

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

DOROTHY GAUTREAUX, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 66 C 1459
	)	
CHICAGO HOUSING AUTHORITY, et al.,	)	Honorable Marvin E. Aspen
	)	
Defendants.	)	

CENTRAL ADVISORY COUNCIL'S MOTION  
TO FILE ITS MEMORANDUM, INSTANTER

NOW COMES the CENTRAL ADVISORY COUNCIL (CAC), by its attorney, ROBERT D. WHITFIELD, and files this Motion respectfully requesting the Court for leave to file its Memorandum, instanter, for the reasons stated below.

1. Counsel for the CAC only worked a few hours on Wednesday and Thursday of this week because of a lingering cold, and was not able to finish and file the CAC's memorandum, per the Court's last Order.

2. Counsel is requesting leave to file the CAC's memorandum on Friday, August 19th. The delay is only one day, and will not unduly delay these proceedings.

3. WHEREFORE, the CAC respectfully requests the Court allow the CAC to file its brief, instanter, for the reasons stated above.

Respectfully Submitted

By: 

Robert D. Whitfield

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

DOROTHY GAUTREAU, et al.,	)	
	)	
Plaintiffs,	)	
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CHICAGO HOUSING AUTHORITY, et al.,	)	Honorable Marvin E. Aspen
	)	
Defendants.	)	

CENTRAL ADVISORY COUNCIL'S MEMORANDUM IN  
SUPPORT OF ITS MOTION FOR CLARIFICATION OF THE  
COURT'S JULY 14, 2005 ORDER, AND ITS SUBSEQUENT  
MOTION TO AMEND THE COURT'S JULY 27, 2005 ORDER

NOW COMES the CENTRAL ADVISORY COUNCIL (CAC), by its attorney, ROBERT D. WHITFIELD, and files this Memorandum in support of the CAC's Motion for Clarification of the Court's July 14, 2005 Order, and the CAC's subsequent Motion to Amend the Court's July 27, 2005 Order.

Procedural Background and Clarification

The CAC initially filed a motion to amend the Court's June 3, 1996 Order to modify the requirement contained in that Order that 50% of the 150 public housing units built in the North Kenwood-Oakland area be occupied only by families whose incomes are in the range of 50% to 80% of the Area Median Income (AMI). The Court subsequently issued an Order dated July 14, 1004 denying the CAC' motion. The Court also issued an Order which allows CHA and its management company at the Lake Park Crescent Development to create a

site based waiting list for the 50% to 80% units. That list, per specific language in the Order, can include eligible persons solicited from the general public who are neither current or former public housing residents, or applicants on CHA's public housing waiting list.

The CAC then filed its motion seeking clarification of the Court's July 14, 2005 Order on whether the Order was intended to waive any applicable regulations issued by the United States Department of Housing and Urban Development (HUD) regarding tenant admission and selection policies by public housing authorities (PHAs). The motion also pointed out that there was no motion before the Court requesting approval of the CHA site based waiting list authorized in the July 14th Order, and that the CAC had not presented any arguments regarding the site based waiting list. The motion requested the CAC be allowed to submit a brief on this issue.

It is not clear from the Court's last Order whether counsel, in a subsequent joint telephone message with Plaintiffs' counsel to the Court's clerk, sufficiently clarified what had been agreed to (by telephone) by all parties regarding the issues to be briefed, and the time frames. Counsel apologizes for any confusion regarding this procedural matter, and will submit this memorandum in support of both CAC motions, subject of course, to the discretion of the Court to allow such arguments as it deems relevant and or appropriate.

## Discussion and Argument

### 1. HUD Regulations

The Court's July 14th Order allowing the creation of a site based waiting list specifically states that the CHA list shall be maintained in accordance with federal regulations concerning the maintenance of public housing unit waiting lists, including the prohibition against discrimination.

Part 960 of the HUD regulations sets forth certain mandatory provisions governing the admission and occupancy of public housing, including Equal Opportunity requirements. at 24 CFR 960.103. This regulatory provision (960.103(a) requires all PHAs to administer their public housing programs in accordance with equal opportunity requirements imposed by Federal law, including authorities cited in HUD's regulations at 24 CFR 5.105(a). PHAs are also required to affirmatively further fair housing in the administration of their public housing programs. 960.103(b)

Section 24 CFR 5.105 lists the Federal nondiscrimination and equal opportunity requirements (see attached), which include The 1968 Fair Housing Act, and implementing regulations at 24 CFR 100 et seq.; Executive Order 11063, as amended by Executive Order 12529, and its implementing regulations at 24 CFR 107; and Title VI of the Civil Rights Act of 1964, and its implementing regulations at 24 CFR Part One. The relevant prohibitions are as follows. The Fair Housing



Act prohibits discrimination because of race, sex and familial status. Executive Orders 11063 and 12529 prohibit discrimination because of race and sex; and Title VI prohibits discrimination because of race.

The HUD regulations implementing the Fair Housing Act include provisions which make it unlawful to engage in any conduct relating to the provision of housing which otherwise makes unavailable or denies dwellings to persons because of their sex and or familial status. (24 CFR 100.50(b)(3)) The CHA's tenant population in its family developments is, and has been for an extended period of time, largely comprised of African American families, most of whom are female heads of household (estimated to constitute from 85 to 90% of the population in family developments). It is believed that the CHA waiting list for public housing is also dominated by black families, with a large percentage being female heads of households.

The current Lake Park Crescent provision, which has an income requirement (50 to 80% of AMI) for a portion of the units, will obviously heavily favor two parent families (with two incomes) over a single mother with one income, and thereby be in conflict with the provisions of the Fair Housing Act, and the implementing regulations at 100.50(b)(3), which specifically prohibits conduct that otherwise makes housing unavailable because of sex and or familial status. Further, I have found no exception in the regulations, or the case

law, which would allow such prohibited conduct if the number of units involved is only a small portion of the total units available at that particular site.

The regulations implementing the Executive Orders cited above are also relevant to the issues before the Court. The regulations at 24 CFR Part 107 state that the purpose of the Executive Order is to assure nondiscrimination in HUD programs because of sex; and assure compliance with the requirement that such programs be administered in a manner to affirmatively further fair housing. 24 CFR 107.10 The requirement for HUD and PHAs to affirmatively further fair housing is also set forth in the Fair Housing Act. Section 107.15(f) defines discrimination to include any policy/practice, or any arrangement, criterion or other method of administration " . . . which has the effect of denying equal housing opportunity or which substantially impairs the ability of persons to apply for or receive the benefits of assistance because of race, color, religion (creed), sex or national origin." An admission policy that heavily favors two parent families over families consisting of female heads of household would appear to be in direct conflict with this regulatory provision.

The regulations implementing Title VI are also relevant, even though the CAC is not contending that any action, or proposed action has or will result in discrimination because of race, color or national origin. However, the Title VI regulations do contain a very

specific requirement that PHAs assign eligible applicants dwelling units in accordance with a plan, duly adopted by HUD, providing for assignment on a community-wide basis in sequence based on the date and time of application. (24 CFR 1.4(b)(2)(ii)) Therefore, if the Court approves CHA assigning units without regard to the applicant's place on the waiting list, a waiver of this provision would also be required. The CAC is not aware that HUD has allowed CHA to deviate from the above Title VI regulatory requirement, as evidenced by a HUD letter to CHA in December, 1990 (see attached) reminding CHA of its obligation to comply with Title VI, and the Fair Housing Act, with respect to its tenant selection and assignment policies.

2. Authorization to Solicit Applicants from the General Public

The July, 2005 Order issued by the Court authorizing CHA to solicit applicants from the general public who are not current CHA residents, or applicants on the CHA waiting list, is extraordinary. The Order, based on counsel's review of the Court records, and discussions with counsel for the Gautreaux Plaintiffs, will be the first time this Court has specifically authorized CHA to provide housing units built as part of the remedial relief ordered in this case, to persons who are not members of the Gautreaux class, since such persons are neither CHA residents or CHA applicants. This point was not argued (verbally or in writing) by the CAC, although it was raised verbally in Court by counsel for the Gautreaux class.



## § 5.105

### § 5.105 Other Federal requirements.

The following Federal requirements apply as noted in the respective program regulations:

(a) *Nondiscrimination and equal opportunity.* The Fair Housing Act (42 U.S.C. 3601-19) and implementing regulations at 24 CFR part 100 *et seq.*; Executive Order 11063, as amended by Executive Order 12259 (3 CFR, 1959-1963 Comp., p. 552 and 3 CFR, 1980 Comp., p. 307) (Equal Opportunity in Housing Programs) and implementing regulations at 24 CFR part 107; title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-2000d-4) (Nondiscrimination in Federally Assisted Programs) and implementing regulations at 24 CFR part 1; the Age Discrimination Act of 1975 (42 U.S.C. 6101-6107) and implementing regulations at 24 CFR part 146; section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at part 8 of this title; title II of the Americans with Disabilities Act, 42 U.S.C. 12101 *et seq.*; 24 CFR part 8; section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and implementing regulations at 24 CFR part 135; Executive Order 11246, as amended by Executive Orders 11375, 11478, 12086, and 12107 (3 CFR, 1964-1965 Comp., p. 339; 3 CFR, 1966-1970 Comp., p. 684; 3 CFR, 1966-1970 Comp., p. 803; 3 CFR, 1978 Comp., p. 230; and 3 CFR, 1978 Comp., p. 264, respectively) (Equal Employment Opportunity Programs) and implementing regulations at 41 CFR chapter 60; Executive Order 11625, as amended by Executive Order 12007 (3 CFR, 1971-1975 Comp., p. 616 and 3 CFR, 1977 Comp., p. 139) (Minority Business Enterprises); Executive Order 12432 (3 CFR, 1983 Comp., p. 198) (Minority Business Enterprise Development); and Executive Order 12138, as amended by Executive Order 12608 (3 CFR, 1977 Comp., p. 393 and 3 CFR, 1987 Comp., p. 245) (Women's Business Enterprise).

(b) *Disclosure requirements.* The disclosure requirements and prohibitions of 31 U.S.C. 1352 and implementing regulations at 24 CFR part 87; and the requirements for funding competitions established by the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3531 *et seq.*).

(c) *Debarred, suspended or ineligible contractors.* The prohibitions at 24 CFR

## 24 CFR Subtitle A (4-1-05 Edition)

part 24 on the use of debarred, suspended or ineligible contractors.

(d) *Drug-Free Workplace.* The Drug-Free Workplace Act of 1988 (41 U.S.C. 701 *et seq.*) and HUD's implementing regulations at 24 CFR part 24.

[61 FR 5202, Feb. 9, 1996, as amended at 65 FR 16715, Mar. 29, 2000]

### § 5.107 Audit requirements for non-profit organizations.

Non-profit organizations subject to regulations in the part 200 and part 800 series of title 24 of the CFR shall comply with the audit requirements of revised OMB Circular A-133, "Audits of States, Local Governments, and Non-profit Organizations" (see 24 CFR 84.26). For HUD programs, a non-profit organization is the mortgagor or owner (as these terms are defined in the regulations in the part 200 and part 800 series) and not a related or affiliated organization or entity.

[62 FR 61617, Nov. 18, 1997]

### § 5.108 Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federally Funded Construction Projects.

(a) *Purpose.* This section implements Executive Order 13202 (issued on February 17, 2001), as amended by Executive Order 13208 (issued on April 6, 2001), entitled "Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects."

(b) *Definitions.* For purposes of this section:

*Construction contract* means a contract for the construction, rehabilitation, alteration, conversion, extension, or repair of buildings, highways, or other improvements to real property, including any subcontracts awarded pursuant to such a contract.

*Financial assistance* includes:

(i) Grants, loans, and advances of federal funds; or

(ii) Proceeds from loans guaranteed under section 108 of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 *et seq.*) and title VI of the Native American Housing Assistance and Self-Determination

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U.S. Department of Housing and Urban Development  
Chicago Area Office, Region V  
547 West Jackson Boulevard  
Chicago, Illinois 60606-5760

DEC 28 1990

Vincent Lane  
Chairman, Board of Commissioners  
Chicago Housing Authority  
22 West Madison Street  
Chicago, Illinois 60602

Dear Mr. Lane:

SUBJECT: Status of CHA's Tenant Selection and Assignment  
Plan (TSAP)

This is in response to your concern, expressed in a meeting in this office on October 3, 1990, as to the status of CHA's TSAP. Simply put, CHA's TSAP is largely or wholly the Plan approved by the Court in the Gautreaux Case in 1969, with modifications as approved by the Court.

It is possible that there are other elements which were or are part of CHA's Admissions and Occupancy Policy. For a period of years, CHA was required to have Income Limits for Continuing Occupancy. These did not relate directly to admission, so presumably they were never referred to the Court. It is also possible, even likely, that CHA had separate provisions for the Waiting List for Elderly Housing which were not included in the TSAP submitted to the Court.

Some of the confusion in evidence at the October 3 meeting arose from our March response to one of the several draft TSAPs. When the Plan was approved by the Court in 1969, there was apparently no input from HUD, and CHA got a Plan which was very different from the TSAPs being approved at every other PHA in the country. In addition, since 1969, the National Housing Act, HUD regulations, and HUD Handbooks have continued to change, usually in ways not compatible with CHA's TSAP. However, when the Court approved the Plan, it also found it in compliance with Title VI. While HUD would in other circumstances absolutely demand that a PHA with a Plan like CHA's revise it totally, to do so in CHA's case would require HUD to go to Court to challenge that part of the 1969 Decree approving the TSAP.

Our March comments on the draft TSAP, and the same holds true for the other drafts which we have seen, were to the effect that the proposed revisions were neither consistent with HUD's current position on Titles VI and VIII nor with the 1969 TSAP approved by the Court. HUD is not ready at this time to challenge the 1969 TSAP, but that does not mean that HUD will or can accept any changes to the Plan which increase the divergence from standard HUD policy. Obviously, HUD has not objected to changes incorporating new legislative provisions, such as the Federal Preferences. As shown by the recent approval of new registration of residents of community areas where scattered site development occurs, the Court will approve changes which appear to further the intent of the 1969 Plan.

Many of the policy changes directed by this Office as a result of the Occupancy Audit are not within the scope of the TSAP approved by the Court. The other changes are of the sort which, if incorporated into the Court-approved TSAP, would not increase the divergence from HUD Fair Housing policy.

As for CHA operations, at no time has CHA been without an Admissions Policy, no matter how much practice may have differed from the adopted policy. Any changes within the scope of the TSAP approved by the Court would need to be acceptable to HUD and would require the approval of the Court. Other policies relating to Occupancy, such as the Pet Policy, Utility Allowances, etc. are outside of the TSAP, and are to be adopted by the Board of Commissioners and, generally, approved by HUD. Until new policies are approved by one of these two routes, CHA must enforce the policies it has adopted.

HUD's goal is that CHA have a comprehensive set of Occupancy policies which are responsive to management needs (especially vacancy reduction), the interests of the Gautreaux plaintiffs, and Titles VI and VIII of the Housing Act. Not all parts of such policies will be adopted at the same time. In the area of Occupancy, change is a constant process. What is critical is for CHA staff to be precisely aware of CHA's policies and of each and every revision.

Questions concerning this response may be referred to Forrest St. Clair Jolley at 353-1411.

Sincerely,

Gertrude W. Jordan  
Regional Administrator-  
Regional Housing Commissioner,  
Region V

CERTIFICATE OF SERVICE

I, ROBERT D. WHITFIELD, hereby certify that I caused a copy of the attached Notice of Motion and CENTRAL ADVISORY COUNCIL'S MOTION TO FILE ITS MEMORANDUM, INSTANTER, and CENTRAL ADVISORY COUNCIL'S MEMORANDUM, to be served on the parties listed below, and the in the Notice of Motion, by U.S. Mail and or by fax on Friday, August 19, 2005, before 5:00pm.

  
Robert D. Whitfield

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

**RECEIVED**

DOROTHY GAUTREAUX, et al.,

Plaintiffs,

v.

CHICAGO HOUSING AUTHORITY, et al.,

Defendants.

AUG 19 2005

Case No. 05-60603-59  
CLERK, U.S. DISTRICT COURT

Honorable Marvin E. Aspen

NOTICE OF MOTION

TO: Alexander Polikoff	Edward Feldman	Gail Nieman
Julie Brown	Miller, Shakman	General Counsel
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Thomas E. Johnson  
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PLEASE TAKE NOTICE that on Tuesday August 23, 2005, I will appear before the Honorable Judge Marvin E. Aspen at 10:30a.m. or as soon thereafter as can be heard, and present a Motion by the CAC to file the the Central Advisory Council's, Memorandum, instant, a copy of which is attached and hereby served upon you.

Dated this 19th day of August, 2005.

Respectfully Submitted

By: 

Robert D. Whitfield

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