

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

DOROTHY GAUTREAUX, et al.,	)	
	)	
Plaintiffs,	)	
	)	
-vs-	)	No. 66 C 1459
	)	
CHICAGO HOUSING AUTHORITY, et al.,	)	
	)	Hon. Marvin E. Aspen
Defendants.	)	

**CHICAGO HOUSING AUTHORITY’S RESPONSE TO AMICI CURIAE BRIEF FILED  
IN SUPPORT OF PLAINTIFFS ON HOUSING REPLACEMENT ISSUE**

Various Amici have filed a brief supporting the plaintiffs, insofar as the plaintiffs seek relief requiring CHA to replace the 524 public housing units that will no longer exist at the Lathrop site, following redevelopment of the Lathrop site as a mixed-income community. Like the plaintiffs, Amici insist that all of the replacement units must be family units.

CHA’s position is fully set out in the brief it filed on November 29, 2016 in response to the plaintiffs’ motion (“CHA’s brief”). However, as the CHA had not then seen the Amici’s brief, it adds only a few brief points responsive to the Amici’s arguments:

**1. The CHA’s Pledge of 525 “New Housing Opportunities” on the North Side of the City Is Not “Intentionally Vague.”** Amici begin (at p. 14) by contending that CHA’s Chief Executive Officer was vague when he committed in writing to provide 525 new housing opportunities in order to compensate for the loss of public housing units on site at Lathrop. It is not vague. CHA’s pledge is to develop, cause to be developed, or acquire 525 units on the North Side. This does not include tenant-based, portable Housing Choice Vouchers but rather hard

units that CHA will own or will acquire through project-based vouchers under CHA's PRA program (described at pp. 18-19 of CHA's brief). These will not all be brand new units, but will include units the CHA acquires directly, through developers with whom the CHA is working, from developers who have built market buildings but must set aside affordable units under the City's Affordable Housing Ordinance, or from existing landlords open to a project based voucher's rental income stream. Each of the units will, however, be for public housing residents. As we made clear in CHA's brief, CHA seeks to include units for seniors within the goal of 525, as well as units for families.

**2. Amici's Concern About the Way in Which Public Housing Families Have Chosen to Use Their Housing Choice Vouchers Is Irrelevant to the Dispute Before the Court.** Amici insist (at pp. 16-17) that CHA should not use Housing Choice Vouchers as a way of replacing public housing units at Lathrop, on grounds that those public housing families who received vouchers have chosen to live in segregated neighborhoods. Amici *Wallace v CHA, 03 C 0491 (N.D. Ill.)*, which was settled in 2005, after CHA expanded its already existing mobility counseling programs to encourage Housing Choice Voucher holders to move to opportunity areas, and a 2011 Illinois Housing Action report on the experience of Illinois Housing Choice Voucher holders. Housing Choice Vouchers are held by individual tenants. They provide a subsidy for the tenant to rent in the private market. They are portable, in that the tenant can move with his or her voucher to any decent, safe and sanitary apartment, and tenants have freedom of choice to live where they wish to live.<sup>1</sup> Housing Choice Vouchers, however, are not and have

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<sup>1</sup> Housing Choice Vouchers are not subject to the *Gautreaux* judgment order, *Gautreaux v CHA, 981 F.Supp. 1091 (N.D. Ill. 1997)*.

never been part of CHA's plan to develop 525 new housing opportunities on the North Side, as a consequence of the Lathrop redevelopment plans.

**3. Lathrop's History As An All-White CHA Development Is Also Not Pertinent to the Dispute Before the Court.** Amici have provided a Racial Impact Statement that traces the history of the Lathrop development<sup>2</sup>. There is no question that decades ago Lathrop was a segregated, all-white CHA development. As the plaintiffs concede, however, Lathrop became a largely African-American development and remains so. As we pointed out in CHA's brief (at p.5, n. 4), 153 of the 245 current residents of Lathrop are African-American, 78 are Hispanic and 14 are white. The point of CHA's current plans at Lathrop are to desegregate these families by integrating them (economically and racially) into the surrounding neighborhood through a mixed-income plan, as CHA has successfully done in various neighborhoods around the city. As such, Lathrop's original designation as a white CHA development long ago does not pertain to the current issues before the Court.

Amici suggest that CHA purposely depopulated Lathrop (pp. 15-16). They offer no evidence to support this claim. In fact, many of the Lathrop units were and are in terrible condition, having been built in the 1930s. As such, it was not appropriate to lease up these units, until a viable plan, supported by adequate financing, was put into place to renovate these units. Financing for such a plan was scarce, particularly given the major financial commitments CHA won in order to redevelop Cabrini, Horner and the many other developments where units have been delivered. We are finally on the doorstep of funding such a plan at Lathrop, and CHA seeks

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<sup>2</sup> This Racial Impact Statement, written by counsel for the Amici, is not a proper expert report. CHA objects to its admission under Federal Rule of Evidence 702.



to go forward with that now. In addition, lease up to viable units was limited because these units were used for relocation, as the system-wide Plan for Transformation was implemented.

**4. CHA's Plan Will Allow Lathrop Families with a Right to Return, and Waiting List Families the Opportunity to Obtain Decent Housing.** Amici argue that CHA has deprived Lathrop families with a Right to Return under the Relocation Rights Contract (and families on the CHA waiting lists) "of an opportunity to live in structurally sound low-rise buildings in an opportunity area" (at p. 14). That is not the case. First, as we described in CHA's brief at p. 1, n. 2, there are 144 units currently occupied at Lathrop. CHA has spent considerable sums to keep these units decent and safe, despite the plan to overhaul them. There are only 26 former Lathrop families living off-site. There are, in addition, 10 other families (from CHA developments other than Lathrop) who have opted to live at the new Lathrop. They all have a right to return. CHA fully expects to be able to accommodate all of these present or former Lathrop families with a Right to Return in Phase IA of the Lathrop development, which it seeks to close in January of 2017. In terms of those on the CHA waiting lists, CHA plans to have exactly the same number of public housing units available (when you combine the on-site and off-site units) as was the case when Lathrop was brand new. The 525 new housing opportunities CHA's Chief Executive Officer has promised (when combined with the on-site units at Lathrop) will equal the original total of public housing units at Lathrop. But now, these units will not be vandalized and dilapidated units, but decent, safe and sanitary quality units, all supported by public housing subsidy. Thus, there will be no adverse impact on the waiting list, or any Fair Housing Violation, particularly after the Supreme Court's decision in *Texas Department of Housing and Community Affairs v Inclusive Communities Project, Inc.*, \_\_\_ U.S. \_\_\_, 135 S.Ct. 2507

(2015)<sup>3</sup>.

**5. Limiting Replacement Housing to Families Is Not Warranted by the Demand for Public Housing.** Amici describe the serious need for affordable housing on the part of public housing families (at pp. 17-19). But, as they note, CHA's waiting list for senior housing has 14,532 seniors on it (Amici Br., at p. 18). These are poor, largely African-American seniors. CHA seeks the opportunity to provide for some of these seniors, as well as families in its replacement housing program. CHA must balance the needs of seniors and families. Historically, Lathrop has always had a large senior population because one-half of the Lathrop units were one bedroom units. Currently, 70 of the 245 people living at Lathrop are elderly (i.e. 28.5%), see, CHA brief, at p. 18. The separately constructed senior building on the Lathrop site is essentially full (Id.). CHA is charged with the responsibility of allocating its scarce resources, as between seniors and families, both of which need affordable housing. units. Its exercise of that discretion should not be second-guessed, absent a specific violation of federal law.

/s/Thomas E. Johnson  
One of the Attorneys for the CHA

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<sup>3</sup> Amici suggest that CHA might be liable under **42 U.S.C. §3608** (at p. 16), but this statute imposes a duty on the Secretary of HUD to affirmatively further fair housing in its administration of its programs. **NAACP v Secretary of HUD**, 917 F.2d 149 (1<sup>st</sup> Cir. 1987), cited by Amici, was in fact a case against HUD. This statute should not be enforced against local officials, *see, e.g. Thomas v Butzen*, 2005 U.S. Dist. LEXIS 21525 (N.D. Ill. 2005); **MHANY Management v Cnty. of Nassau**, 843 F.Supp.2d 287 (E.D.N.Y. 2012), particularly where they seek to implement a plan that will desegregate public housing.

JAMES L. BEBLEY  
General Counsel  
CHERYL J. COLSTON  
Deputy General Counsel  
Chicago Housing Authority  
60 East Van Buren Street, 12<sup>th</sup> Floor  
Chicago, IL 60606  
(312) 913-7060

THOMAS E. JOHNSON  
Johnson, Jones, Snelling, Gilbert & Davis  
36 S. Wabash Ave., Suite 1310  
Chicago, IL 60603  
(312) 578-8100

*Attorneys for the CHA*

**CERTIFICATE OF SERVICE**

Thomas E. Johnson, hereby certifies that on this 14th day of December, 2016, I caused to be served, via electronic mail through the Court's ECF system, a true and correct copy of **Defendant Chicago Housing Authority's Response to Amici Curiae Brief Filed In Support of Plaintiffs on Housing Replacement Issue** on counsel of record:

Alexander L. Polikoff  
Julie Elena Brown  
BPI  
25 East Washington St., Suite 1515  
Chicago, IL 60602  
Email: a.polikoff@bpichicago.org  
Jbrown@bpichicago.org

/s/ Thomas E. Johnson