
In the
UNITED STATES COURT OF APPEALS
For The Seventh Circuit

No.

DOROTHY GAUTREAUX, et al.,

Plaintiffs

v.

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

Defendant

and

CITY OF CHICAGO, a Municipal Corporation;
CENTRAL ADVISORY COUNCIL, a Not-for-profit
Corporation, CHICAGO HOUSING AUTHORITY, a
Municipal Corporation

Intervenors-Appellants

EMERGENCY MOTION TO SUSPEND AND VACATE
THE ORDER OF DISTRICT COURT ENTERED THE
1ST DAY OF OCTOBER, 1971

City of Chicago, a municipal corporation, Central Advisory
Council, a not-for-profit corporation, and Chicago Housing Authority,
a municipal corporation, by their attorneys, move the Court to

suspend and vacate the Order granting injunctive relief entered by the District Court on October 1, 1971 and as grounds for said Motion state:

1. On September 10, 1971 this Court handed down its opinion and order in this cause. No mandate has issued from this Court to the District Court in connection with said order, and at this time the issuance of the mandate is stayed until November 15, 1971.

2. On September 17, 1971, plaintiffs moved in the District Court pursuant to Rule 62(c) of the Federal Rules of Civil Procedure for an order "to preserve the status quo" until such time as the mandate -- and entire case -- might come back to the District Court for the consideration of appropriate relief. The subject matter of the motion was a \$26,000,000 grant, under the "Model Cities Program", to the City of Chicago.

3. Pursuant to motions appropriately made, the City of Chicago, the Central Advisory Council and the Chicago Housing Authority -- the movants herein -- were given leave to intervene.

4. Following the hearing on plaintiffs' motion, the District Court entered an order -- purportedly pursuant to Rule 62(c) of the Federal Rules -- enjoining HUD from releasing any Model Cities funds unless the City Council of the City of Chicago

approves the location of a specified number of public housing sites within specified areas of the city. Copies of said order and of the opinion accompanying same are attached hereto as Exhibits A and B.

5. The District Court's order creates an emergency, threatening immediate and irreparable harm to movants in that: (a) 4,000 Model City residents are in jeopardy of the immediate loss of their employment; (b) day-care centers, health centers, special education programs, job training, Senior Citizen programs, free breakfast, and other social service programs affecting thousands of low-income citizens, are also in immediate jeopardy. The District Court expressly found:

"The court agrees that failure to continue the Model Cities Program for the next three months would have a devastating effect on tens of thousands of the citizens of this City. Four Thousand would lose their jobs and many other thousands would be deprived of the benefits derived from the Model Cities Program." (Opinion, p. 8).

① 6. For the reasons stated above, the order is contrary to the public interest.

② 7. The injunction order is illegal and an abuse of discretion in that it directs action expressly prohibited by section 602 of the Civil Rights Act of 1964 (42 U.S.C. § 2000d--1).

3. The injunction order, though purportedly issued pursuant to Rule 62(c), is in no way directed toward maintaining the status quo pending appeal. It does not relate to any issue before this Court in the pending cause of action, Gautreaux v. Romney, No. 71-1073.

In further support of said Motion, we respectfully submit Suggestions filed herewith and, because of the emergency nature of this motion, request that we be permitted to argue orally before this Court forthwith.

WHEREFORE, movants pray that the Order of the District Court entered on October 1, 1971 in the above entitled cause be suspended and vacated.

CITY OF CHICAGO, a municipal corporation

By _____
RICHARD L. CURRY
Corporation Counsel

EARL L. NEAL, Special
Assistant Corporation Counsel

WILLIAM QUINLAN
Assistant Corporation Counsel

CENTRAL ADVISORY COUNCIL,
a not-for-profit corporation

By _____
ERNEST LAFONTANT
Its Attorney

CHICAGO HOUSING AUTHORITY,
a municipal corporation

By _____
KATHRYN M. KULA

PATRICK W. O'BRIEN

WATSON B. TUCKER
Its Attorneys

DOROTHY GAUTREAU, et al.,)
)
Plaintiffs,)
)
vs.) NO. 66 C 1460
)
GEORGE W. ROMNEY,)
)
Defendants.)

This matter coming on to be heard on the motion of plaintiffs under Rule 62(c) of the Federal Rules of Civil Procedure, and on the objections thereto filed by the defendant and intervenors, and the Court having heard the evidence and the arguments of counsel and being fully advised in the premises, it is hereby ordered:

The funds or monies may be so paid or made available

Exhibit "A"

to the City or agencies thereof at any time after the defendant files with this Court a certification to the effect that,

- (a) not fewer than seven hundred sites located in the general public housing area of the City, as such area is defined in this Court's final decree in the companion case Gautreaux, et al. vs. Chicago Housing Authority, No. 66 C 1459, which housing is to be provided by the Chicago Housing Authority; have been identified and processed by the City [including approval thereof by the City Council of the City] so as to permit acquisition thereof by Chicago Housing Authority to begin; and
- (b) Chicago Housing Authority is using its best efforts to proceed as rapidly as possible with the acquisition and development of the sites so processed

ENTER:

JUDGE RICHARD B. AUSTIN

J U D G E

DATED: October 1, 1971

NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

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

MEMORANDUM OPINION

It is particularly appropriate and fortuitous that this opinion is being handed down today, during the period that the Mayor has proclaimed as Model Cities Week. It is appropriate because it pinpoints who will be responsible for either the continuance or the discontinuance of the Model Cities Program in the City of Chicago.

In order to put in proper focus and perspective the problem confronting the court, the petition for an injunction, the hearing of last week, and the order to be entered today, the court feels it necessary to outline the historical background of this matter.

In 1966 the plaintiffs filed two different suits, one against Chicago Housing Authority and the other against the Secretary of Housing and Urban Development. Preparation for trial, by means of discovery, commenced first in the

suit against Chicago Housing Authority. Documents from the files of Chicago Housing Authority and sworn testimony from the lips of present and former Chicago Housing Authority supervisory personnel revealed overwhelming and irrefutable evidence of twenty years of deliberate housing segregation on the part of Chicago Housing Authority. That was found to be the fact by this court in its decree of July, 1969, twenty-six months ago. After frantically consulting all the legal talent available to it, Chicago Housing Authority apparently determined that an appeal of this decree would be hopeless and abandoned it. The net effect of this was to permit the decree to stand unchallenged and thus become the law of the Northern District of Illinois.

At this point the court wishes to interpolate a new facet. Twenty-one days ago, it was judicially determined by the 7th Circuit Court of Appeals that the Department of Housing and Urban Development was equally guilty and responsible with Chicago Housing Authority for deliberately perpetuating segregated housing. Relevant excerpts from that opinion follow:

"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.

"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.

"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.

"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.

"We hold that HUD, through its Secretary, violated the Due Process Clause of the Fifth Amendment . . . and also has violated Section 601 of the Civil Rights Act of 1964 . . ."

Getting back to the July, 1969 decree, the next problem was the manner in which the illegal conduct that the court found could be remedied and ameliorated. Chicago Housing Authority was ordered to use its "best efforts" to supply and submit as rapidly as possible to the City Council for approval sites for seventeen hundred and forty-six units of public housing. The first seven hundred of these were to be in the general or white areas, and of the balance of one thousand and forty-six, seven hundred and fifty were also to be in the general or white areas of the City. The court

and the plaintiffs waited patiently to determine what the "best efforts" of Chicago Housing Authority would produce. Ten months later these "best efforts" had not resulted in any sites being presented to the City Council for approval.

Conferences were held from time to time between attorneys for the plaintiffs and Chicago Housing Authority and its counsel, and at one of these in the spring of 1970, the Chairman of Chicago Housing Authority advised the plaintiffs that they would submit no sites to the City Council until after the municipal elections, one year later in the spring of 1971. The court was informed of this statement and also that the "best efforts" of Chicago Housing Authority had resulted in no submissions to the City Council. It thus became apparent that the court could no longer rely on the "best efforts" of Chicago Housing Authority and a new decree was signed on July 1, 1971, which established a timetable as to when these sites were to be submitted. This decree Chicago Housing Authority decided to appeal, hoping that the appellate procedure would delay the performance of the timetable until after the municipal elections in the spring of 1971.

They went screaming and protesting, as they had a legal right to do, first to the Court of Appeals, and that Court sustained the July, 1970 decree. Next, they went to

the United States Supreme Court seeking to reverse the Court of Appeals, and the highest Court in the land denied them the relief sought. One final effort was made to the United States Supreme Court for a rehearing, seeking to have that Court reverse itself, which was denied. Having run the gamut, they returned to the District Court where prompt disclosure and submission was ordered. Only then did Chicago Housing Authority, with a gun to its head, comply, twenty months after the first decree and eight months after the second decree. Sites for seventeen hundred odd units were finally disgorged and submitted to the City Council for its approval.

After the municipal elections, the City sought from the Secretary of the Department of Housing and Urban Development 26 million dollars to finance its Model Cities Program for the period from June 15 to December 31, 1971. It is obvious from the evidence that the Regional Administrator for the Department of Housing and Urban Development was concerned with the City's failure to perform many of its past commitments, including prompt submission to the City Council of the sites heretofore supplied by Chicago Housing Authority. He apparently required the City to supply him with a Letter of Intent as to what its future conduct would be before

authorizing and granting the 26 million dollar request. Such a Letter of Intent was drafted and redrafted and resulted in the Letter of Intent of May 12, 1971, setting forth the undertakings of the City. One of the witnesses in the case, Lewis Hill, the City's Commissioner of Development and Planning, testified that he participated in the drafting and redrafting of this Letter of Intent. Below are pertinent excerpts from the Letter of Intent:

"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.

"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."

This Letter of Intent was signed by the Mayor of the City of Chicago, the Chairman of Chicago Housing Authority and was dispatched to the Regional Administrator of the Department of Housing and Urban Development, who subsequently approved it.

It is obvious from the evidence in this case that the drafters and the signers of the Letter of Intent knew, or should have known, the improbability of compliance with the undertakings outlined above. It is becoming increasingly clear that there was no intention by each of the above parties to comply with their undertakings. The court finds that the sole purpose of the letter was to induce the Department of Housing and Urban Development to grant the 26 million dollars for funding the Model Cities Program.

By the first deadline, June 15, 1971, only two hundred forty-two units had been approved in the general or white areas. From June 15 to the next date deadline, only forty-six units were approved in the general or white areas, leaving a deficit of more than five hundred twenty-five units for approval.

On June 21, 1971, the Regional Administrator of the Department of Housing and Urban Development addressed a letter to the Mayor containing the following pertinent excerpts:

"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."

It is apparent that the planned release of the Model Cities funds was conditional. It is also perfectly clear that the conditions set forth have not been met, and it is becoming obvious that they never will be.

The court agrees that failure to continue the Model Cities Program for the next three months would have a devastating effect on tens of thousands of the citizens of this City. Four thousand would lose their jobs and many other thousands would be deprived of the benefits derived from the Model Cities Program. Only the City of Chicago, by failing to comply with its undertakings, and neither the plaintiffs nor this court, would be responsible for such a catastrophe. The court wonders, at this stage, whether the Regional Administrator of the Department of Housing and Urban Development, and a former Mayor of the City of St. Paul, really believes now that the City intends to comply with its undertakings. The evidence is to the contrary.

There have been occasions in the past, in other parts of this country, when chief executives have stood at the

school house and the state house doors with their faces livid and their wattles flapping, and have defied the federal government to enforce its laws and decrees. It is an anomaly that the "law and order" chief executive of this City should challenge and defy the federal law. Apparently, "law and order" applies only to the enforcement of state law and municipal ordinances.

The defendant and the intervenors have appealed to the court's sense of equity in determining the matter before it. The court accedes to their request. The court will give the chief executive and his City Council an opportunity to repent and reconsider their conduct. The court will sugar-coat the pill. In order for the City to qualify for the 26 million dollar grant, the court will not require at this time that they approve fourteen hundred fifty units in the general or white areas, which they undertook to supply; the court will require merely approval for their current deficit as of September 15, 1971, those seven hundred such units, less than half of their total undertaking. This in no way relieves the City of the balance of its undertaking, spelled out in the letter of May 12. The court is handing them the key to the funds that they so plaintively seek; however, until that minimum compliance has been achieved, the court is enjoining

the Department of Housing and Urban Development from releasing any of the funds but is authorizing it to do so when that minimum requirement has been met. Should the City fail to do so, the court has pinpointed the responsibility for the devastating effect which may ensue.

The court finds it has jurisdiction both under Rule 62(c) and the opinion of the 7th Circuit heretofore referred to.

JUDGE RICHARD B. AUSTIN

Judge, United States District Court

DATED: October 1, 1971

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

NO. 71-1732

DOROTHY GAUTREAUX, et al.,
Plaintiffs

vs.

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

and

CITY OF CHICAGO, a Municipal Corporation;
CENTRAL ADVISORY COUNCIL, a Not-for-profit
Corporation, CHICAGO HOUSING AUTHORITY, a
Municipal Corporation
Intervenors-Appellants.

NOTICE OF MOTION

TO:

Alexander Polikoff
109 North Dearborn
Room 1001
Chicago, Illinois
60602

William J. Bauer
United States Attorney
for the Northern Dis-
trict of Illinois
219 So. Dearborn Street
Chicago, Illinois 60604

Kenneth Howell
Community Legal Counse
116 So. Michigan Ave.
Chicago, Illinois

PLEASE TAKE NOTICE that on October 13, 1971 I filed in
the Court of Appeals, Seventh Circuit, the attached Emergency
Motion to Suspend and Vacate the Order of District Court Entered
October 1, 1971, together with Suggestions in support thereof.

Richard L. Curry

RICHARD L. CURRY
Corporation Counsel of the City of Chicago
511 City Hall, Chicago, Illinois 60602
Attorney for Intervenors-Appellants.

STATE OF ILLINOIS)
) . SS
COUNTY OF C O O K)

AFFIDAVIT OF SERVICE

I, _____, having been duly sworn upon
oath, state that I served a copy of the foregoing Notice of
Motion by delivering a copy of same to the following persons on
October ____, 1971.

Alexander Polikoff
109 North Dearborn
Room 1001
Chicago, Illinois 60602

William J. Bauer
United States Attorney for
the Northern District of Illinois
219 South Dearborn Street
Chicago, Illinois 60604

Kenneth Howell
Community Legal Counsel
116 South Michigan Avenue
Chicago, Illinois

SUBSCRIBED AND SWORN TO
before me this ____ day
of October A.D., 1971.

NOTARY PUBLIC

In the
UNITED STATES COURT OF APPEALS
For The Seventh Circuit

No. 71-1732

DOROTHY GAUTREUX, et al.,
Plaintiffs

v.

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

and

CITY OF CHICAGO, a Municipal Corporation;
CENTRAL ADVISORY COUNCIL, a Not-For-Profit
Corporation, CHICAGO HOUSING AUTHORITY, a
Municipal Corporation,

Intervenors-Appellants

SUGGESTIONS IN SUPPORT OF EMERGENCY
MOTION TO SUSPEND AND VACATE THE DISTRICT COURT'S
ORDER OF OCTOBER 1, 1971

MOVING PARTIES

The City of Chicago, a municipal corporation, is the agent to administer the Model Cities grant from the federal government. The City, as well as other cities in this District, has an on-going Model Cities Program which provides social service programs such as day-care centers, health centers, special education programs and job training.

Conditionally
On June 21, 1971, the City received from the Department of Housing and Urban Development a "Letter to Proceed", authorizing the City to implement various programs (see Exhibit C attached hereto); the cost for such programs amounts to 26 million dollars for the second year of the Model Cities programs, which terminate on December 31, 1971. Relying upon the letter, the City proceeded to make contracts, leases, commitments and expenditures. The Order of October 1, 1971, impairs this on-going program, which is scheduled for a period of five years.

Central Advisory Council is the official representative of all the residents of public housing in Chicago, and sets policies and programs to improve the quality of life of all said residents, who directly and substantially benefit from the varied and numerous Model Cities Programs.

Chicago Housing Authority, a municipal corporation, intervened in this cause on behalf of the thousands of residents and citizens who live in the developments and who directly benefit from the aforesaid Model Cities program.

There are four Model Cities target areas in the City of Chicago:

(a) MIDSOUTH: bounded by 60th Street on the North; 67th Street on the South; Cottage Grove on the West; and Stony Island on the East.

(b) NEAR SOUTH: bounded by 39th Street on the North, Federal Street on the West; 51st Street on the South over to Cottage Grove.

North on Cottage Grove to 47th Street and then East to Lake Michigan.

(c) WEST: bounded by the Eisenhower Expressway on the North; 21st Street on the South, Rockwell Street on the East; Hamlin Avenue and Independence Boulevard on the West.

(d) NORTH: bounded by Irving Park Road and Montrose Avenue on the South; Lawrence Avenue and Foster on the North; Clarendon Avenue and Sheridan Road on the East; and Clark Street on the West.

Three of the above areas have predominantly Black residents.

The affidavit of Erwin A. France, which describe the programs that benefit the movants, was filed in the District Court and is attached hereto as Exhibit D.

SUMMARY OF RELEVANT FACTS

On September 17, 1971, one week after the filing of this Court's opinion in No. 71-1073, but before issuance of the mandate, plaintiffs moved in the District Court for an Order under Rule 62(c) of the Federal Rules of Civil Procedure. That rule, in pertinent part, reads as follows:

"When an appeal is taken from an interlocutory or final judgment granting, dissolving, or denying an injunction, the court in its discretion may suspend, modify, restore, or grant an injunction during the pendency of the appeal upon such terms as to bond or otherwise as it considers proper for the security of the rights of the adverse party."

The District Court held hearings from September 21, to September 24, 1971. Testimony was taken and affidavits filed.

On October 1, 1971, the District Court entered an Order, purportedly pursuant to Rule 62(c), enjoining the defendant, George W. Romney, from releasing to the City of Chicago "pending termination of the appeal", any funds for the second year of the Model Cities programs, unless the City Council of the City of Chicago approved sites for a given quantity of public housing units in predominantly white areas.

ARGUMENT

I.

THE ENTRY OF THE ORDER OF OCTOBER 1, 1971 BY THE DISTRICT COURT IS DIRECTLY CONTRARY TO THE PUBLIC INTEREST OF ALL THE CITIZENS OF THE CITY OF CHICAGO AND OF EVEN GREATER HARM TO THE CLASS OF CITIZENS WITHIN THE SCOPE OF THE MODEL CITIES PROGRAM

The District Court found that

"...failure to continue the Model Cities Program for the next three months would have a devastating effect on the tens of thousands of the citizens of this City. Four thousand would lose their jobs and many other thousands would be deprived of the benefits derived from the Model Cities Program."
(Exhibit B, p.8.)

Courts have uniformly held that the interest of the public is of paramount consideration in the granting or withholding of injunctive relief. 7 Moore, Federal Practice, Sec. 65.04-[1] (2d ed.). The Supreme Court of the United States, in Yakus v. U. S., 321 U.S. 414, 441, (1944) has recognized this principle:

"that 'Courts of equity may, and frequently do, go much farther both to give and withhold relief in furtherance of the public interest than they are accustomed to go when only private interests are involved.'"

The paramount importance of the "public interest" factor in the exercise of judicial discretion is demonstrated by a recent decision in which a district judge, after considering all relevant factors, such as likelihood of success and irreparable harm to plaintiff, stated:

"...if an injunction will adversely affect the public interest in a manner that cannot be compensated by a security bond, then on this ground alone the application for an injunction can be denied." Citizens Committee for the Hudson Valley v. Volpe, 297 F. Supp. 804, 808 (S.D.N.Y., 1969) (emphasis supplied).

That the effect of the Order below on the public interest is immediate, direct, and adverse--to an intolerable degree--is indisputable. Testimony and affidavits filed in the trial court make it clear that more than fifty separate programs having little or nothing to do with housing face immediate termination for want of funding. Approximately 10 million

dollars of the Model Cities money supports health centers and education programs in impoverished areas. The balance supports programs which include the prevention of juvenile delinquency, library services, day care centers, services for unmarried mothers, the Registrar of Citizen's Complaints, consumer protection, nutrition programs, free breakfast, instruction in the English language, reading instruction, and senior citizens services.

The major thrust of the Model Cities program is to maintain and improve the quality of life in the four designated Model City low-income neighborhoods. The continuance of these services and the retention of the operating and administrative personnel involved in carrying them out is dependent upon the availability of funding. Similar factors were considered by the Court of Appeals for the Sixth Circuit in denying an injunction against expansion of Tennessee Valley Authority operations:

"It is, moreover, inescapable that in the conduct of an activity of the size and scope herein delineated, a great organization must necessarily have been built up, including not only laborers, equipment, and executives, but technological experts and specialists of many kinds. To appraise the injury to the defendants from the disorganization which must follow, substantial or even partial cessation of activity is impossible, but that it will be great cannot be denied. So also in respect to the public interest involved. The loss, inconvenience, and discomfort of the residents of the area in failing to obtain cheap electric energy;

if it be found in the end that it may lawfully be supplied to them, may likewise not be measured, but equally incontrovertible is it that it will be great." T.V.A. v. Tenn. Elec. P. Co., 90 F 2d 885, 894 (C.A.6; 1937).

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For these reasons, it is submitted that the court below erred in entering the Injunction Order despite the admittedly "devastating effect" it will have on the public.

II

THE ORDER IS ILLEGAL AND AN ABUSE OF DISCRETION IN THAT IT DIRECTS ACTION EXPRESSLY PROHIBITED BY SECTION 602 OF THE CIVIL RIGHTS ACT OF 1964

Section 602 of the Civil Rights Act of 1964 (42 U.S.C., Sec. 2000d-1) states:

see our brief

"Compliance with any requirement adopted pursuant to this section may be effected (1) by the termination of or refusal to grant or to continue assistance under such program or activity to any recipient as to whom there has been an express finding on the record, after opportunity for hearing, of a failure to comply with such requirement, but such termination or refusal shall be limited to the particular political entity, or part thereof, or other recipient as to whom such a finding has been made and, shall be limited in its effect to the particular program, or part thereof, in which such non compliance has been so found, or (2) by any other means authorized by law..." (Emphasis supplied.)

It is thus clear that Congress intended to avoid the dangerous situation in which funds promoting one government program are, in effect, "held for ransom" in promoting a different government program.

new
In Board of Public Instruction v. Finch, 414 F.2d 1068 (C.A. 5, 1969), the Court held that Section 602 was enacted specifically in response to Congressional fears that the administrative authority to terminate aid to schools "might also lead to termination of aid to roads and highways," and to other programs, 414 F.2d at 1077. There, three separate and distinct programs were before the Court: aid for education of children of low income families; grants for supplementary educational centers; and grants for adult education. The Court said that "each of the programs has a different objective; each requires a separate plan and separate administrative approval", and concluded that:

"In order to affirm HEW's action, we would have to assume, contrary to the express mandate of 42 U.S.C.A. sec. 2000d-1, that defects in one part of a school system automatically infect the whole. Such an assumption in disregard of statutory requirements is inconsistent with both fundamental justice and with our judicial responsibilities." 414 F.2d at 1074.

The Chicago Model Cities social service programs are even more distinct in concept from the city-wide construction of low income public housing than were the three educational programs in Finch.

Thus, HUD could not have terminated the Chicago Model Cities funds for the violations involved in either of the Gautreaux cases; nor, could the Secretary legally terminate such

funds for any alleged non-performance of objectives set forth in the letter of intent of May 12, 1971.

read

The Injunction Order of the District Court in effect directs HUD to violate § 502 of the Civil Rights Act. The fact that the District Court has ordered HUD to do the act cannot make the act legal; Doty v. Atkinson, 262 F. Supp. 477, 481 (N.D. Miss. 1966).

III

THE MODEL CITIES PROGRAM IS UNRELATED TO THE ISSUES IN THE GAUTREAUX CASES AND, AS SUCH, IS NOT PROPERLY BEFORE THE DISTRICT COURT FOR THE PURPOSE OF GRANTING INTERIM OR PERMANENT RELIEF

relief issues broader?

The Chicago Model Cities programs, do not provide for the construction of low rent public housing (the issue in the two Gautreaux cases). Their principal relation to housing is twofold: First, by providing "seed money" to private developers of single family dwellings, pursuant to Section 235 of the Housing Act; second, by funding a "supplemental rent" program to provide housing for low income families throughout the Chicago metropolitan area. The latter program, the larger of the two, provides only one million dollars out of the 76 million dollars two-year Model Cities grant. Neither of these Programs

See 47 Appeal, footnote
no relief - e.s. Detroit
is relevant to the only issue of this case: racial discrimination in construction of public housing. Moreover, together they comprise a miniscule proportion of the total Chicago Model Cities programs which the lower court has terminated.

HUD new
It is therefore impossible to place Model Cities programs within the status quo that the order of injunction entered below purports to preserve. Rule 62(c) of the Federal Rules of Civil Procedure "is merely expressive of a power inherent in the court to preserve the status quo...." 7 Moore, Federal Practice, Sec. 62.05 (2d ed.). The social services affected by the Injunction Order, however, have no bearing on the construction of low income housing, are not part of the status quo, and thus should not have been considered by the District Court in attempting to preserve whichever of plaintiffs' rights is in need of protection "pending the termination of the appeal."

Model Cities funds and programs were not involved in the pleadings or proceedings of either Gautreaux case. Model Cities connection with either case is only that the defendant in one of them, George W. Romney, happens to administer federal funds which are available for construction of public housing under one program and for social services under another program.

CONCLUSION

The Order of the District Court is contrary to the public interest, an abuse of discretion and illegal. There can be no assurance that its avowed purpose, i.e., coercion of the City Council to approve public housing sites will be achieved. What is sure, however, is the fact of adding to the suffering of the poor, the disadvantaged, the aging and the elderly. It is they - and they alone - who will be the victims of the ill-considered order of injunction.

WHEREFORE, movants pray, for the reasons stated above, that the Order of the District Court entered on October 1, 1971 in the above entitled cause be suspended and vacated.

Respectfully submitted,

CITY OF CHICAGO, a municipal corporation

By RICHARD L. CURRY
Corporation Counsel

CENTRAL ADVISORY COUNCIL,
a not-for-profit corporation

By ERNEST LAFONTANT
Its Attorney

EARL L. NEAL, Special
Assistant Corporation Counsel

WILLIAM R. QUINLAN
Assistant Corporation Counsel

CHICAGO HOUSING AUTHORITY,
a municipal corporation

By KATHRYN M. KULA

PATRICK W. O'BRIEN

WATSON B. TUCKER

Its Attorneys



DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
360 NORTH MICHIGAN AVENUE, CHICAGO, ILLINOIS 60601

JUN 22 1971

IN REPLY, REFER TO:
9-DM

Project Number: ME-12-002
Additional Grant: \$26,082,256

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

Dear Mayor Daley:

On behalf of Mr. Vavoulis, Regional Administrator, we are pleased to inform you that the City of Chicago's Second Year Model Cities Program has been approved. You will recall that on May 12, 1971, HUD released \$12,076,744 for continuation of first year programs under the City's amended Model Cities grant budget. Thus an additional \$26,082,256 is now approved for the carrying out of your comprehensive city demonstration program. As recited in the Regional Administrator's letter to you dated June 21, 1971, 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 City's Letter of Intention dated May 12, 1971. As the Regional Administrator further indicated, should this progress not continue, the Model Cities Letter of Credit will be cancelled.

We wish to extend congratulations to you, to Mr. Erwin France, to the Model Cities staff, to the Model Area Councils, and to the many other individuals and groups in and out of public life whose personal efforts and sacrifices have contributed to the success of the Chicago Model Cities Program.

The attached instruction sheet lists the documents enclosed and sets forth the procedure for execution of the revised grant budget. The Department of Housing and Urban Development will approve the revised grant budget after the City has approved it and returned it to this Office in accordance with that procedure.

Costs incurred on and after January 1, 1971 for approved undertakings as listed in the grant budget will be eligible for reimbursement if the terms and conditions of the grant agreement are met and the attached instructions are followed.

Exhibit "C"

City of Chicago
Ex. 3

Exhibit A-1 (attachment to the revised grant budget) states that:
 "If duplicate Federal funding becomes available to the City for similar purposes for any portion of the time provided for in this grant agreement, HUD reserves the right to terminate that portion of the grant allocable to the period of time after such duplicate Federal funding becomes available. In determining the portion of the grant so allocable, it is assumed that eligible expenses should be incurred (except for funds obligated to capital projects) at a rate of approximately 1/12 per month."

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) was enacted on January 2, 1971. Assurances from cities of compliance with the Act are required before any supplementally funded project involving displacement or real property acquisition is approved. A general statement on the Act (Form E); four copies each of the two assurance forms -- Form A (Displacement Assurance) and Form C (Acquisition Assurance); the procedure for execution of the assurances; and a copy of the Act are also enclosed.

We are happy that your program has been moving ahead and pledge the continued support of the Federal Government.

Sincerely yours,

Alan Goldfarb
 Assistant Regional Administrator for
 Model Cities

Enclosures

cc:
 Mr. Erwin France
 Administrative Assistant to the
 Mayor

Chairmen, Citizens' Organizations:

- Mrs. Geneva Boy
- Mr. Richard Hikawa
- Mr. Walter Walker
- Miss Alfreda Duster

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

DOROTHY GAUTREUX, et al.

Plaintiffs,

vs.

GEORGE W. ROMNEY,

Defendant.

No. 66 C 1460

A F F I D A V I T

I, ERWIN A. FRANCE, being first duly sworn on oath, deposes and says:

1. That your Affiant is an Administrative Assistant to the Mayor, City of Chicago, charged with directing the Chicago Model Cities Program. That your Affiant has been so engaged since November, 1967. That your Affiant is primarily responsible for the coordination and development of the Model Cities Program throughout the City of Chicago.

2. That on June 21, 1971, the Department of Housing and Urban Development indicated an intention to submit a Letter of Credit for approximately \$26,000,000.00 for the implementation of the second year Model Cities Program.

That the following are the commitments heretofore made with

Exhibit "D"

with respect to said Grant:

CONTRACTS

1.	Project #1481 Health Centers	\$2,267,657.00
2.	Project #1486 Information & Referral	38,330.00
3.	Project #2381 Land Acquisition	280,488.00
4.	Project #2384 Threshold	37,679.00
5.	Project #2581 Leasing Program	1,000,000.00
6.	Project #3287 Summer Program	15,522.55
7.	Project #3387 Summer Beautification	276,781.00
8.	Project #3581 Urban Intern	37,508.00
9.	Project #3687 Mundelein (HICA)	122,742.00
10.	Project #3891 Chicago Public Library	98,977.00
11.	Project #3789 Kennedy-King	61,000.00
12.	Project #4182 Prevention of J/D	307,409.00
13.	Project #4186 Youth Service Homes	200,690.00
14.	Project #4188 Residential Apprentice	36,111.00
15.	Project #4581 Registrar of Citizen's Complaints	94,902.62
16.	Project #4685 Alternative	193,180.00
17.	Project #4881 Chicago Police Department	1,095,000.00
18.	Project #5188 Day Care	533,078.00
19.	Project #5384 CHA Day Care	121,126.00
20.	Project #5493 Services for Unmarried Mothers	342,591.00
21.	Project #5589 Foster Family Day Care	38,174.00
22.	Project #5681 Mayor's Office of Inquiry & Information	110,973.00
23.	Project #5785 Marillac House	41,798.00
24.	Project #6584 Dept. of Consumer Sales, Weights & Measures	123,776.00
25.	Project #6681 Mayor's Committee of Economic/Cultural Development	105,274.59
26.	Project #7782 Streets & Sanitation	1,527,077.00
27.	Project #8181 Department of Human Resources	278,006.00
28.	Project #8981 Model Cities Summer Program	29,996.00
29.	Project #9681 Contract Compliance	81,706.00
30.	Project #9881 M. D. T. A. Training	248,985.00

31.	Project #9882 Mayor's Office of Manpower	\$ 1,092,247.00
32.	Dr. Joseph Braga	4,530.00
33.	Project #0001 Relocation	802,701.09
34.	Project #3187 Swimming Pool	133,825.70
35.	Project #3481 Co-Plus Administration	601,792.00
36.	Project #3482 New Careers	1,361,300.00
37.	Project #3483 Instructional Team Leaders	660,700.00
38.	Project #3484 Community School	547,631.00
39.	Project #3487 Co-Plus Nutrition	268,560.00
40.	Project #3488 Pre-School Program	506,189.00
41.	Project #3489 In-Service Co-Plus	283,700.00
42.	Project #3491 In-Service	540,360.00
43.	Project #3492 TESL	97,300.00
44.	Project #3493 Reading Cntr Hess	45,100.00
45.	Project #3494 Free Breakfast	492,530.00
46.	Project #3495 Improved Language Arts	112,900.00
47.	Project #3499 Summer Co-Plus	575,845.00
48.	Project #3498 Reading Project (Performance)	538,151.00
49.	Project #3583 Reading Project	27,216.00
50.	Project #1682 Cook County	218,000.00
51.	Project #2488 Community Bldg.	257,787.00
52.	Project #2783 Not-for Profit Developers	198,766.00
53.	Arthur D. Little	50,000.00
54.	Project #6787 C.E.D.C.	113,652.50
55.	Project #6788 C.F.D.C.	1,300,476.75
56.	Booz, Allen, Hamilton	70,000.00
57.	Perkins and Will	49,785.00
58.	Spa-Redco	45,815.00
59.	W. V. Rouse	45,000.00
60.	Daniel D. Howard	9,920.00
61.	Project #5183 Services for Seniors	106,806.00
		\$ 20,905,123.80

SUMMARY

CONTRACTS	\$ 20,905,123.80
PROGRAM ADMIN.	1,687,228.00
MULTI SERVICE CENTER	4,000,000.00

TOTAL \$ 26,592,351.80

3. That of the total funds allocated to the Model Cities Program, none of said funds are directed toward the construction of low income rental housing.

FURTHER AFFIANT SAITH NOT.

ERWIN A. FRANCE, Affiant

STATE OF ILLINOIS)
) SS:
)
 COUNTY OF COOK)

ERWIN A. FRANCE, being first duly sworn on oath says that he has read the above and foregoing Affidavit by him subscribed and that the same is true in substance and in fact.

Subscribed and sworn to before
 me this _____ day of _____
 A.D., 1971.

Notary Public