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

DOROTHY GAUTREAUX, et al., Plaintiffs,	)	
v.	)	No. 66 C 1460
GEORGE W. ROMNEY, Defendant.	)	

MOTION PURSUANT TO RULE 62(c) OF THE RULES OF CIVIL PROCEDURE FOR THE UNITED STATES DISTRICT COURT AND RULE 8(a) OF THE FEDERAL RULES OF APPELLATE PROCEDURE FOR AN ORDER TO PRESERVE THE STATUS QUO PENDING A HEARING

Now come plaintiffs, by their attorneys, and represent to the Court as follows:

1. On September 10, 1971, the United States Court of Appeals for the Seventh Circuit entered an order and filed an opinion determining that summary judgment should be entered in this matter against the defendant, Department of Housing and Urban Development ("HUD"), and remanding the case to this Court for determination as to what relief should be granted to the plaintiffs. Copies of such order and opinion are attached hereto as Exhibits A and B, respectively.

2. The mandate of the Court of Appeals has not yet issued and in normal course, pursuant to Rule 41 of the Rules

of Appellate Procedure, will not issue for 14 days from the date hereof. Such issuance may be further stayed by the timely filing of a petition for rehearing or by the granting of a motion for a stay of mandate pending application to the Supreme Court of the United States for a writ of certiorari. Accordingly, the appeal in this cause is still pending and this Court has jurisdiction under Rule 62(c) of the Federal Rules of Civil Procedure to grant an injunction during the pendency of the appeal upon such terms as it considers proper for the security of the rights of the parties. Under Rule 8(a) of the Rules of Appellate Procedure parties are directed to move for injunctions pending appeal in the district court.

3. On May 12, 1971, HUD, the City of Chicago (the "City") and the Chicago Housing Authority ("CHA") entered into an agreement, a true and correct copy of which is attached hereto as Exhibit C. Under such agreement (the "Agreement") the City and CHA promised expeditious consideration by the City Council of the City of Chicago of proposed CHA housing units to be provided in accordance with the provisions of the decree of this Court entered in the companion case of Gautreaux v. Chicago Housing Authority, 304 F.Supp. 736. In the Agreement the City and CHA stated that they anticipated that sites suitable for 500 CHA units would be processed by the City to permit CHA acquisition to begin by June 15, 1971, and that

sites for an additional 350 such units (a total of 850) would be so processed by September 15, 1971. The Agreement also states that HUD would approve the second year model cities program of the City, "provided that the City by June 15, 1971, has approved sites for [such] 500 units," and has made reasonable progress toward achieving the other objectives set forth in the Agreement.

4. On June 15, 1971, the City advised HUD of facts showing that sites for only 242 such CHA units, instead of the 500 provided for in the Agreement, had been so processed by June 15, 1971.

5. On June 21, 1971, HUD sent a letter to the City of Chicago, a true and correct copy of which is attached hereto as Exhibit D. In such letter HUD stated that sites for only 242, instead of 500, such units had been approved by the City Council as of June 15. Nonetheless, HUD stated that it would approve the City's second year model cities program and the conditional release of $26,000,000 therefor. The HUD letter further stated, however, that such model cities funds were being released "on the condition that the City Council will continue to approve public housing sites 'suitable for use by CHA in accord with applicable law' at each regular Council session ... Should this progress not continue the model cities letter of credit will be cancelled."

6. Although such June 21 letter speaks in terms of such

funds "being released" on the aforesaid condition, HUD had not, by the end of the day on September 15, 1971, and, on information and belief, has not to date, released said $26,000,000.

7. Between June 21, 1971, and September 16, 1971, several regular sessions of the City Council were held but no public housing sites were approved by the City Council at any of such sessions. Accordingly, by the end of the day on September 15, 1971, sites for only 242 CHA units had been approved by the City Council as against sites for 500 such units which were to have been so approved by June 15, 1971, and sites for an additional 350 such units which were to have been approved by September 15, 1971, under the Agreement.

8. On information and belief, notwithstanding such failure by the City Council to approve a substantial part of the sites needed for such 850 units by September 15, 1971, and notwithstanding HUD's letter of June 21 stating that the model cities funds were being released upon a condition which has not been met and that the model cities letter of credit "will be cancelled" if progress did not continue under the Agreement, HUD intends to release said $26,000,000 imminently.

9. The Agreement and the HUD letter of June 21, 1971, reflect a determination by HUD that the ability to require the

City to comply with its obligations under the decree in the companion case (HUD having represented to the Court in that case by a memorandum filed therein that it would use its best efforts to obtain such compliance) is reasonably related to other programs, including the model cities program, over which HUD exercises control as to the release of funds. Accordingly, such exercise of control by HUD over such release of funds is an aspect of the relief in this case which this Court will have the responsibility to consider upon remand.

10. Under the foregoing circumstances plaintiffs are entitled to a hearing on the question of whether the unconditional release of such $26,000,000 is appropriate, or whether such release might substantially prejudice this Court's ability to enforce provisions of its decree in the companion case. To deny a hearing on such issue would be to deny to this Court an opportunity to consider whether appropriate relief in this case, under such circumstances, should include instructions to HUD with respect to the timing and conditions for release of said $26,000,000.

11. On information and belief, nearly $8,000,000 of model cities funds, exclusive of the $26,000,000 here in question, are presently available to and unused by the City. Accordingly, no prejudice would result from a delay in release of such $26,000,000 incident to a hearing on this motion.

12. Under the foregoing circumstances an order should be entered by this Court to preserve the status quo with respect to the release of such $26,000,000 pending a hearing with respect to such matter. Had the mandate of the Court of Appeals already issued, a hearing as to such matter would clearly be appropriate; the fortuitous circumstance that the possible imminent release of the $26,000,000 may occur prior to the issuance of the mandate should not be allowed to present this Court with a fait accompli and preclude it from a consideration of such matter.

Wherefor, plaintiffs pray for an order to be entered by this Court to preserve the status quo with respect to the release of such $26,000,000 pending a hearing, at a time to be set by this Court, on the question of whether, and on what conditions, such status quo should be preserved pending the continuation of the appeal of this cause.

Respectfully submitted,

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Dated: September 17, 1971

United States Court of Appeals
FOR THE SEVENTH CIRCUIT
Chicago, Illinois 60604

Friday, September 10, 1971

Before

Hon. ELMER J. SWAIM, Chief Judge

Hon. F. RYAN DUFFY, Senior Circuit Judge

Hon. THOMAS E. FAIRCHILD, Circuit Judge

DOROTHY GAUTREAUX, et al.,
Plaintiffs-Appellants,

No. 71-1073 vs.

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

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, REMANDED to the said District Court in accordance with the opinion of this Court filed this day.

It is further ordered that each party to this appeal shall pay their own costs.

Ex A

In the

United States Court of Appeals

For the Seventh Circuit

No. 71-1073 SEPTEMBER TERM 1970 — APRIL SESSION 1971

DOROTHY GAUTREAUX, et al.,
Plaintiffs-Appellants,
v.
GEORGE W. ROMNEY, Secretary of the Department of Housing and Urban Development,
Defendant-Appellee.

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

SEPTEMBER 10, 1971

Before SWYGERT, *Chief Judge*, DUFFY, *Senior Circuit Judge* and FAIRCHILD, *Circuit Judge*.

DUFFY, *Senior Circuit Judge*. This suit is brought against the Secretary of the Department of Housing and Urban Development (HUD). Plaintiffs are all Negro tenants or applicants for public housing in the City of Chicago. They seek, on behalf of themselves and all other Negroes similarly situated, a declaration that the Secretary has "assisted in the carrying on . . . of a racially discriminatory public housing system, within the City of Chicago, Illinois." Plaintiffs further seek to enjoin the Secretary from making available to the Chicago Housing Authority any federal financial assets to be used in connection with or in support of the racially discriminatory aspects of the Chicago public housing system. "Such other and further relief as the Court may deem just and equitable" is also requested.

Stated another way, the complaint herein challenges the role played by HUD[1] and its Secretary in the funding and construction of certain public housing in the City of Chicago. The role played by the Chicago Housing Authority (CHA), which is not a party to this suit, in the construction of the same public housing already has been held to have been racially discriminatory (*Gautreaux* v. *Chicago Housing Authority*, 296 F. Supp. 907 (N.D.Ill., 1969)[2]. Further construction of public housing by CHA on a segregated site selection basis has been permanently enjoined. (304 F. Supp. 736). A good many of the facts pertaining to this present controversy are reported at 296 F. Supp. 907; 304 F. Supp. 736 and in this Court's decision at 436 F.2d 306 (7 Cir., 1970), cert. den. 402 U.S. 922 (1971). We shall avoid unnecessary repetition where possible.

The complaint in this case was filed simultaneously with the complaint in the *Gautreaux* v. *CHA* case, an order of the District Court stayed all proceedings in this suit until disposition of the companion CHA case. Defendants moved to dismiss the complaint herein and filed certain affidavits and documents in support of said motion. On October 31, 1969, plaintiff moved for summary judgment under Rule 56 (F.R.C.P.) asserting that no dispute as to any material fact existed.

On September 1, 1970, the District Court entered its memorandum opinion dismissing all four counts of this complaint. Count I had been brought under the general federal question statute (28 U.S.C. § 1331) and the Fifth Amendment to the United States Constitution. It alleged that the Secretary, through his action in funding and approving CHA's racially discriminatory programs, had violated the Due Process Clause of that amendment.

[1] The Department of Housing and Urban Development was created by Public Law # 89-174, enacted on September 9, 1965. All duties of the Public Housing Administration and other predecessor agencies were transferred to the authority of HUD by that law. We shall refer to HUD as both the predecessor and present agency.

[2] Because of the racial distinctions expressly found to be present in the tenant assignment and site selection practices involved in the public housing sites at issue in the CHA case and in this present suit, we do not deal with a situation such as confronted the Supreme Court in its recent decision of *James* v. *Valtierra*, 402 U.S. 137 (1971).

The Court first found that plaintiffs had standing to bring suit under all counts and that the requisite jurisdictional amount was present. The Court then concluded that "the Fifth Amendment under the circumstances here alleged [did] not authorize this suit." This ruling was a holding that there was a lack of jurisdiction to bring Count I.

Jurisdiction as to Count II was grounded on 28 U.S.C. § 1331 and 28 U.S.C. § 1343(4). Count II alleged that the Secretary's acts had violated 42 U.S.C. § 2000d (Section 601 of the Civil Rights Act of 1964). The District Court dismissed Count II for failure to state a claim upon which relief could be granted.[3] The Court's dismissal was based upon the finding that HUD's financial assistance to CHA was insufficient to make it a "joint participant" in CHA's racially discriminatory conduct.

Counts III and IV were identical with Counts I and II respectively, except that deliberate discriminatory conduct on the part of CHA had not been alleged. The District Court dismissed these counts for failure to allege such deliberate CHA action.

Finally, the Court expressed the view that the doctrine of sovereign immunity was, in part, applicable to bar this suit.

This appeal followed. The Government has abandoned both the lack of jurisdiction as to Count I and sovereign immunity as possible grounds for affirmance. Plaintiffs have not strongly contested the dismissal of Counts III and IV of the complaint. Thus, the central question presented for review reduces to whether summary judgment in favor of either party is proper on Counts I or II of the complaint. The Government argues that the District Court's grant of summary judgment in its favor is proper and advances as an additional ground for affirmance the contention that the case is now moot.

The Government's position on appeal is that this present suit is somewhat superfluous inasmuch as full and complete equitable relief has been made available to these same

[3] Since supporting affidavits and other documents had been submitted by both parties, this should actually be treated as the grant of a motion for summary judgment, Rule 12(b), Rule 56 F.R.C.P.

plaintiffs through the *Gautreaux* v. *Chicago Housing Authority* case. See: 296 F. Supp. 907; 304 F. Supp. 736. The Government is said to be in complete agreement with the "aims and objectives" of that case and that proposition is not strongly contested by the plaintiffs here.

We understand this contention by the Secretary to bear upon only two issues: mootness, and the scope of any equitable relief which might be deemed necessary by the District Court. The second issue, the extent of possible equitable relief is extremely important, but is not before this Court on this present appeal. We deal here only with whether summary judgment in favor of either party is proper on the issue of the Secretary's alleged *liability* for events which occurred in prior years. Liability for past conduct is totally separate from the question of appropriate future relief. In deciding the liability issue, it would thus not be appropriate for us to consider the effect which the decree entered in the companion case (304 F. Supp. 736) might have in minimizing the need for an extensive decree in this suit.

Similarly, a determination of just what type of equitable remedy might be appropriate in cases of this sort is a question best left initially to the sound discretion of the District Court. *Brown* v. *Board of Education* (Brown II), 349 U.S. 294 (1955); *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971). Even though to the writer of this opinion it might appear that extensive relief would not be necessary, we do not, in any way, wish to anticipate the District Court on an issue properly for its decision.

Thus, the only issue presently before us which might be affected by the entry of the *Gautreaux* v. *CHA* injunction is mootness. We shall consider the effect of the prior injunction as it bears on that issue.

Before turning to the issues, however, this Court wishes to state its strong support for the actions of the District Judge throughout the course of this entire litigation. The District Judge who decided the *Gautreaux* v. *CHA* case and who has supervised the decree entered thereto, is the same District Judge who dismissed this present suit. The administration of the decree in the former case has unquestionably been a difficult and time-consuming task, presenting unique problems for resolution,[4] and generating enormous public interest. This Court would be extremely reluctant to interfere with the exercise of that District Judge's sound discretion in matters pertaining to this controversy, and no statement in this opinion should be so construed. Nevertheless, since important issues of law are presented by this appeal and since the basis of the District Court's dismissal of this present suit below seems to have been a feeling that "the putative limits [of the Court's] powers" had been "effectively circumscribed," rather than a feeling that discretion dictated the dismissal of a suit thought to be unnecessary, it is apparent that review by this Court is compelled.

JURISDICTION AS TO COUNT I.

Since courts always are free to review jurisdiction, we shall examine this point briefly even though not contested by defendant on appeal. We find jurisdiction under 28 U.S.C. § 1331 and the Fifth Amendment to be present in this case. The jurisdictional statute speaks in alternative terms with respect to the "Constitution, laws *or* treaties of the United States. . . ."[5] Thus, a plain reading would seem to encompass a suit of this present type which directly challenges conduct alleged to have violated the Fifth Amendment. That such a reading is correct was settled by the Supreme Court in *Bell* v. *Hood*, 327 U.S. 678 (1946) where the Court held that: ". . . where the complaint, as here, is so drawn as to seek recovery directly under the Constitution or laws of the United States, the federal court . . . must entertain the suit." 327 U.S., 681-2. See also: *Bolling* v. *Sharpe*, 347 U.S. 497 (1954); *Hicks* v. *Weaver*, 302 F.Supp. 619 (D.La., 1969). Jurisdiction would still exist even though we were of the opinion that no cause of action under Count I had been stated. *Bell* v. *Hood*, *supra*, at 682. Since all other require-

[4] For an account of at least one set of unique problems confronting the District Judge see this Court's opinion in *Gautreaux* v. *Chicago Housing Authority*, 436 F. 2d 306.

[5] The statute reads in full: "The district courts shall have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of $10,000, exclusive of interests and costs, and arises under the Constitution, laws or treaties of the United States."

ments under 28 U.S.C. § 1331 have been met, we find that jurisdiction is present under Count I to bring a suit in equity challenging alleged racial discrimination which is said to have violated the Fifth Amendment.[6]

SOVEREIGN IMMUNITY.

Since the defendant has chosen to abandon any claim of sovereign immunity on appeal, we do not think that that point merits an extended discussion on our part. In any case, the doctrine does not bar a suit such as this which is challenging alleged unconstitutional and unauthorized conduct by a federal officer. *Dugan* v. *Rank*, 372 U.S. 609 (1963); *Bolling* v. *Sharpe, supra*; *Shannon* v. *HUD*, 436 F. 2d 809 (3 Cir., 1970). See also: *Powelton Civic Homeowners Association* v. *HUD*, 284 F. Supp. 809 (E.D.Pa., 1968); *Hicks* v. *Weaver, supra*.

MOOTNESS:

As noted previously, this appeal follows the entry of an extensive Judgment Order in *Gautreaux* v. *Chicago Housing Authority*, 304 F. Supp. 736, as modified in 436 F. 2d 306. The decree provides in part that CHA shall not ". . . seek any approval or request or accept any assistance from any government agency with respect thereto . . ." unless the plan for such assistance complies with other provisions of the Court's decree. The Secretary contends that HUD's stated full agreement with the aims and objectives of the Judgment Order, along with the issuance of an injunction against the exact practices now before us, make this present controversy moot.[7]

To some extent, the Secretary's argument is that its own voluntary promise to abide by the decision in the companion case and to stop any further racially discriminatory acts on its part is a viable ground for this Court to dismiss for mootness. We have no doubt that such assertions are offered in good faith, but we do not think

[6] We agree with the District Court that the requisite jurisdictional amount has been stated.

[7] Had the cases been consolidated and decided together, the possibility of mootness would not, of course, have arisen. Thus, in *Hicks* v. *Weaver*, *supra*, the Court entered an injunction against *both* the local housing authority and the Secretary of HUD.

that they are sufficient for us to hold this appeal moot. It long has been held that ". . . voluntary cessation of allegedly illegal conduct does not deprive the tribunal of power to hear and determine the case, *i.e.*, does not make the case moot." *United States* v. *W. T. Grant*, 345 U.S. 629, 632 (1953).

A more persuasive argument is that the injunction entered in *Gautreaux* v. *CHA* renders this controversy moot since CHA is now prohibited from "accept[ing] any assistance from [HUD]" unless CHA's programs strictly comply with the specifications of the decree in that case. Thus, it is argued, a ruling here would be merely "advisory," lacking "concrete legal issues, presented in actual cases. . . ." *United Public Workers of America* v. *Mitchell*, 330 U.S. 75, 89 (1947), quoted in *Golden* v. *Zwickler*, 394 U.S. 103, 108 (1969).

We conclude, however, that the entry of the companion decree does not make this suit moot. The fact that some of the injunctive relief originally requested is no longer possible does not affect the issues presently before us. "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*, 395 U.S. 486, 496, n. 8 (1969). In this suit, both declaratory and injunctive relief against construction of specific projects was originally sought. Since some of those projects now have been completed, it is obvious that full injunctive relief in favor of plaintiffs cannot now be given. But that fact does not, of itself, make this case moot. *Shannon* v. *HUD, supra*, at 822.[8] At the present time, a declaratory judgment as well as such "other and further relief as the court may deem just and equitable" is requested.

Plaintiffs have contended that such "other and further relief" might include a more vigorous utilization of the several different types of housing programs which HUD

[8] The *Shannon* court stated: "The defendants suggest that because the project has been completed and occupied by rent supplement tenants there is no longer any relief which may feasibly be given. The completion of the project and the creation of intervening rights of third parties does indeed present a serious problem of equitable remedies. It does not, however, make the case moot in the Article III sense. Relief can be given in some form."

administers in the form of a decree aimed at ". . . remedying the continuing effects of the discrimination of the past."[9] Such a decree arguably would represent an equitable remedy going beyond the scope of relief made available through the companion case and, it is contended, might facilitate the overall desired goal of desegregating the public housing sites around Chicago metropolitan area. We express no view on whether such requested relief is either necessary or appropriate. However, as long as a decree utilizing certain HUD programs still remains a possible form of relief not already available through the other case, this Court cannot deem the controversy moot. *Powell* v. *McCormack, supra.*

Moreover, even if only the declaratory judgment were demonstrated to be appropriate at this time, this Court would not necessarily be compelled to dismiss for mootness as long as the requisite "case" or "controversy" exists. "A court may grant a declaratory relief even though it chooses not to issue an injunction or mandamus. . . . A declaratory judgment can then be used as a predicate to further relief, including an injunction." *Powell* v. *McCormack, supra,* at 499.

Contrary to the Secretary's arguments, we do not think that the controversy here has been rendered "abstract" by the injunction against CHA's further use of federal funds in a manner not in compliance with the *Gautreaux* v. *CHA* plan. A determination of whether or not the Secretary's own past conduct violated the Constitution or applicable federal statute remains very much of an open question. The entry of a declaratory judgment here would have significant consequences in determining the extent of any "further relief" deemed necessary, in the event that practices found to be discriminatory were resumed. Most important of all, the decree in the CHA case, thorough though it may be, is not binding against HUD or its

[9] For example, we are advised that "Section 236 Housing" is a low income housing program designed to increase the flow of such housing by favorable interest assistance payments to the mortgage lender. Unlike the public housing programs now before us, local governmental approval is not required for such housing to be constructed. See also: "Section 235" and "Section 231" housing programs.

Secretary.[10] Thus, at the present time, plaintiffs are in the anomalous position of having the full force of the federal judicial power at their command to enforce proven rights against CHA, yet having to rely solely on the voluntary promises of a party whose role is equally important, whose decisions pertaining to this matter may prove to be among the best means of insuring full compliance with the "aims and objectives" of the CHA decree,[11] but who never has been a party to that case or bound by its terms.

Under such circumstances, we must conclude that the issues before us are "capable of repetition yet evading review" and that the case is not moot. *Southern Pacific Terminal Co.* v. *Interstate Commerce Commission,* 219 U.S. 498 (1911), quoted in *Moore* v. *Ogilvie,* 394 U.S. 814 (1969). Viewed another way, we are confronted here with ". . . a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment." *Goden* v. *Zwickler, supra,* at 108.

WHETHER A CLAIM IS STATED UNDER THE FIFTH AMENDMENT OR SECTION 601 OF THE 1964 CIVIL RIGHTS ACT

We turn then to the merits. The Government admits that HUD approved and funded CHA-chosen regular family housing sites between 1950 and 1969, knowing that such sites were not "optimal" and that the reason for their exclusive location in black areas of Chicago was that "sites other than in the south or west side, if proposed for regular family housing, invariably encounter[ed] sufficient opposition in the [Chicago City] Council to preclude Council approval." (Letter from a Public Housing Administration Official to the Chairman of the West Side Federation, October 14, 1965).

[10] Thus this suit is unlike *Watkins* v. *CHA,* 406 F.2d 1234 (7 Cir., 1969) where reinstatement of previously evicted named plaintiffs rendered the cause moot, as between the original parties to that same case.

[11] Favorable HUD action, for example, might have been a factor in the district court's decision to modify the "best efforts" clause of the original Judgment Order in that case so as to order submission of approximately 1500 sites to the City Council in accordance with a specific timetable. See: 436 F.2d 306, 310.

Nevertheless, the District Court found that HUD had followed this course only after having made "numerous and consistent efforts . . . to persuade the Chicago Housing Authority to locate low-rent housing projects in white neighborhoods." That finding is not directly challenged on appeal. Moreover, given the acknowledged desperate need for public housing in Chicago,[12] HUD's decision was that it was better to fund a segregated housing system than to deny housing altogether to the thousands of needy Negro families of that city.

On review of the District Court's action, we shall treat all of the above facts as true. The question then becomes whether or not, even granting that "numerous and consistent efforts" were made, HUD's knowing acquiescence in CHA's admitted discriminatory housing program violated either the Due Process Clause of the Fifth Amendment or Section 601 of the Civil Rights Act of 1964.[13] Given a previous court finding of liability against CHA (296 F. Supp. 907), the pertinent case-law compels the conclusion that both of these provisions were violated.

HUD's approval and funding of segregated CHA housing sites cannot be excused as an attempted accommodation of an admittedly urgent need for housing with the reality of community and City Council resistance. This question was argued and settled in the companion case as to these exact housing sites and the same City Council. The District Judge there well stated the applicable rule:

> "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." (296 F.Supp. at 914).

[12] The Government's brief points to affidavits submitted by many of the present plaintiffs which starkly illustrate that fact. Plaintiff Gautreaux has accepted public housing in Negro areas only because she had been living in a one bedroom apartment with a family of six. Plaintiff Odell Jones had moved to segregated public housing with his wife and three children to escape their two rooms in which "the rats had begun to run over the house at will."

[13] "No person in the United States shall, on the ground of race, color or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 42 U.S.C. § 2000d.

This court applied much the same rule in affirming a modification of the Judgment Order in the companion decision and in ordering submission of 1500 HUD approved sites to the City Council in accordance with a specific timetable. In rejecting a plea for delay, we pointed to several cases holding ". . . that 'abstention' is inappropriate in constitutional cases of this sort and that community hostility is no reason to delay enforcement of proven constitutional rights." (436 F.2d at 312.)

Courts have held that alleged good faith is no more of a defense to segregation in public housing than it is to segregation in public schools. *Gautreaux* v. *Chicago Housing Authority*, 296 F. Supp. 907; *Kennedy Park Homes Assn.* v. *City of Lackawanna*, 436 F.2d 108 (2 Cir., 1970), cert. den. 401 U.S. 1010 (1971). Moreover, the fact that it is a *federal* agency or officer charged with an act of racial discrimination does not alter the pertinent standards, since ". . . it would be unthinkable that the same Constitution would impose a lesser duty on the Federal Government." *Bolling* v. *Sharpe*, *supra*, at 500. See also: *Green* v. *Kennedy*, 309 F. Supp. 1127, 1136 (D.C.D.C. 1970), appeal dismissed 398 U.S. 956 (1970). The reason for courts' near uniform refusal to examine purported good faith motives behind alleged discriminatory acts was, perhaps, most succinctly put by the Supreme Court in *Burton* v. *Wilmington Parking Authority*, 365 U.S. 715, 725 (1963): "It is no consolation to an individual denied the equal protection of the laws that it was done in good faith."

The fact that a governmental agency might have made "numerous and consistent efforts" toward desegregation has not yet been held to negate liability for an otherwise segregated result. Thus, for example, in *Cooper* v. *Aaron*, 358 U.S. 1 (1958) the local school board admittedly had been "going forward with its preparation for desegregating the Little Rock [Arkansas] school system" (358 U.S. at 8), but was still held liable when it abandoned those plans in the face of stiff community and state

governmental resistance. See also: *Watson* v. *City of Memphis*, 373 U.S. 526, 535 (1963); *Green* v. *Kennedy*, *supra*, at 1136.

With the foregoing considerations in mind, then, it is apparent that the "dilemma" with which the Secretary no doubt was faced and with which we are fully sympathetic, nevertheless cannot bear upon the question before us. For example, we have been advised that any further HUD pressure on CHA would have meant cutting off funds and thus stopping the flow of new housing altogether. Taking this assertion as true, still the basis of the "dilemma" boils down to community and local governmental resistance to ". . . the only constitutionally permissible state policy. . . ." *Green* v. *Kennedy*, *supra*, at 1137, a factor which, as discussed above, has not yet been accepted as a viable excuse for a segregated result. So, even though we fully understand the Secretary's position and do not, in any way, wish to limit the exercise of his discretion in housing related matters, still we do not feel free to carve out a wholly new exception to a firmly established general rule which, for at least the last sixteen years, has governed the standards of assessing liability for discrimination on the basis of race.[14]

Turning to the facts now before us, there can be no question that the role played by HUD in the construction of the public housing system in Chicago was significant. The great amount of funds for such construction came from HUD. Between 1950 and 1966 alone HUD spent nearly $350,000,000 on CHA projects. The Secretary's trial brief acknowledged that "in practical operation of the low-rent housing program, the existence of the program is entirely dependent upon continuing, year to year, Federal financial assistance." We find no basis in the record with which to disagree with that conclusion. Moreover, within the structure of the housing programs as funded, HUD retained a large amount of discretion to approve or reject both site selection and tenant assignment procedures of the local housing authority. HUD's "Annual Contributions Contract" contained detailed provisions concerning program operations and was accompanied by eight pages of regulations on the subject of site selection alone.

[14] ". . . it should go without saying that the vitality of these constitutional principles cannot be allowed to yield simply because of disagreement with them." *Brown* v. *Board of Education* (Brown II), *supra*, at 300.

It also is not seriously disputed on appeal that the Secretary exercised the above described powers in a manner which perpetuated a racially discriminatory housing system in Chicago, and that the Secretary and other HUD officials were aware of that fact. The actual aspects of that segregated system are fully described at 296 F. Supp. 907 and we shall not recount them here. The fact that HUD knew of such circumstances is borne out by the District Court's specific finding in this suit that HUD tried to block "the activity complained of, succeeded in some respects, but continued funding knowing of the possible action the City Council would take." This finding is supported by, among other record items, the HUD letter to the West Side Federation previously referred to (page 15), and by the affidavit of HUD official Bergeron recalling his unsuccessful attempts in the early 1950s "to enlist [Mayor Kennelly's] assistance in having project sites located in white neighborhoods."

On such facts, and given the inapplicability of HUD's "good faith" arguments, we are unable to avoid the conclusion that the Secretary's past actions constituted racially discriminatory conduct in their own right.[15] The fact that the Secretary's exercise of his powers may have more often reflected CHA's own racially discriminatory choices than it did any ill will on HUD's part, does not alter the question now before us.

We are fully sympathetic to the arguments advanced by the Government on appeal, especially, as mentioned above, to the very real "dilemma" which the Secretary

[15] Our holding thus is not based on the "joint participation" doctrine set forth in *Burton* v. *Wilmington Parking Authority*, *supra*, and relied upon in the District Court litigation below. We need not discuss the applicability of that doctrine, for it is concerned with a different inquiry, namely, "upon identifying the requisite 'state action'". (*Griffin* v. *Breckenridge*, 402 U.S. ...., 39 Law Week 4091) sufficient to render admitted discrimination actionable under the Fourteenth Amendment. In any event, contrary to the Government's assertions on appeal, "joint participation" already has been "extended" to federal government operations. *Simpkins* v. *Moses T. Cone Memorial Hospital*, 323 F.2d 959 (4 Cir., 1963), cert. den. 376 U.S. 938; *Smith* v. *Hampton Training School for Nurses*, 360 F.2d 477 (4 Cir., 1966).

faced during these years. On the other hand, against such considerations are not only the principles of law discussed heretofore, but also two recent decisions which hold against this same defendant (or predecessor) and which deal with similar facts. *Shannon* v. *HUD, supra*; *Hicks* v. *Weaver, supra.* We do not think we should ignore those cases.

In holding the Secretary liable on nearly identical facts as are now before us, the *Hicks* court reasoned as follows:

> "As noted above, HUD was not only aware of the situation in Bogalusa [Louisiana] but it effectively directed and controlled each and every step in the program. 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 U.S.C. § 2000d." (302 F. Supp. at 623).

Likewise, in *Shannon* the Third Circuit recently enjoined further action on a HUD decision to change a proposed housing project in Philadelphia from the originally contemplated owner occupied buildings to a 100% rent supplement assistance program (which was found to be the "functional equivalent of a low rent public housing project.") (436 F.2d at 819). The *Shannon* court acknowledged that HUD was vested with broad discretion to supervise its various programs, but held, nevertheless, that ". . . that discretion must be exercised within the framework of the national policy against discrimination in federally assisted housing . . . and in favor of fair housing. . . ." (436 F.2d at 819.)

We can find no viable basis for distinguishing the *Hicks* and *Shannon* decisions. The Secretary contends that the relief requested in those two cases differed from that which is sought here. The Government's argument is entirely correct, but has no bearing on the issue of actual liability which, as mentioned previously (page 6) is the only issue now before this Court. The Government's further contention, advanced at oral argument, that *Shannon* should be distinguished as involving only a more stable integrated neighborhood trying to stave off additional public housing, is also factually correct, but legally insignificant. Such a factor might arguably affect the standing of individual plaintiffs to bring suit, but it does not alter the pertinent standard for answering the question of whether or not racial discrimination in the funding and approval of particular programs has occurred.

Finally, we emphasize, as did the *Shannon* court, that ". . . there will be instances where a pressing case may be made for the rebuilding of a racial ghetto." (436 F.2d at 822.) However, the situation before us now *already* has been held not to constitute such a pressing case, and such is the determinative factor. Where the Court in the companion decision previously has held that CHA's "deliberate policy to separate the races cannot be justified by the good intentions with which other laudable goals are pursued" (296 F. Supp. at 914), it is not possible with consistency to apply a lesser standard against HUD in assessing whether it too is liable for its role on the same identical facts.

So, even while we are fully sympathetic to the arguments advanced by the Secretary on appeal, we must conclude that the great weight of the caselaw favors plaintiffs' position. Since there exist no controverted issues of material fact, we conclude that summary judgment should be granted in plaintiffs' favor on both Counts I and II of the complaint. We hold that HUD, through its Secretary, violated the Due Process Clause of the Fifth Amendment (*Bolling* v. *Sharpe, supra*; *Hicks* v. *Weaver, supra*) and also has violated Section 601 of the Civil Rights Act of 1964 (*Shannon* v. *HUD, supra*; *Hicks* v. *Weaver, supra*).

In so holding we state *only* that the Secretary must be adjudged liable on these particular facts and again point out that our holding should not be construed as granting a broad license for interference with the programs and actions of an already beleaguered federal agency. It may well be that the District Judge, in his wise discretion, will conclude that little equitable relief above the entry of a declaratory judgment and a simple "best efforts" clause will be necessary to remedy the wrongs which have been found to have been committed.

Such considerations, however, are not the subject for present decision, and we defer to the District Court for their resolution.

REMANDED.

A true Copy:

Teste:

.....

Clerk of the United States Court of Appeals for the Seventh Circuit.

USCA 3921—The Scheffer Press, Inc., Chicago, Illinois—9-10-71—200

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 project [illegible]tion 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 additionnal 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: Charles R. 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

RICHARD J. DALEY
MAYOR

CITY OF CHICAGO
OFFICE OF THE MAYOR

For Immediate Release
May 12, 1971

Mayor Richard J. Daley, regional administrator of the Department of Housing and Urban Development, George Vavoulis and Chicago Housing Authority chairman, Charles Swibel , today announced an agreement providing increased low and moderate income housing opportunities in Chicago which will release federal funds for the Model Cities and urban renewal programs.

The new housing will be provided from a variety of programs including the participation of the Chicago Housing Authority, non-profit community groups, leasing and rent certificates, Chicago Dwellings Association, use of suburban sites and federal housing programs which provide subsidies for low income families.

Mayor Daley said, "This agreement will meet the objectives of both the city and the federal government in providing good housing for low and moderate income families. The agreement was made possible through the efforts of George Vavoulis and his staff and Commissioner of the Department of Development and Planning, Lewis Hill and his staff. I believe that this program represents a giant step towards meeting the urgent housing needs of all our citizens. This is a program of the highest priority for the city."

Under the agreement, the Chicago Housing Authority will begin, after approval by the City Council, acquisition of sites for 500 units by June 15 in accordance with applicable law and will prepare acquisition of sites for an additional 350 units by Sept. 15 of this year and sites for 850 units by Dec. 15, for a total of 1700 units.

The Chicago Housing Authority in cooperation with the Cook County Housing Authority will seek to establish sites for 230 low cost dwelling units in 10 suburban areas. Plans also call for seeking an additional 270 units in the area outside Chicago.

The agreement points our that a survey of the sites submitted to the City Council have found a number which are not properly zoned, not appropriate for housing, or have been acquired for other public and private uses. Based upon this information it is expected that many of the submitted sites will not be satisfactory and that alternative locations will have to be selected.

The agreement also provides that housing programs undertaken by non-profit organizations may be substituted for a portion of the other programs..

Other provisions of the agreement provide that the city and other agencies which own 1000 scattered vacant lots will use them for single family or town house units under Section 235 of the Housing Program. A new leasing and rent certificate program will be undertaken with up to $1 million of Model Cities money or other federal funds and $1 million of community improvement bond money to expand the leasing program for housing low income families. In addition the city and the Department of Housing and Urban Development will require developers of Section 236 Housing to make available 20 per cent of their units under rent supplement contracts.

The agreement also cites long range developments which the city anticipates it will undertake in cooperation with other agencies to provide housing for all its citizens.

--the use of a number of sites in the urba n area, such as the former Bridewell Farm, for housing developments to accomodate moderate and

low income families.

--the use of obsolete and deteriorated commercial strip frontage and abandoned or vacant factories for the development of new housing.

--the requirement by the Department of Housing and Urban Development that all developments in the metropolitan area funded through the Illinois Housing Development Authority will provide 10 per cent of the units for low income families.

--development of new towns in town in such areas as Goose Island, the railroad yards south of the Loop, obsolete slips and lumber yards along the south branch of the Chicago River and 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.

--use of land owned by the federal government such as Fort Sheridan could be made available for housing.

June 21, 1971

58

Honorable Richard J. Daley
Mayor of the City of Chicago
City Hall
Chicago, Illinois 60601

Dear Mayor Daley:

We are in receipt of your letter of June 15, with accompanying reports indicating the City's efforts to achieve the housing goals set forth in the City-HUD Letter of Intention dated May 12, 1971.

As you know, the purpose of the Letter of Intention was to set forth a plan of action to provide 4,300 low-income housing units to reduce the serious deficiency in the City's supply of relocation resources for low-income families. Such remedial action has become necessary to permit further implementation of HUD assisted programs.

The City has made a great deal of progress toward achieving the objectives set forth in the Letter of Intention:

1. Under the Section 23 Leasing Program, 58 leases have been executed and 5 additional leasing agreements are in process. This represents "reasonable progress" toward achieving the goal of leasing 75 units by June 15, 1971;

2. The City has identified sites for over 600 units of Section 235 single-family housing. This should accommodate both the 250 units of moderate-income housing, as well as the 250 units of low-income housing specified in the Letter of Intention;

3. The City has met the objective of reducing projected demolition by 500 units;

4. Discussions have been held between the Chicago Housing Authority and the Housing Authority of Cook County concerning suburban sites for low-income family housing which we trust will result in needed housing resources;

5. The City has identified Section 236 developments which are scheduled to provide 600 rent supplement units serving low-income families.

At the same time, however, it is evident that the City needs more time to fulfill its housing goals as set forth in the City-HUD Letter of Intention dated May 12, 1971, particularly with regard to City Council approval of sites "suitable for use by Chicago Housing Authority in accord with applicable law" for 500 units of new low-income family housing. As of June 15, the City Council had approved sites "suitable for use by Chicago Housing Authority in accord with applicable law" which will provide for only 242 units of low-income family housing. Also, while over 200 units have been identified for use under the City's Leasing and Rent Certificate Program, to date no units have actually been leased, nor rent certificates issued to low-income families.

In view of the City's progress to date, however, HUD is now prepared to approve the Second Year Model Cities Program representing an additional $26,000,000. As you will recall, HUD released approximately $12,000,000 of Model Cities funds on May 12, 1971, to insure that the benefits of the Model Cities Program would not be denied to the citizens of Chicago and to prevent any jeopardy to the future of that program.

As soon as the City has completed approval of sites "suitable for use by the Chicago Housing Authority in accord with applicable law" for the 500 units of low-income family housing and has made major progress in the Leasing and Rent Certificate Program, HUD will issue a Letter of Consent for selected activities under the Second Year Neighborhood Development Program (the total Second Year NDP being $20,000,000).

The Model Cities funds are being released on the condition that the City Council will continue to approve public housing sites "suitable for use by Chicago Housing Authority in accord with applicable law" at each regular Council session and that the other City Agencies and Chicago Housing Authority will continue to show progress toward meeting the housing goals set forth in the Letter of Intention. Should this progress not continue the Model Cities Letter of Credit will be cancelled.

These further actions on the Public Housing Program and the Leasing and Rent Certificates Program will constitute substantial steps towards providing relocation feasibility for the Model Cities and

Neighborhood Development Programs. In this connection, we welcome your statement in the June 15, report that "the Planning and Housing Committee and Plan Commission will continue to schedule meetings for consideration of additional sites and units."

Sincerely yours,

/s/ George J. Vavoulis

George J. Vavoulis
Regional Administrator

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

DOROTHY GAUTREAUX, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	No. 66 C 1460
	)	
GEORGE W. ROMNEY,	)	
	)	
Defendant.	)	

NOTICE

To: William J. Bauer
United States Attorney
219 S. Dearborn Street
Chicago, Illinois 60604

Attention: James Murray, Assistant United States Attorney

PLEASE TAKE NOTICE that at 10 A.M. on Friday, September 17, we will appear before the Honorable Richard B. Austin in the courtroom usually occupied by him in the U.S. Courthouse, 219 S. Dearborn Street, Chicago, or before any other judge then and there sitting, and present a motion, a copy of which motion is herewith served upon you.

Alexander Polikoff
One of the Attorneys for Plaintiffs

CERTIFICATION

The undersigned, one of the attorneys for plaintiffs in the above matter, hereby certifies that he served a copy of the foregoing notice and motion referred to therein to the addressee named above by personal delivery to his office before 9 A.M., September 17, 1971, that prior to 4:30 P.M.,

September 16, 1971, he generally advised said addressee of the contents thereof, of the fact that delivery would be made at 9 A.M. on September 17, 1971 and of the time of presentation to the Court, and that he and said addressee have been discussing the steps to be taken in the matter since Monday, September 13, 1971.

Alexander Polikoff
One of the Attorneys for Plaintiffs

September 17, 1971

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