In the

United States Court of Appeals

For the Seventh Circuit

No. 71-1073

DOROTHY GAUTREAUX, et al.,

Plaintiffs-Appellants,

vs.

GEORGE W. ROMNEY,

Defendant-Appellee.

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

REPLY BRIEF OF APPELLANTS

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TABLE OF CONTENTS

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REPLY BRIEF

The opinion below rested on three grounds: (1) Count I of the complaint was dismissed for lack of jurisdiction; (2) Count II of the complaint was dismissed for failure to state a claim upon which relief could be granted; and (3) both counts were dismissed because of the doctrine of sovereign immunity. HUD does not respond to the discussion in our initial brief of

the first and third grounds, and presumably abandons them as reasons for affirmance. The second ground is dealt with in Part II of HUD's brief, and a mootness argument, not relied upon in the opinion below, is advanced in Part I.

We will first reply to HUD's discussion of the second ground, the liability issue, and then deal with the new mootness argument. Nothing further is added here to what we said in our initial brief about the two grounds HUD has presumably abandoned.

I. A CLAIM FOR RELIEF AGAINST HUD HAS BEEN ESTABLISHED.

HUD says, "Plaintiffs argue, in essence, that because HUD's efforts to end CHA's discrimination proved unsuccessful ... HUD itself violated plaintiffs' rights ..." (p.12.) That, of course, is not our position, in essence or otherwise. HUD is liable because of what it did - namely, knowingly participate in, approve and fund a racially discriminatory housing system - not because of its failure to dissuade CHA from discrimination. In one of its briefs below HUD made this ironic comparison:

> "If mere knowledge of the City's intention to resist desegregation implicates HUD, then the policeman is indeed implicated in the nefarious activities of those he pursues." (Rec. Item 52, HUD's memorandum, p. 13-A.)

We responded that the policeman is implicated in the nefarious activities of those he pursues if, having failed to dissuade them, he participates in, approves and funds their activities.

The Court is respectfully referred to pages 4-7 of our initial brief for a summary of the facts concerning HUD's knowledge of CHA's discriminatory site selection practices and the detailed and extensive role HUD played in them, even to "negotiating" with CHA concerning its sites.*

In our initial brief we said that three cases, Hicks v. Weaver, Shannon v. HUD and Green v. Kennedy, as well as the clear language and intent of 42 USC §2000d, showed that under these facts a claim for relief against HUD had been established. (Initial br. p.24.) HUD's brief fails to deal in any adequate way with these cases and hardly even mentions §2000d in this connection. Apart from mischaracterizing our argument HUD's brief on the legality of its conduct really reduces to the stunning assertion that because of the "dilemma" (p.16) that

*HUD's brief is rife with suggestions that plaintiffs have not specified the "exact [HUD] conduct" which wronged them (p.13), or given a "specific instance" in which HUD acted in a manner with which they disagree (Ibid.), or "expressly argued" that HUD wronged them by not disapproving proposed CHA sites (p.17), and the like (although inconsistently as well as incorrectly HUD elsewhere says that the "only alleged wrongdoing on HUD's part was to provide federal financial assistance to CHA ..." - p.11). This is ostrich-like. It is plain that the theory of the action is that HUD's participation in and approval and funding of CHA's discriminatory site selection practices, knowing of the discrimination, all constitute specific unlawful discriminatory action by HUD in violation of 42 USC §2000d and the Fifth Amendment. See our initial brief, pp. 21-22.

the alternative to HUD's illegal conduct might have been "no sites at all" (p.17), HUD's violations of plaintiffs' statutory and constitutional rights should be sanctioned by dismissal of the case against it. As to such a "defense" the district court in the companion case said:

> "It is also undenied that sites for the projects which have been constructed were chosen primarily to further the praiseworthy and urgent goals of low cost housing and urban renewal. Nevertheless, a deliberate policy to separate the races cannot be justified by the good intentions with which other laudable goals are pursued. Brown v. Board of Education of Topeka, Shawnee County, Kansas, 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 (1954)." 296 F.Supp. at 914.*

In Hicks v. Weaver the court said:

> "This, then, is a case where the dominant factor in selecting sites for the location of public housing was the racial concentration of the neighborhoods. Its purpose was to perpetuate segregation of the races in public housing, and the present location of the sites will most likely perpetuate discrimination. This is rank discrimination forbidden by both the equal protection clause of the Fourteenth Amendment and 42 USC §2000d. Cf., Gautreaux v. Chicago Housing Authority, supra. Likewise, through its Secretary Weaver, HUD has

*The district court also referred in this connection to Cooper v. Aaron, 358 U.S. 1 (1958), in which the Supreme Court rejected the argument that the laudable goals of maintenance of a sound educational program and preservation of the public peace justified delay in implementing school desegregation. 358 U.S. at 12-13, 16-17. See also this Court's opinion on appeal in the companion case respecting "community hostility" as a reason for delaying the enforcement of constitutional rights. Gautreaux v. Chicago Housing Authority, 436 F.2d 306, 312-13 (7th Cir. 1970).

> violated the plaintiffs' right under 42 USC §2000d. As noted above, HUD was not only aware of the situation in Bogalusa but it effectively directed and controlled each and every step in the program. Nothing could be done without its approval. HUD thus sanctioned the violation of plaintiffs' rights and was an active participant since it could have halted the discrimination at any step in the program. Consequently, its own discriminatory conduct in this respect is violative of 42 USC §2000d." 302 F.Supp. at 623 (emphasis added).

It would be hard to conceive of a more relevant case.

HUD suggests Hicks should be distinguished because there the development of the proposed, discriminatorily located housing projects was enjoined whereas here construction of the specific projects sought to be enjoined went forward during the pendency of the lawsuit. (p.13.) But Shannon v. HUD teaches that the circumstance that construction proceeded, even to completion, is no bar to relief. 436 F.2d at 822. Moreover, HUD's "distinguishing" of Hicks relates solely to the appropriate form of relief, not to liability; the holding of Hicks is that HUD violated §2000d by doing precisely what HUD has done in Chicago (except that in Chicago HUD did it over a longer period of time). Hicks is exactly in point on the issue of liability and HUD's brief does not even purport to distinguish Hicks on that issue.

It is true that in Hicks there appears to have been no evidence, as there is here, that before giving its approval to discriminatorily selected sites HUD had tried to dissuade the

local housing authority from its discriminatory ways. But certainly it is too late in the history of the law of race relations in this country to argue that good intentions insulate government officials from liability for racially discriminatory actions.

> "It is of no consolation to an individual denied the equal protection of the laws that it was done in good faith ..." Burton v. Wilmington Parking Authority, 365 U.S. 715, 725 (1961).*

HUD's effort to distinguish Shannon is perfunctory to the point of nonexistence. Shannon held that §2000d was violated where HUD had approved sites under a subsidized housing program which "would seem to have the same potential for perpetuating racial segregation as the low rent public housing program has had. See Gautreaux v. Chicago Housing Authority, 296 F.Supp. 907 (N.D. Ill. 1969); Hicks v. Weaver, supra." 436 F.2d at 820. As with Hicks, the case is almost precisely in point on the issue of liability. Yet the whole

*In Green v. Kennedy, 309 F.Supp. 1127 (D.C.D.C. 1971), the court said:

> "We have taken into account that what is involved in the case before us is the Federal Government, and not the States, and that there is no allegation or evidence that it is the purpose of the Federal statute or regulations to foster segregated schools. These considerations do not undercut the plaintiffs' claims ... [T]he lack of segregative purpose on the part of the Government does not avoid the constitutional issue if the Government action materially supports a program of school segregation." 309 F.Supp. at 1136; appeal dismissed, 398 U.S. 956 (1970).

of HUD's effort to deal with Shannon consists of quotations from the opinion to the effect that HUD has broad discretion to make choices between alternative types of housing in achieving national housing objectives and that desegregation is not the only goal of the national housing policy. (pp. 17-18.) But Shannon also says that such discretion "must be exercised within the framework of the national policy against discrimination in federally assisted housing, 42 USC §2000d, and in favor of fair housing ..." 436 F.2d at 819, emphasis added. Obviously HUD has no discretion to violate §2000d, nor does it have the temerity to make that argument in so many words. Its treatment of Shannon, however, seems designed to create just that implication.

In a related connection HUD, while making no mention of §2000d, argues at length that national housing policy vests a great deal of responsibility in local housing agencies. (pp. 15-16.) The inference, presumably, is that HUD should be absolved from responsibility for participating in, approving and funding local discrimination. We pointed out in our initial brief (and there has been no response by HUD) that it was the obvious intent of Congress that §2000d apply to discrimination carried on by a State or other local political subdivision. (p.20.) Plainly the thrust of a statute which specifically prohibits discrimination in locally administered programs cannot be avoided by pointing to a general policy to

vest large responsibility in local administrators.

HUD's knowing participation in, and approval and funding of, a program involving de jure racial segregation in site selection is as strong a case of violation of §2000d as is likely to be found. If that section was violated in Shannon, surely it was violated here.*

HUD likewise fails to distinguish Green v. Kennedy. There the Internal Revenue Service conceded that §2000d would be violated by granting tax benefits to segregated schools if "state action" were involved in their operation, and the court held it to be violated as well by a grant of such benefits to wholly private segregated schools (i.e., schools not infused with "state action"). We observed in our initial brief (p.23) that if §2000d is violated by aiding private discrimination, as Green v. Kennedy held, a fortiori it is violated by aiding state (e.g., CHA) discrimination. HUD's response in its entirety

*HUD objects to the characterization of site selection in the Chicago public housing system as "de jure." (p.12.) Giving "de jure" its usual meaning of having been done deliberately and under governmental authority, this characterization of the Chicago situation is perfectly proper. Thus, in one of its briefs below HUD itself speaks of "the City's intention to resist desegregation." (Rec. Item 52, HUD's memorandum, p. 13-A.) And a HUD official said that it was "common knowledge" that sites in Chicago were not located in white areas because the Chicago City Council would not permit Negroes to move into those areas (Rec. Item 52, deposition of Joseph Burstein, pp. 63-64), and that the objection "was on the basis of the white composition of these areas" and the "generally understood occupancy of public housing as being virtually all Negro." (Id. p.66.)

is to say that the private segregated schools in Green were operated as an alternative to integrated public schools whereas the alternative to HUD's approval of sites in Chicago would have been no sites at all. (p.17.) This is to say, presumably, that if in Green the public schools had been closed it would have been perfectly legal for the Internal Revenue Service to grant tax benefits to private segregated schools!

HUD says it "believed [CHA sites] to be lawful but not optimal." (p.16.) We assume this to be the case and have not charged HUD with believing that its course of conduct was illegal any more than we charged CHA with believing that its conduct was in violation of law. The fact that HUD did not believe that its participation in and approval and funding of discriminatory site selection was unlawful is no more relevant than its pursuit of laudable housing goals and lack of segregative purpose. In both Hicks and Shannon HUD was held to have violated §2000d for conduct which preceded a determination that its site selection approvals were unlawful. Presumably in each of those cases HUD did not believe itself to be violating the law. Presumably there too HUD was approving sites which it "believed to be lawful but not optimal."

HUD says that the legal theory which "arguably applies" to its conduct is the "joint participation" doctrine of Burton v. Wilmington Parking Authority. (p.13.) The legal theory which does apply to HUD's conduct is HUD's clear violation, by

its actions (see our initial br. pp. 4-7), of §2000d. Hicks, Shannon and Green all support this "theory". No reliance need be placed on Burton. Nonetheless, the factual differences between that case and this one, over which HUD labors in its brief (pp. 13-14), are differences which are not legally significant. The principle of Burton supports plaintiffs' claim. (See our initial br. p.21.)*

* * *

Hicks, Shannon, Green and the plain language of §2000d all make it clear that a claim for relief against HUD has been established.

*HUD's reliance (p.14) upon D. R. Smalley & Sons, Inc. v. United States, 372 F.2d 505 (Ct. Cl. 1967), is also misplaced. Smalley was an action for money damages against the United States in which the Court said:

> "All of the acts and omissions complained of by plaintiff were those of the State of Ohio. It does not allege a single affirmative act on the part of the defendant that deprived it of any of its property nor that interfered with or disturbed its property rights in any way. Without such allegations, plaintiff cannot recover damages from defendant ..." 372 F.2d at 508, emphasis added.

Here, of course, it is HUD's conduct which is complained of. See our initial br. pp. 21-22.

II. THE CASE IS NOT MOOT

HUD argues the case is moot because in the companion case plaintiffs obtained relief against CHA and because HUD "strongly supports the objectives of the Court" in that case, thereby supposedly destroying "concrete adverseness" of the parties on this appeal. (p.11.) The argument is utterly without merit.

> "[A] case is moot when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome." Powell v. McCormack, 395 U.S. 486, 496 (1969).

Here the issues are "live" and the parties possess a legally cognizable interest in the outcome for several distinct reasons.*

First, there is a "live" continuing controversy over whether plaintiffs are entitled to relief against HUD respecting the continuing effects of the discrimination practiced against them. HUD's brief contends that plaintiffs have already secured all the relief to which they are entitled or which the facts of the case permit - "all 'other and further relief' that the

*Another formulation is that, "A case is moot when there is 'no longer a subject matter on which the judgment of this Court [can] operate.' St. Pierre v. United States, 1943, 319 U.S. 41, 42 ..." Singleton v. Board of Commissioners, 356 F.2d 771, 773 (5th Cir. 1966), a test plainly not met with respect to the segregated public housing system in Chicago. On any view that system, and its continuing harmful effects on the plaintiff class, will unfortunately be with us for a long time. See discussion in the text, infra.

district court deemed 'just and equitable' has already been secured in the companion case." (pp. 10-11.) Plaintiffs, on the other hand, assert that relief against HUD is required if the continuing effects of the discrimination against them are to be remedied.

The nature of the case of course prevents full relief overnight. Buildings which were discriminatorily located cannot be picked up and moved to non-discriminatory locations. This is not a school segregation case in which a dual school system can be substantially eliminated at one fell swoop by rearranging boundaries, pairing schools, busing, and the like.* Here, the remedy can come only over a long period of time as new housing is built. Thus, remedying the continuing effects of the discrimination of the past is a complex task which, notwithstanding the order entered against it in the companion case, CHA cannot accomplish without further HUD action and without further action by the City of Chicago (see 296 F.Supp. at 910) with which HUD has continuing, important relationships. To illustrate HUD's pervasive implication in the many facets of that task a "letter of intention", signed by HUD with CHA and the City, dated May 12, 1971, is attached as an Addendum to this brief. The letter makes it clear that HUD is crucially involved

*Even in such a case it has been said, "Only permanent - demonstrably permanent - desegregation of the Schools would render this case moot." Singleton v. Board of Commissioners, supra, 356 F.2d at 773.

in the shaping of CHA policies and programs which bear directly on when and how much relief will be provided to the plaintiff class. (Indeed, the letter shows rather dramatically that without HUD's continuing and affirmative involvement there might be no remedial action from CHA at all since, acting alone, CHA is powerless to remedy the continuing effects of past site selections. For example, the letter says that the parties recognize that their objectives "can only be achieved through their mutual cooperation." Addendum, p.15.) The same point is made by HUD itself by its references to affirmative actions it says it has taken and is taking to support the court's objectives in the companion case. (pp. 9-10.)

Thus, the relief secured in the companion case was necessarily limited and incomplete and, by itself, provides no assurance that the continuing harmful effects of the past discrimination will be remedied. It was all the relief the district court deemed appropriate in that case against CHA, the only party to that case. But both the letter of intention and HUD's references to its affirmative actions show that HUD's conduct will be a critical factor in determining how soon and how fully the continuing harm to the plaintiff class will be alleviated. If HUD can feasibly contribute to a prompter and fuller alleviation of that harm than would occur without its efforts, as it clearly can, plaintiffs are entitled to an order calling for such efforts. "It is for the federal courts 'to adjust their remedies so as to

grant the necessary relief' where federally secured rights are invaded." J. I. Case Co., v. Borak, 377 U.S. 426, 433 (1964). The Court "has not merely the power but the duty to render a decree which will so far as possible eliminate the discriminatory effects of the past ..." Louisiana v. United States, 380 U.S. 145, 154 (1965).

That duty would not of course be satisfied by requiring plaintiffs to accept HUD's actions as a volunteer (as HUD suggests) in lieu of the enforceable judgment to which they are entitled. Volunteers are by definition not legally obligated to continue their good offices. Without the entry of judgment against it, HUD's affirmative action to remedy the effects of its own past misdeeds will not be assured. Moreover, the scope and nature of HUD's remedial activity requires judicial definition. HUD's purely voluntary efforts availed nothing while plaintiffs' constitutional rights were being thwarted over a period of decades in the manner which forced this suit. Without judicial definition there will be no assurance that HUD's future efforts will be any more effective.*

*In October, 1970, the United States Commission on Civil Rights published a report which criticized HUD (and other federal agencies) for its failure to make full use of fair housing enforcement tools at its command. Site selection inadequacies were specifically mentioned. The Federal Civil Rights Enforcement Effort, Summary of a Report of the United States Commission on Civil Rights 1971, Clearinghouse Publication No. 31 (U.S. Government Printing Office), pp. 31-32. Seven months later, on May 10, 1971, the Commission issued a follow-up report in which

(continued on page 15)

HUD's efforts, like CHA's efforts, will be enormously helpful in creatively working out the implementation of a remedial decree. But absent a judgment order plaintiffs will be left only with the continuing good intentions of federal officials who for years say they tried to reverse the Chicago pattern - and wound up approving and paying the bills for a dismal and unconstitutional all-Negro public housing system.

In a variety of contexts the Supreme Court has held that "continuing effects" precluded a finding of mootness and preserved a subject matter upon which the judgment of the Court could operate. See, e.g., Carroll v. Princess Anne, 393 U.S. 175, 178-79 (1968); Bus Employees v. Missouri, 374 U.S. 74, 77-78 (1963); and Southern Pacific Terminal Co. v. ICC, 219 U.S. 498, 514-16 (1911). Such effects are present here, along

(continued from page 14)

it expressed doubt about the degree of commitment of some Federal agencies to take the steps necessary to assure equal rights. The Federal Civil Rights Enforcement Effort - Seven Months Later, United States Commission on Civil Rights, May 10, 1971, p.11. HUD was specifically criticized: "HUD appears to have regressed in the vigor with which it approaches its fair housing responsibilities." (Id., Housing Section, p.4.)

Indeed, without a judgment against HUD, and notwithstanding all its protestations, HUD's volunteer efforts may well be counter-productive. One observer of urban problems, who has also served as a consultant to several government agencies, including HUD, says that current urban renewal and housing programs, including public housing programs, "could be viewed as a concerted effort to maintain the ghetto." John F. Kain and Joseph J. Persky, Alternatives to the Gilded Ghetto, The Public Interest, No. 14, Winter 1969, p.79. (Kain is the consultant.)

with a subject matter upon which the judgment of the Court can operate. Accordingly, the case is not moot.

Second, there is a continuing dispute over the legality of HUD's conduct. In United States v. W. T. Grant Co., 345 U.S. 629, 632 (1953), the Court said that voluntary cessation of allegedly illegal conduct does not make a case moot, for "A controversy may remain to be settled in such circumstances, e.g., a dispute over the legality of the challenged practices [citations omitted]." Here, HUD continues to insist that its actions were perfectly lawful, thus underlining the importance of a judicial determination that HUD's conduct was a violation of plaintiffs' rights and that the excuses advanced by HUD in its brief do not justify such unlawful action by federal officials.

Third, the fact that the particular relief of termination of funding for specific projects is not in issue does not render the case moot. Even if plaintiffs were not seeking other relief, "A court may grant declaratory relief though it chooses not to issue an injunction or mandamus." Powell v. McCormack, 395 U.S. 486, 499 (1969); see also, 395 U.S. at 517-18. Here, plaintiffs are seeking affirmative and declaratory relief, and HUD does not explain why these requests should be viewed as mooted simply because, by reason of ongoing construction during the pendency of the case, plaintiffs no longer seek to enjoin financial assistance to specific projects. "Where several

forms of relief are requested and one of these requests subsequently becomes moot, the Court has still considered the remaining requests." Powell v. McCormack, supra, 395 U.S. at 496. However, even completion of construction does not make a case moot. "[C]ompletion of the project ... does not ... make the case moot in the Article III sense. Relief can be given in some form." Shannon v. HUD, 436 F.2d 809, 822 (3rd Cir. 1970).*

*HUD says plaintiffs "now" concede that termination of financial assistance to CHA would have been inappropriate. (pp. 10-11.) Plaintiffs never sought, in their complaint or elsewhere, to terminate across-the-board funding to CHA. The complaint sought to enjoin assistance to certain specific projects, then proposed but not yet built, as well as more generally to enjoin HUD assistance in support of the racially discriminatory aspects of the public housing system in Chicago; it sought "other and further relief" as well. (A, 19-20.) By the time of the decision below the specific projects were already underway, and the decree in the companion case therefore permitted construction to continue. (304 F.Supp. at 738, the 1458 Dwelling Units there referred to.) The "concession" to which HUD presumably refers is the statement in one of plaintiffs' briefs below to the effect that in the then circumstances of the case a cut-off of federal funds for those projects would have been counter-productive. Plaintiffs said that the remedy to which they were entitled required the production of more, not less, housing and "what plaintiffs seek from HUD is its affirmative action to that end, not the negative action of cutting off funds." (Rec. Item 44, plaintiffs' brief, p.16.)

HUD also says plaintiffs have not "hinted at any action they seek as a remedy ... (p.12.) However, "The propriety of such remedies [injunction and mandamus] ... is more appropriately considered in the first instance by the courts below." Powell v. McCormack, 395 U.S. at 550. Several examples of forms of relief which might be appropriate were listed by amici in the court below. (Rec. Item 50, brief of Lawyers' Committee for Civil Rights Under Law and others, p.12.)

Finally, the question of the legality of HUD's conduct in the present case is one of obvious public importance in whose resolution there is a great public interest. It is well-established that "a public interest in having the legality of ... practices settled ... militates against a mootness conclusion." United States v. W. T. Grant Co., supra, 345 U.S. at 632.

* * *

HUD's suggestion that the parties lack "concrete adverseness" (p.11.) because HUD as a volunteer supports the court's objectives in the companion case is belied by the continuing controversies concerning the legality of HUD's past actions and whether and what relief should be granted against it. The subject matter of those past actions - Chicago's segregated public housing system and its continuing harm to the plaintiff class - persists as a subject matter upon which the Court's judgment can operate. Effective relief from that harm cannot be obtained without such a judgment against HUD. For the reasons and under the authorities given above, a case in such a posture is not moot.

CONCLUSION

The theme that runs through HUD's entire brief is that as a volunteer it supports the objectives of the court in the companion case (and has really supported them all along as shown by its efforts to persuade CHA to the course of nondiscrimination), and that therefore it is inappropriate to grant relief against it because under these circumstances there is no liability and anyway the case is moot.

Surely neither HUD's past unsuccessful efforts nor its present protestations are a substitute for specific relief. Surely plaintiffs are entitled to, and the courts are duty bound to give, effective legal redress for proven wrongs, not just the promises of a volunteer. This is especially important where, as here, the wrongdoer is the Federal Government and the wrong is racial discrimination.

> "[M]any minority group members are losing faith in the Federal Government's will and capacity to protect their rights. Some also are losing faith that equality can be achieved through law. It is important that their faith be restored ..." (The Federal Civil Rights Enforcement Effort, supra, p. iii; and see the amicus brief filed in this Court, p.15.)

In its "Seven Months Later" Report, the Commission on Civil Rights said, "This is not 1956 when Dr. Martin Luther King's Montgomery bus boycott reawakened the Nation to a realization of racial injustice by making its inhumanity visible. It is not 1964 when

we rode the crest of optimism, convinced that the struggle for racial equality was all but won. It is 1971 and time is running out ... It is too late for promises." (Seven Months Later, supra, p.12.)

The Court should reverse and remand with instructions to grant the declaratory relief requested as to all four counts of the complaint, and to determine and grant whatever affirmative injunctive relief may be appropriate. Powell v. McCormack, supra, 395 U.S. at 550.

Respectfully submitted,

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May 31, 1971

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ADDENDUM

RICHARD J. DALEY
MAYOR

CITY OF CHICAGO
OFFICE OF THE MAYOR

May 12, 1971

Mr. George J. Vavoulis
Regional Administrator of
Department of Housing and
Urban Development
360 North Michigan Avenue
Chicago, Illinois 60601

Dear Mr. Vavoulis:

In accordance with the conferences held by representatives of our offices, this letter of intention is submitted delineating the proposed activities to be undertaken in the City of Chicago to accomplish the objectives of providing increased housing opportunities for all its citizens. Your acceptance of this letter, as well as the acceptance thereof by the Chicago Housing Authority (CHA), reflects the intention of your agencies to provide your full cooperation in the implementation of these programs.

The following is an outline of the proposed action program and a timetable for its accomplishment.

PART I. UNDERTAKINGS BY THE CITY AND THE CHA

The following actions are to be implemented within the times hereinafter set forth.

A.

DEMOLITION

The City will reduce projected demolition of housing units for

the current Workable Program period from 12,827 units to 12,327 units and shall submit a report to HUD by June 15, 1971, identifying the sources and numbers of such reductions in demolition activities.

B.

DEVELOPMENT OF SECTION 235 HOUSING SITES

The City of Chicago and other local entities presently have title to approximately 1,000 scattered vacant lots situated within the boundaries of the City which will accommodate the development of single-family or townhouse units under the Section 235 housing program. Working with Model Cities' funds, the City will accomplish the following:

1. Develop programs for land cost write-down, down-payment loans or grants, and homemaking assistance.
2. Establish procedures and formalize agreements, satisfactory to HUD, to assure that not less than 250 of units of said Section 235 housing will be available for purchase of low-income families.
3. A delineation of the location of sites for 500 units of said Section 235 housing, including the 250 units which will be made available for purchase by low-income families, shall be submitted on or before June 15, 1971, to HUD together with a program and construction schedule. Invitations for bids for construction contracts for the 250 units for low-income families shall be announced by June 15, 1971, and contracts shall be executed by September 15, 1971, subject to HUD providing Section 235 allocations.

4. Said housing shall be available in accordance with the 1968 Civil Rights Act and the Open Housing Law of the City of Chicago. It is anticipated that the City and The Chicago Housing Authority will cooperate in this effort by making available to the developers of the units for low-income families, approximately 50-100 sites in census tracts in the City with a non-white population not in excess of thirty (30) percent.

C.

LEASING AND RENT CERTIFICATE PROGRAM

A new leasing and rent certificate program will be undertaken with up to one million dollars of Model Cities money, or other Federal funds, and one million dollars of community improvement bond money to expand the leasing program for housing low-income families. Contracts will be entered into with major private real estate management firms to identify available units throughout the Chicago Metropolitan area and enter into leases for said units for up to 1,200 families. Families if they wish may receive a rent certificate for use with units they identify. Such rent certificates will be issued after a unit has been identified and provision has been made for occupancy thereof. The City's Relocation Division will identify families eligible for this program and make their names available to the Chicago Dwellings Association. The overall responsibility for implementing this program will rest with the

Chicago Dwellings Association. The City will make funds available on a 50-50 matching basis, utilizing local money and Model Cities money, or other Federal funds, for this supplementary leasing program for a duration of five years, unless there is a determination of reduced need, concurred in by HUD, that permits a later reduction of the program.

This leasing and rent certificate program will be administered so that 200 rental units for low-income families will be identified (or rent certificates issued) and made available for occupancy by low income families by June 15, 1971; said leasing and rent certificate program to be continued thereafter at a rate of 200 rental units per month until a total of 1,200 such rental units are made available to low-income families.

Site selection for rental units under this program shall take account of accessibility to places of employment of relocatees and shall be conducted in such a way as to ensure equal housing opportunities and a "broad choice of neighborhoods," in accordance with Federal law and policy, to all persons without regard to race, color, religion, or national ancestry.

The City shall provide HUD with monthly reports on units leased and certificates issued including the address of each unit, the percentage of non-white population in the census tract, the rental

price of the unit, the subsidy provided by the City, and confirmation that each such unit has been inspected by the City and found to meet or exceed the applicable local housing code standards, or in the absence thereof, to meet or exceed the housing code standards then in effect for the City.

D.

INCREASED USE OF RENT SUPPLEMENTS

The City and HUD will require developers of Section 236 housing to make available 20 percent of their units under rent supplement contracts. This should provide 600 units within the City of Chicago. HUD should also require units constructed in the metropolitan area under Section 236 to be made available under rent supplement contracts. By June 15, 1971, specific developments and the number of units to be provided will be submitted to HUD.

E.

CHICAGO HOUSING AUTHORITY

1. The Chicago Housing Authority has submitted to the Chicago City Council and the Chicago Plan Commission 275 sites which would provide for construction of approximately 1746 low-income family housing units.

   Community organizations are arranging meetings with representatives of the Housing Authority in order to become

fully informed about these proposed developments. At the meetings held to date, a number of the sites have been disapproved in some areas and others approved by the Community organizations.

The Department of Development and Planning has made preliminary review of the sites and found a number which are not properly zoned, are not appropriate for housing, have been acquired for other public uses, where private construction is already under way, or appear to be unacceptable for a variety of other reasons.

The City Council and the Chicago Plan Commission will give expeditious and full consideration to all the sites as soon as the community meetings and technical reviews permit. Based upon the information presently available, it is expected that many of the sites will not be satisfactory and that alternative locations will need to be determined.

It is anticipated, however, that sites suitable for use by Chicago Housing Authority in accord with applicable law will be identified and processed by the City to permit acquisition by CHA to commence in accordance with the following schedule:

Sites for 500 units by June 15, 1971;

Sites for 350 units by September 15, 1971;

Sites for 850 units by December 15, 1971;

To the extent that sites are necessary in addition to those already given preliminary approval by HUD (see letter to the Executive Director of CHA dated March 3, March 13, and May 28, 1970), such sites will be submitted to HUD for review and determination in an expeditious manner so as not to interfere with the foregoing timetable. It is contemplated that these housing units will be constructed by the Chicago Housing Authority; however, with the concurrence of HUD, some or all of said units may be developed under the turnkey methods.

2, The Chicago Housing Authority, by resolution, authorized its Executive Director to contract with the Cook County Housing Authority to enable the Chicago Housing Authority, in cooperation with the Cook County Housing Authority, to develop in 10 communities outside of the boundaries of the City of Chicago additional sites which will provide for approximately 230 dwelling units. It is anticipated that the CHA will locate additional sites outside Chicago, but within Cook County, for approximately 270 dwelling units and that it will similarly pursue development of such sites in cooperation with the Cook County Housing Authority.

3. The Chicago Housing Authority will lease throughout the metropolitan area, pursuant to Section 23 of the Unites States Housing Act, not less than 75 housing units for low-income families (by June 15, 1971), and thereafter an additinnal 75 housing units for low-income families per month until the present 600 unit authorization has been utilized and shall submit a report of progress by June 15, 1971.

4. The Chicago Housing Authority has indicated that it will initiate a program to acquire from FSLIC 200 units, perform the necessary rehabilitation and lease to low-income families. Specific properties will be identified by June 15, 1971, with contracts for rehabilitation award by September 15, 1971.

F.

OTHER DEVELOPMENTS

New financing devices using non-federal sources of money are anticipated to become available which will permit local not-for-profit corporations to undertake development of housing, servicing the needs of families whose incomes are the same as the present CHA eligibility requirements. These developments which rent units to such low-income families will have rents comparable to the Chicago Housing Authority. In addition, to the extent

permitted by applicable law, the Chicago Housing Authority may enter into partnership arrangements with not-for-profit sponsors for the development, management, and leasing of units.

The following are the long-range developments which the City of Chicago anticipates that it will undertake in cooperation with the other agencies involved in its continuing effort to provide adequate, safe, and sanitary housing for all of its citizens:

1. The Chicago Housing Authority and the Chicago Dwellings Association have identified a number of sites in the urban area (such as the former Bridewell Farm) for housing development with units to be made available for moderate and low-income families. This will require cooperation and participation by all levels of government.

2. The City will identify obsolete and deteriorated commercial strip frontage and abandoned or vacant factories throughout the City for development of new housing. The new housing developments must be so established in a comprehensive manner not to overcrowd existing public facilities nor be in

detrimental locations. With the many miles of existing strip commercial zoned areas in the City, extensive areas could be acquired and cleared with minimal displacement but with a substantial increase in the housing supply.

3. HUD should require that all developments in the metropolitan area funded through the Illinois Housing Development Authority will provide 10 percent of the units for low-income families. Recognizing that HUD has allocated funds specifically for utilization by State Development Authorities, it is appropriate that part of that fund allocation be conditioned upon the expansion of low-income housing in the metropolitan area.

4. New Communities (New towns in town) within the City are proposed to be developed in such areas as Goose Island, the railroad yards south of the Loop, the obsolete slips and lumber yards along the south branch of the Chicago River and in the Lake Calumet vacant land area. These new communities would provide a range of housing types and prices along with necessary shopping and institutional facilities.

5. All land in the metropolitan area presently owned by

the various agencies of offices of the Federal Government should be identified to determine which of the sites (such as Fort Sheridan) could be made available for housing development. Housing developments on these sites should be undertaken to provide a mix of moderate and low-income units with the necessary funding conditioned upon such commitments.

6. In addition to the utilization of modular construction for town house development, explorations are under way for increasing the use of new system building techniques; such as panel walls and pre-case concrete slab. A specific Section 236 project that will be site assembled from factory produced components will be under construction shortly.

To the extent that sites for units are acquired and construction under way for low-income families pursuant to programs outlined in this Section F, such units will add to or may substitute for a portion of the proposed units then remaining to be developed under other sections of this part of this letter of intent.

Mr. George Vavoulis

PART II. UNDERTAKINGS BY HUD

It is my understanding that the Department of Housing and Urban Development intends to cooperate with the City in achieving the foregoing objectives by providing funds and other assistance as follows:

A.

LETTER OF CONSENT

HUD will issue a Letter of Consent to permit the City to acquire certain properties included in the Second Year Neighborhood Development Program Application, which properties are identified in Exhibit A, attached hereto; such Letter of Consent to be issued by June 15, 1971, provided the City has made reasonable progress toward achieving theobjectives set forth in Part I, above.

B.

ANNUAL CONTRIBUTIONS CONTRACTS

When the Chicago Housing Authority has accomplished the necessary preliminary steps, HUD will execute Annual Contribution Contracts with the CHA and with other appropriate local bodies for the public housing units described in Part I above.

C.

SECTION 235 HOUSING

1. In cooperation with the City of Chicago and its obligations as delineated herein with respect to Section 235 Housing, HUD will issue commitments for mortgage insurance and interest subsidy payments for the 500 single-family or town house units and it is contemplated that the commitments will be issued promptly to assist the City in accomplishing its objectives.

2. In order to implement the City's intention to supply units of Section 235 Housing to low-income families, HUD will promptly approve the use of Model Cities funds to accomplish the objectives as indicated herein.

D.

SPECIAL LEASING PROGRAM

As its matching share for the initial stage of the City of Chicago's special leasing program, HUD will approve the use of up to one million dollars ($1,000,000) of Model Cities funds on a matching basis through December 31, 1971, and thereafter will allow the City to utilize additional federal funds available for such expenditures to assist the City in implementing later stages of its special leasing program, as set forth in Part I above.

E.

MODEL CITIES FUNDS

Upon acceptance of this letter of intent, HUD will approve an amendment to the first year Model Cities Program, extending through June 30, 1971.

HUD promptly will approve the second year Model Cities Program, said second year ending December 31, 1971, provided that the City by June 15, 1971, has approved sites for 500 units of public housing suitable for use by the Chicago Housing Authority and has made reasonable progress toward achieving the objectives set forth in Part I, above.

F.

SECOND YEAR NDP

HUD promptly will approve full implementation of the second year NDP, said second year ending December 31, 1971, provided that HUD finds the City has by September 30, 1971, reasonably accomplished the objectives set forth in Part I, above.

G.

LOAN AND CAPITAL GRANT CONTRACT

HUD promptly will approve the execution of a Loan and Capital Grant Contract for the Douglas-Lawndale Rehabilitation Project, Project No. Ill. R-129, which project was the subject of a Letter of Consent dated August 2, 1968; provided that HUD finds the City has by September 30, 1971, reasonably accomplished the objectives set forth in Part I, above; and further provided that HUD's obligation in regard to the amount of the capital grant shall

not exceed the existing grant reservation for such project.

It is understood between the City of Chicago and the Department of Housing and Urban Development that the basic objectives contemplated by the parties shall continue to be the objectives of the parties in the implementation of the various programs, as set forth herein. The above programs are directed at providing 4300 units of low-income housing. It is understood that changes in Federal or local law or regulations may permit or in fact require modifications to the program outlined above. It is agreed that proposed modifications may be made to this memorandum of intent if concurred in by all signators to this statement. The parties recognize that these objectives can only be achieved through their mutual cooperation and to that end the undersigned each pledge to use their best efforts and full strength of their respective offices in carrying out this letter of intention.

Very truly yours,

By Richard J. Daley
RICHARD J. DALEY, Mayor
of the City of Chicago

CONCURRED:

By: Lulest Swibel
CHARLES R. SWIBEL, Chairman
Chicago Housing Authority

APPROVED:

By: Geo. Vavoulis
GEORGE J. VAVOULIS, Regional Administrator
Department of Housing and Urban Development

cc: Charles Swibel

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

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of June, 1971, I served the foregoing reply brief upon counsel for the Appellee and the Amici Curiae by delivering a copy thereof to William J. Bauer, United States Attorney, 219 South Dearborn Street, Chicago, Illinois 60604, and by mailing copies thereof, postage prepaid, to:

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Received a copy of the attached Reply Brief this 1st day of June, 1971.

United States Attorney