
In the
United States Court of Appeals
For the Seventh Circuit

No. 81-2308
No. 81-2311
No. 81-2361
(CONSOLIDATED)

No. 81-2308
GAUTREAUX, et al.,
Plaintiffs-Appellees,
vs.
SAMUEL R. PIERCE, ETC., et al.,
Defendants-Appellees,
vs.
ROGERS PARK COMMUNITY COUNCIL, ETC, et al.,
Proposed Intervenor-Appellants.
No. 81-2311
GAUTREAUX, et al.,
Plaintiffs-Appellees,
vs.
SAMUEL R. PIERCE, ETC., et al.,
Defendants-Appellees,
APPEAL OF: GINGER MACK, Class Member,
Plaintiff-Appellant.
No. 81-2361
GAUTREAUX, et al.,
Plaintiffs-Appellees,
vs.
ILLINOIS HOUSING DEVELOPMENT AUTHORITY,
Defendant-Appellant.

Appeal from the United States District Court for the
Northern District of Illinois.
Honorable JOHN POWERS CROWLEY, *Judge Presiding*

**REPLY BRIEF OF PROPOSED INTERVENORS-
APPELLANTS ROGERS PARK COMMUNITY
COUNCIL, ETC., et al.**

LAWRENCE JAY WEINER
FREDRIC BRYAN LESSER
One North La Salle Street
Chicago, Illinois 60602
Telephone: 782-4115
*Attorneys for Proposed Intervenor-
Appellants Rogers Park Community
Council, Etc., et al., in Case No. 81-
2308*

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

NO. 81-2308
NO. 81-2311
NO. 81-2361
(CONSOLIDATED)

NO. 81-2308
GAUTREAUX, et al., Plaintiffs-Appellees,

-v-

SAMUEL R. PIERCE, ETC., et al.,
Defendants-Appellees,

-v-

ROGERS PARK COMMUNITY COUNCIL, ETC., et al.,
Proposed Intervenor-Appellants.

NO. 81-2311
GAUTREAUX, et al.,

Plaintiffs-Appellees.

-v-

SAMUEL R. PIERCE, ETC., et al.,
Defendants-Appellees,

APPEAL OF: GINGER MACK, Class Member,
Plaintiff-Appellant.

NO. 81-2361
GAUTREAUX, et al.,
Plaintiffs-Appellees,

-v-

ILLINOIS HOUSING DEVELOPMENT AUTHORITY,
Defendant-Appellant.

On Appeal from
The United States
District Court
For The Northern
District of
Illinois Eastern
Division

Case Nos.
66-C-1459
66-C-1460
(Consolidated)

The Honorable
John Powers
Crowley,

Judge Presiding

REPLY BRIEF OF PROPOSED
INTERVENORS-APPELLANTS ROGERS
PARK COMMUNITY COUNCIL, ETC., ET AL.

The Rogers Park Community Council, an Illinois not-for-profit corporation and fifty named residents (collectively referred to herein as "RPCC") of Census Tract 101 ("CT 101") sought intervention to prevent the designation CT 101 as a revitalizing area. The consent decree requires, authorizes and governs the building of 7,100 new subsidized housing units in areas which, if the consent decree is affirmed, will include CT 101.

The appellees have failed to rebut the RPCC'S contention and the evidence adduced at the hearing that CT 101 is not a revitalizing area. As contrasted with the detailed showing by the RPCC that CT 101 is clearly not revitalizing, but rather deteriorating and overpopulated, the appellees present only vague assertions that because of CT 101's geographical location it has "potential" (Joint Brief of Plaintiffs-Appellees and Defendant-Appellee, United States Department of Housing and Urban Development, at 40, hereinafter "Brief of Appellees").

I.
THE RPCC'S MOTIONS FOR LEAVE TO
INTERVENE WERE NOT PREMATURE

The plaintiffs and HUD assert that intervention by the RPCC was properly denied (although the RPCC was allowed to participate

in a limited manner in the hearing) because the request was "premature" (Brief of Appellees at 26-27). The rationale asserted by the plaintiff and HUD is that the consent decree "does not authorize any assisted housing units to be located in CT 101 ..." (Brief of Appellees at 26). They assert that the consent decree "merely" designates CT 101 as a revitalizing area and that if CT 101 was designated as a limited or a general area, new subsidized construction would not be precluded.

First, no appellee or appellant suggests that CT 101 should have been designated as a general area. The issue before the district court and this Court is whether CT 101 should have been designated a limited area instead of a revitalizing area. The distinction is vital to the welfare of CT 101 and directly affects whether any new subsidized housing will be built in CT 101 under the consent decree and the amount of said subsidized housing.

The consent decree commands that, "HUD will provide assisted housing to eligible persons ... until the number of occupancies of assisted housing units in the General Area and/or in the Revitalizing Area ... equals 7,100." (Consent Decree, p. 4; Appendix A23). If CT 101 is a limited area, it will not be included in the 7,100 unit quota required of HUD.

Although designation as a limited area does not preclude new subsidized housing being constructed outside of that required

by the consent decree, a limited designation would create a great disincentives for HUD to build in CT 101. See, e.g., Consent Decree at 7, par. 5.5.2, Appendix, A26; and Consent Decree at 14, par. 5.8, Appendix, A33. Thus, intervention is not premature because the designation is a vital factor in HUD's decisions to build new subsidized housing in CT 101.

Second, the consent decree does authorize new subsidized housing to be built in CT 101. The consent decree also authorizes construction in other revitalizing areas, yet this does not mean, as the plaintiffs and HUD assert, that the residents of CT 101 do not have "an interest relating to the transaction which is the subject of the lawsuit" Fed. R. Civ. P. 23(a). The residents of CT 101 have a definite interest in a consent decree requiring HUD to build 7,100 units in areas including CT 101.

Third, there is nothing premature about the RPCC's motions for leave to intervene. As the plaintiffs and HUD point out, any future developer will have to comply with HUD's site and neighborhood standards (Brief of Appellees at 27). Compliance is a separate and independent requirement. If CT 101 is designated a revitalizing area, then funds will be provided for those builders who satisfy the independent site selection requirement.

The plaintiffs and HUD also assert that if the RPCC is

dissatisfied with HUD's decision on site selection requirements, it may then seek administrative and legal redress (Brief of Appellees at 27). This is irrelevant. If the consent decree is affirmed, the RPCC cannot challenge the consent decree's authorization. Section 8 of the consent decree allows only the plaintiffs or HUD to modify the decree or to seek court review of the decree's provisions (Consent Decree at 15-18; Appendix A34-A37).

Finally, the plaintiffs and HUD assert that the RPCC was properly denied leave to intervene because if it had intervened, other community organizations could intervene also and turn the fairness hearing into a "public policy debating forum ..." (Brief of Appellees at 28). By this designation, the plaintiffs and HUD are seeking to insulate their decision to include CT 101 as a revitalizing area from judicial review.

RPCC respectfully submits that whether HUD's determination was political or apolitical was and is not at issue. The issue presented and to be resolved is whether the evidence supports HUD's determination. If it does not, then CT 101 should not be included within designated revitalizing areas. Moreover, the record clearly shows that a very small number of organizations sought intervention and that the proceedings were not a public policy debate, but rather a legal challenge to the sufficiency of evidence with respect to the inclusion of CT 101

as a revitalizing area in the consent decree. RPCC respectfully contends that the evidence not only does not support the inclusion of CT 101, but to the contrary mandates its exclusion.

The plaintiffs and HUD sought and obtained a consent decree directly affecting the lives and property of literally millions of people. It is respectfully submitted that those people and their representatives had a right to be heard.

II.

CT 101 IS NOT A REVITALIZING AREA

The plaintiffs and HUD have failed to rebut RPCC's contention that the evidence adduced clearly established that CT 101 is not a revitalizing area, but rather a substantially overpopulated, deteriorating area. The plaintiffs and HUD presented this Court with testimony by Patricia Barnes, Jean Wanzo, Jay Golden and Elmer Binford (Brief of Appellees at 40-41). The district court had already heard the testimony by the first three lay witnesses when it said, "I am going to have to hear some pretty strong evidence from the plaintiffs and HUD that 101 is a revitalizing area" (Tr. II at 346) (emphasis supplied).

Ms. Barnes' testimony was inadequate to show that CT 101 is a revitalizing area. Unquestionably, CT 101 "is very close to a lot of public transportation" (Brief of Appellees at 40).

The RPCC's expert witness, Mrs. Lorraine Woos, testified that the CTA turnaround tracks located in CT 101 "may in fact have spurred some of the disinvestment in buildings along that western boundary, ... you can hear the tremendous amount of screeching and turnaround up there" (Tr. II at 378-79). Unquestionably, as Ms. Barnes testified, CT 101 is "very close to the lake" (Brief of Appellees at 40). Yet Mrs. Woos testified, "if there was some magic about being a lakefront neighborhood, I don't believe that the north of Howard neighborhood would have deteriorated to the degree it has" (Tr. II at 380).

Contrary to Ms. Barnes' lay testimony that CT 101 has adequate shopping (Brief of Appellees at 40), Mrs. Woos testified in great detail as to the deteriorating commercial use of CT 101 (Tr. II at 365-67, summarized in the Brief of Proposed Intervenor-Appellants Rogers Park Community Council, Etc., et al., at 6-7). Among other examples of poor commerce, Mrs. Woos testified that CT 101 has "a lot of very small supermarkets that have very poor quality produce and fresh meat products, and that is very largely a function of the fact that there isn't an incentive for those merchants to provide fresh goods ..." (Tr. II at 370).

The plaintiffs and HUD neglected to inform this Court that the housing construction referred to by Ms. Wanza and Mr. Golden was entirely subsidized housing (Brief of Appellees at 40).

The construction referred to by Ms. Wanzo was the construction rejected by the Northern Illinois Planning Commission ("NIPC") due to the high population density in CT 101 (Tr III at 744). A full description of NIPC's rejection is quoted in the RPCC's brief, at p. 8.

Mr. Golden was a witness for the RPCC, and his organization has plans to rehabilitate existing housing, not to build new housing, and even then only if the government subsidizes the rehabilitation. In any case, these construction plans are only in the formative stage and CT 101 is not undergoing any construction. Not one new building has been built in CT 101 in at least ten years (Tr. II at 339-341).

The RPCC has presented this Court with the extensive, detailed and uncontroverted evidence introduced at the hearing (Brief of Proposed Intervenor-Appellants Rogers Park Community Council, Etc., et al., at 5-9, 11-12, 13-14, and RPCC Appendix). The record reveals that whether a revitalizing area is defined by the consent decree's standard of a substantially minority area "undergoing substantial physical development," or the purported ten "criteria" orally asserted by HUD for the first time at the hearing in an attempt to retroactively provide a basis for its decision, or simply by the normal English meaning of the word "revitalizing", CT 101 is not a revitalizing area. Moreover, even assuming arguendo the validity, rationality

and applicability of the ten "criteria", CT 101 satisfies only three (located near the lake and accessible to transportation, with lakefront location being counted twice), and does not fit the other seven "criteria". Significantly, if the "criteria" are applied, CT 101 should be excluded on that basis. The only school in CT 101 is segregated (94% minority) and so overcrowded (by 103 students) that the students must be bused to other schools. New subsidized housing can only aggravate this deplorable situation. CT 101 is "bounded by considerable physical barriers that really make it a ripe situation for a ghettoizing effect" (Tr. II at 381). The district court's finding that "the ten criteria were appropriately applied and that [CT 101 has] been properly designated as Revitalizing" is not only unsupported by the evidence, it is directly against the manifest weight of the evidence (R.C. 527, at 17; Appendix, A17).

Mr. Binford is the HUD Area Manager and his testimony was described in the RPCC's brief at p. 12. The plaintiffs and HUD state that Mr. Binford had visited CT 101 "on several occasions," yet neglect to note that those were social visits over the years (Tr. III at 674-76). Mr. Binford did not visit CT 101 in conjunction with designating the area as revitalizing (Deposition of Elmer C. Binford at 87). Mr. Binford's testimony quoted by the plaintiffs and HUD is that CT 101 has "potential"

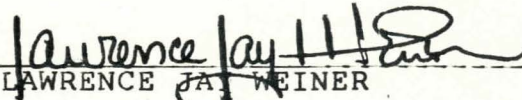
and that it has the "possibility" for continued integrated living (Brief of Appellees at 40). Potential for development is a far cry from undergoing substantial physical development.

Thus, the testimony presented by the plaintiffs and HUD does not indicate that CT 101 is revitalizing. The testimony presented by the RPCC uncontradictedly proves that CT 101 is not revitalizing. The district court's finding that CT 101 is a revitalizing area is not supported by and is against the manifest weight of the evidence. The consent decree is not "fair, reasonable and adequate" with respect to CT 101 and the persons living therein.

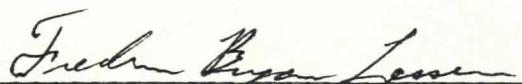
CONCLUSION

WHEREFORE, for the reasons stated herein, in the Brief of Proposed Intervenor-Appellants Rogers Park Community Council, Etc., et al., and the arguments contained in the briefs of appellants Illinois Housing Development Authority and class member Ginger Mack incorporated herein to avoid unnecessary duplication, the RPCC respectfully prays that this Court reverse and/or modify the consent decree entered by the district court on June 16, 1981, and the final judgment order, entered on June 29, 1981, to delete Census Tract 101 as a revitalizing area.

Respectfully submitted,



LAWRENCE JAY WEINER



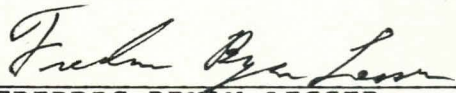
FREDRIC BRYAN LESSER

LAWRENCE JAY WEINER
FREDRIC BRYAN LESSER
LAWRENCE JAY WEINER & ASSOCIATES
ONE NORTH LA SALLE STREET
CHICAGO, ILLINOIS 60602
TELEPHONE: 782-4115

NOTICE OF FILING

TO: See attached Service List.

YOU ARE HEREBY NOTIFIED that on April 22, 1982, the undersigned filed with the Clerk of the United States Court of Appeals for the Seventh Circuit, the attached Reply Brief of Proposed Intervenor-Appellants Rogers Park Community Council, Etc., et al.


FREDRIC BRYAN LESSER

CERTIFICATE OF SERVICE

I, FREDRIC BRYAN LESSER, certify that I served the attorneys on the attached Service List the foregoing Reply Brief of Proposed Intervenor-Appellants Rogers Park Community Council, Etc., et al., by depositing in the U.S. mail located at One North La Salle Street, Chicago, Illinois 60602, 4:00 p.m. this 22nd day of April, 1982.


FREDRIC BRYAN LESSER

SERVICE LIST

Gershon M. Ratner, Esq.
Associate General Counsel
for Litigation
Department of Housing and Urban Development
451 7th Street, S.W.
Washington, D.C. 20410

John W. Herold, Esq.
Trial Attorney
Department of Housing and Urban Development
451 7th Street
Washington, D.C. 20410

Mr. Alexander Polikoff, Esq.
Mr. Howard Lerner, Esq.
109 North Dearborn Street
Room 1300
Chicago, Illinois 60602

Mr. Jeffrey Jahns, Esq.
Ms. Gwen Carroll, Esq.
Seyfarth, Shaw, Fairweather & Geraldson
55 East Monroe Street
Chicago, Illinois 60603

Mr. Stephen B. Diamond, Esq.
Ms. Penny Anderson, Esq.
Mangum, Beelre, Shad & Diamond
208 South La Salle Street
Chicago, Illinois 60604