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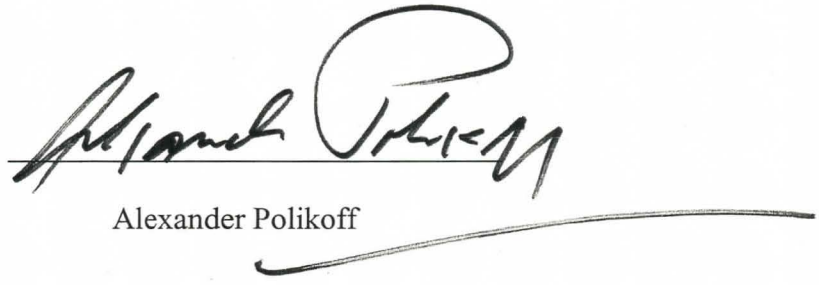

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

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

STATEMENT OF GAUTREAUX PLAINTIFFS
IN RESPONSE TO ABLA PLAINTIFFS' MOTION TO INTERVENE
AND RELATED MOTIONS

Mindful of the Court's admonition against redundancy, respondents have divided the issues among their several responses. In this Statement we deal only with 1) the alleged inadequacy of representation by existing parties as one of the requisites for intervention, and 2) whether the motion to intervene and its accompanying complaint allege any violations of law. The other responses include fuller statements of facts.

Introduction

A dissident group of current and former ABLA residents ("ABLA Plaintiffs") seeks intervention to challenge an implementation step in a remedial ABLA process previously begun with Court approval. Logically, the first question is whether the requisites for intervention are present. The ABLA Plaintiffs' failure to show inadequacy of existing representation is addressed in Part I below; other intervention requirements are discussed in the CHA Statement and HUD Memorandum.

Although, as these discussions show, the ABLA Plaintiffs do not meet the requirements for intervention, the Court has traditionally given careful consideration to would-be intervenors' claims, sometimes opining on them even as it denies intervention. For example, "Had we allowed the Organization's motion to intervene, we would have denied on the merits its [motions for relief]." (12/10/98 order denying intervention to Lakefront Community Organization respecting North Kenwood-Oakland redevelopment, No. 66 C 1459). In Part II, we therefore address the merits of one of the ABLA Plaintiffs' two basic claims – that the ABLA redevelopment plan is unlawful under the Fair Housing and United States Housing Acts. (The HUD Memorandum deals with the alleged violations of the Housing and Community Development and Administrative Procedure Acts.)

We do not address the second basic claim -- that relocation of ABLA residents has violated various statutes -- because that claim does not belong in this case. If valid relocation claims exist they can be brought in a separate lawsuit, and indeed they have been. *Wallace v. CHA*, Civil Action 03 C 491, a class action pending before Judge Castillo, was filed in January 2003 on behalf of all CHA residents allegedly illegally relocated since 1995, including former residents of ABLA. Thus, the ABLA Plaintiffs' relocation claims are already pending in another action. For that reason, as we show in Part III, the attempt to introduce them here must be rebuffed.

I. Because They Fail to Overcome Two Separate Presumptions That They Are Adequately Represented By the Gautreaux Plaintiffs, the ABLA Plaintiffs May Not Intervene as of Right, and Should Not Be Permitted to Intervene Permissively.

To intervene by right, would-be intervenors must show, among other things, that their interests are not adequately represented by an existing party. Fed.R.Civ.P. 24(a). The burden of proof is theirs. *Trbovich v. United Mine Workers of Am.*, 404 US 528, 538 n.10 (1972). Though

minimal, the burden "cannot be treated as so minimal as to write the requirement completely out of the rule." *Edwards v. City of Houston*, 78 F.3d 983, 1005 (5th Cir. 1996). *See also Pittman v. Chicago Bd. of Educ.*, 1992 WL 233903, at *1 (N.D. Ill. Sept. 15, 1992) ("[M]ovants' burden. . . is 'minimal,'. . . nonetheless, it is a burden that must be met.").

When would-be intervenors are "members of the class already involved in the litigation," or when they share the "same ultimate objective" with the existing class, courts presume that existing parties provide adequate representation. *Jenkins v. Missouri*, 78 F.3d 1270, 1275 (8th Cir. 1996); *Wade v. Goldschmidt*, 673 F.2d 182, 186 n.7 (7th Cir. 1982). Here both presumptions apply. The ABLA Plaintiffs are Gautreaux class members, and they share with the Gautreaux class the ultimate objective of a revitalized ABLA community that includes as much public housing as is consistent with economic integration. Because the ABLA Plaintiffs do not overcome either presumption, they do not bear their burden of showing that their interests are inadequately represented by the Gautreaux plaintiffs.

A. The ABLA Plaintiffs are all Gautreaux class members.

The ABLA Plaintiffs concede that current public housing residents and persons on the waiting list are members of the Gautreaux class. (ABLA Mem. at 13.) [1] The Concerned Residents of ABLA (CRA) are simply that, residents of ABLA, who as public housing residents are perforce Gautreaux class members. As an association comprised entirely of Gautreaux class members, CRA has no interest separate from that of its members. Finally, any resident of ABLA who was illegally relocated remains a member of the Gautreaux class, for a defendant's illegal action cannot strip away a resident's class status. Accordingly, because all ABLA Plaintiffs are

[1] "ABLA Mem." refers to the ABLA Plaintiffs' Memorandum in Support of Their First Amended Motion to Intervene. "ABLA Complaint" refers to the First Amended Intervenors' Complaint. "J.A." refers to the Joint Appendix.

Gautreaux class members, it is to be presumed that ABLA Plaintiffs are adequately represented by the Gautreaux plaintiffs.

B. The ABLA and Gautreaux plaintiffs share the same ultimate objective.

A second presumption of adequacy of representation arises where proposed intervenors and a party have the same ultimate objective. *Am. Nat'l Bank & Trust Co. of Chicago v. City of Chicago*, 865 F.2d 144, 148 n.3 (7th Cir. 1989) (citing *Wade*, 673 F.2d at 186 n.7). That presumption applies here because both the ABLA and Gautreaux plaintiffs share the same ultimate objective of a revitalized, mixed-income ABLA community with the maximum amount of public housing consistent with economic integration.

The ABLA Plaintiffs seek "a plan that provides the maximum amount of viable integrated housing for low-income families." (ABLA Complaint ¶12.) In their joint motion requesting designation of ABLA as a Revitalizing Area, the Gautreaux plaintiffs, the Receiver and CHA all represented to the Court that their objectives included new public housing that "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." (ABLA Mem., Ex. A at 2.) *See Bradley v. Milliken*, 828 F.2d 1186, 1193 (6th Cir. 1987) (finding that "present class representatives and proposed intervenors share the same ultimate objective of a unitary school district").

Disagreements about implementation details along the road to a shared ultimate objective do not vitiate the presumption. "A difference of opinion concerning. . . individual aspects of a remedy does not overcome the presumption of adequate representation." *Jenkins*, 78 F.3d at 1275. Using the metaphor of a road map, the Seventh Circuit has said that a "disagreement with respect to the road map to be used to achieve [the] goal [of desegregation]" does not vitiate the

presumption of adequacy of representation that arises from a shared goal. *U.S. v. South Bend Cmty. Sch. Corp.*, 692 F.2d 623, 628 (7th Cir. 1982).

A disagreement about details of an ABLA revitalization plan, designed to reduce segregation by creating an economically integrated community that includes but is not dominated by public housing, is just such a "road map" disagreement. Denying intervention to the Gautreaux plaintiffs in the Horner case because of the presumption of adequate representation arising from a shared ultimate objective, Judge Zagel said in a succinct phrase that is equally applicable to the present context, "Here that objective is revitalization." (ABLA Mem., Ex. E.)

An earlier opinion of this Court cited by the ABLA Plaintiffs is not to the contrary, for in *Gautreaux v. Pierce,* 548 F. Supp. 1284, 1287 (N.D. Ill. 1982), neither of the presumptions applied. The *Pierce* intervenors were residents of the community, not members of the Gautreaux class, and their goal was to oppose the scattered-site housing in their neighborhood that Gautreaux plaintiffs sought. Id. at 1286. Similarly, in another case cited by the ABLA Plaintiffs, those seeking intervention were in direct competition for jobs sought by the plaintiffs. (ABLA Mem. at 13.); *Edwards,* 78 F.3d at 1005-1006 (finding presumption of adequate representation does not apply when intervenors do not seek the same ultimate objective as existing parties).

To overcome this doubly-based presumption of adequate representation, the ABLA Plaintiffs would have to demonstrate something akin to collusion between Gautreaux counsel and CHA, an adverse interest, or show that Gautreaux counsel have been ineffective. *South Bend*, 692 F.2d at 628; *Wade*, 673 F.2d at 186 n.7; *Bradley,* 828 F.2d at 1192. No such demonstration is made. Accordingly, the presumption of adequacy of representation being unrebutted, the ABLA Plaintiffs fail to meet "all the requirements" of Rule 24(a), and

intervention by right must be denied. *Sokaogon Chippewa Cmty. v. Babbitt*, 214 F.3d 941, 946 (7th Cir. 2000). The same result should obtain under Rule 24(b), for adequacy of representation is a "relevant factor" regarding permissive intervention. *U.S. Postal Serv. v. Brennan*, 579 F.2d 188, 191 (2d Cir. 1978). *See also* Moore's Federal Practice § 24.10[2][c] (3d ed., 1999).

II. There is No Showing that the ABLA Redevelopment Plan Violates the Fair Housing or United States Housing Acts.

The ABLA Plaintiffs' attack on the merits has two basic prongs: 1) the 1084 public housing unit number is too small (ABLA Complaint ¶ 73); and 2) whatever the number, the public housing units are improperly distributed between the areas north and south of Roosevelt Road. (*Id.* ¶ 99.) These two failings of the ABLA plan are said to have disparate impacts on protected classes, to perpetuate segregation and to fail to affirmatively further fair housing. We address each prong in turn.

A. The 1084 public housing unit number is not shown to be unlawful.

First, the ABLA Plaintiffs argue that in violation of the Fair Housing Act the failure to build more public housing units will have a disparate impact on African Americans, women, and families. (*Id.* ¶ 98.)

1. African Americans.

The 1084 public housing unit number is too small, leading to a disparate impact on African Americans, say the ABLA Plaintiffs; the number must be bigger. (Id. ¶ 73.) This Court has of course explicitly authorized precisely that number:

> . . . the Receiver is authorized to develop such number of new public housing units within the Revitalizing Area as will result in public housing units compromising approximately 1,084 of a total of approximately 2,895 residential units within the Revitalizing Area. (Order 6/19/98, Ex. 1 attached, at 3.)

The plan is to build 755 new public housing rental units which, when added to the 329 public housing units already rehabilitated, totals exactly 1,084 public housing rental units on site. (Receiver Decl., J.A. Ex. A ¶33(a).)[2]

Although the plan thus complies with the Court's prescription, the ABLA Plaintiffs contend that the prescription was wrong. "[T]he 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 wish to return." (ABLA Mem. at 8-9.) In other words, the prescription should have been two and a half times larger – some 2500 public housing units (832 + 1668 = 2500, which is over 86% of planned residential units), not 1084. The reason for the Court's error is said to be that all current and displaced ABLA residents who wish to do so must be given a "chance to live in the ABLA neighborhood." (*Id.* at 9.)[3]

Breathtakingly, this attack on the Court's order is unadorned with any citation to authority, or even naked legal argument, showing that as a matter of law all current and displaced ABLA residents possess a right to live in the ABLA neighborhood. As discussed more fully in the HUD Memorandum, to foster a mixed-income approach Congress has mandated a reduction of public housing units in HOPE VI developments:

> Notwithstanding any other provision of law, replacement public housing units for public housing units demolished in accordance with this section [including HOPE VI demolition] may be built on the original public housing location or in the same

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[2] In accordance with the Court's order, 2896 ABLA residential units are planned, including 2441 units of new construction, 329 units in the rehabilitated Brooks Homes, and 126 rehabilitated units at Loomis Courts. In addition to the construction of 755 public housing rental units, the plan provides for the construction of 50 homeownership units to be for CHA families. (ABLA Mem. ¶¶ 47, 65, 68.)

[3] Elsewhere the ABLA Plaintiffs up the ante to 2992 public housing units, more than the total proposed number of residential units of every kind, thereby to replace all public housing units being demolished. (ABLA Complaint ¶131.) As discussed in the HUD Memorandum, the ABLA Plaintiffs do not acknowledge the shift by Congress from a one-for-one replacement policy, repealed in 1995, to a requirement of a reduction of the number of public housing units built back on site. *See* Publ. L. 104-19, Sec. 1002(a), 109 Stat. 194, 235-36 (suspending one-for-one replacement requirement with limited exceptions not relevant here); *see infra* p. 8, 42 U.S.C. §1437p(d).

> neighborhood as the original public housing location *if the number of replacement public housing units is significantly fewer than the number of units demolished* (emphasis added). 42 U.S.C. §1437p(d).

And the HUD-mandated Relocation Rights Contract between CHA and the Central Advisory Council (representing all tenants) specifically provides that "the CHA cannot guarantee that all families displaced by redevelopment activity will be able to return to their site of origin or receive their permanent housing choice." (Relocation Rights Contract, Ex. 2 attached, ¶ 4(c)(1).) The upshot is that on this prong of their attack the ABLA Plaintiffs have utterly failed to supply the Court with even the pretense of a case.

Moreover, because it seeks to fundamentally alter a remedial order agreed to by adverse parties and approved by the Court, the ABLA Plaintiffs must satisfy a particularly difficult standard: illegality must appear "as a legal certainty on the face of the agreement." *Isby v. Bayh*, 75 F.3d 1191, 1197 (7th Cir. 1996). Even viewing their challenge as asking the Court to reconsider its 1998 Order, the ABLA Plaintiffs fail to meet the applicable standard – correcting manifest errors of law or fact or presenting newly discovered *evidence* (not speculations by professors). *See Publisher's Resource, Inc. v. Walker-David Publications, Inc.*, 765 F.2d 557, 561 (7th Cir. 1985). Improvements in the ABLA neighborhood are not such evidence, for they were presented to the Court when it entered its 1998 Order – "surrounding and nearby neighborhoods already evidence strong commercial and market-rate housing activity." (ABLA Mem., Ex. A at 4.) Indeed, the Order was predicated on the parties' showing of "'revitalizing' circumstances such that a responsible forecast of economic integration, with a longer term possibility of racial desegregation, could be made." (Order 6/19/98, Ex. 1 attached, at 2.)

The bottom line is that the point of providing "only" 1084 public housing units (where before there had been many more) was to leave room for dwellings that were not public housing,

thereby to foster economic integration and with it the chance "to provide plaintiff class families with desegregated housing opportunities." (*Id.*) It is quixotic to argue that a court-approved plan to help *remedy* segregation of African Americans adversely impacts them. See the fuller discussion of this point in the HUD Memorandum.

The plain fact is that the number of public housing units in the ABLA circumstances – a judgment negotiated and agreed to by adversary parties, approved by the Court's Receiver, by HUD, by the City of Chicago, by the elected tenant representatives, by the surrounding community, and by the Court itself – is not shown to be unlawful. (Emphasizing the importance of such agreement in settlement contexts, see, in addition to *Isby* and *Armstrong, Little Rock Special Sch. Dist. v. Pulaski County*, 921 F.2d 1371 (8th Cir. 1990)). As this Court said in a slightly different but comparable context,

> It would be both unfeasible and highly inappropriate for the Court to review every decision made by these parties. . . [W]e cannot second guess site decisions of the CHA and the Receiver which do not violate the consent decree. *Gautreaux v. Kemp*, 132 F.R.D. 193, 196-97 (1990).[4]

2. Women.

The next assertion is that because the ABLA plan calls for a reduction in the number of units for public housing residents, who are disproportionately female, the plan violates the law. (ABLA Complaint ¶ 98.) The assertion is bereft of logic as well as law, for *any* reduction of public housing units would then have an adverse disparate impact on women. Yet the HOPE VI program, which supplies important funding for ABLA redevelopment, mandates "significantly fewer" than the original number of public housing units precisely to assure that we do not replicate the segregated, concentrated poverty conditions that gave rise to *Gautreaux* in the first

[4] The Declaration of Receiver (J.A., Ex. A. ¶ 39) responds to the similar invitation to second guess the density decision implicit in the Court's approval of approximately 2895 total residential units.

place, but rather create mixed income developments that may replace the segregated past with a racially integrated future. 42 U.S.C. §1437p(f).

3. Families with children.

Last is the complaint that the plan fails to provide a sufficient number of three or four-bedroom units, a failure that is said to have a disparate impact on families with children. (ABLA Complaint ¶¶ 47.) The fact is, however, that the plan provides for a *higher* percentage of three and four bedroom units than were present in ABLA originally -- some 18% of new units will have three bedrooms as against 17% in the original development. (*See* Veenstra Decl., J.A. Ex. B ¶ 46.) Indeed, only 4% of units in the original development had four-bedroom units, while the proposed number is 13%. (*Id.*) Obviously a plan that actually increases the percentage of three and four bedroom units in ABLA does not have a negative impact on families with children.[5]

B. The North/South Distribution Is Not Shown to Be Unlawful.

The other prong of the attack is that the distribution of the 1084 public housing units north and south of Roosevelt Road also perpetuates segregation, fails to affirmatively further fair housing, and produces unlawful disparate impacts on African Americans, women, and families with children.

The perpetuation of segregation and failure to further fair housing charges stumble over a threshold absurdity. The ABLA plan seeks to take a 100 percent racially segregated neighborhood and transform 85 percent of it (the new development) into an economically integrated community "to provide plaintiff class families with desegregated housing opportunities" (Order 6/19/98, Ex. 1 attached, at 2), while most of the remaining 15 percent

[5] The ABLA Plaintiffs' claim is additionally indefensible given the Plan's policy that families who are too large to be accommodated in available units in the new development may split into two or more family units to facilitate placement. (*See* Veenstra Decl., J.A. Ex. B ¶ 46).

(Brooks Homes) has been recently renovated.[6] How striving to move from segregation to integration perpetuates segregation or fails to further fair housing passes understanding.

The contention that the proposed distribution of public housing units north and south of Roosevelt Road has a disparate impact on African Americans is based on statistical manipulations of uncontested facts and rank speculations. For example, the statistic that nearly 80% of the public housing units in a redeveloped ABLA will be south of Roosevelt Road (ABLA Complaint ¶ 7), is offered without acknowledgement that nearly 80% of the land within the revitalizing area is south of Roosevelt Road. (Decl. Receiver, J.A. Ex. A ¶ 36.) Or acknowledgment that the area north of Roosevelt Road will actually have a slightly higher percentage of newly constructed public housing units than will the area south (32.0% vs. 30.5%). (Decl. Receiver, J.A. Ex. A-2.)

Even when public housing units of the Brooks Homes are factored into the equation (see the CHA Statement and HUD Memorandum as to the reasons for the rehabilitation of Brooks, the result is that 39% of units south and 32% of units north of Roosevelt Road will be public housing units. (Decl. Receiver, J.A. Ex. A ¶ 35.) Simple arithmetic discloses that it would require a shift of only 35 public housing units to bring these percentages to equality.[7] It is perfectly plain that in a complex plan for the development of nearly 3000 residential units, a complaint about the location of 35 of them is not a fit matter for judicial action. *See Dowell v. Bd. of Ed. of Oklahoma City,* 795 F.2d 1516, 1522 (10th Cir. 1986) (recognizing in school desegregation context that "minor shifts in demographics or minor changes in other

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[6] 329 Brooks units + 126 Loomis units = 455 units ÷ 2896 total ABLA units = 15%.

[7] Swapping 35 CHA units from south to north of Roosevelt Road produces an identical percentage of public housing on both sides of the road:
North: 213 (new CHA units) + 35 (CHA units moved from south) = 248 (total CHA units) ÷ 666 (total units north of Roosevelt) = 37.2%
South: 871 (new CHA units and Brooks) – 35 (CHA units moved north) = 836 (total CHA units south) ÷ 2230 (total units south of Roosevelt) = 37.4%.
See Declaration of Receiver (J.A. Ex. A-2) for numbers of CHA units used in calculation.

circumstances which are not the result of an intentional and racially motivated scheme to avoid the consequences of a mandatory injunction cannot be the basis of judicial action"). *See also* this Court's observation in *Gautreaux v. Kemp* that it would be inappropriate to second guess site decisions of the Receiver and CHA which do not violate Court orders. 132 F.R.D. at 196-97. A shift in location of little more than 1% of the planned residential units seems a fit subject for application of that observation.

The fact is that the distribution of residential units north and south of Roosevelt Road results from a good faith reconciliation of complex logistical, financial and marketing considerations. For example, additional public housing units north of Roosevelt Road would require displacing market rate units, the revenue from which is required to help fund the development. (*See* Decl. Receiver, J.A. Ex. A ¶¶ 14, 15.) [8]

The area around ABLA – both north and south – makes it a good candidate for the development of a healthy, mixed-income community. *See Gautreaux v. Landrieu,* 523 F.Supp. 665, 669 (N.D. Ill. 1981) (noting that revitalizing areas are those that are "considered the most promising neighborhoods for racial and economic residential integration"). While they acknowledge the promising commercial and residential growth north of Roosevelt Road (ABLA Complaint ¶ 74(b), (c)), the ABLA Plaintiffs' complaint about conditions south of Roosevelt Road (*Id.* at ¶ 74(f)) does not acknowledge the two large *market rate* developments being constructed adjacent to the ABLA redevelopment south of Roosevelt Road. (*See* Decl. Receiver, J.A. Ex. A ¶ 48.) University Commons and University Village, both planned for the census tracts adjacent to the south-of-Roosevelt ABLA redevelopment, will together produce 1780 new

[8] *Cabrini-Green Local Advisory Council v. Chicago Housing Authority,* 1997 WL 31002 (N.D. Ill. Jan. 22, 1997) does not require a different result. There the court denied CHA's motion to dismiss when plaintiffs complained that families who were denied replacement housing would be relocated to segregated areas. *Id.* at *12. As we explain in Section III, the ABLA Plaintiffs' relocation claims belong in *Wallace,* not here.

market-rate units by the end of 2005, thus placing the southern portion of ABLA redevelopment immediately proximate to substantial new market rate housing developments. (ABLA Complaint, Ex. C at 1, 28.) [9]

It would be pointless to supply further examples of statistical manipulation and speculation. The fact is that the ABLA plan seeks to achieve precisely what the ABLA Plaintiffs claim the law requires -- the maximum amount of *viable,* integrated housing for very low-income families that can be practicably achieved. (ABLA Complaint ¶12.) As the HUD Memorandum and the CHA Statement explain, the plan has drawn a responsible balance between maximizing housing for low-income families on the one hand and providing those families desegregated housing opportunities by creating a viable mixed-income community on the other. The ABLA Plaintiffs have offered absolutely no reason for the Court now to second guess, after a laborious and very public process, the drawing of that balance.

III. The ABLA Plaintiffs' Claims of Illegal Relocation Do Not Belong in this Case.

The ABLA Plaintiffs' claims of improper relocation do not belong here because they have already been advanced elsewhere. The broad Gautreaux objectives are to "prohibit the future use and to remedy the past effects of the defendant Chicago Housing Authority's unconstitutional site selection and tenant assignment procedures." *Gautreaux v. Chicago Hous. Auth.,* 981 F.Supp. 1091, 1093 (N.D. Ill. 1997); *Gautreaux v. Chicago Hous. Auth.,* 304 F.Supp. 736, 738 (N.D. Ill. 1969). While one can imagine claims of illegal relocation that are related to

[9] At the same time ABLA Plaintiffs complain about the racial composition of the area south of Roosevelt Road, they also complain that "over 70% of the new homes will be available to higher-income, likely white families." (ABLA Complaint ¶ 5. *See also id.* at ¶17(d)). This speculation takes no account of the fact that "approximately 845 non-public housing units to be occupied by persons with incomes 36-120 percent of the area median income" are to be built (Order 6/19/1998, Ex. 1 at 3), and that only 966 units are to be occupied by persons with incomes in excess of 120 percent of the area median income. *Id.*

those objectives, the Gautreaux plaintiffs have never brought such claims in this case. Instead, joining with ABLA Plaintiffs' counsel, they have brought them elsewhere.

Wallace v. CHA was filed in January 2003 on behalf of "current and former residents of the Chicago Housing Authority who were or will be involuntarily displaced from public housing and segregated into high poverty, overwhelmingly African American neighborhoods by Defendants." (First Amend. Compl. in *Wallace*, J.A. Ex. E. ¶ 1) The complaint alleges that CHA relocation policies and practices violate various statutes, that they have disparate impacts on African Americans, on women, and on families with children, that they perpetuate segregation, and that they fail to affirmatively further fair housing. (*Id.* ¶¶ 233-87.)

The ABLA Plaintiffs' complaint is brought on behalf of all "former and current residents of ABLA." (ABLA Complaint ¶ 16.) Like the *Wallace* complaint it alleges that CHA relocation policies and practices at ABLA violate fair housing laws, have disparate impacts on the same three groups, and also perpetuate segregation and fail to affirmatively further fair housing. Thus, the ABLA Plaintiffs are members of the *Wallace* class and have complained in *Wallace* about the same conduct, for the same reasons, they advance in their complaint here.

Under these circumstances the general principle of "avoiding duplicative litigation" obviously applies. *West Gulf Maritime Ass'n v. ILA Deep Sea Local,* 751 F.2d 721, 728-29 (5th Cir. 1985). *See also Great N. Ry. Co. v. Nat'l R.R. Adjustment Bd.,* 422 F.2d 1187, 1193 (7th Cir. 1970) (when identical actions filed in courts of concurrent jurisdiction, one first acquiring jurisdiction should try case to avoid burdening courts and possible embarrassment from conflicting results); *Pacesetter Sys., Inc. v. Medtronic, Inc.,* 678 F.2d 93, 95 (9th Cir. 1982) (sound judicial administration indicates that court which first acquired jurisdiction would try lawsuit); *Washington Metro. Area Transit Auth. v. Ragonese,* 617 F.2d 828, 830 (D.C. Cir. 1980)

(second-filed action dismissed where first presented a "closely related question").[10] The admonition to avoid duplicative litigation applies with special force when, as here, entertaining an eleventh hour lawsuit would cause severe, probably irreparable prejudice to the original parties. As to prejudice, see the CHA Statement and the HUD Memorandum.

Conclusion

Apart from their failure to show that they are entitled to intervene, the ABLA Plaintiffs' advance claims that are singularly unmeritorious. The Court can and should deny intervention, secure in the knowledge that revitalization at ABLA is proceeding in accordance with its prior order under a good, carefully wrought plan.

Respectfully submitted,

One of the Attorneys for Plaintiffs

Dated: June 3, 2004

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[10] The fact that the class in *Wallace* has not yet been certified does not mean that this Court should hear the ABLA Plaintiffs' relocation claims, for these are clearly "related" to *Wallace* under N.D.Ill. Local Rule 40.4, and should be heard by Judge Castillo. Hearing all the relocation claims together will "result in a substantial saving of judicial time and effort, not cause substantial delay, and it is possible to dispose of all the cases in a single proceeding." *Id.* at 40.4(b)(2)-(4).

List of Exhibits

Exhibits	Description
1	Order of June 19, 1998
2	CHA Leaseholder Housing Choice and Relocation Rights Contract (excerpts)

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

DOROTHY GAUTREAUX, 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

EXHIBIT 1

current HOPE VI application contemplates and proposes that this prior grant be utilized in conjunction with the grant currently being applied for; and

The Court being cognizant that the principal remedial purpose of the orders previously entered in this case has been and is to provide plaintiff class families with desegregated housing opportunities; and

The Court also being cognizant that on occasion it has permitted public or assisted housing to be developed in census tracts not within the General Public Housing Area upon a sufficient showing of "revitalizing" circumstances such that a responsible forecast of economic integration, with a longer term possibility of racial desegregation, could be made; and

The Court being of the view, based on the presentations of the parties and the Receiver, that subject to appropriate terms and conditions such a forecast can be made with respect to the Revitalizing Area should the Receiver and the defendant, Chicago Housing Authority (CHA), be awarded a FY1998 HOPE VI grant therefor pursuant to their proposed joint application;

IT IS HEREBY ORDERED:

1. Effective upon advice to the Court from the parties that a FY1998 HOPE VI grant has been made to the Receiver and CHA pursuant to a joint application to be submitted by them to HUD respecting the Revitalizing Area, the Court designates as the ABLA 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; 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:

Marvin E. Aspen

June 19, 1998

results from the redevelopment process, the terms and conditions of that MOA may not diminish the rights and protections afforded under this contract.

This Contract shall provide the rights and responsibilities for:

1. Leaseholders in occupancy on October 1, 1999 that are determined lease compliant; and

2. Household members of Leaseholders described above that become Leaseholders pursuant to the Admissions and Occupancy Policy (A&O Policy) and CHA's Split Family Transfer Procedures in order to address overcrowded conditions or for CHA initiated reasons. Household members must be authorized occupants as defined by the A & O Policy.

3. This Contract is not applicable to residents whose occupancy begins after 10/1/99.

   a. These families do not have a right to return to a public housing unit. These families are, however, provided the relocation process protections outlined in this contract. The rights and responsibilities of these families are discussed in more detail in a separate contract.

   b. The CHA agrees to track these families while they participate in the Section 8 Program. These families will be offered a Section 8 voucher with a preference on a site based waiting list and Citywide preference list. These families will be provided a priority over new admissions but after families with a right of return under this contract (See Section 4(d) & (c)(2)).

1. Lease Compliance, Additional Lease Requirements, Property Specific Requirements and Lease Amendments.

This Contract applies to lease compliant Leaseholders as determined by this paragraph and paragraphs 3 and 5 below. The conditions of lease compliance, additional lease requirements and property specific requirements are:

a. Leaseholder is current with rent, or is current in a repayment agreement.

b. When the Leaseholder is responsible for utility charges as a CHA Leaseholder, the Leaseholder has no unpaid balance with the CHA or a utility company or is current on a repayment agreement with the CHA or utility company.

c. The Leaseholder, household member, or guest under the control of the Leaseholder is in compliance with the terms of the CHA lease adopted by

CHA LEASEHOLDER HOUSING CHOICE AND RELOCATION RIGHTS CONTRACT[1]

General Purpose.
This Contract sets forth the rights and responsibilities of the Chicago Housing Authority (CHA), its agents, and the CHA Leaseholder. The terms of this Contract shall apply in the event that CHA relocates said Leaseholder from his or her CHA unit either temporarily or permanently for any reason beyond the control of the Leaseholder when in conjunction with redevelopment, demolition, consolidation, rehabilitation, court order, or required conversion to tenant-based assistance.

It is understood that CHA's ability to offer a right of return is subject to the federal funding commitments identified in the Moving to Work Agreement ("MTW") with the United States Department of Housing and Urban Development ("HUD"). To the extent HUD reduces its commitment, fewer hard units will be built or rehabilitated. In the event that federal funds are reduced to a level that is insufficient to meet the level of hard unit production as described in the Plan for Transformation, it is the CHA's obligation under the Plan to consult with the Central Advisory Council ("CAC") to make revisions to the Plan as necessitated by this reduced funding. The MTW Agreement also provides that, if there is insufficient funding to meet the level of hard unit production, Leaseholders covered by this contract will receive a Section 8 voucher. This contract does not commit CHA to build units at a particular development to satisfy all families with a right of return. After meeting the Plan for Transformation goal of approximately twenty five thousand (25,000) public housing units, CHA agrees to make reasonable efforts to identify opportunities to add public housing units to its inventory.

This Contract does not apply to transfers required to fill vacant units (routine turnover units), to address building system failures, or CHA's failure to provide habitable housing when such housing is not subject to the redevelopment process as laid out in the CHA's Plan for Transformation. This contract, including the rights and obligations set forth herein and implementation thereof, is subject to any decisions or orders of the Gautreaux Court or any other applicable court order.

This Contract constitutes the basic rights and responsibilities of the CHA, its agents and the Leaseholder during the redevelopment process. Any existing or proposed Redevelopment Agreement between the developer and the CHA negotiated as part of the redevelopment process may contain additional relocation terms, conditions, and property specific requirements for admission and continued occupancy. In such cases, the Redevelopment Agreement will govern, provided that the protections to Leaseholders under this Contract are not diminished. CHA agrees to modify the terms and conditions of any existing or proposed Redevelopment Agreement(s) to ensure that Leaseholder rights and housing options covered by this Contract are retained. Similarly, if a Memorandum of Agreement (MOA) with the Local Advisory Council (LAC)

[1] If the agreed upon language conflicts with CHA's Admissions and Occupancy Policy, the Policy will be amended accordingly.

4. **Basic Rights of CHA Leaseholders.**
In cases of relocation due to redevelopment, demolition, required conversion to tenant-based assistance, rehabilitation, consolidation or court order, the CHA shall provide the following basic rights to the Leaseholders as described in the General Purpose Section of this Contract:

a. Comparable replacement housing as defined in paragraph 10 below.

b. To the maximum extent possible and subject to subparagraph 4(c) below, CHA will house each Leaseholder in the Leaseholder's preferred housing choice. CHA will provide each Leaseholder with all relevant information regarding the available replacement housing choices. In the event of permanent relocation, the Leaseholder will be allowed to select up to three replacement housing choices in order of preference. Where temporary relocation is necessary, the Leaseholder will be able to choose a temporary Section 8 voucher, or state a public housing development preference that will be honored to the extent feasible. These choices are defined in Section 8 of this document and shall be listed on the Housing Choice Survey (HCS).

c. Lottery System and Unit Offers:

(1) Lease compliant Leaseholders are guaranteed the right to return to a newly constructed or rehabilitated public housing unit. However, the CHA cannot guarantee that all families displaced by redevelopment activity will be able to return to their site of origin or receive their permanent housing choice.

When public housing units become available, first priority for those units (see order of offers provided in subparagraph 4(d) below) will be determined by lottery. The lottery will be by priority group and type and size of unit.

(2) In order to satisfy the right of return, CHA will, in accordance with subparagraph 4(b) above, make two offers of otherwise comparable dwelling units. It is understood that these offers may not be the Leaseholder's site of origin or HCS preference. Failure to accept the second offer will result in the loss of right of return under this contract. Upon loss of the right of return, CHA will offer a preference for return to a public housing unit. This preference will be based on the Housing Choice Survey (HCS) and will permit the Leaseholder to obtain a preference on a site-based waiting list and preference on a citywide placement list. Families in occupancy after 10/1/99 will get a preference on these lists after right of return families who fail to accept a second offer of housing.

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

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

NOTICE OF FILING AND CERTIFICATE OF SERVICE

To: Attached Service List

PLEASE TAKE NOTICE that on Thursday, June 3, 2004, we filed with the Honorable Marvin E. Aspen, of the U. S. District Court, 219 South Dearborn Street, Chicago, Illinois, the attached **Statement of Gautreaux Plaintiffs in Response to ABLA Plaintiffs' Motion to Intervene**, a copy of which is hereby served upon you.

Respectfully submitted,

One of the Attorneys for the *Gautreaux* Plaintiffs

June 3, 2004

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