

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DOROTHY GAUTREUX, et al.,

Plaintiffs,

v.

GEORGE W. ROMNEY,

Defendant.

NO. 66 C 1460

OBJECTIONS TO PLAINTIFFS' MOTION PURSUANT
TO RULE 62(c) OF THE RULES OF CIVIL PROCEDURE
AND RULE 8(a) OF THE FEDERAL RULES OF APPELLATE
PROCEDURE FOR AN ORDER TO PRESERVE THE STATUS
QUO PENDING A HEARING

Now comes George W. Romney, Secretary of Housing and Urban
Development by WILLIAM J. BAUER, United States Attorney for the
Northern District of Illinois, and objects to plaintiffs' motion to
stay the release of \$26,000,000.00 of Model Cities funds by defendant
and in support of said objection submits a memorandum of law and the
attached affidavit.

WILLIAM J. BAUER
United States Attorney

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attack on social, economic, and physical problems in selected disadvantaged areas through concentration and coordination of federal, state and local public and private efforts.

4. Section 103 (b) provides that : "in implementing this Title the Secretary shall

- 1) emphasize local initiative in the planning, development and implementation of comprehensive city demonstration programs;
- 2) insure, in conjunction with other appropriate Federal departments and agencies and at the direction of the President, maximum coordination of Federal assistance provided in connection with this Title, prompt response to local initiative, and maximum flexibility in programming, consistent with the requirements of law and sound administrative practice;
- 3) encourage city demonstration agencies to (A) enhance neighborhoods by applying a high standard of design, (B) maintain, as appropriate, natural and historic sites, and distinctive neighborhood characteristics, and (C) make maximum possible use of new and improved technology and design, including cost reduction techniques."

5. Pursuant to the requirements in the Act, the guidelines and program requirements for the Model Cities program have been developed by the Secretary of the Department of HUD, in cooperation with the Departments of HEW, OEO, DOL, DOT, Commerce, Justice and other agencies; and that review and recommendations for approval and funding of locally planned and designed programs are conducted by Regional representatives of the same Federal Departments and agencies,

6. In order to participate in the Model Cities program, Cities such as Chicago, were required to designate one or more disadvantaged areas of the city containing no more than ten percent of the city's population, prior to first receiving a planning grant. The designated areas were to be substantially slum and blighted areas of the city in which low-income families were concentrated, which would benefit from the thrust of the Model Cities programs, i.e., to attempt to alleviate the basic problems of human and physical deterioration in the inner cities.

7. After a designated area had been approved by HUD as a Model Cities target area, the City was awarded a planning and action year grant, which was to be spent for programs and projects within such target areas, or for the direct benefit of the residents of such areas, in order to carry out the Demonstration provided for by the Congress Act.

8. Federal guidelines for the Model Cities program, pursuant to the requirement that the city be granted initiative and flexibility in its choice of projects making up its comprehensive program, permit the city demonstration program to allocate its funds to those projects it determines to have highest priority, based upon its own problem analysis, but that such problem analysis must have considered whether serious problems and priority concerns exist in education, health, social services, recreation, culture, crime and delinquency, manpower and job development, economic and business development, housing, relocation, transportation, communication, environmental protection and development, and must include program administration, citizen participation, and an information and evaluation process.

9. Upon the submission of the first and second action year programs by the Chicago Model Cities, the required Federal review was performed, and administrative conclusions were reached at each program was "comprehensive", within the meanings of the Act; that it had been compiled and submitted in compliance with the procedures required, and that it satisfied all of the legal requirements to warrant funding, and for each year, in turn. The Assistant Secretary for Model Cities has authorized a contract to be offered the City to continue the funding of its program.

10. The Chicago Model Cities program is now in its second year. The Department of Housing and Urban Development has executed a grant contract with the City of Chicago for a total sum, to date, of \$50,159,000, which represents the 1st year program and an advance on its second year program.

11. A contract to fund the second year program was tendered to the City of Chicago, requiring approval and acceptance by the City Council and the Mayor of Chicago. Pending that formal approval, the City was given a "letter to proceed", under which the City is authorized to place its second year program projects under contract, and to implement them,

using the City's own funds or credit, upon HUD's commitment to reimburse the City's Model City program for all expenses incurred in compliance with the offered contract, upon final execution of the said contract by both parties.

12. To the best of my knowledge and belief, pursuant to the "letter to proceed", the Chicago Model Cities placed much of its second year program under contract with operating agencies, and has incurred financial obligations to such operating agencies for salaries and wages, and other expenses normally incurred in the operation of such projects.

13. My administrative review of the Chicago Model Cities program reveals that the program complied with all requirements of Federal Law, and all departmental rules and regulations. It is my administrative recommendation to the Regional Administrator that the second year Model Cities contract with the City of Chicago be executed, so as to allow the City access to funds for continuation of their programs.

14. HUD Assistant Secretary, Lloyd Hyde has authorized Regional officials to execute the \$26,000,000 contract with the City of Chicago, which, when executed, will complete the second year financing of the Chicago Model Cities program.

Theodore Robinson
Theodore Robinson

Title Model Cities Officer

Subscribed and sworn to before me this 20th day of September, 1971.

Edward J. Sadowski
Notary Public

My Commission Expires:

11/4/73

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DOROTHY GAUTREUX, et al.,)	
)	
Plaintiffs,)	
)	
vs.)	NO. 66 C 1460
)	
GEORGE W. ROMNEY,)	
)	
Defendant.)	

MEMORANDUM IN OPPOSITION TO PLAINTIFFS' MOTION
PURSUANT TO RULE 62(c) OF THE RULES OF CIVIL
PROCEDURE AND RULE 8(a) OF THE FEDERAL RULES
OF APPELLATE PROCEDURE FOR AN ORDER TO
PRESERVE THE STATUS QUO PENDING A HEARING.

INTRODUCTION

It is already settled that a grant of stay pursuant to Rule 62(c) of the Rules of Federal Civil Procedure and Rule 8(a) of the Federal Rules of Appellate Procedure is not a matter of right, but an exercise of judicial discretion. The propriety of its issuance depends on the circumstances of a particular case. Scripps-Howard Radio, Inc. v. Federal Communications Commission, 316 U.S. 4 (1942); Belcher v. Birmingham Trust National Bank, 395 F.2d 685 (5th Cir. 1968); In Re: Petition of J. Kaller Mann, 307 F.Supp. 412 (D.C. Hawaii 1969).

To establish sufficient grounds to warrant a stay in the instant case, it is incumbent upon the plaintiffs to show the following:

1. A likelihood that the plaintiffs will prevail on the merits of an appeal;
2. That without such relief, the plaintiffs would be irreparably damaged;
3. That a stay order would not irreparably damage the defendant; and
4. That the public interest favors such a stay.

The Defendant, George W. Romney, respectfully asserts that the remedy sought by plaintiffs in the instant motion is patently inappropriate, as will be demonstrated by the analysis of the above cited criteria in the order presented.

ARGUMENT

I.

LIKELIHOOD THAT THE PLAINTIFFS WILL PREVAIL ON THE MERITS OF AN APPEAL FROM DENIAL OF AN INJUNCTION.

First, and foremost, it must be recognized that the appeal taken by plaintiffs involved an injunction previously denied by this Court to restrain the defendant from further financial participation in the racially discriminatory public housing program

conducted by the Chicago Housing Authority (CHA). It was the public housing program in the City of Chicago which was the subject of these proceedings and the subject of the companion case, Gautreaux v. Chicago Housing Authority (No. 66 C 1459). The Model Cities program was not involved in either of these lawsuits. Indeed, it is a wholly separate program, administered not by CHA, but by other independent local governmental units. Furthermore, the Model Cities program is designed primarily not to address housing needs per se, but to focus on a wide range of other social and economic urban problems. The Model Cities program seeks to provide better community services such as health care, schools, youth counseling, and day care centers; it seeks to provide vocational training and job placement services; and, in general, it seeks to upgrade the quality of the environment in the inner city so that other programs, such as the various housing programs, can move forward in stable, economically viable neighborhoods, where jobs and social services are available to area residents.

With respect to the first condition for the requested stay, the issue is whether the release of the funds is an aspect of the relief in this case which this Court will have the responsibility to consider upon remand from the Court of Appeals. The plaintiffs' premise their argument on the fact that the Regional Administrator of the Department of Housing and Urban Development (HUD) in a letter dated June 21, 1971, to Mayor Richard J. Daley stated that:

"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."

The plaintiffs argue that since the City of Chicago has not approved 850 public housing sites by September 15, 1971 in conformity with the Letter of Intent, dated May 12, 1971, between the City of Chicago, CHA and HUD (the "Letter of Intent"), HUD should be required to cancel the Model Cities program and not release the \$26,000,000 of Model Cities funds. The plaintiffs'

theory rests on the premise that HUD conditioned the release of the Model Cities funds upon the City's continuing performance of its obligations as set forth in the Letter of Intent, and the City having failed to do so, HUD should rescind the Model Cities program. This theory ignores the fact, however, that imposition of said condition and any modification thereof rests solely within the discretion of the Regional Administrator.

Although the City's performance to date has not come up to expectations, nevertheless, the City has made some progress in achieving the housing goals set forth in the Letter of Intent. HUD has determined that withholding the Model Cities funds at this time would have a negative effect on the continuing progress of the city in implementing the Letter of Intent. In the June 21, 1971 letter to the Mayor, HUD did not dictate any timetable in which the determination would be made for terminating the Model Cities program. Unquestionably, the decision of whether or not to release the Model Cities funds rests within the sound administrative discretion of HUD. Certainly, this federal agency, charged with the protection and promotion of the public welfare, is not precluded from taking appropriate action

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even though there has not been total compliance with the Letter of Intent. HUD must retain sufficient latitude in the administration of its programs so as to advance the overall objectives sought to be achieved by Congress. Maxwell Company v. N.L.R.B., 414 F.2d 477 (D.C. Cir. 1969). One of the basic attributes of the administrative process is the flexibility in reconsidering and refining policy in light of the particular circumstances and the Congressional purpose behind a statutory scheme. City of Chicago v. F.P.C., 385 F.2d 629 (D.C. Cir. 1967). HUD has made the determination not to cancel the Model Cities program at this time because of the City's progress in achieving its housing goals under the Letter of Intent and because the funds will contribute to essential social services for inner-city residents. Moreover, in the June 21 letter from HUD to the Mayor, HUD continued to withhold the second year Neighborhood Development Program, which amounts to approximately \$20,000,000 in federal funds and HUD will not release those funds until the City has achieved substantial compliance with the Letter of Intent.

On the basis of the foregoing, it should be clear that the Model Cities program is not germane to the subject of these proceedings; that the decision to allow that program to continue rests within the discretion of the Regional Administrator; and that, therefore, it is inappropriate for plaintiffs to invoke Rule 62(c) to halt spending of second year Model Cities funds. Such a remedy would not serve to preserve the status quo vis a vis the subject of this litigation (i.e. public housing), but would only undermine vitally needed programs which provide social services and job opportunities for the poor, the black and the culturally disadvantaged citizens of Chicago.

II.

WHETHER, WITHOUT SUCH RELIEF, THE PLAINTIFFS WOULD BE IRREPARABLY DAMAGED.

The plaintiffs cannot demonstrate to the satisfaction of this Court that they would be irreparably damaged by the release of the second-year Model Cities funds, since (1) release of these funds is unrelated to the specific program on which this proceeding is predicated; (See part I, supra), and (2) the plaintiffs have no apparent "standing" to challenge the administrative decision which authorized release of the \$26,000,000 of second year Model Cities funds.

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The plaintiffs do not possess the requisite interest as it relates to the second year Model Cities program. The release of the Model Cities monies is based upon contractual relationship between the City of Chicago and HUD. Even if, arguendo, the plaintiffs could establish rights as third-party beneficiaries to that contract, nothing in the contractual relationship, nor in the June 21 letter of the HUD Regional Administrator, dictates any sanction with respect to Model Cities funding at this point, or any other specific point, in time. The decision as to whether to allow the Model Cities program to continue rests within the sound discretion of the Regional Administrator.

As a further matter, the plaintiffs cannot suffer any irreparable damage from the release of the Model Cities funds since, quite to the contrary, the release of these funds will benefit the public welfare and provide essential social services to the very people in the class which the plaintiffs purport to represent. Coalition for a United Community Action v. Romney, 316 F.Supp. 742 (N.D. Ill. 1970). Staying the release of these funds for essential social services would not alleviate the problems presented in this case but, in fact, would aggravate the social problems which face low income and disadvantaged persons in the City of Chicago. The funds utilized in the various Model Cities

programs provide job opportunities for low income people; reduce dependency on welfare payments; improve educational facilities and programs; reduce incidents of crime and delinquency; enhance recreational and cultural opportunities; establish better access between homes and jobs; and generally, improve living conditions for the people who live in urban slums and blighted areas in the city. Title 42, United States Code, Section 3301.

The Model Cities programs are independent, but vital components to successful housing programs in the inner cities. In testifying before the Senate sub-committee on Housing and Urban affairs, the late Senator Robert F. Kennedy stated in reference to the placement of new housing in the ghetto as follows:

"To seek a rebuilding of our urban slums is not to turn our backs on the goal of integration. It is only to say that open occupancy laws alone will not suffice and that sensitivity must be shown to the aspirations of Negroes and other non-whites who would build their own communities and occupy decent housing in neighborhoods where they now live. And, in the long run, this willingness to come to grips with blight of our center city will lead us toward an open society. For it is comparability of housing and full employment that are the keys to free movement and to the establishment of a society in which each man has a real opportunity to choose whom he will call neighbor." 1/

1/ Hearing on S. 3029 before the sub-committee on Housing and Urban affairs of the Senate Banking and Currency Committee, 90th Congress, 2nd Session (1968).

In his message to Congress recommending the Model Cities program, President Lyndon Johnson said:

"From the experience of three decades, it is clear to me that American cities require a program that will --

Concentrate our available resources--in planning tools, in housing construction, in job training, in health facilities, in recreation, in welfare programs, in education--to improve the conditions of life in urban areas.

Join together all available talent and skills in a co-ordinated effort.

Mobilize local leadership and private initiative, so that local citizens will determine the shape of their new city ***" 2/

In order to further an important, but none the less specific objective, i.e., promoting integration of public housing in the City of Chicago, the plaintiffs are urging this Court to invoke a sweeping order which would undermine programs which serve to improve the quality of life in the city slums and blighted areas.

Aside from shutting down essential social services, such an order also seriously would impede the City from achieving the

2/ 1966, 89th Congress, Second Session, U.S. Code, Congressional and Administrative News, Volume 3, page 4003.

the overall housing goals for low and moderate income families, since HUD has authorized a limited portion of the Model Cities funds to be used to implement a special program designed to create home ownership opportunities for low income families under the FHA Section 235 program. As set forth in the Letter of Intent, the City will locate sites for 500 units of Section 235 housing, 250 units of which will be available for purchase by low income families. The sites for 50 to 100 units of such Section 235 housing for low income families will be in census tracts in the City with a non-white population not exceeding 30 per cent. HUD has approved the use of Model Cities money to develop this program and provide home ownership counseling services to those who will occupy these single family units.

Furthermore, if the requested stay is granted in this matter, a special leasing program for low income families undertaken by the City of Chicago also will be jeopardized. HUD has authorized the use of up to \$1,000,000 of Model Cities money, on a local matching basis, to help finance subsidies for this new leasing program.

Thus, examination of the facts and circumstances reveals that the plaintiffs are pursuing, with Machiavellian zeal, a

reckless course of action to further a limited and unrelated goal in blatant disregard of the inevitable harmful consequences, which thereby will be inflicted upon the citizens of Chicago.

III & IV

WHETHER A STAY ORDER WOULD IRREPARABLY DAMAGE THE
DEFENDANT AND WHETHER THE PUBLIC INTEREST FAVORS SUCH
A STAY.

Many of the same arguments that were made on the issue of whether the plaintiffs will be irreparably injured if the second year Model Cities funds are released apply in a reciprocal fashion to these issues. Moreover, if this Court were to deny HUD the authority to release the second year Model Cities funds, it would have a pronounced negative impact at a very critical stage in HUD's relationship with the City of Chicago. While the City has not achieved the targeted housing goals set forth in the Letter of Intent as rapidly as anticipated, nevertheless there has been, and continues to be, visible progress toward reaching those goals. Without doubt, the most sensitive element of that program is the approval of sites for public housing. An arbitrary withdrawal of the Model Cities funds at this time would serve only to shore up hostility to that program and impede further approval of public

housing sites by the City Council. In HUD's letter to Mayor Daley, dated June 21, 1971, which the plaintiffs rely on for authority that HUD should cancel the second year Model Cities funds, HUD did not specifically quantify the level of continuing performance it expected, nor did it indicate a specific date upon which it would determine whether to terminate the Model Cities funding. ^{3/} Since the City has shown continuing progress toward meeting the housing goals set forth in the Letter of Intent, and since the Model Cities money will contribute to essential social services for inner-city residents, HUD has determined that, on balance, it would not be in the best interests of HUD or the citizens of Chicago to withhold the Model Cities funds at this time; and that such action would have an adverse impact upon the relations between HUD and the City of Chicago. ^{4/}

^{3/} "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 program not continue, the Model Cities Letter of Credit will be cancelled." (June 21 letter at page 2).

^{4/} Norwalk Core v. Norwalk Board of Education, 298 F.Supp. 213, 226 (D.C. Conn. 1969).

The plaintiffs should be well aware of the fact that the 7th Circuit's holding in Gautreaux v. Romney, supra, was not intended to provide a broad license for interference with the programs and actions of federal agencies. In addition, it should be emphasized that HUD has adequate and more strategic administrative remedies available to enforce compliance with the Letter of Intent. HUD has not released any funds for the second year Neighborhood Development Program which amounts to approximately \$20,000,000. In fact, no new urban renewal programs for Chicago have been funded since April, 1970. The reason HUD has taken this position is well known: urban renewal programs have significantly diminished the supply of housing units for low income families; in the absence of substantial progress by the City in replenishing this housing stock, additional urban renewal programs will only aggravate the problem. HUD has not released, and will not release, those urban renewal funds until it finds that substantial progress has been made by the City on the Letter of Intent.

Although the second year Model Cities funds have been authorized for the City of Chicago, this should not be construed as an indication that HUD will not withdraw that funding if the City fails to make continuing progress on the Letter of Intent.

Congress has vested the responsibility for the administration of the Model Cities program in the Secretary of Housing and Urban Development. Title 42, United States Code, Section 3302. The decision to release the Model Cities funds rests within the sound discretion of the administrative agency, and an examination of the equities leads the Department of Housing and Urban Development to firmly believe that withdrawal of the Model Cities program at this time would be precipitous and unwise.

If the plaintiffs feel that CHA or the City of Chicago is not living up to its obligations under Gautreaux v. CHA, 304 F.Supp. 736 (N.D. Ill. 1969), the plaintiffs possess an adequate remedy at law to enforce that order by way of supplemental proceedings in this Court. Also, it should not go un-noticed that the real obstacle to achievement of the public housing goals sought by plaintiffs, and ordered by this Court, is not HUD, but rather the Chicago City Council and the basic state enabling legislation which in effect grants veto power over public housing sites selected by CHA and approved by HUD, which power this Court has found to have effected a racially discriminatory public housing program in the City of Chicago. Gautreaux v. CHA, 286 F.Supp. 907 (N.D. Ill. 1969); Gautreaux v. Romney, (Slip Opinion No. 71-1073, 7th Cir. 1971).

WHEREFORE, based upon the foregoing reasons, the defendant, George W. Romney, respectfully requests that this Court deny plaintiffs' motion.

WILLIAM J. BAUER
United States Attorney

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CERTIFICATE OF SERVICE

JAMES C. MURRAY, Assistant United States Attorney, hereby certifies that he has caused to be delivered copies of the defendant's objections to plaintiffs' motion, the memorandum of law in support of defendant's objections to plaintiffs' motion, and the affidavit attached to the objections to plaintiff's motion to the following individuals at the address indicated on the 20th day of September 1971:

Mr. Alexander Polikoff, Esq.
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JAMES C. MURRAY, AUSA

Received a copy of the foregoing this 20th day of September, 1971.

ALEXANDER POLIKOFF, Esq.

By: _____

PATRICK W. O'BRIEN

By: _____

KAY KULA

By: _____

EARL NEAL

By: _____

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