

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

DOROTHY GAUTREAUX, et al.,

Plaintiffs,

vs.

**The CHICAGO HOUSING AUTHORITY ("CHA"), an
Illinois Municipal Corporation,**

Defendant.

JURY DEMAND

No. 66 C 1459

Hon. Marvin Aspen

CONCERNED RESIDENTS OF ABLA ("CRA"), et al.

Intervenor-Plaintiffs,

vs.

**The CHICAGO HOUSING AUTHORITY ("CHA"),
et al.,**

Intervenor-Defendants.

**ABLA PLAINTIFFS' MEMORANDUM IN
SUPPORT OF THEIR FIRST AMENDED MOTION TO INTERVENE**

On July 29, 1999, a group of current, former, and potential ABLA residents ("ABLA Plaintiffs") filed a lawsuit against the Chicago Housing Authority ("CHA") and the United States Department of Housing and Urban Development ("HUD"), challenging the CHA's redevelopment plan for their community at ABLA ("ABLA case"). The ABLA Plaintiffs return to this Court seeking a hearing for their claims: violations of the Fair Housing Act, related executive orders, and implementing regulations, 42 U.S.C. §§ 3604(a) and 3608(e)(5), EO 11063 § 101, EO 12892 §§ 2-201 and 6-604(b), 24 C.F.R. §§ 960.103(b) and 903.7(o); violations of the United States Housing Act, 42 U.S.C. §§ 1437(b)(2) and 1437c-1(d)(15); violations of the Housing and Community Development Act, 42 U.S.C. § 5304(d)(2)(A)(i)-(iii); and violations of the Administrative Procedure Act, 5 U.S.C. § 706(2)(A), (C)-(D). See First Amended Intervenor's Complaint. For the ABLA Plaintiffs, an improved redevelopment plan would provide them not only with new homes, but also with improved opportunities for employment, education, and integration that could benefit their families for generations.

I. PROCEDURAL HISTORY

On June 18, 1998, the Gautreaux plaintiffs and the Gautreaux court-appointed Receiver (“Receiver”) submitted a joint motion to this Court requesting a revitalization order for ABLA, limiting the number of very-low income units to 1084. See Joint Motion, attached hereto as Exhibit A. This Court entered the proposed order on the very day following its presentation. See Order of June 19, 1998, attached hereto as Exhibit B. No hearing was held, nor was any evidence presented to the court on the legality of the proposed order, nor on whether the proposed order complied with the various statutes cited in Section VII of the ABLA Plaintiffs’ First Amended Intervenor’s Complaint.

The ABLA Plaintiffs’ original complaint against CHA and HUD was filed on July 29, 1999, and was assigned to Judge Robert W. Gettleman. On August 18, 1999, the Gautreaux plaintiffs and the Receiver filed a joint motion in this Court to dismiss the ABLA Plaintiffs’ complaint pending before Judge Gettleman—without prejudice to the ABLA Plaintiffs’ seeking leave to intervene in Gautreaux—arguing that the complaint constituted a “collateral attack” on this Court’s Order of June 18, 1998. On November 4, 1999, this Court granted the joint motion, transferred the case to its own docket pursuant to Local Rule 40.4, and dismissed the ABLA Plaintiffs’ original complaint without prejudice to their “right to intervene in Gautreaux.” See Order of November 4, 1999, attached hereto as Exhibit C. On November 29, 1999, the ABLA Plaintiffs filed a motion to intervene in Gautreaux and an intervenors’ complaint pursuant to this Court’s Order of November 4, 1999, and Rule 24 of the Federal Rules of Civil Procedure.

In response, Defendants moved to dismiss the intervenors’ complaint, arguing that the Redevelopment Plan established by this Court’s Order of June 18, 1998, was not final, thus not ripe for adjudication. On September 25, 2000, this Court granted the motion, agreeing with the Gautreaux parties’ argument: “Because there is still no final development plan, the CRA’s complaint, which alleges that the plan is illegal, is not ripe for adjudication.” Order of September 25, 2000, attached hereto as Exhibit D. This Court set out the events that need occur before the ABLA redevelopment plan became ripe, as follows:

The process of creating a final development plan includes selecting a development manager, having the manager prepare tentative final plan documents, having a working group which includes the

Receiver and the Gautreaux plaintiffs consider and approve the plan, and incorporating the plan into a final proposal submitted to HUD for approval.

Id. The Order further ruled that once the ABLA development plan was finalized and the ABLA Plaintiffs' claims were ripe for adjudication, this Court would "hold a hearing on the merits of the plan, which would involve receiving either written or oral written submissions from all interested parties. At that time, if the CRA believes the final plan is in violation of the law, it may renew its motion to intervene." See Order of September 25, 2000 (Exhibit D).

On October 24, 2000, the ABLA Plaintiffs filed a timely appeal of that Order to the Seventh Circuit Court of Appeals. However, while the appeal was pending for nearly 19 months, the parties reached agreement that the ABLA redevelopment plan had become ripe, meeting the requirements set forth in this Court's Order of September 25, 2000. Accordingly, on May 31, 2002, the ABLA Plaintiffs moved to voluntarily dismiss their appeal in the Seventh Circuit, and the parties agreed to a process for attempting to settle the claims of the ABLA Plaintiffs. The Seventh Circuit granted the ABLA Plaintiffs' motion to dismiss their appeal on June 3, 2002.

From May 2002 until August 2003, the ABLA Plaintiffs diligently attempted to settle their claims with the defendants. After a series of letters and meetings, the parties were unable to reach agreement, though the ABLA Plaintiffs made a meaningful attempt to do so, leaving them with no choice but to proceed with litigation. The ABLA Plaintiffs believe they may intervene as of right pursuant to this Court's Orders of November 4, 1999 and September 25, 2000. (Exhibits C and D). Even aside from these orders, the ABLA Plaintiffs may intervene as of right pursuant to Rule 24(a)(2), or alternatively, they seek permissive intervention pursuant to Rule 24(b)(2), of the Federal Rules of Civil Procedure.

II. THE ABLA PLAINTIFFS ARE ENTITLED TO INTERVENE AS OF RIGHT BECAUSE THEY SATISFY ALL REQUIREMENTS OF RULE 24(A)(2).

Rule 24(a)(2) of the Federal Rules of Civil Procedure provides that a party may intervene as of right:

when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to

protect that interest, unless the applicant's interest is adequately represented by existing parties.

Fed. R. Civ. P. 24(a)(2). Plaintiffs must satisfy four requirements in order to intervene as of right under Rule 24(a)(2): (1) their application must be timely; (2) they must have an interest relating to the subject matter of the action; (3) they must be at risk that their interest will be impaired, as a practical matter, by the action's disposition; and (4) they must lack adequate representation of the interest by existing parties. Security Insurance Co. of Hartford v. Schipporeit, 69 F.3d 1377, 1380 (7th Cir. 1995) (affirming lower court's decision to allow plaintiff to intervene as of right); Nissei Sangyo Am. Ltd. v. United States, 31 F.3d 435, 438 (7th Cir. 1994) (granting motion to intervene); Sec. & Exch. Comm'n v. Heartland, No. 01-C-1984, 2003 U.S. Dist. LEXIS 3666, at *16 (N.D. Ill. 2003). Courts accept as true all non-conclusory allegations of such motions and proposed pleadings. Reich v. ABC/York-Estes Corp., 64 F.3d 316, 321 (7th Cir. 1995) (reversing district court's denial of petition to intervene as of right); In re Discovery Zone Sec. Litig., 181 F.R.D. 582, 592, 1998 U.S. Dist. LEXIS 14321, at *29 (N.D. Ill. 1998). Moreover, a motion to intervene as a matter of right should not be dismissed unless it appears to a certainty that the intervenor is not entitled to relief under any set of facts which could be proved under the complaint. See Reich, 64 F.3d at 321. The ABLA Plaintiffs satisfy all four requirements, and they are entitled to intervene as of right.

A. The Motion Is Timely.

There is no precise time limit for filing a motion to intervene. See Nissei Sangyo Am. Ltd. v. United States, 31 F.3d 435, 438-39 (7th Cir. 1994). Rather, the Seventh Circuit considers timeliness a question of reasonableness: "[P]otential intervenors need to be reasonably diligent in learning of a suit that might affect their rights, and upon so learning they need to act reasonably promptly." Sec. and Exch. Comm'n v. Heartland, No. 01-C-1984, 2003 U.S. Dist. LEXIS 3666, at *17 (N.D. Ill. 2003), quoting Nissei Sangyo Am. Ltd., 31 F.3d at 438. The Seventh Circuit considers four factors in determining whether a motion to intervene is timely: (1) the length of time the intervenor knew or should have known of his interest in the case; (2) the prejudice to the original party caused by the delay; (3) the resulting prejudice to the intervenor if the motion is denied; and (4) any unusual circumstances. Bankers Trust Co. v. Beneficial Illinois, Inc., No. 95-3522, 1996 U.S. App. LEXIS 19960, at *18-19 (7th Cir. 1996). More generally, the purpose

of the timeliness requirement is to “prevent a tardy intervenor from derailing a lawsuit within sight of the terminal.” United States v. City of Chicago, 870 F.2d 1256, 1263 (7th Cir. 1989).

Regarding the first factor, the ABLA Plaintiffs are now filing a timely motion to intervene since the ABLA plan has only recently become ripe for review. The CHA and the Receiver initially issued a Request for Proposals (“RFP”) for a development manager to implement the ABLA revitalization plan on July 13, 1999, specifying the precise numbers of very low-income units to be developed. At that point it became clear that nothing short of litigation would give CRA a voice in the process, so on July 29, 1999, ABLA Plaintiffs filed suit against the CHA and HUD. On November 4, 1999, this Court issued its opinion dismissing the ABLA case. See Order of November 4, 1999 (Exhibit C). On November 29, 1999, the ABLA Plaintiffs promptly filed their original motion to intervene. But as explained above, this Court declared that the ABLA Plaintiffs’ claims were not ripe for adjudication, and dismissed their motion without prejudice. The ABLA Plaintiffs appealed that decision to the Seventh Circuit, where it lingered for almost 19 months, after which the ABLA Plaintiffs voluntarily dismissed their appeal when parties finally agreed the case was ripe. The parties resumed settlement discussions, ending later in 2003. Since it is now clear that the parties will be unable to settle on a mutually agreeable plan for ABLA, though they finally agree that the case is ripe for review, the ABLA Plaintiffs re-submit their motion to intervene. In this context, since they have been delayed by waiting for their claims to become ripe, while simultaneously exhausting all attempts to settle, the ABLA Plaintiffs’ motion is timely filed.

The second factor—prejudice to the original parties caused by the delay—weighs in the ABLA Plaintiffs’ favor, since this Court has held that the ABLA Plaintiffs’ intervention in Gautreaux is preferable to the filing of a new case. This Court noted in its decision dismissing the ABLA Plaintiffs’ complaint that it would be “much more expedient” for all concerned parties to address the ABLA Plaintiffs’ concerns “in one forum, instead of pursuing piecemeal litigation in different courts.” Order of November 4, 1999 (Exhibit C); see also Jansen v. Cincinnati, 904 F.2d 336, 341 (6th Cir. 1990) (original parties in employment discrimination action were not prejudiced by intervention, as their interests were better served by having all the relevant interests represented in one case to avoid “piecemeal” litigation).

CHA itself acknowledged that the ABLA Plaintiffs should be granted leave to intervene, noting that “ABLA and Gautreaux could be resolved in a single proceeding.” See CHA Memorandum in Support of Joint Motion of Receiver and Gautreaux Plaintiffs at 3. Indeed, CHA, HUD, the Receiver, and Gautreaux plaintiffs—all of whom argued strenuously that intervention was ABLA Plaintiffs’ only remedy—cannot legitimately argue that intervention should be denied. See City of Chicago, 870 F.2d at 1260 (observing that it was “disingenuous” of City to argue intervenors did not meet criteria for intervention in employment discrimination litigation, while at the same time arguing that intervenors’ separate lawsuit could not proceed because it was a collateral attack). Thus, as this Court has already observed, existing parties would not be prejudiced by granting the ABLA Plaintiffs’ intervention.¹

The third factor, prejudice to movants if the motion is denied, weighs heavily in favor of intervention. As this Court has already dismissed both their independent lawsuit and their first attempt to intervene on procedural grounds, denying intervention would effectively leave the ABLA Plaintiffs with no forum in which to raise their substantial and well-supported concerns. See Edwards v. City of Houston, 78 F.3d 983, 1002, 1006 (5th Cir. 1996) (finding that white, female, and Asian-American police officers were entitled to intervene in employment discrimination suit brought by African-American and Hispanic police officers, since proposed intervenors could not bring separate lawsuit, thus denying intervention would mean court’s decrees were “unassailable” by persons who clearly had substantial interest in the litigation).

Other Northern District courts have held that complaints similar to the ABLA Plaintiffs’ stated legitimate claims upon which relief could be granted. See, e.g., Wallace v. CHA, 298 F. Supp. 2d 710 (N.D. Ill. 2003) (upholding 10 of 13 counts of complaint after motion to dismiss); Cabrini-Green LAC v. CHA, No. 96-C-6949, 1997 U.S. Dist. LEXIS 625 (N.D. Ill. 1997) (denying motion to dismiss). Moreover, denying ABLA Plaintiffs any forum in which to raise their legitimate claims would run contrary to our “deep-rooted historic tradition that everyone should have his own day in court.” Martin v. Wilks, 490 U.S. 755, 762 (1981); cf. Marbury v. Madison, 1 Cranch 137, 163 (1803) (“[the] very essence of civil liberty certainly consists in the

¹ Although HUD is no longer a party in Gautreaux, it is noteworthy that HUD has also recommended that “the ABLA case should be handled by the Gautreaux court,” thereby causing HUD to become again a party in Gautreaux. HUD’s Response in Support of Joint Motion, at 3.

right of every individual to claim the protection of the laws"). This factor weighs heavily in favor of granting intervention.

Lastly, pursuant to the fourth factor, which requires the court to consider any unusual circumstances, this Court should allow intervention. The complex procedural posture of this case in itself is certainly unusual. Based on the manner in which similar cases at the Henry Horner and Cabrini-Green developments had proceeded, the ABLA Plaintiffs believed that the appropriate method for raising their concerns was through a separate lawsuit, not intervention in Gautreaux. See Cabrini-Green LAC v. CHA, No. 96-C-6949, 1997 U.S. Dist. LEXIS 625 (N.D. Ill. 1997) (holding that residents could proceed with separate litigation, though any relief granted must comply with Gautreaux orders); and Henry Horner Mothers Guild v. CHA, No. 91-C-3316, Order of August 7, 1997 (N.D. Ill. 1997). In the Horner and Cabrini cases, the Receiver and Gautreaux plaintiffs made no motion to require the residents to intervene in Gautreaux, nor did this Court act sua sponte to order such relief. In Cabrini Judge Coar expressly rejected the argument by CHA that the case, which presented strikingly similar race discrimination claims as those raised in ABLA, was a collateral attack on Gautreaux. See Cabrini, 1997 U.S. Dist. LEXIS at *44-45. In Horner, this Court has retained jurisdiction only on the core Gautreaux issues in the case. See Orders of March 9, 1995; August 14, 1995; April 15, 1996; and October 22, 1998 (relating to the number and location of public housing units within the Horner Revitalization Area). But this Court has deferred to Judge Zagel on issues relating to the Horner consent decree, notwithstanding implications to Gautreaux. See Order of June 10, 1997 (denying Receiver's Motion for Instructions relating to Horner filed with this Court, noting that the Receiver's concerns related "essentially to the Horner decree," holding that, "notwithstanding the implications to Gautreaux, the proper venue to resolve the Receiver's concerns is Horner," and deferring "to Judge Zagel to resolve these disputes in the Horner case"), attached hereto as Exhibit E. When this Court made clear by its November 4, 1999, decision that intervention in Gautreaux was the ABLA Plaintiffs' only remedy, they promptly filed a motion to intervene. Given the unusual facts of this case, the motion to intervene should be considered timely and intervention should be granted.

B. The ABLA Plaintiffs Have A Substantial Interest In The Subject Matter Of The Gautreaux Litigation.

To satisfy this requirement, the ABLA Plaintiffs need not establish a “vested” right or “property” right. United States v. City of Chicago, 870 F.2d 1256, 1260 (7th Cir. 1989). Rather, the “interest” test is primarily a practical guide for involving as many apparently concerned persons as is compatible with efficiency and due process. See Cook v. Boorstin, 763 F.2d 1462, 1466 (D.C. Cir. 1985). Here, the ABLA Plaintiffs—current residents, persons illegally displaced from ABLA who wish to return, and persons on the waiting list for public housing—have a strong interest in the redevelopment of ABLA. The contours of this redevelopment plan—particularly the number, location, and type of public housing replacement units—will ultimately determine whether these families will live in their historic community, and whether the redevelopment plan results in a revitalized, truly integrated neighborhood.

The ABLA Plaintiffs assert that the current plan not only fails to remedy past discrimination in Chicago public housing, but that it also discriminates against protected groups and perpetuates segregation. Persons have a “significantly protectible interest” in being free from race discrimination sufficient to warrant intervention. Cook, 763 F.2d at 1466 (allowing employees alleging discriminatory treatment to intervene in employment discrimination case); see also Bradley v. Pinellas Co. Sch. Bd., 961 F.2d 1554, 1557 (11th Cir. 1992) (allowing parents to intervene in school desegregation case, pending an evidentiary hearing determining the merits of their allegations that burden of busing to fall on Black students rather than on Whites). Courts have also recognized the strong interest of subsidized tenants to intervene in cases where the future of their homes is at stake. United States v. Dixwell Hous. Dev. Corp., 71 F.R.D. 558, 560 (D. Ct. 1976) (allowing tenants to intervene in foreclosure of HUD-subsidized multi-family building, given their leasehold interest and interest as beneficiaries of the assisted housing program); United States v. Germantown Settlement Homes, No. 84-2622, 1985 U.S. Dist. LEXIS 18193, at *7-8 (E.D. Pa. 1985) (same). Here, then, the ABLA Plaintiffs have a significant interest in the outcome of the Gautreaux litigation.

C. The ABLA Plaintiffs’ Interest Will Be Impaired By the Disposition of Gautreaux.

This Court’s decisions in the Gautreaux case have impaired and will continue to impair the ABLA Plaintiffs’ interest in remaining in the revitalized ABLA community. First, the

revitalization plan approved by this Court fails to provide sufficient units for the approximately 832 current residents of ABLA and the approximately 1668 persons illegally displaced from ABLA who may wish to return. The “revitalized” ABLA neighborhood will contain only 1084 housing units for very low-income families, 329 of which (nearly 20%) will be renovated barracks-type housing south of Roosevelt Road. See First Amended Intervenor’s Complaint at ¶¶ 47, 65. Thus, more than 1400 families—over half of ABLA’s population in 1995—will have no chance to live in the ABLA neighborhood.

Equally troubling, numerous recent studies confirm that this redevelopment plan will relegate most of the current and former ABLA families who are finally allowed to live in the new ABLA neighborhood into the less racially integrated and less economically prosperous area south of Roosevelt Road. In one recent study, Professor Roberta Feldman concluded that Roosevelt Road acts as an ecological barrier, effectively dividing the ABLA community into northern and southern portions that must be considered separately in terms of unit distribution. See First Amended Intervenor’s Complaint at ¶ 75. Professor Feldman also noted that when the renovated barracks-style Brooks Homes are factored into the redevelopment plan, over 80% of the new and rehabbed public housing units at ABLA will be concentrated south of Roosevelt Road. Id. According to another recent study by Professor Patricia Wright, each of the new and rehabbed public housing units built south of Roosevelt Road will be concentrated almost entirely into a single census tract, which was already 97% African American as of the 2000 Census. See First Amended Intervenor’s Complaint at ¶ 74. Professor Edward Goetz compared the ABLA area with thirty-two HOPE VI redevelopment sites across the country, finding that the area south of Roosevelt Road ranks poorly even among other HOPE VI sites in terms of integration, featuring the second-highest percentage of very low-income families and the lowest percentage of white families in his sample. See First Amended Intervenor’s Complaint at ¶ 76. Instead of living in a fully revitalized, integrated neighborhood, 80% of the families who are able to live in new and rehabbed public housing units at ABLA will be concentrated into the less affluent, less integrated area south of Roosevelt Road, many of which units will in turn be the distinctive, barracks-style Brooks Homes.

Indeed, the plan will most severely impact residents of the Jane Addams Homes (“Addams”), a historically significant, low-rise public housing development located north of

Roosevelt Road. Recent studies have documented the marked economic improvement and opportunities for racial integration taking place in the census tracts north of Roosevelt Road. In the area surrounding Addams, Professor Wright documented declining family poverty rates, increasing incomes, and housing prices far outpacing the city as a whole. See First Amended Intervenor's Complaint at ¶ 74. While the census tract containing Addams is predominantly African-American (56.4%), four of the five adjoining census tracts are majority white. Id. at ¶ 49. Professor Goetz confirmed that the area north of Roosevelt Road has the highest number of affluent families and the fifth-lowest number of very low-income families among the thirty-two HOPE VI sites he studied. See Intervenor's First Amended Complaint at ¶ 76.

But under the ABLA redevelopment plan, few public housing families will return north of Roosevelt Road. All of the 987 units at Addams will be demolished, and only 679 units will be built in their place, nearly 70% percent of which will be rented at affordable and market rate prices, making them well outside the reach of Addams residents. First Amended Intervenor's Complaint at ¶ 47. Only 213 units north of Roosevelt Road will be "public housing eligible," for families earning up to 50% of AMI (under \$33,950). Id. at ¶¶ 47, 50. At best, only 21% of the public housing units demolished in the rapidly integrating area north of Roosevelt Road will be replaced for very-low income residents of ABLA. The remaining public housing units will be built south of Roosevelt Road, where the area is 97% African-American. See Intervenor's First Amended Complaint at ¶ 60.

The Seventh Circuit has recognized that persons whose interests are harmed in such a manner by a decree entered in a race discrimination case have a right to be heard through intervention, particularly where they themselves are members of a protected class. The court found that a group of white female police sergeants had a right to intervene in a suit brought by black male sergeants, alleging that the City's examination to determine eligibility for promotions had a disparate impact for Blacks. United States v. City of Chicago, 870 F.2d 1256, 1263-64 (7th Cir. 1989). After the district court ordered immediate promotions of non-white sergeants, the parties agreed to "adjust" the test results by raising the mean scores of non-white sergeants who had taken the test. Id. at 1258. The white female sergeants filed a motion to intervene, claiming they were denied promotions due to the post-exam "leg-up" given to non-white sergeants. Id. The district court denied the motion to intervene, but the Seventh Circuit

reversed, noting that although white female sergeants did not have a “vested” or “property” right to be promoted, they had a “confident expectation” of being promoted based on their performance on the exam, which was a sufficient interest to satisfy Rule 24(a)(2). *Id.* at 1260. This interest was at risk of impairment, as the “leg-up” given minority sergeants could permanently impair the intervenors’ chances for promotion within the ranks of the Chicago Police Department. *Id.* at 1262. The court noted that “[e]quitable decrees are not to be made without consideration of the interests of third parties who may be affected by the decrees These would-be intervenors are third parties who may be vitally, adversely, and irreparably affected by the Bigby decree.” *Id.* Thus, they were allowed to intervene for the purpose of challenging the court’s order approving promotions on the basis of racially altered test results. *Id.* at 1263-64.² Although the district judge may have been “tired of this endless . . . litigation,” he was required to give the female sergeants an opportunity to be heard. The court declared that judges must consider victims’ claims in such cases:

[W]hen a federal judicial decree unexpectedly impairs settled expectations, and does so on what might appear to be arbitrary and discriminatory grounds, the judge is obliged to listen to the victims of the decree when they make a prompt application to intervene; and perhaps especially when the victims are themselves a protected group Decrees requiring discrimination in the name of ending discrimination should be administered with due regard for the interests of those upon whom the decrees bear hardest.

Id. at 1263 (emphasis added).

Similarly, in the Cabrini case, this Court indicated that it would allow the Cabrini LAC to intervene in Gautreaux if the LAC felt the plan ultimately developed violated federal law. *See* Memorandum Opinion and Order, November 3, 1999, at 4 n.3. In this case, where members of protected groups—African-Americans, female-headed households, and children—have made legitimate, substantial claims that a plan approved by this Court will discriminate against them and perpetuate segregation, this Court should give them an opportunity to be heard.

² The Seventh Circuit observed that if alteration of the test results were actionable discrimination, the City could not shield itself from liability by invoking the district judge’s approval of promotions based on the altered results, since all the judge cared about was the “bottom line” of increased minority lieutenants. *Id.* at 1261. Here, then, if the ABLA plan is discriminatory, Gautreaux defendants cannot shield themselves from liability by invoking the fact that this Court gave approval of the plan.

D. The ABLA Plaintiffs Are Not Adequately Represented By The Existing Parties

This requirement is satisfied “if the applicant shows that representation of his interest ‘may be’ inadequate; the burden of making that showing should be treated as minimal.” Trbovich v. United Mine Workers, 404 U.S. 528, 538 n.10 (1972); Gautreaux v. Pierce, 548 F. Supp. 1284, 1287 n.3 (N.D. Ill. 1982). Any doubt about the adequacy of representation should be resolved in favor of the proposed intervenors. Moore’s Federal Practice § 24.03(4)(a).

This Court itself has previously allowed developers and community members to intervene in Gautreaux when their interests were not adequately protected by existing parties. See Gautreaux v. Pierce, 548 F. Supp. 1284, 1287 (N.D. Ill. 1982). In that case, community members and developers disagreed over whether HUD had violated the Gautreaux decree by reserving Section 8 contract authority for a building on the Near West Side. Community members argued that HUD’s action would push the number of assisted housing units in their census tract to more than 15%, the limit set by the decree. Id. at 1286. It was apparent to this Court that existing parties did not adequately represent the community’s interests, since HUD did not seek to clarify its obligations under the decree until after the intervention motions were filed, and more importantly, since the Gautreaux plaintiffs opposed the relief sought by some of the intervenors. Id. at n.3.

Here, existing parties do not adequately represent the interests of the ABLA Plaintiffs. The CHA certainly cannot be said to represent their interests, as it has played a key role in developing the plan that the ABLA Plaintiffs believe is discriminatory. It is the CHA that caused the unlawful removal of at least 1668 of ABLA’s families since 1995 (over two-thirds), a number that continues to grow by the day. And it is the CHA that purposely allowed ABLA buildings to deteriorate beyond repair in an effort to vacate, consolidate, and demolish them. Far from representing ABLA Plaintiffs’ interests, then, CHA is at the root of the problem.

Nor do the Gautreaux plaintiffs or Receiver represent the interests of the ABLA Plaintiffs. The organizational plaintiff CRA and persons displaced from ABLA are not members of the Gautreaux class and, thus, have no current representation in the litigation at all. Further, the ABLA Plaintiffs have raised concerns with the plan that do not relate to Gautreaux or race discrimination, such as failure to comply with the Housing and Community Development Act

and discrimination on the basis of familial status. Since these concerns do not relate to race discrimination, they have not and will not be raised as part of the Gautreaux case.³

Lastly, the ABLA Plaintiffs who are also members of the Gautreaux class (individual current residents and individuals on the waiting list) believe that their interests are not adequately represented by the Gautreaux plaintiffs' counsel and the Receiver with respect to their race discrimination claims. Both the Gautreaux plaintiffs and the Receiver approved the ABLA redevelopment plan without any apparent concern for its devastating discriminatory effect. Moreover, the Gautreaux plaintiffs and Receiver oppose the relief sought by the ABLA Plaintiffs, namely, a redesigned revitalization plan and a right to return for families who were illegally displaced from ABLA before October 1, 1999. See Joint Motion at 5; cf. Edwards v. City of Houston, 78 F.3d 983, 1005 (5th Cir. 1996) (finding no adequate representation when there was "sharp disagreement" between the original plaintiffs and proposed intervenors).

Because the ABLA Plaintiffs and the existing parties sharply disagree over the very revitalization order at stake here, this case is fundamentally different from Horner v. CHA, in which the Gautreaux plaintiffs were denied leave to intervene because they "had ample opportunities to participate in the execution of the Horner Settlement Agreement as well as its implementation," and because the Horner and Gautreaux plaintiffs had the "same ultimate objective" of revitalization. See Horner v. CHA, Order of August 7, 1997 (Exhibit E). The Horner and Gautreaux plaintiffs both agreed on the revitalization order itself, but differed on its implementation. In this case, though, the ABLA Plaintiffs strongly question the ABLA revitalization order itself; thus the Gautreaux plaintiffs and the ABLA Plaintiffs have a

³ See Hines v. Rapides Parish Sch. Bd., 479 F.2d 762 (5th Cir. 1973) (dismissing plaintiffs' complaint and instructing them to seek leave to intervene in ongoing desegregation action). Hines and its progeny indicate that intervention does not result in the loss of any substantive rights and that, if granted intervention, ABLA Plaintiffs can raise all claims raised in their complaint, even though these issues were not raised by the original Gautreaux parties. See Davis v. Bd. of Sch. Comm. Of Mobile County, 517 F.2d 1044, 1049 (5th Cir. 1975) (dismissing the suit brought by school employee based on Hines Doctrine and directing him to intervene in school desegregation case, even though he raised claims under Title VII which were not raised by the plaintiffs in the desegregation litigation; district court would consider Title VII claims, as well as any rights he had under statutes relied on by original plaintiffs and consent decree), later proceeding at 600 F.2d 470 (5th Cir. 1979) (litigating claims brought by employee-intervenor).

fundamental disparity of interests. The ABLA Plaintiffs thus meet this “minimal” standard of showing that their interests are not adequately represented by current parties to Gautreaux.

III. IN THE ALTERNATIVE, ABLA PLAINTIFFS SHOULD BE GRANTED PERMISSIVE INTERVENTION

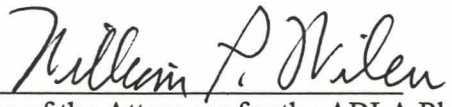
Even if this Court does not rule that the ABLA Plaintiffs have the right to intervene and even if the requirements for intervention of right were not met in this case, for purposes of argument, this Court should grant them permissive leave to intervene under Rule 24(b)(2) of the Federal Rules of Civil Procedure, to give them a forum in which to pursue their claims. Rule 24(b)(2) provides that, upon timely application, anyone with a claim or defense that has a question of law or fact in common with the main action may be permitted to intervene. See, e.g., Romasanta v. United Airlines, 537 F.2d 915, 920 (7th Cir. 1976) (granting permissive intervention in employment discrimination case where proposed intervenor’s claim and main action had questions of law in common, namely, the appropriate remedy for the employer’s illegal no-marriage policy); Miller v. Silberman, 832 F. Supp. 663, 674 (S.D.N.Y. 1993) (allowing permissive intervention by tenants in suit brought by landlords challenging procedures of housing court, where positions were divergent but claims all related to constitutionality of procedures); McNeill v. New York City Housing Authority, 719 F. Supp. 233, 250 (S.D.N.Y. 1989) (despite factual differences between plaintiffs and intervenors, claims all involved constitutionality of New York City Housing Authority’s implementation of Section 8 program). Here, this Court believed the claims raised in ABLA were so similar with those being litigated in Gautreaux that the two cases were properly classified as “related” under Local Rule 40.4. Thus, the requirements for permissive intervention are met here.⁴

⁴ For the reasons discussed in Sections II.A. and II.D. above, the motion for permissive intervention also meets the timeliness and inadequacy of representation requirements.

IV. Conclusion

For the above reasons, the ABLA Plaintiffs respectfully request that this Court grant them leave to intervene in this case.

Respectfully submitted,


One of the Attorneys for the ABLA Plaintiffs

Dated: May 14, 2004

WILLIAM P. WILEN
KATHERINE E. WALZ
RAJESH D. NAYAK
Sargent Shriver National Center on Poverty Law, Inc.
50 East Washington, Suite 500
Chicago, IL 60602
(312) 263-3830 ext. 251, 232, 243

CLYDE E. MURPHY
SHARON K. LEGENZA
Chicago Lawyers' Committee for
Civil Rights Under Law, Inc.
100 N. LaSalle St., Suite 600
Chicago, IL 60602
(312) 630-9744

HAROLD C. HIRSHMAN
ELIZABETH LEIFEL
ANNIE ALBERTSON
SONNENSCHN EINH NATH & ROSENTHAL LLP
8000 Sears Tower
233 South Wacker Drive
Chicago, IL 60606
(312) 876-8000

Attorneys for the ABLA Plaintiffs

List of Exhibits

<u>Exhibits</u>	<u>Description</u>
A	Joint Motion of the Gautreaux Plaintiffs and the Gautreaux Receiver Requesting the Entry of a Revitalization Order of June 18, 1999
B	Order of June 19, 1998
C	Order of November 4, 1999
D	Order of September 25, 2000
E	Horner Order of June 10, 1997

FILE COPY

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

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CHICAGO HOUSING AUTHORITY
OFFICE OF THE
CLERK OF THE COURT

DOROTHY GAUTREUX, et al.,)	
)	
Plaintiffs,)	
)	
v.)	66 C 1459
)	
CHICAGO HOUSING AUTHORITY, et al.,)	Hon. Marvin Aspen
)	
Defendants.)	

JOINT MOTION OF DEFENDANT CHICAGO HOUSING AUTHORITY,
THE RECEIVER, AND THE PLAINTIFFS
FOR AN AGREED ORDER DESIGNATING ABLA REVITALIZING AREA AND
AUTHORIZING DEVELOPMENT OF PUBLIC HOUSING UNITS THEREIN

Defendant Chicago Housing Authority ("CHA"), Daniel E. Levin
and The Habitat Company (the "Receiver"), and the plaintiffs
respectfully move the Court as follows:

A. To designate as the ABLA Revitalizing Area
("Revitalizing Area") that portion of the City of Chicago that
lies within the following boundaries: on the west, Ashland
Avenue; on the south, the Burlington Northern Railway tracks
immediately south of 15th Street; on the east along Racine Avenue
from such Burlington Northern Railway tracks to Blue Island
Avenue, northeast along Blue Island Avenue to Roosevelt Road,
west along Roosevelt Road to Racine Avenue, and north along
Racine Avenue to Cabrini Street; and on the north, along Cabrini
Street to Loomis Street, north along Loomis Street to Polk
Street, and west along Polk Street to Ashland Avenue.

B. To authorize the development of such number of new non-
elderly public housing units within the Revitalizing Area subject



to such conditions as are specified by further orders of the Court.

In support hereof, the parties state as follows:

1. In collaboration with the City of Chicago, CHA and the Receiver have been preparing an application to be submitted to the United States Department of Housing and Urban Development ("HUD") for a grant of \$35 million for the proposed ABLA Revitalizing Area pursuant to HUD's Notice of Funding Availability under the HOPE VI program published in 63 Federal Register 15577-84, March 31, 1998. The application is the first step in a competitive process by which HUD may award up to \$35 million for HOPE VI authorized activities to each successful applicant.

2. The application will propose to redevelop CHA's ABLA housing development by adding substantial components of market-rate housing and "affordable" housing to the Revitalizing Area to be marketed to persons with incomes above 120 percent and from 80 to 120 percent of area median income, respectively, and by demolition and rehabilitation of existing, and development of new, public housing within the Revitalizing Area, such that upon completion of the proposed redevelopment activity public housing units will comprise no more than approximately 37.5 percent of a total of approximately 2,895 residential units within the Revitalizing Area and will be dispersed geographically throughout the Revitalizing Area, thereby creating opportunities for economically integrated, and over the longer term the possibility of racially integrated, housing for plaintiff class families.

Specifically the application will propose that of a total of approximately 2,895 residential units within the Revitalizing Area, 1,084 units would be public housing units initially occupied by persons with incomes 0-35 percent of area median income, 845 non-public housing units would be occupied by persons with incomes 36-120 percent of area median income, and 966 non-public housing units would be occupied by persons with incomes in excess of 120 percent of area median income.

3. By arrangement with the plaintiffs and HUD, CHA received a HOPE VI grant of \$24,483,250 in FY1996 for a portion of the Revitalizing Area. The current HOPE VI application contemplates and proposes that this prior grant would be utilized in conjunction with the grant currently being applied for.

4. As specified in the proposed HOPE VI application, the City of Chicago will commit substantial resources to the proposed redevelopment of the Revitalizing Area, including but not limited to tax credits under the City's low-income housing tax credit program and financing under the City's multi-family rehabilitation and new construction programs for the development of new housing. The City has also agreed to consider the use of community development block grant funds, the development of a tax increment financing district, and the sale of tax-exempt bonds, all for the further support of redevelopment in the Revitalizing Area.

5. The Revitalizing Area lies within a section of the City of Chicago that is undergoing substantial institutional and market-driven development activity. A short distance to the west

lies the Illinois Medical Center District. A short distance to the east lies the University of Illinois, Chicago. Both institutions have already carried out substantial development activity and have plans for further such activity. Surrounding and nearby neighborhoods already evidence strong commercial and market-rate housing activity.

6. Based on the foregoing movants believe that should the Receiver and CBA receive a FY1998 HOPE VI grant for the Revitalizing Area, a responsible forecast of economic integration, with a longer term possibility of racial desegregation, could be made for the Area.

7. For the foregoing reasons, movants respectfully request entry of an order designating an ABLA Revitalizing Area and authorizing the development of public housing units therein. A proposed form of order is attached hereto.

Respectfully submitted,

Jerome M. Butler
One of the Attorneys for CBA

Raymond Miller
One of the Attorneys for the Receiver

Michael J. Fisher
One of the Attorneys for Plaintiffs

June 18, 1998

Jerome Butler, General Counsel
Chicago Housing Authority
200 West Adams Street - #2100
Chicago, IL 60606
312/791-8415

Michael L. Shakman
Barry A. Miller
Edward W. Feldman
Miller, Shakman, Hamilton,
Kurtzon & Schlifke
208 South LaSalle - #1100
Chicago, IL 60604
312/263-3700

Alexander Polikoff
Julie Elena Brown
BUSINESS AND PROFESSIONAL PEOPLE
FOR THE PUBLIC INTEREST
17 East Monroe Street - #212
Chicago, Illinois 60603
312/641-5570; fax: 312/641-5454

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CHICAGO HOUSING AUTHORITY
OFFICE OF THE
CLERK OF THE COURT

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

DOROTHY GAUTREUX, et al.,)	
)	
Plaintiffs,)	
)	
v.)	66 C 1459
)	
CHICAGO HOUSING AUTHORITY, et al.)	Hon. Marvin Aspen
)	
Defendant.)	

O R D E R

This matter coming on to be heard on the joint motion of the parties and the Receiver for an order designating an ABLA Revitalizing Area ("Revitalizing Area") and authorizing the development of non-elderly public housing units therein; and

The Court having heard the presentations of the parties and the Receiver respecting, and being advised that the City of Chicago supports entry of, the proposed order; and

The Court being further advised that the Receiver and the defendant, Chicago Housing Authority, in collaboration with the City of Chicago, are engaged in the preparation of an application for a FY1998 HOPE VI grant of \$35 million for the ABLA Revitalizing Area to be submitted by them to the United States Department of Housing and Urban Development (HUD) on or before June 29, 1998; and

The Court also being advised that by arrangement with the plaintiffs and HUD, CHA received a HOPE VI grant of \$24,483,250 in FY1996 for a portion of the Revitalizing Area, and that the



immediately south of 15th Street; on the east along Racine Avenue from such Burlington Northern Railway tracks to Blue Island Avenue, northeast along Blue Island Avenue to Roosevelt Road, west along Roosevelt Road to Racine Avenue, and north along Racine Avenue to Cabrini Street; and on the north, along Cabrini Street to Loomis Street, north along Loomis Street to Polk Street, and west along Polk Street to Ashland Avenue; and

2. Subject to such terms and conditions as are specified by further orders of the Court, the Receiver is authorized to develop such number of new public housing units within the Revitalizing Area as will result in public housing units comprising approximately 1,084 of a total of approximately 2,895 residential units within the Revitalizing Area, which is the approximate number of public housing and total residential units within the Revitalizing Area presently contemplated by such grant application, as part of an overall development including approximately 845 non-public housing units to be occupied by persons with incomes 36-120 percent of area median income, and 966 non-public housing units to be occupied by persons with incomes in excess of 120 percent of area median income.

ENTER:

Marion E. Copen

June 19, 1998

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Marvin Aspen	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	66 C 1459	DATE	11/4/1999
CASE TITLE	Gautreaux vs. CHA		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

MOTION:

DOCKET ENTRY:

(1) ☐ Filed motion of [use listing in "Motion" box above.]

(2) ☐ Brief in support of motion due _____.

(3) ☐ Answer brief to motion due _____. Reply to answer brief due _____.

(4) ☐ Ruling/Hearing on _____ set for _____ at _____.

(5) ☐ Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.

(6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.

(7) ☐ Trial[set for/re-set for] on _____ at _____.

(8) ☐ [Bench/Jury trial] [Hearing] held/continued to _____ at _____.

(9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
☐ FRCP4(m) ☐ General Rule 21 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).

(10) ☒ [Other docket entry] Before us is a joint motion of the Gautreaux plaintiffs and the Receiver for entry of an order whose effect would be to dismiss a complaint filed in front of Judge Gettleman by the Concerned Residents of ABLA (CRA) and certain individuals, without prejudice to their right to intervene in the Gautreaux case. We grant the motion by reassigning the ABLA case to this Court pursuant to Local Rule 40.4 and then dismissing it without prejudice to the ABLA plaintiffs' right to seek intervention in Gautreaux.

(11) ☒ [For further detail see order on the reverse side of the original minute order.]

<input type="checkbox"/> No notices required, advised in open court. <input type="checkbox"/> No notices required. <input checked="" type="checkbox"/> Notices mailed by judge's staff. <input type="checkbox"/> Notified counsel by telephone. <input type="checkbox"/> Docketing to mail notices. <input type="checkbox"/> Mail AO 450 form. <input type="checkbox"/> Copy to judge/magistrate judge.	<div style="border: 1px solid black; height: 150px; margin-bottom: 5px;"></div> <div style="border: 1px solid black; padding: 5px; text-align: center;"> Date/time received in central Clerk's Office </div>	<div style="border: 1px solid black; padding: 5px; text-align: center;">number of notices</div> <div style="border: 1px solid black; padding: 5px; text-align: center;">date docketed</div> <div style="border: 1px solid black; padding: 5px; text-align: center;">docketing deputy initials</div> <div style="border: 1px solid black; padding: 5px; text-align: center;">11/4/1999</div> <div style="border: 1px solid black; padding: 5px; text-align: center;">date mailed notice</div> <div style="border: 1px solid black; padding: 5px; text-align: center;">GL</div> <div style="border: 1px solid black; padding: 5px; text-align: center;">mailing deputy initials</div>	<div style="border: 1px solid black; padding: 5px; text-align: center;"> Document Number </div> <div style="border: 1px solid black; height: 100px; margin-top: 5px;"></div>
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ORDER

Before us is a joint motion of the *Gautreaux* plaintiffs and the Receiver for entry of an order whose effect would be to dismiss a complaint filed in front of Judge Gettleman by the Concerned Residents of ABLA (CRA) and certain individuals, without prejudice to their right to intervene in the *Gautreaux* case. HUD and the CHA support the motion. For the following reasons, we will grant the motion by reassigning the ABLA case to this Court pursuant to Local Rule 40.4 [formerly Local General Rule 2.31] and then dismissing it without prejudice to the ABLA plaintiffs' right to seek intervention in *Gautreaux*.

In 1998, the CHA and HUD, along with the *Gautreaux* Receiver, the *Gautreaux* plaintiffs, and an ABLA tenants' group called the ABLA LAC developed a plan to build new and replacement housing at the ABLA public housing developments. On June 19, 1998, we entered an order designating an ABLA "revitalizing area" – a necessary step under the *Gautreaux* decree to allow new public housing to be constructed there – and authorized the Receiver to construct new public, low income, and market rate housing in the area. The ABLA plaintiffs want Judge Gettleman to declare that the ABLA plan violates various housing, relocation, and civil rights laws, and requests an injunction requiring, *inter alia*, the development of a modified plan for the area that addresses their concerns.

Because the ABLA complaint directly attacks the relief we ordered for the ABLA area pursuant to the *Gautreaux* decree, it is appropriate to reassign the case to this Court and then dismiss it without prejudice to the ABLA plaintiffs' right to intervene. See *Hines v. Rapides Parish School Board*, 479 F.2d 762 (5th Cir. 1973). This result will allow the ABLA plaintiffs to present their complaints about the revitalization plan without "fostering a multiplicity of new lawsuits over the same complicated and emotional issues which have already once been fought out in an all too lengthy court battle." *Id.* at 765.

The ABLA plaintiffs contend that *Hines* and its progeny are not applicable here because some of them are not members of the *Gautreaux* class and because the ABLA complaint encompasses issues not covered by the *Gautreaux* decree. We do not find these arguments persuasive – *Hines* itself involved a collateral attack on a desegregation consent decree by white parents who were not members of the original plaintiff class. And although the ABLA complaint alleges new statutory violations in addition to those covered by the *Gautreaux* decree, the entirety of the complaint attacks the revitalization plan created pursuant to this Court's June 19, 1998 order. See *Davis v. Board of School Commissioners of Mobile County*, 517 F.2d 1044, 1048 (5th Cir. 1975) (ordering plaintiff to seek intervention even though he added a Title VII claim to his attack on the consent decree).

Pursuant to Local Rule 2.31, we find it appropriate to deem the ABLA case related to the *Gautreaux* action and transfer it to this Court. Reassignment will promote judicial economy by avoiding the possibility that Judge Gettleman will order relief that is inconsistent with or otherwise violative of *Gautreaux*. See August 12, 1998 order (enjoining a Cabrini-Green redevelopment plan created without the required input of the Receiver).

Second, there is little chance that reassignment will delay the *Gautreaux* case because the ABLA piece is still in the development phase, unlikely to move forward until the CRA challenge is resolved. And finally, all of the ABLA plaintiffs' challenges to the ABLA revitalizing plan may be addressed in a single proceeding concerning the development of the area. Any plan for the area that involves the construction of public housing must be approved by a host of entities, all of whom are parties to the *Gautreaux* litigation. It would be much more expedient to address all of the challenges to the ABLA plan now, in one forum, instead of pursuing piecemeal litigation in different courts with the intention of later moving for waivers and approval pursuant to the *Gautreaux* decree. We therefore grant the joint motion, reassign the case to this Court, and dismiss it without prejudice to the ABLA plaintiffs' right to intervene in *Gautreaux*. It is so ordered.



United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Marvin Aspen	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	66 C 1459	DATE	9/25/2000
CASE TITLE	Gautreaux vs. CHA		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

MOTION:

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(1) ☐ Filed motion of [use listing in "Motion" box above.]

(2) ☐ Brief in support of motion due _____.

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(5) ☐ Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.

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(7) ☐ Trial[set for/re-set for] on _____ at _____.

(8) ☐ [Bench/Jury trial] [Hearing] held/continued to _____ at _____.

(9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
☐ FRCP4(m) ☐ General Rule 21 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).

(10) ☒ [Other docket entry] As stated on the reverse, the CRA's concerns are not yet ripe for review, and thus we currently have nothing to decide. So we dismiss the complaint without prejudice to the CRA's right to bring another motion intervene in this court after the completion of the development plan. Concerned Residents of ABLA's motion to intervene (0-1) is denied without prejudice.

(11) ☒ [For further detail see order on the reverse side of the original minute order.]

<input type="checkbox"/> No notices required, advised in open court. <input type="checkbox"/> No notices required. <input checked="" type="checkbox"/> Notices mailed by judge's staff. <input type="checkbox"/> Notified counsel by telephone. <input type="checkbox"/> Docketing to mail notices. <input type="checkbox"/> Mail AO 450 form. <input type="checkbox"/> Copy to judge/magistrate judge.	<div style="border: 1px solid black; height: 150px; margin-bottom: 5px;"></div> <div style="border: 1px solid black; padding: 2px; text-align: center;"> Date/time received in central Clerk's Office </div>	<div style="border: 1px solid black; padding: 2px; text-align: center;">number of notices</div> <div style="border: 1px solid black; padding: 2px; text-align: center;">date docketed</div> <div style="border: 1px solid black; padding: 2px; text-align: center;">docketing deputy initials</div> <div style="border: 1px solid black; padding: 2px; text-align: center;">9/25/2000</div> <div style="border: 1px solid black; padding: 2px; text-align: center;">date mailed notice</div> <div style="border: 1px solid black; padding: 2px; text-align: center;">GL</div> <div style="border: 1px solid black; padding: 2px; text-align: center;">mailing deputy initials</div>	<div style="border: 1px solid black; padding: 2px; text-align: center;">Document Number</div> <div style="border: 1px solid black; height: 100px; margin-top: 5px;"></div>
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ORDER

Before us is the motion of the Concerned Residents of ABLA ("CRA"), a tenants' group made up of current, former, and potential residents of the ABLA public housing development, to intervene in the case of *Gautreaux v. Chicago Housing Authority*, 66c1459, for the purpose of challenging plans to redevelop the ABLA site into one of mixed-income housing. Opposing the motion are the Chicago Housing Authority ("CHA"), the *Gautreaux* plaintiff class, the Department of Housing and Urban Development ("HUD"), and the Receiver appointed by this Court. For the reasons stated herein, we deny the motion to intervene without prejudice to the CRA's right to refile the motion in the future, when the controversy is ripe.

The CRA's proposed complaint in this case alleges that there exists a plan to revitalize ABLA by utilizing funds granted from HUD to CHA through a federal program known as HOPE VI, and that this plan discriminates against the CRA individuals in violation of the Fair Housing Act, the Civil Rights Act of 1968, the Civil Rights Act of 1964, § 1983, the Uniform Relocation Act and the United States Housing Act. The CRA presumably bases its allegations on the tentative plan for revitalization that accompanied the CHA's 1998 application for HOPE VI funds. However, as the *Gautreaux* plaintiffs and other objecting parties point out in their briefs, the application explained that "[t]he scenario included in this application is a sample development plan to demonstrate the financial feasibility of CHA's redevelopment strategy, not the final development plan." The process of creating a final development plan includes selecting a development manager, having the manager prepare tentative final plan documents, having a working group which includes the Receiver and the *Gautreaux* plaintiffs consider and approve the plan, and incorporating the plan into a final proposal submitted to HUD for approval.

Because there is still no final development plan, the CRA's complaint, which alleges that the plan is illegal, is not ripe for adjudication. See *Abbott Laboratories v. Gardner*, 387 U.S. 136 (1967). We cannot consider whether the sample plan violates the various laws cited by the CRA because it is not apparent whether any or all of the sample plan will actually be implemented. Further, although the CRA contends that it has been shut out of the planning process, the evidence submitted by the CHA belies this allegation. And with regard to future planning, the Receiver has represented that "[d]uring the process of plan development, the Receiver, CHA, the City and the *Gautreaux* plaintiffs will consult regularly with the representatives of the putative intervenors, informing them of pertinent developments and giving them an opportunity to present their views. . . ." Unless we are confronted with evidence that this is not occurring, we will assume that the CRA will have the opportunity to present its opinions on the progress of the planning and development.

Finally, once a development plan is finalized, we expect to hold a hearing on the merits of the plan, which would involve receiving either oral or written submissions from all interested parties. At that time, if the CRA believes the final plan is in violation of the law, it may renew its motion to intervene.

This result comports with our order of November 4, 1999, which dismissed the CRA's complaint filed in front of Judge Gettleman without prejudice to their right to intervene here. As we explained in that order, it would be much more expedient to address the concerns of the CHA in this forum instead of pursuing piecemeal litigation in a variety of courts. As we have explained above, the CRA's concerns are not yet ripe for review, and thus we currently have nothing to decide. So we will dismiss the complaint without prejudice to the CRA's right to bring another motion to intervene in this court after the completion of the development plan. It is so ordered.



UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS

Name of Assigned Judge or Magistrate Judge	James B. Zagel	Sitting Judge if Other Than Assigned Judge	
Case Number	91 C 3316	Date	August 7, 1997
Case Title	Horner v. CHA		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd-party plaintiff, and (b) state briefly the nature of the motion being presented.]

MOTION:

DOCKET ENTRY:

(1)	<input type="checkbox"/>	Filed motion of [use listing in "MOTION" box above]
(2)	<input type="checkbox"/>	Brief in support of motion due _____
(3)	<input type="checkbox"/>	Answer brief to motion due _____ Reply to answer brief due _____
(4)	<input type="checkbox"/>	<input type="checkbox"/> Ruling on _____ set for _____ at _____
	<input type="checkbox"/>	Hearing
(5)	<input type="checkbox"/>	Status hearing <input type="checkbox"/> held <input type="checkbox"/> continued to <input type="checkbox"/> set for <input type="checkbox"/> re-set for _____ at _____
(6)	<input type="checkbox"/>	Pretrial conf. <input type="checkbox"/> held <input type="checkbox"/> continued to <input type="checkbox"/> set for <input type="checkbox"/> re-set for _____ at _____
(7)	<input type="checkbox"/>	Trial <input type="checkbox"/> Set for <input type="checkbox"/> re-set for _____ at _____
(8)	<input type="checkbox"/>	<input type="checkbox"/> Bench Trial <input type="checkbox"/> Jury Trial <input type="checkbox"/> Hearing held and continued to _____ at _____
(9)	<input type="checkbox"/>	This case is dismissed <input type="checkbox"/> without <input type="checkbox"/> with prejudice and without costs <input type="checkbox"/> by agreement <input type="checkbox"/> pursuant to
	<input type="checkbox"/>	<input type="checkbox"/> FRCP 4(j) (failure to serve) <input type="checkbox"/> General Rule 21 (want of prosecution) <input type="checkbox"/> FRCP 41(a)(1) <input type="checkbox"/> FRCP 41(a)(2)
(10)	<input checked="" type="checkbox"/>	[Other docket entry] The motion to intervene is denied.
(11)	<input checked="" type="checkbox"/>	[For further detail see <input checked="" type="checkbox"/> order on the reverse of <input type="checkbox"/> order attached to the original minute order form.]

<input type="checkbox"/> No notices required, advised in open court. <input type="checkbox"/> No notices required. <input type="checkbox"/> Notices mailed by judge's staff. <input checked="" type="checkbox"/> Notified counsel by telephone. <input checked="" type="checkbox"/> Docketing to mail notices. <input type="checkbox"/> Mail AO 450 form. <input type="checkbox"/> Copy to judge/magistrate Judge.	<div style="border: 1px solid black; padding: 5px;"> courtroom deputy's Initials </div>	<div style="border: 1px solid black; padding: 5px;"> Date/time received in central Clerk's Office </div>	number of notices	<div style="border: 1px solid black; padding: 5px;"> Document # </div>
			date docketed	
			docketing dpty. initials	



ORDER

Horner v. CHA

91 C 3316

Judge Zagel

The Gautreaux plaintiffs seek to intervene as of right in this case pursuant to Federal Rule of Civil Procedure 24(a). The basic requirements to intervene as of right require that the applicant claim an interest relating to the property or transaction which is the subject of the action, and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties. Fed. R. Civ. P. 24(a)(2).

In order to intervene as of right under Rule 24(a)(2) the applicant must (1) make timely application, (2) possess an interest relating to the subject matter of the action, (3) be at risk that the interest will be impaired as a practical matter by the action's disposition, and (4) lack adequate representation of the interest by existing parties. Nissei Sangyo America Ltd. v. United States, 31 F.3d 435, 438 (7th Cir. 1994).

There is no question that the Gautreaux plaintiffs possess an interest at stake in this case as more than \$20 million of Gautreaux funding is involved. The Gautreaux plaintiffs further argue that four serious problems exist which will impair or impede their ability to protect their interests; they are: (1) inadequate procedures for the timely tenantry by Horner units frustrate the fundamental housing purposes of Gautreaux funding at Horner, (2) inadequate development of a program for providing transitional assistance to tenants moving into Horner replacement units, (3) inadequate eviction procedures at Horner, and (4) inadequate security at Horner threaten the revitalization objective.

Three issues require the denial of the Gautreaux plaintiffs' motion. First, the motion is untimely. While the Gautreaux plaintiffs argue that they filed this motion as soon as it became apparent that their position was sharply divergent from that of the Horner plaintiffs' position, these "recent" issues are not new. There is no precise time limit for bringing a motion to intervene, however, the Gautreaux plaintiffs have been intimately familiar with the Horner litigation from the early stages and the divergent positions that have arisen over the years. I find allowance of this motion would prejudice the parties as there would cause inevitable delay in the implementation of the Horner consent decree. Second, the Gautreaux plaintiffs have provided only conclusory allegations that their interests will be impaired if they are not allowed to intervene. There is no indication that the Gautreaux plaintiffs will be prejudiced if the Court denies their motion as they have had ample opportunities to participate in the execution of the Horner Settlement Agreement as well as its implementation. Finally, the Gautreaux plaintiffs are adequately protected by the parties in this case as there is a presumption of adequate representation where the proposed intervenors and a party to the suit have the same ultimate objective. Wade v. Goldschmidt, 673 F.2d 182, 186 n.7 (7th Cir. 1982). Here that objective is revitalization.

The motion to intervene is denied.

James B. Zagel
U.S.D.J.