHA had determined that use of this rule violated the anti-discrimination policies of Executive Order No. 11063, 3 C.F.R. 652 (1959-1963 Comp.).

The nondiscrimination provisions imposed first by PHA and then by HUD have grown progressively more stringent since 1950 in all its programs including, among others, urban renewal, model cities, and FHA-acquired homes programs, as well as low-income housing (see Exhibit H). HUD's Low-Rent Housing Preconstruction Handbook establishes the criteria for site selection by the local authorities (part of Exhibit H). These criteria include the suitability of the site in relation to the surrounding neighborhood and the city plan, the physical characteristics of the site, the use of scattered sites as opposed to a single site, the acquisition cost, the feasibility

of relocating all site occupants to standard housing which is within their financial means, reasonably convenient, and available on a non-discriminatory basis, and the suitability of the site from the standpoint of the 1964 Civil Rights Act. In defining this last criterion, the Handbook provides (at p. 8):

> The housing on the site to be selected must be operated in accordance with all applicable requirements of Title VI of the Civil Rights Act of 1964 and of Executive Order 11063, and Department regulations and requirements issued pursuant thereto. The aim of a Local Authority in carrying out its responsibility for site selection should be to select from among sites which are acceptable under the other criteria of this Section those which will 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. Any proposal to locate housing only in areas of racial concentration will be prima facie unacceptable and will be returned to the Local Authority for further consideration and submission of either (1) alternative or additional sites in other areas so as to provide more balanced distribution of the proposed housing or (2) a clear showing, factual substantiated, that no acceptable sites are available outside the areas of racial concentration.

In 1966 PHA officials determined to reject five of the sites selected by CHA which were among those specifically challenged in this suit (see App. 14-15). The reasons for this rejection were that the sites were in areas of high Negro concentration and, in some cases, in areas also having a high concentration of public housing (Deposition of Joseph Burstein taken March 25, 1968, p. 105). After discussions with federal officials CHA withdrew these sites.

In approving the Chicago Model Cities Program for 1969, HUD stated that it expected "full compliance by the City and all its agencies with all HUD equal opportunity requirements, and with the provisions of any decree finally entered by the U.S. District Court in the case of Gautreaux v. Chicago Housing Authority * * *" (see Exhibit H). The Government expressed its strong support for the objectives of the district court in this companion case. Memorandum for the United States, filed in Gautreaux v. Chicago Public Housing Authority, supra, p. 2).[2/] HUD volunteered specific affirmative action in support of the court's judgment (Memorandum, supra, pp. 17-19). HUD's efforts to advance the purposes of desegregation and the production of low-income housing are continuing throughout its many programs in Chicago and its surrounding area (see Affidavits of Don Murrow dated March 24, 1970, and June 8, 1970). Among these actions are the granting of a program reservation to CHA for 3,000 units and to the Cook County Housing Authority for 2,000 units. HUD approved $20,000 in modernization funds for CHA. One site selection study has been received by HUD, and HUD is attempting to involve the Illinois state officials in joint efforts in approaching the problem of low and moderate income housing on a metropolitan basis. In addition, HUD provides funds to an organization assisting Negroes in obtaining housing outside the areas of Negro concentration. Its investigation of complaints against a number of real estate brokers led to a favorable court

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2/ This Memorandum is reproduced as an Addendum to this brief.

decree. HUD's Equal Opportunity Office is investigating complaints of discrimination in the sale or rental of housing in Chicago and its suburbs and secured an affirmative action program from a public housing developer. HUD's leasing program has produced racially balanced units in two Chicago suburbs with additional units under contract. The objectives which HUD is affirmatively pursuing are improving the living environment of existing housing projects, providing more low-rent housing in the areas specified by the district court, and increasing the supply of low and moderate income housing in the Chicago suburbs (Affidavit of Don Morrow, dated June 8, 1970). To meet these objectives, HUD is engaged in formal and informal activities with local housing authorities, a research corporation, a planning commission, and various levels of state and community governments.

ARGUMENT

I

THIS ACTION IS MOOT BECAUSE PLAINTIFFS NOW CONCEDE THAT TERMINATION OF FEDERAL ASSISTANCE TO CHA WOULD HAVE BEEN INAPPROPRIATE AND THE DISCRIMINATORY PRACTICES THEY ALLEGE HAVE BEEN ENJOINED.

Most of the facts alleged in the complaint (paragraphs 6-19) pertain only to CHA's conduct, and they are alleged in support of plaintiffs' request for a declaration that CHA -- not HUD -- "has been and is carrying on a racially discriminatory public housing system within the City of Chicago" (App. 19, 21-22, 23, 25). This declaration together with all "other and further relief" that the district court deemed "just and equitable" has already been

secured in the companion case.[3/] The only alleged wrongdoing on HUD's part was to provide federal financial assistance to CHA, but plaintiffs have now conceded that it would have been inappropriate for HUD to have terminated such funding. As the district court intimated in the companion suit "even a temporary denial of federal funds would * * * damage the very persons this suit was brought to protect." 296 F. Supp. at 915.

In light of these facts, this case is now moot. A further indication that the parties no longer possess a concrete adverseness (see Note, Mootness on Appeal in the Supreme Court, 83 Harv. L. Rev. 1672, 1677 (1970)), is that HUD "strongly supports the objectives of the Court in" the companion case. Memorandum for the Unites States at p. 2. Although this memorandum suggested some alterations to the order plaintiffs proposed, there certainly has been no charge that HUD is impeding the effectuation of the relief ordered. Quite the contrary, HUD has indicated its readiness to take affirmative

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3/ If contrary to their complaint, plaintiffs are seeking relief which is not limited to CHA's jurisdiction (see Ill. Rev. Stat. Ch. 67 1/2, §§ 3, 17), then the Cook County Housing Authority or whatever other local authority has jurisdiction should have been made a defendant. Heyward v. Public Housing Administration, 214 F. 2d 222 (C.A.D.C., 1954). In any event, tenants and applicants within one jurisdiction would have no claim for relief from some other jurisdiction.

actions in support of the district court's objectives. Memorandum, supra, at 17-19. Finally, plaintiffs admitted in the court below that HUD had made "numerous and consistent efforts * * * to persuade the Chicago Housing Authority to locate low-rent housing projects in white neighborhoods" (App. 44). Indeed, in this Court plaintiffs have not pointed to even one specific act by HUD with which they disagree, nor have they hinted at any action they seek as a remedy for what plaintiffs, the amici, and HUD all recognize as a critical and urgent national problem: the concentration of public housing projects in the predominantly Negro areas of the central city.

II

THE DISTRICT COURT CORRECTLY HELD THAT PLAINTIFFS HAVE FAILED TO STATE A CAUSE OF ACTION BECAUSE HUD DID NOT PARTICIPATE IN THE DISCRIMINATORY PRACTICES ALLEGED BUT RATHER HAS MADE CONSISTENT EFFORTS TO END THEM.

Plaintiffs argue, in essence, that because HUD's efforts to end CHA's discrimination[4/] proved unsuccessful at least in some respects, HUD itself violated plaintiffs' rights under the

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4/ Plaintiffs categorization of the Chicago public housing system as "de jure racially segregated" (Apt. Br., p. 2) is correct only with respect to the racial quotas formerly imposed on tenant selection at four projects. Any segregation resulting from the site selection policies was de facto (see, Note, 83 Harv. L. Rev. 1441, 1443 (1970)), in that no one was by law excluded from these projects because of his race. As to the racial quotas -- an issue now plainly moot -- it should be noted that they represented an improvement over the total exclusion of Negroes in effect until 1968. Moreover, there has been no showing that plaintiffs challenged these former tenant selection policies through the administrative procedure established in 42 U.S.C. 2000 d-1 and d-2. This Congressionally prescribed procedure must be followed prior to seeking judicial review. Green Street Assn. v. Daley, 373 F. 2d 1 (C.A. 7), certiorari denied, 387 U.S. 932 (1967).

Fifth Amendment and the 1964 Civil Rights Act (Apt. Br., p. 9). HUD wronged plaintiffs, it is asserted, by continuing "administratively and financially, to approve and participate in the carrying on and expansion of the segregated Chicago public housing system." (Apt. Br., p. 9). Inasmuch as plaintiffs conceded HUD should not have terminated its financial assistance to CHA, the exact conduct on HUD's part which plaintiffs feel wronged them has not been specified. In fact, plaintiffs do not suggest to this Court any specific instance in which HUD acted or failed to act in a manner they would not have acted had they been administering the housing program. Nor, for that matter, have plaintiffs suggested to this Court anything which HUD should be ordered to do to remedy the alleged unspecified wrong. These factors distinguish Hicks v. Weaver, 302 F. Supp. 619 (E.D. La., 1969), where the action had been brought to prevent construction of specified projects at specified sites, thereby challenging specific action by HUD relating to those projects. We also note that the order entered against HUD in Hicks was a preliminary injunction barring further federal funding, a type of relief which plaintiffs here no longer seek.

The district court correctly held that plaintiffs' allegations do not state a cause of action. The legal theory which arguably applies to HUD's conduct is the "joint participation" doctrine of Burton v. Wilmington Parking Authority, 365 U.S. 715 (1961). After a detailed analysis of the facts in that case, the Supreme Court held that the state agency had "so far insinuated itself into a position of interdependence with [the private restaurant]

that it must be recognized as a joint participant in the challenged activity * * *." 365 U.S. at 725. The court below correctly distinguished Burton as not involving relationships between "separate and distinct political entities and sovereignties" (App. 48). In addition, the issue in Burton was not whether the governmental agency should be enjoined; rather the question was whether there had been sufficient state action for the discrimination to fall within the scope of the Fourteenth Amendment. Finally, in Burton the state agency collected rents from the restaurant so that "profits earned by discrimination not only contribute[d] to, but also [were] indispensable elements in, the financial success of a governmental agency." 365 U.S. at 724. In the federal assistance program challenged here, this important element is, of course, plainly lacking.

An extension of the Burton doctrine to programs of federal assistance accompanied by federal standards would, as the court below noted (App. 48), have consequences both far-reaching and undesirable. In an analogous case involving the interstate highway program in which the federal government provides ninety percent of the funds and sets construction standards, the Court of Claims held that the federal government was not liable to a contractor for the actions of the state. D. R. Smalley and Sons, Inc. v. United States, 372 F. 2d 505 (Ct. Cl.), certiorari denied, 389 U.S. 835 (1967).

Application of a joint participation theory in this case would

also conflict with the statutory policy confining the role of federal authorities in the national housing program. Section 1 of the National Housing Act of 1937, 42 U.S.C. 1401, provides: "It is the policy of the United States to vest in the local public housing agencies the maximum amount of responsibility in the administration of the low-rent housing program * * *." In an urban renewal case, Harrison-Halsted Community Group, Inc. v. Housing and Home Finance Agency, 310 F. 2d 99, 104 (C.A. 7, 1962), certiorari denied, 373 U.S. 914 (1963), this Court recognized the same statutory policy:

> The federal Housing Act of 1949 is a subsidy statute which provides for federal grants of aid to local governmental units. Both Senate and House Committee reports stated "* * * that every project assisted be a local undertaking, locally planned, locally approved, locally managed and designed to serve local needs." (Senate Report No. 84, 81st Cong., 1st Sess., p. 37.)

In accordance with this statutory policy:

> By law, by contract and by administrative custom of almost thirty years' standing, the selection of sites for low-rent housing projects is vested in local housing authorities, not in HUD. The Department of Housing and Urban Development is confined by said law, contract and administrative custom to approval or disapproval of the sites which the local housing authority selects and presents to HUD. [Affidavit of Marie C. McGuire, 5/ dated November 9, 1966.]

The strong objections to having officials from Washington attempt to redesign metropolitan areas throughout the nation reinforce the statutory and administrative policy that the initiative and

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5/ Acting Deputy Assistant Secretary for Housing Assistance.

responsibility for selecting public housing sites rest with local authorities.

James v. Valtierra, 39 U.S.L.W. 4488 (April 26, 1971), reaffirms the right of individual localities to control their public housing program. In that case, the Supreme Court upheld the constitutionality of California's requirement that all proposed low-rent public housing projects be approved by a majority vote in a community election. The referendum provision had been challenged by citizens eligible for such housing who argued that the referendum constituted an invidious discrimination based on race and poverty, and the three-judge district court had so held. Valtierra v. Housing Authority of the City of San Jose, 313 F. Supp. 1 (N.D. Cal., 1970), reversed sub. nom. James v. Valtierra, 39 U.S.L.W. 4488 (April 26, 1971).

In light of the statutory framework, HUD faced the dilemma of accepting sites proposed by CHA which HUD believed to be lawful but not optimal, or rejecting those sites and depriving potential public housing tenants of improved shelter. The individual plaintiffs submitted affidavits in the companion case explaining why they accepted public housing in Negro projects located in Negro areas. Dorothy Gautreaux stated her need for improved housing was "desperate" when she filed her application with CHA. Her family of six was then occupying one bedroom (Affidavit of Dorothy Gautreaux, dated December 12, 1966). Odell Jones, his wife, and three children "were trying to live in two rooms," and "the rats had begun to run over the house at will"

when he applied for public housing. (Affidavit of Odell Jones, dated December 1966). When Doreatha R. Crenchaw applied to CHA, she and her three children were living in one and a half rooms where "the children were forced to sleep in the kitchen, we shared a bathroom with six other families, and our place was infested with rats and roaches." (Affidavit of Doreatha R. Crenchaw, dated December 8, 1966). That the 13,000 persons on CHA's family housing waiting list (see 296 F. Supp. at 909) may well be similarly situated indicates how harsh a decision disapproving proposed sites is. Nevertheless, HUD had decided to reject five of the 1966 proposed sites because they were located in areas of high Negro concentration. Plaintiffs have not expressly argued to this Court that HUD wronged them by not disapproving the other proposed sites.[6/]

Shannon v. United States Department of Housing and Urban Development, 436 F. 2d 809 (C.A. 3, 1970), involved HUD's site selection procedures for rent supplement housing. The Third Circuit held that "within the framework of the national policy against discrimination in federally assisted housing, 42 U.S.C. § 2000d, and in favor of fair housing[,] 42 U.S.C. § 3601,"

6/ Green v. Kennedy, 309 F. Supp. 1127 (D. D.C.),appeal dismissed, 398 U.S. 956(1970), relied upon by plaintiffs, is readily distinguishable. The issue there was whether or not the federal government could constitutionally allow income tax deductions for contributions to private segregated schools which were operated as an alternative to integrated public schools. Here the alternative to HUD's approval of public housing sites located in areas of Negro concentration was no sites at all.

HUD may exercise "broad discretion" between alternative types of housing. 436 F. 2d at 819. The court further held (436 F. 2d at 822):

> Nor are we suggesting that desegregation of housing is the only goal of the national housing policy. There will be instances where a pressing case may be made for the rebuilding of a racial ghetto. We hold only that the agency's judgment must be an informed one; one which weighs the alternatives and finds that the need for physical rehabilitation or additional minority housing at the site in question clearly outweighs the disadvantage of increasing or perpetuating racial concentration.

There is no question in this case that HUD's choice was an informed one. Indeed, plaintiffs base their argument upon the premise that HUD was fully informed (Apt. Br., pp. 1-2). There is no question that HUD made "numerous and consistent efforts * * * to persuade the Chicago Housing Authority to locate low-rent housing projects in white neighborhoods" (App. 44). In these circumstances, as the district court correctly held, plaintiffs have failed to state a cause of action under either the Fifth Amendment or the 1964 Civil Rights Act.

CONCLUSION

For the foregoing reasons, this appeal should be dismissed because the case is moot. Alternatively this Court should affirm

the decision below.

Respectfully submitted,

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MAY 1970

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of May, 1971, I served the foregoing Brief for the Appellee upon counsel for the appellants and the amici curiae by causing two copies to be mailed, postage prepaid, to:

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ADDENDUM

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

DOROTHY GAUTREAUX, ODEL JONES, DORETHA R. CRENCHAS, EVA RODGERS, JAMES RODGERS, ROBERT M. FAIRFAX and JIMMIE JONES, Plaintiffs, v. THE CHICAGO HOUSING AUTHORITY, a corporation, and C. E. HUMPHREY, Executive Director, Defendants.	)	Civil Action No. 66 C 1459

MEMORANDUM FOR THE UNITED STATES

Introduction

In response to the request of the Court and in light of its interest and concern in this case, the Government, and particularly the Department of Housing and Urban Development (HUD), offered on May 16th to advise the Court of its views in regard to the proposed judgment orders in this case and the practical impact of the proposed orders on the model cities, urban renewal, leased housing programs in Chicago. In addition, we were requested by the Court to provide information as to how the various HUD programs

and activities could be utilized to further the objectives of the Court.

This memorandum is presented in response to the Court's request for our views.

The United States strongly supports the objectives of the Court in this case We are concerned that the Court Order be realistic, so as to permit the provision for badly needed housing for poor families and that it be effective, in order to accomplish the objectives previously indicated by the Court.

We have considered the alternative Judgment Orders proposed by both parties (copies of which are attached), that transmitted to the Court by Mr. Polikoff by his letter dated June 2, 1969, and that presented to the Court by Miss Kula with her letter of June 4, 1969. Our comments are addressed to the provisions of Plaintiffs' proposed Order, for two reasons: First, Plaintiffs' Order is more comprehensive in scope and raises the full range of issues which the Court and the parties have considered, and in addition has received more extended consideration by the Court;second, we accept the Court's view that a generalized Order such as that proposed by CHA, substituting for specific criteria

a requirement for judicial review and approval of all project proposals, will not serve the Court's purpose of removing constraints which have heretofore inhibited both housing production and production of housing so located and administered as to serve the objectives of the Order. See, e.g., Louisiana v. United States, 380 U.S. 145, 154 (1965); Local 53, Asbestos Workers v. Vogler, 407 F. 2d 1047, 1052-53 (5th Cir., 1969). Accord: Green v. County School Board of New Kent County, 391 U.S. 430, 437-8 (1968); Brown v. Board of Education, 349 U.S. 295, 299, 301 (1955).

We accept the Court's intention to lay down specific requirements for dispersed and desegregated housing and base our comments on the provisions proposed by Plaintiffs. These comments deal first with factual material that we have been able to gather relating to the probable impact of the Order on provisions of new or rehabilitated public housing units; on leasing; on urban renewal; and on the model cities program. The second section of the material which follows sets forth certain comments and observations based upon the preceding information. The third

section which follows deals with affirmative actions that can be taken by HUD in furtherance of the objectives of the Court.

I. IMPACT OF PROPOSED ORDER

1. Impact on Provision of New or Rehabilitated Public Housing Units

From September 1958 through December 1967 CHA completed construction of 11,817 family dwelling units. However, of this number only 1,284 units were completed during the last 5 years of this period -- an average of 257 units per year. Since December 1967, only six units have been completed, but 1,259 are now in various stages of construction.

On the basis of an application filed by the CHA in January 1967, the HUD regional office is currently considering the reservation of 4,000 family units and 1,000 elderly units.

The proposed Order would hereafter require placement of at least three quarters of all family public housing units (and all of the next 1,330 units built) in a "General Public Housing Area." Out of a total city area of about 200 square miles, a rough calculation indicates that an area of approximately 75 miles is available for the location of such units. The Order further requires the scattering of such units by means of limitations on the amount of

public housing which may be placed in any given census tract and by project size limitations. Within this area there will, of course, be further limitations of site costs, availability and suitability.

The "Limited Public Housing Area" includes approximately 85 square miles classified non-white, to which have been added one mile buffer areas which aggregate approximately 40 square miles. Under the terms of the Order, no more than one quarter of the family public housing would be built in this area.

A measure of the change contemplated by the proposed Order may be gained from an analysis of the 8,050 units (or 10,903 units counting repeat requests) in "white" areas submitted to the city council by CHA over the past 15 years and disapproved by it. Sixty percent of those units were on sites along the boundary areas between the non-white and buffer zones. Twenty-five percent were in areas now classified non-white; and only 775 appear to have been proposed for the "General" areas as it is now delineated.

While we would support the objective of constructing housing outside the City of Chicago, in light of the probable difficulty of obtaining the required cooperation of local governments, that appears unlikely to be a major factor in the immediate future.

2. Impact on Leasing Program

The proposed Order also places the leasing program under a 3 to 1 requirement, requiring that 75 percent of units leased be in the "General" area.

There is a city-wide vacancy rate of less than 1 percent, and virtually no availability of three or more bedroom units. CHA reports that since 1965 it has leased only 180 family units, of which 44 are stated to be in white areas. Few, if any, are large units.

Currently, CHA has commenced using the leasing program for a number of purposes in the "Limited" area. It is being used to support nonprofit moderate-income housing projects where up to 20 percent of the units in such projects can be leased in order to assist sponsors in achieving financial feasibility, to reach poorer families, or to accommodate larger families. The T. W. O. - Maremont Project in Woodlawn is an example of such an undertaking.

The leasing program is also an element of certain rehabilitation programs, such as programs under the "Chicago Plan Agreement" and in the Department of Urban Renewal's rehabilitation programs on West Douglas Boulevard and Independence Avenue. Some leasing has already commenced and it is planned that several hundred units be leased under these three programs in the "Limited" areas.

3. Impact on Urban Renewal

The so-called "Proxmire Amendment" requires that 20 percent of the housing units provided in urban renewal projects subject to the Amendment shall be for low-income families or individuals. As stated in the Senate Report on the Housing and Urban Development Act of 1968 (Report Number 1123), this amendment "reflects the committee's concern that the present emphasis in urban renewal on the provision of housing for persons of low or moderate income be continued and reinforced, in view of the urgent need for housing at these levels." Low-rent public housing is a major source for the provision of such units. The location of the urban renewal projects is such that probably at least four-fifths of the necessary public housing would have to be built in the "Limited Public Housing Area."

The maximum number of dwelling units permitted on land to be disposed of in projects subject to the Proxmire Amendment is 59,002 units, assuming actual construction at maximum permitted densities. Should this total be reached, 11,800 low-rent units would be needed in the project areas involved in order to meet the statutory requirement.

The statistics above must be considered in light of several other factors which reduce the impact of the order on this program. The projects involved are recent projects, in early stages of planning or development. Therefore, only a small fraction of the indicated housing will be needed in the years immediately ahead. In addition, the City proposes to rely on Section 236 of the National Housing Act for much of the low-income housing required by the statute. Projects developed under this FHA moderate-income housing program will be able to house families in the public housing income range if they are operated to utilize the maximum Federal subsidy available. Moreover, a substantial portion of the public housing programmed for these projects will undoubtedly be housing for the elderly, which is not affected by the Order.

The urban renewal program is directed at slum and blighted areas, most of which in Chicago are in the "Limited" area, and Congressional mandates increasingly require provision of housing for low-and moderate-income families in such project areas. In addition, the national goals to which the program's priorities are directed by the Department make provision for housing of these income groups the primary factor for priority of approval of projects. The Order can be reconciled with urban renewal efforts, but its effects on the present renewal program must be carefully evaluated.

Urban renewal is important not only in terms of housing production but in terms of the objectives of desegregation. Urban renewal affords one of the few possibilities for making inner city neighborhoods sufficiently attractive to partially reverse the out-migration by bringing some white families back into the center city.

The neighborhood preference aspect of the proposed Order may have an adverse impact on relocation efforts connected with urban renewal and other public programs causing displacement of families and individuals. The latest workable

program submitted by the City of Chicago to HUD estimates displacement from January 1969 to December 1970 by urban renewal and other public programs as including 5,165 families, of whom 3,484 are non-white. In addition, we estimate urban renewal displacement over the life of projects now covered by contracts to involve 21,381 families and 14,435 individuals. Of these, 11,514 families and 8,556 individuals are non-white. A few thousand families and individuals have already been displaced; on the other hand, estimates do not include three large rehabilitation areas.

While neither set of figures is broken down by incomes, a sizable percentage of displacees are persons of low income. Public housing is the essential resource to provide relocation housing for such persons, and is counted on in planning and scheduling urban renewal undertakings. A 50 percent "neighborhood preference" in "white" areas where most of the dwelling units must be placed under the Order could reduce by half the number of units available for rehousing of displaced non-white families and individuals.

4. Impact on Model Cities

Three of the four model neighborhoods in the Chicago model cities program are in the "Limited Public Housing Area." Current proposals for these four areas contemplated provision of 4,400 units of public housing over a 5-year period, but under the City's program, 2,450 are for the elderly, and would not be affected by the Order. Of the 1,950 units slated for family occupancy, 1,450 are in the "Limited" area. Some or all of these units may duplicate units required to meet the statutory urban renewal requirement.

Federal law does not require such units to be placed within model neighborhoods. Nevertheless, in view of the statutory objective of improving living conditions in such areas, an Order will certainly have substantial impact on rebuilding or restoration of the model neighborhoods.

In the three areas involved, 12,716 families out of 113,355 -- or slightly more than 11 percent -- earn less than $3,000 per year. Many additional families are within the initial occupancy income limits for public housing in Chicago which range

from $4,200 for a single person to $10,000 for a family of twelve. Public housing is the only program in Chicago which has been able to reach families in the lower segment of this income range.

II. COMMENTS

We have carefully reviewed the provisions of the plaintiffs' proposed order, and have come to the conclusion that the basic structure and direction of that order are appropriate to accomplish the Court's objectives. In light of the absence of information concerning the availability of sites in the "General" area, we are not in a position to assure the Court that these provisions are the best ones, or that the order is workable as stated. After the order has been in effect, and the results of the site survey discussed below are available, it may be necessary to make changes in the order. Accordingly, we suggest that any order of the Court expressly recognize that the specific features (e.g., 75-25 percent requirement) are subject to revision based upon experience and further information.

1. The 75 Percent-25 Percent Requirement

It is presently impossible to evaluate the workability of the basic 75 percent-25 percent requirement of the proposed Order. It will require the location of many sites in an area where site availability is still an unknown factor. To the extent that there may be difficulties in obtaining sites and getting production in the "General" area, the formula would impose another restriction on a program which is already failing to make available sufficient public housing to the families in non-white areas, or indeed to any of the poor families in Chicago. The necessity for dispersion and a balanced distribution of public housing in the City must somehow be reconciled with the need for accelerated response to the housing needs of persons in the "non-white" and buffer areas.

The 100 percent requirement for 1,330 units in the "General Public Housing Area" to balance 1,330 units now being provided will intensify the problems above. It would appear preferable and more logical to regard the latter as part of the past record on which the Court's opinion was based, and to confine the Order to one formula uniformly applicable to all future housing production.

We recognize and accept the Court's belief that specific criteria are essential to an Order. Any ratio calling for provision of housing units in "white" areas equal to or greater in number than those in "non-white" areas would require a striking change in CHA's program. It is, therefore, particularly unfortunate that there is little or no information as to the prospective availability of usable sites in the "General Public Housing Area" as delineated in the proposed order. We regret that we are unable at this point to advise the Court whether the particular 3 to 1 ratio proposed by the plaintiffs, or any other ratio, is in fact appropriate.

2. The Leasing Program

Application of the proposed Order to leasing may present some special problems. The primary present utility of the leasing program in Chicago is in connection with new moderate-income housing projects and rehabilitation programs in non-white areas. If units for leasing are as scarce in other areas as we understand them to be, the proposed Order would make it virtually impossible to use the leasing program for this purpose. In order

not to deprive neighborhood and other nonprofit projects in the "Limited" area of the support which this program can furnish them, the effect of this provision of the Order must be carefully evaluated.

3. "Neighborhood Preferences"

There is basis for concern in regard to the proposal to give a preference to "neighborhood residents" for 50 percent of the dwelling units in a project. Such preferences can have the effect of denying admission to public housing to some non-whites who have been waiting for public housing for long periods. The proposal may be subject to misunderstanding and attack by non-whites denied admission, and it may be subject to abuse.

To the extent that the Court requires that projects be small, the location of such projects in white neighborhoods may well achieve the desegregated living pattern which is sought without regard to the precise composition of the residents of the projects. Though this is less true of larger projects, we question whether such preferences or quotas are sufficiently useful to overcome the disadvantages as well as the complications they would add to already cumbersome tenant assignment procedures.

4. Other Comments

We agree that the Court's proposal to limit project size to occupany by 150-200 persons is preferable to a 24-dwelling unit limitation. This still does not permit judgments on size to be made in relation to neighborhood development, services and facilities, except to a very limited extent, but it ought to be possible to make provision for exceptions in cases where somewhat larger projects would not be disadvantageous in light of the location and facilities available.

It appears that some exceptions to the limitation to 15 percent of the family living units in a census tract will be necessary if statutory and other requirements are to be met, particularly in the urban renewal program. It should not be difficult to provide for such exceptions where needed.

In our view the following clarifying revisions might improve the proposed order:

(1) To more clearly state the objectives of the Court, we would suggest deleting the second paragraph in the proposed judgment order, and substituting therefor the paragraph contained in Attachment A to this memorandum.

(2) In Paragraph V B, the relationship between persons presently on the "waiting list" and new registrants is not clear. Consistent with the first-come, first-served policy of the HUD Title VI Regulations, 24 C.R.F. 1.4(b)(2)(ii) we believe that those people who have been on the "waiting list" prior to this time should receive credit for that period of time in determining the order in which eligibles are to be offered new units in accordance with existing priorities. Similarly, persons who are already tenants should be allowed to transfer only in accord with their place on the new "waiting list."

III. AFFIRMATIVE ACTIONS

HUD has considered possible means of utilizing its various programs in support of a CHA program under a Judgment Order. There are several supporting actions which we are prepared to take.

We can promptly make funds available for a survey to located available and suitable sites. We can also fund activities to modernize existing public housing so as to make that housing

located in the "Limited" area as desirable and as well serviced as possible. Another action this Department can take, as occasions may arise, is to encourage and approve utilization of other HUD programs for improvement of neighborhoods into which housing projects are introduced pursuant to a Court Order.

In one specific respect, HUD is ready and willing to assist the Court directly. We will be happy to participate in any arrangement whereby CHA proposals are screened or reviewed by HUD in order that we may furnish technical advice as to their conformity to the dictates of the Court. We believe that some such procedure could substantially relieve the Court of a technical burden which it would otherwise be forced to assume.

In conclusion, we assure the Court that we fully support the objectives of overcoming segregated and over-concentrated patterns of low-rent public housing in Chicago. We

hope that they can be achieved together with the production of a substantial volume of sorely needed housing. We will do all that we can to contribute to the achievement of these objectives.

Respectfully submitted,

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ATTACHMENT A

The Court having determined that the defendants, Chicago Housing Authority and its Executive Director have violated their obligations under the Fourteenth Amendment of the Constitution of the United States by following racially discriminatory tenant assignment practices and racially discriminatory site selection procedures and practices, with the purpose and effect of maintaining patterns of residential segregation in Chicago; and the Court having conferred on several occasions with counsel for the parties and having received their written and oral statements as to the provisions of this judgment order.