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United States District Court, N.D. Illinois, Eastern Division.

CABRINI-GREEN LOCAL ADVISORY COUNCIL, Plaintiff,
v.
CHICAGO HOUSING AUTHORITY and Joseph Shuldiner, Defendants.

No. 96 C 6949.
|
Jan. 22, 1997.

MEMORANDUM OPINION AND ORDER

COAR, District Judge.

***1** Defendants Chicago Housing Authority and its Executive Director Joseph Shuldiner (collectively, "CHA" or "defendants") have moved to dismiss plaintiff Cabrini-Green Local Advisory Council's ("LAC" or "plaintiff") twenty-two-count complaint seeking declaratory and injunctive relief. For the following reasons, defendants' motion is granted in part and denied in part.

I. Allegations of the Complaint

A. Cabrini-Green Housing Development and the Parties

The Cabrini-Green public housing development in Chicago, Illinois ("Cabrini-Green"), is a family public housing development containing approximately 3606 dwelling units and housing some 6000 residents. Virtually all of the families residing in Cabrini-Green are "very low income," a term that is defined by the U.S. Department of Housing and Urban Development ("HUD") to mean 0% to 50% of the median area income. (Compl., ¶¶ 32-33). In addition, 94% of the heads of households at Cabrini-Green are African-American, 63% of the residents are female, and 56% of the residents are younger than nineteen years of age. (*Id.* ¶ 34).

Plaintiff LAC is a tenant organization that represents the tenants of Cabrini-Green. Membership in LAC is composed of lessees and other authorized residents of Cabrini-Green. LAC has the power to act for and on behalf of the residents of Cabrini-Green and to take steps to effect changes in rules, regulations, practices, and policies on behalf of the residents. LAC also has the power to enter into contracts on behalf of the residents. (Compl., ¶ 12).

Defendant Chicago Housing Authority is an Illinois municipal corporation that administers federally subsidized and assisted low-income housing. (Compl., ¶ 17). Defendant Joseph Shuldiner is the Executive Director of the Chicago Housing Authority and is charged with establishing and administering the Authority's policies. (*Id.* ¶ 18)

B. Initial HOPE VI Application and the LAC-CHA Agreements

On May 5, 1993, CHA filed an application with HUD under the HOPE VI Urban Revitalization Demonstration Program ("HOPE VI") for $50 million to revitalize Cabrini-Green. The application called for the demolition of three residential buildings with 660 dwelling units and the renovation of another. The plan also provided for one-to-one replacement of each dwelling unit to be demolished, either by constructing new units or by providing "Section 8" certificates to those displaced by the demolition. (Compl., ¶¶ 3, 36).

On May 28, 1993, CHA and LAC entered into a memorandum of agreement that provided, among other things, that "[r]esidents impacted by the rehabilitation and demolition ... will be provided relocation opportunities within the general planning area [of the Cabrini-Green development]," (Compl., ¶ 38(b)), and that CHA would meet with LAC "for the purpose of developing a 'master-plan'" for Cabrini-Green, (*id.* ¶ 38(d)). LAC

alleges that this agreement remains in full force and effect and is a contract between LAC and CHA. (*Id.* ¶ 38).

***2** On November 19, 1993, HUD approved CHA's HOPE VI grant application. Disbursement of funds, however, was conditioned upon CHA's submission of an approvable demolition application and replacement housing plan. (Compl., ¶ 40). On March 1, 1995, HUD approved CHA's request to demolish the building at 1117-1119 N. Cleveland, provided that the HOPE VI grant would fund 72 of the 262 replacement units. (*Id.* ¶ 42). On March 13, 1995, CHA, through its Chairman, Vincent Lane, agreed in writing with LAC (1) that the residents of 1150-60 N. Sedgwick would not be relocated and that the building would not be demolished until replacement housing was built and (2) that 1158 N. Cleveland would be vacated for rehabilitation. (*Id.* ¶ 43). On March 15, 1995, CHA submitted to HUD the "HOPE VI Revised Plan to Revitalize Cabrini-Green" ("Revised Plan"), which included a replacement housing plan. The Revised Plan provided for one-to-one replacement of dwelling units. (*Id.* ¶ 44). In a letter dated May 15, 1995, HUD refused to either approve or deny the Revised Plan. (*Id.* ¶ 45). On June 23, 1995, HUD approved CHA's demolition application for 1157-59 N. Cleveland and 1150-60 N. Sedgwick. HUD's approval for these demolitions was based in part on CHA's proposal to replace the units in those buildings on a one-for-one basis. (*Id.* ¶ 48). Later in 1995, CHA demolished 1117-19 N. Cleveland and 1157-59 N. Cleveland. (*Id.* ¶ 49).

In October 1995, CHA issued a "Request for Proposals -- Step Two and Developer's Packet For The Planning, Design & Development of Mixed Income Housing For The Cabrini HOPE VI Urban Revitalization Demonstration Project" ("RFP"). The purpose of the RFP was to assist CHA in developing a replacement housing plan for the 660 units scheduled to be demolished. (Compl., ¶ 51). In November 1995, the City of Chicago ("City") submitted to HUD its 1995 Consolidated Plan/Action Plan ("Consolidated Plan"). That plan presents the City's community development priorities and strategies. Local governments receiving HUD funds are required to submit or update such a plan annually. (*Id.* ¶ 52).[1]

C. Development of the CHA Plan

In January 1996, CHA created the HOPE VI Development Screening Committee, an advisory committee whose purpose it was to make recommendations to CHA regarding development proposals submitted pursuant to the RFP. Four Cabrini-Green residents were appointed by plaintiff to serve on this committee. (Compl., ¶ 54). However, plaintiff alleges that between March 1996 and June 1996, CHA and the City held a series of closed-door meetings to create their own plan for the redevelopment of Cabrini-Green. Plaintiff was excluded from these meetings. (*Id.* ¶ 56). The meetings between CHA and the City culminated in a joint press conference held on June 27, 1996, in which a new plan for the redevelopment of Cabrini-Green was announced ("CHA Plan" or "Plan"). Under the Plan, CHA will demolish eight buildings totaling 1324 units, rather than just the three buildings with 660 units called for under the original HOPE VI application. (*Id.* ¶ 57). The CHA Plan does not require one-for-one replacement of demolished units for very low-income residents. In fact, the Plan call for only 300-325 such units to be built, a net loss of approximately 1000 very low-income dwelling units. (*Id.* ¶ 58).

***3** Plaintiff alleges that the CHA Plan will have a disproportionate impact on African-Americans, women, and children due to the fact that all of the 675 families that have either been displaced or will be displaced from the eight buildings designated for demolition under the CHA Plan are considered "low income." (Compl, ¶¶ 60, 62, 89). In addition, LAC alleges that the building designated for renovation under the original HOPE VI application is now slated for demolition. In reliance on CHA's promise to renovate this building, the families residing in that building moved out. (*Id.* ¶¶ 63-64). Finally, plaintiff alleges that CHA has violated its promise to build replacement housing prior to vacating and demolishing 1150-60 N. Sedgwick. (*Id.* ¶¶ 68-69).

D. Injury to LAC and its Members

As a result of defendants' actions, LAC alleges that it has suffered injury because it has been denied participation in the planning process leading up to the CHA Plan. (Compl., ¶ 73(a)). LAC also alleges that it has been forced to divert resources from its other organizational purposes in order to discover and discuss the CHA Plan, to advocate against the Plan, to monitor defendants' implementation of the Plan, to inform its members about the Plan, and to initiate this lawsuit. (*Id.* ¶ 73(b)). Plaintiff

also alleges that many of its members will suffer irreparable injury due to the destruction of their community. Particularly, plaintiff alleges that LAC members will be denied eligibility to reside in replacement housing at Cabrini-Green. (*Id.* ¶ 74). Further, LAC members have been injured because the CHA Plan was developed without the consultation and participation of LAC members, as required by HOPE VI, Section 18 of the U.S. Housing Act of 1937 (codified at 42 U.S.C. § 1437p), and the May 28, 1993 agreement between the parties. (Compl., ¶ 75).

E. LAC's Complaint

LAC filed a twenty-two count complaint for declaratory and injunctive relief. Counts 1-4 are brought under Title VIII of the Civil Rights Act of 1968, also known as the Fair Housing Act. In those counts, plaintiff alleges that the CHA Plan will have a disproportionate impact upon African-Americans, women, and children. (Compl., ¶¶ 80-83). Count 5 is brought under Title VI of the Civil Rights Act of 1964 and alleges that the CHA Plan will have a disproportionately adverse impact upon African-Americans. (*Id.* ¶ 84). Counts 6-10 are brought under 42 U.S.C. § 1983 and HOPE VI, 42 U.S.C. § 1437*l,* note. Count 6 seeks to enforce the "revitalization" provisions of HOPE VI. (Compl., ¶ 85). Counts 7 and 8 seek to enforce the requirement in the HOPE VI statute that all plans developed under HOPE VI be consistent with the City's Consolidated Plan. (*Id.* ¶¶ 86-87). Counts 9 and 10 seek to enforce statutory provisions that, when read together, "require that persons displaced by HOPE VI reconstruction activities shall be eligible for replacement units of their choice, to the maximum extent practicable." (*See id.* ¶ 88). Counts 11 and 12 are brought under 42 U.S.C. § 1983 and Section 18 of the U.S. Housing Act of 1937, 42 U.S.C. § 1437p. In Count 11, plaintiff alleges that the defendants have failed to "meaningfully consult" with plaintiff in developing the CHA Plan, in violation of Section 18 and the HOPE VI grant requirements. (Compl., ¶ 90). Count 12 alleges that one of the buildings scheduled for demolition is not obsolete and that a reasonable program of modifications is feasible to return it to "useful life." Plaintiff thus alleges that the building's demolition violates Section 18, which governs the demolition of public housing. (Id. ¶ 91). Count 13 alleges that the CHA Plan violates Section 24 of the U.S. Housing Act of 1937, 42 U.S.C. § 1437v(e)(2), because the Plan creates a local preference whereby 300-325 replacement public housing units will be available for families making 50-80% of median area income without first holding one or more public hearings to obtain the views of low-income tenants. Plaintiff alleges in Count 14 that defendants have violated the Uniform Relocation Act, 42 U.S.C. § 4625(c), and regulations promulgated thereunder. In particular, plaintiff alleges that defendants have (1) failed to adequately assess the needs and preferences of displaced families; (2) failed to give displaced families reasonable opportunities to relocate to decent, safe, and sanitary replacement dwellings that are not located in areas of African-American concentration; and (3) failed to provide displaced families comparable replacement housing. (Compl., ¶ 93).

***4** Plaintiff has also brought eight state law claims. Count 15 alleges that the CHA Plan exceeds the powers conferred upon CHA by the Illinois Housing Authorities Act, 310 ILCS 10/2. (Compl., ¶ 94). Counts 16-21 allege various breaches of the agreements between CHA and LAC. (*Id.* ¶ 95-100). Finally, Count 22 alleges that the families living at 1158 N. Cleveland detrimentally relied on CHA's promise to rehabilitate that structure when they moved out. Plaintiff therefore claims that defendants are estopped from demolishing 1158 N. Cleveland. (*Id.* ¶ 101).

Defendants have moved to dismiss all of the counts in plaintiff's complaint that challenge the legality of the CHA Plan because those counts are not ripe for adjudication. In addition, defendants have moved to dismiss other counts because plaintiff has sued on its own behalf and lacks standing to assert the claims of its individual members. Defendants also argue that plaintiff's state law claims must be dismissed because the court lacks jurisdiction to enter relief against a local government agency based on state law claims. Furthermore, defendants contend that plaintiff has failed to state a cause of action for many of the federal and state counts.[2]

II. Standards

A motion to dismiss pursuant to Rule 12(b)(6) does not test whether the plaintiff will prevail on the merits but instead whether the claimant has properly stated a claim. *See Scheuer v. Rhodes,* 416 U.S. 232, 236, 94 S. Ct. 1683, 1686 (1974). The court may dismiss a complaint for

failure to state a claim under Rule 12(b)(6) only if "it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." *Hishon v. King & Spalding,* 467 U.S. 69, 73, 104 S. Ct. 2229, 2232 (1984); *see also Conley v. Gibson,* 355 U.S. 41, 45-46, 78 S. Ct. 99, 102 (1957). The court must accept as true all well-pleaded allegations and draw all reasonable inferences in favor of the plaintiff. *Antonelli v. Sheehan,* 81 F.3d 1422, 1427 (7th Cir. 1996). However, the court need not strain to find favorable inferences which are not apparent on the face of the complaint. *Coates v. Illinois St. Bd. of Educ.,* 559 F.2d 445, 447 (7th Cir. 1977). Similarly, the court is not required to accept legal conclusions either alleged or inferred from pleaded facts. *Northern Trust Co. v. Peters,* 69 F.3d 123, 129 (7th Cir. 1995) (citing *Nelson v. Monroe Reg'l Med. Ctr.,* 925 F.2d 1555, 1559 (7th Cir.), *cert. denied,*502 U.S. 903, 112 S. Ct. 285 (1991)). Finally, the complaint need not specify the correct legal theory nor point to the right statute to survive a Rule 12(b) motion to dismiss, provided that "relief is possible under any set of facts that could be established consistent with the allegations." *Bartholet v. Reishauer A.G.,* 953 F.2d 1073, 1078 (7th Cir. 1992). The complaint must, however, state either direct or inferential allegations concerning all material elements necessary for recovery under the chosen legal theory. *See Glatt v. Chicago Park Dist.,* 847 F. Supp. 101, 103 (N.D. Ill. 1994).

III. Discussion

***5** CHA has moved to dismiss LAC's claims on a number of grounds. The court will consider each of these arguments in turn.

A. Ripeness of Claims

CHA first contention in its motion to dismiss is that there is "no concrete, fully developed and final CHA Plan ... which has ever been submitted to HUD for approval, a necessary precondition for CHA expenditure of HOPE VI funds." (Def. Mem., at 12). Rather, CHA argues that there has simply been a press conference announcing a "skeletal outline" of a potential plan and that the court should therefore not prematurely adjudicate the legality of a plan that is only a possibility. CHA has therefore moved to dismiss plaintiff's claims in Counts 1-13, 15-17, and 20 that challenge the CHA Plan on the ground that the court lacks subject matter jurisdiction because the claims are not yet ripe.

The ripeness doctrine has both a constitutional component based on Article III "case or controversy" concepts and a prudential component based on the discretionary power of the court to refuse review for policy reasons. In its most elemental form, the doctrine of ripeness is invoked to determine whether a particular dispute has developed to a point that merits decision. "The central concern [of the ripeness doctrine] is whether the case involves uncertain or contingent future events that may not occur as anticipated, or indeed may not occur at all." *13A Wright, Miller & Cooper, Federal Practice & Procedure: Civil 2d* § 3532, at 112 (1984). The Supreme Court has noted that ripeness turns upon "the fitness of the issues for judicial decision" and "the hardship to the parties of withholding court consideration." *Pacific Gas & Elec. Co. v. State Energy Resources Conservation & Dev. Comm'n,* 461 U.S. 190, 201, 103 S. Ct. 1713, 1720-21 (1983).

There is some merit to CHA's contention that the CHA Plan is not "final" and thus not ripe for review. No HOPE VI funds will be dispersed until the plan is submitted and approved by HUD. Nor may CHA actually raze any buildings without HUD approval. However, "the label an agency attaches to its action is not determinative." *Continental Air Lines v. CAB,* 522 F.2d 107, 124 (D.C. Cir. 1974) (en banc). The fact that there are uncertain contingencies, such as what the plan ultimately submitted to and approved by HUD will look like, does not mean that there is no case or controversy before the court or that the plaintiff and the individuals that it represents will not be irreparably injured during the time that it takes those contingencies to become certain. Rather, the court must accept as true all well-pleaded allegations in the plaintiff's complaint. *Antonelli,* 81 F.3d at 1427.

Plaintiff alleges that, in developing and implementing the Plan, defendants have failed to consult with the residents of Cabrini-Green. (Compl., ¶¶ 56, 73(a)). This injury has already occurred and is not dependent upon HUD approval of a HOPE VI application. The complaint also alleges that defendant has adopted a plan that details steps to be taken in regard to the Cabrini-Green development. (*See id.* ¶¶ 57-61). Plaintiff alleges that defendants have begun implementing this meticulous plan by, for example, taking concrete steps to demolish a building that had been scheduled for rehabilitation under the previous plan. (*Id.* ¶¶ 63-66). While HUD has not yet approved this demolition, CHA's taking of steps in compliance with

some new design when residents of that building have already moved out in reliance on CHA's promise to renovate the building makes the inevitability of demolition appear that much more likely to this court. Other courts have recognized the notion of "*de facto* demolition" of housing developments, *see, e.g., Henry Horner Mothers Guild v. Chicago Hous. Auth.,* 824 F. Supp. 808, 817 (N.D. Ill. 1993) ("By their inaction defendants have ... accomplished the constructive or *de facto* demolition of the Horner developments."); *Gomez v. Housing Auth. of City of El Paso,* 805 F. Supp. 1363, 1374-75 (W.D. Tex. 1992) (recognizing plaintiffs' right to sue for *de facto* demolition), and this court finds that the facts of the instant case support recognition of that notion here. Withholding court consideration of this case could cause significant hardship to plaintiff's members if housing becomes uninhabitable and unavailable through CHA's creation of vacant buildings coupled with its inaction in maintaining and securing those buildings. Beyond the notion that CHA may be implementing a *de facto* demolition is the fact that plaintiff has simply alleged that its members have already been injured by moving out of buildings in reliance on CHA's promise to provide replacement housing.

***6** Defendants' effort to apply *Pacific Gas* to the facts of this case is not persuasive. *Pacific Gas* dealt with a legal challenge to two sections of a California statute that regulated nuclear power plants. The first section established an absolute moratorium on the construction of nuclear power plants. The Court found ripeness in regard to that section because it threatened impending injury. *See Pacific Gas,* 461 U.S. at 201, 103 S. Ct. at 1720-21 (stating that "[o]ne does not have to await the consummation of threatened injury to obtain preventive relief. If the injury is certainly impending that is enough." (citations omitted)). The second section of the statute concerned a provision that required a state agency to decide on a case-by-case basis whether adequate storage existed for spent nuclear fuel before a nuclear power plant could be built. The Court found that the challenge to this section of the statute was not ripe because further administrative events were required to demonstrate whether there was a factual basis for the challenge. *Id.* at 203, 103 S. Ct. at 1721-22.

Despite CHA's efforts to demonstrate otherwise, plaintiff's arguments in this case are not "identical" to the rejected claim in *Pacific Gas.* Plaintiff's complaint fairly contains allegations that "administrative events" have already taken place that are in furtherance of the CHA Plan. The fact that the CHA Plan has not been submitted to or approved by HUD does not mean that the injury alleged is not imminent or has not already occurred. Furthermore, in other cases regarding public housing, courts have held that HUD approval is not a prerequisite to the determination of ripeness. For example, in *Jackson v. Okaloosa County, Fla.,* 21 F.3d 1531 (11th Cir. 1994), the court found that a Fair Housing Act ("FHA") claim was ripe, even though HUD had not yet given final approval for site selection. The court noted that the plaintiffs had alleged that the *process* of site selection itself was flawed, because all of the sites ranked and submitted for approval were in racially impacted areas. The court found that if these allegations were true, the site selection process would have a segregative result -- in violation of the law -- regardless of HUD's decision. *Jackson,* 21 F.3d at 1541 & n.15. So too in this case. For example, plaintiff's complaint alleges that CHA's process for developing CHA has already violated consultative provisions in the law, and that the CHA Plan threatens imminent injury to federal or state rights or violates federal or state law. Thus, plaintiff need not wait for the Plan to be submitted to HUD for approval in order to bring this suit. *See Jackson,* 21 F.3d at 1541 n.15 ("HUD decisions need not be final where an injury is imminent."); *accord Sierra Club v. Morton,* 514 F.2d 856, 868-69 n.20, 880-82 (D.C. Cir. 1975) (holding that claims that plans for development of coal resources had proceeded far enough to require environmental impact statement were ripe despite lack of formal, "final" agency action), *reversed on other grounds,*427 U.S. 390, 96 S. Ct. 2718 (1976) (not questioning ripeness determination of lower court).

***7** Plaintiff has alleged that as a result of a series of secret meetings, CHA has agreed with the City on a "plan." Whether that plan is merely in outline or final form is not the crucial issue. Plaintiff has alleged that the necessary outcome of the process culminating in the "plan" is to deny it an opportunity to participate and will result, inevitably, in the violations alleged in the complaint. The allegations in plaintiff's complaint, if true, raise a justiciable case or controversy and entitle plaintiff to relief; therefore, defendants' motion to dismiss plaintiff's complaint on grounds of ripeness is denied.

B. Plaintiff's Standing to Sue

CHA's next contention is that the court lacks jurisdiction over Counts 1-5, 9, 10, 14, and 22 because LAC does not

have standing to sue to bring the claims. In Counts 1-5, plaintiff alleges that the CHA Plan discriminates against African-Americans, women, and families with children. (Compl., ¶¶ 80-84). In Counts 9, 10, 14, and 22, plaintiff alleges that certain families did not receive their choice of replacement housing and have not received adequate assessments, reasonable opportunities for decent housing, or comparable replacement housing, or that those individuals detrimentally relied on CHA actions. (Compl., ¶¶ 88, 89, 93, 101). CHA argues that, because plaintiff has not identified any one of its members with independent standing to bring all of these claims, and because the determination of the validity of these claims requires a case-by-case factual inquiry of the particularities of each family, LAC lacks standing to bring the claims.

To support its argument, CHA cites to the Supreme Court's holdings in *Hunt v. Washington State Apple Advertising Commission,* 432 U.S. 333, 343, 97 S. Ct. 2434, 2441 (1977) and *United Food & Commercial Workers v. Brown Group, Inc.,* --- U.S. ----, 116 S. Ct. 1529 (1996), in which the Court identified a three-prong test to determine an association's standing to sue based on injury to its members. The elements of that test are as follows: (1) the association's members would otherwise have standing to sue in their own right; (2) the interests the association seeks to protect are germane to the organization's purpose; and (3) neither the claim asserted nor the relief requested require participation in the lawsuit by individual members of the association. *See Hunt,* 432 U.S. at 343, 97 S. Ct. at 2441. By limiting representational standing in this way, the Court has ensured that both the constitutional and prudential restrictions on standing are applied to organizations as well as to individuals. The first prong of the test ensures that there has been some injury in fact to the party who appears in court. The second requirement establishes that the representative appearing is entitled to represent the injured party on a particular issue. The final requirement assures the court that allowing the parties to proceed in a representational capacity will not harm the individual interests allegedly protected by the representative.*MPIRG v. Selective Serv. Sys.,* 557 F. Supp. 925, 931 (D. Minn. 1983) (Alsop, J.).

***8** CHA argues that the first prong of this test has not been satisfied in regard to Counts 1-5, 9, 10, 14, and 22 because LAC has sued only on behalf of itself and not as a representative acting on behalf of its members and has not identified even one member with standing to assert the claims. For example, CHA notes that, in Counts 1-5, plaintiff alleges that some LAC members will not receive some of the HOPE VI replacement units they desire but has not identified any LAC member who desires to receive a replacement unit and who will not be able to do so under the alleged plan. CHA also contends that LAC's claims also fail under the third prong of the *Hunt* test, because the court will have to make particularized determinations as to whether any individual family that is displaced by HOPE VI activities wants to return to Cabrini-Green and will be unable to do so under the CHA Plan; whether any individual family received its choice of replacement housing and received the full panoply of relocation benefits; or whether any individual family detrimentally relied on CHA actions when that family moved. The court will now apply CHA's two arguments to plaintiff's claims brought under the Fair Housing Act (Counts 1-4) and to its claims brought under other statutory provisions and under the theory of promissory estoppel (Counts 5, 9, 10, 14, and 22).

1. Counts 1-4

In determining whether LAC has standing to sue under Counts 1-4 of its complaint, the Supreme Court's decision in *United Food & Commercial Workers v. Brown Group,* --- U.S. ----, 116 S. Ct. 1529 (1996), is significant. In *Brown Group,* the Court noted that the third prong of the test set out in *Hunt* is a prudential impediment that Congress may abrogate. In *Brown Group,* this meant that a union could sue on behalf of its members for their monetary damages, since such action was authorized by the WARN Act. *Brown Group,* --- U.S. at ----, 116 S. Ct. at 1532-33. In an earlier case, the Supreme Court held that, in suits brought under the Fair Housing Act, courts lacked the authority to create prudential barriers to standing. *Havens Realty Corp. v. Coleman,* 455 U.S. 363, 372-74, 102 S. Ct. 1114, 1120-21 (1982). Therefore, under Counts 1-4, brought pursuant to the Fair Housing Act, no prudential limits, such as determining the need for individual participation of LAC members, can be used to determine plaintiff's standing. The relevant issue is therefore whether plaintiff has alleged "distinct and palpable injuries" that can be traced to defendants' actions. *Id.* at 376, 102 S. Ct. at 1122.

Plaintiff alleges that it has been denied participation in the planning process that produced the CHA Plan and that it has been forced to divert its limited resources from other organizational purposes and goals and to direct these

resources to discover and discuss with defendants the CHA Plan, to advocate against the CHA Plan, and to monitor implementation of the CHA Plan. (Compl., ¶ 73). In *Havens Realty,* the Supreme Court held that the injury the organization alleged, namely, that the defendant's steering practices had frustrated the organization in its efforts to assist equal access to housing and had caused it to devote significant resources to identify and counteract the discrimination, was a sufficient allegation of injury for standing purposes. The Court found that these effects established a concrete and demonstrable injury that was "far more than simply a setback to the organization's abstract social interests." *Havens Realty,* 455 U.S. at 379 & n.20, 102 S. Ct. at 1124 & n.20;*see also 13 Wright, Miller & Cooper, Federal Practice & Procedure: Jurisdiction & Related Matters 2d* § 3531.9, at 604 (1984) ("[A]n organization can assert standing to protect against injury to its own organizational interests."). In this case, plaintiff alleges the same type of injury as that alleged by the organization in *Havens Realty:* "[it] has been forced to divert its limited resources from its other organizational purposes." (Compl., ¶ 73(b)). The court finds that plaintiff has properly alleged an organizational injury, which is causally related to defendants' alleged activities. Because the court can redress this injury through the requested relief, plaintiff has standing to sue under Counts 1-4.

2. Counts 5, 9, 10, 14, and 22

***9** The next question is whether plaintiff can satisfy the standing requirements under Counts 5, 9, 10, 14, and 22, which are not brought under the Fair Housing Act and thus require plaintiff to meet both the constitutional and the prudential requirements for standing. An association meets the prudential requirements for standing if (1) it has standing in its own right because it alleges injury to itself or (2) it alleges that its members have been injured. *Warth v. Seldin,* 422 U.S. 490, 510-11, 95 S. Ct. 2197, 2211 (1975). As noted *supra,* plaintiff has properly alleged an organizational injury: it has been forced to divert its limited resources from its other organizational purposes and goals. Plaintiff thus meets the prudential requirements for standing in regard to Counts 5, 9, 10, 14, and 22.[3]

3. Must LAC Identify Individuals with Independent Standing?

CHA nevertheless contends that plaintiff's allegations of organizational injury are not enough to give it standing under Counts 1-5, 9, 10, 14, and 22 to assert the claims of its members. Even if it has standing to sue on behalf of itself, CHA suggests that LAC must still identify individuals having independent standing to assert the claims. CHA has cited cases in which courts found organizations to have standing, but in which individual members of those organizations were also identified and had independent standing. This court finds, however, those cases do not impose a requirement to identify individuals with independent standing to sue. Furthermore, CHA's efforts to distinguish the cases cited by plaintiff in its response to the motion to dismiss are not convincing. For example, *Chicano Police Officer's Association v. Stover,* 526 F.2d 431 (10th Cir. 1976), does not stand for the proposition that an association must allege a specific type of injury in order to have standing. The fact that the association in that case gained standing because it demonstrated that, "in challenging barriers against employment[,] it might well enhance its membership and resources to attain its goals," *id.* at 431, does not mean that LAC can only have standing to assert the claims of its members if it alleges that its challenge to the CHA Plan will enhance its membership or resources. Rather, *Chicano Police Officer's* stands for the proposition that an association must simply allege *some* injury to itself and/or its members.

Nor does the Seventh Circuit's holding in *Minority Police Officers Association of South Bend v. City of South Bend,* 721 F.2d 197 (1983), contradict the holding of *Chicano Police Officer's.* In *Minority Police Officers,* the court found that individual police officers and the association that represented them did not have standing to challenge a city police force's hiring practices. However, the court based its decision regarding lack of standing on the fact that all of the individuals named as plaintiffs in the suit, as well as all of the members of the association, had already been hired. In the instant case, however, LAC is challenging a plan that allegedly discriminates against its members and that will deny its members replacement housing. Unlike the situation in *Minority Police Officers,* in which there was no possibility that the plaintiffs would be harmed by the defendant's actions, this case presents a situation in which LAC and its members are facing imminent injury.

***10** Finally, the court notes that LAC has standing to assert the rights of its members. Courts have consistently held that, if the same activity injures both the interests of

the organization as well as the interests of its members, the organization can assert the rights of its members. For example, in *Warth v. Seldin,* 422 U.S. 490, 511, 95 S. Ct. 2197, 2211 (1975), the Court observed that "in attempting to secure relief from injury to itself the association may assert the rights of its members, at least so long as the challenged infractions adversely affect its members' associational ties." In this case, LAC is the recognized, duly elected tenant council for the residents of Cabrini-Green. (Compl., ¶ 13). Neither HUD nor CHA may recognize a competing resident council once such a duly elected council has been established. *See 24 C.F.R. § 964.18(a)(7) and (b)(iv).* Plaintiff's purposes and powers are defined by federal law and its own charter. (*See* Compl., ¶ 12; *24 C.F.R. § 964.100*). In a very real sense, therefore, LAC represents the residents of Cabrini-Green and provides them with the voice through which they "express their collective views and protect their collective interests." *Hunt,* 432 U.S. at 345, 97 S. Ct. at 2442. Furthermore, because plaintiff's membership is drawn from those who reside at Cabrini-Green, any change in the makeup of Cabrini-Green public housing necessarily affects LAC members' associational ties to that organization.

The allegations in plaintiff's complaint, if true, demonstrate that plaintiff has standing to challenge defendants' actions in developing the CHA Plan: plaintiff has alleged injury to itself and its members, it has met the constitutional and, where necessary, prudential requirements for standing, and it has standing to assert the rights of its members. Therefore, defendants' motion to dismiss plaintiff's complaint on grounds of standing is denied.[4]

C. Jurisdiction over State Law Claims

CHA's next contention is that plaintiff's state law claims in Counts 15-22 must be dismissed because the court lacks jurisdiction to enter relief against the defendants on them, citing *Evans v. City of Chicago,* 10 F.3d 474, 481 (7th Cir.1993) (en banc), *cert. denied,*114 S. Ct. 1831 (1994). In *Evans,* the Seventh Circuit refused to enter an injunction against the City of Chicago for violating a consent decree in which the City of Chicago had agreed to abide by state law concerning the prompt payment of tort claims against municipal governments. *Id.* at 480. The plurality of the court in *Evans* indicated that the consent decree had to be set aside because a district court may not require a unit of state or local government to abide by a consent decree that does not serve any federal interest. The plurality opinion explained:

> [T]he [district] court must ensure that there is a substantial federal claim, not only when the decree is entered but also when it is enforced, and that the obligations imposed by the decree rest on this rule of federal law rather than the bare consent of the officeholder.

3

> ***11** [E]ntry and continued enforcement of a consent decree regulating the operation of a governmental body depend on the existence of a substantial claim under federal law. Unless there is such a claim, the consent decree is no more than a contract, whose enforcement cannot be supported by the diversity jurisdiction and that has in court no more force than it would have outside of court.

Id. at 479-80. The court further stated that "litigants aggrieved by Chicago's failure to adhere to state law must take their claims to state court. The Constitution does not authorize federal judges to superintend state and local governments' compliance with their own laws." *Id.* at 481 (citations omitted).

It is not clear to this court that the *Evans* holding applies to the facts of the instant case. This case does not deal with the enforcement of a consent decree. *Evans* would not appear to apply to situations in which a court is simply asked to issue an injunction against a state or city governmental agency directing it to comply with state law or to comply with the terms of agreements it has made with other parties, especially when there are "substantial federal claims." Because there are such claims in this case, plaintiff argues that the court may exercise supplemental jurisdiction over Counts 15-22. The supplemental jurisdiction statute provides that, in any civil action in which the federal district court has original jurisdiction, the court also has supplemental jurisdiction over all related claims that form part of the same case or controversy. *See 28 U.S.C. § 1367(a); United Mine Workers v. Gibbs,* 383 U.S. 715, 725, 86 S. Ct. 1130, 1138 (1966). In this case, plaintiff's complaint contains several claims that are based solely upon federal law. (*See* Compl., Counts 1-14). The court has found that it has jurisdiction over those federal claims. (*See supra* Parts III.A and III.B). The court also finds that plaintiff's state law claims arise out of the same case or controversy as do

its federal claims (i.e., events related to the development and implementation of the CHA Plan). In the past, courts have also found that supplemental jurisdiction may be exercised over state law claims against governmental defendants. *See Board of Educ. of Community High Sch. Dist. No. 218 v. Illinois State Bd. of Educ.,* 940 F. Supp. 1321, 1327 (N.D. Ill. 1996) (noting that court had supplemental jurisdiction of state law claim against Illinois Department of Mental Health and Development Disabilities deriving from the same nucleus of operative fact as federal IDEA claim); *Contreras v. City of Chicago,* 920 F. Supp. 1370 (N.D. Ill. 1996) (noting that court had discretion to exercise supplemental jurisdiction over claims that requested declaratory and injunctive relief and that only raised questions of state and municipal law); *see also Myers v. County of Lake, Ind.,* 30 F.3d 847 (7th Cir. 1994) (upholding district court's exercise of supplemental jurisdiction over plaintiff's state law negligence claim against county). This court therefore adopts the reasoning of those cases and concludes that it has discretion to exercise supplemental jurisdiction over plaintiff's state law claims.

D. Plaintiff's Claims Under Fair Housing Act and Title VI of Civil Rights Act of 1964

***12** CHA contends that Counts 1-4 of plaintiff's complaint fail to state a claim under § 3604(a) of the Fair Housing Act ("FHA") because those counts fail to allege that CHA has either (1) denied black residents replacement housing in a racially integrated neighborhood (Count 4), or (2) otherwise discriminated against them in the provision of housing because of their race, sex, or familial status (Counts 1-4).[5] CHA also contends that Count 5, brought under Title VI of the Civil Rights Act of 1964, should be dismissed for lack of standing.

1. Denying Black Residents Replacement Housing

LAC's complaint alleges that the CHA Plan provides for the demolition of several structures containing over 1300 units public housing units and that this will displace 675 very low-income Cabrini-Green families. Plaintiff also alleges that the CHA Plan for Cabrini-Green only provides for 300-325 very low-income replacement units. (Compl., ¶¶ 60, 62, 89). Thus, the face of plaintiff's complaint contains allegations that over 300 Cabrini-Green families will be denied replacement housing, the majority of whom are African-American. The complaint can also fairly be read to allege that, because the Cabrini residents will be denied housing in their newly revitalized neighborhood and because those residents have very low incomes, they will be forced to live in a non-racially integrated area. While plaintiff may not ultimately be able to prove that current LAC members will be moved into segregated neighborhoods against their will, this court cannot say that plaintiff has not at this point adequately alleged a violation of the FHA in Count 5.

2. Sufficiency of Allegations of Discrimination

The court now turns to CHA's second argument as to why plaintiff's FHA counts fail to state a claim. CHA argues that plaintiff's allegations of disparate impact, unaccompanied by allegations that CHA acted with intent to discriminate, are insufficient to state a *per se* claim under the FHA. CHA bases this argument on the court's decision in *Metropolitan Housing Development Corp. v. Village of Arlington Heights,* 558 F.2d 1283 (7th Cir. 1977), in which the Seventh Circuit stated that there are four critical factors to be examined in determining whether conduct that produces discriminatory impact violates § 3604(a). Those factors are: (1) how strong the showing of discriminatory effect is; (2) whether there is some evidence of discriminatory intent; (3) what the defendant's interest is in taking the action complained of; and (4) whether the plaintiff seeks affirmative relief that would compel the defendant to provide housing for minority groups. *Id.* at 1290. CHA contends that LAC has failed to satisfy at least three of the four factors because (1) there is no allegation that defendants are acting with intent to discriminate; (2) defendants' interest is to improve Cabrini-Green housing and open it to a wider range of residents; and (3) plaintiff seeks to require defendants to take affirmative action to build or rehabilitate housing in Cabrini-Green, which represents a collateral attack on *Gautreaux v. Chicago Housing Authority,* 304 F. Supp. 736 (N.D. Ill. 1969).

***13** The court initially notes that the four-factor test set out in *Arlington Heights* for determining whether conduct producing discriminatory impact but taken without discriminatory intent violates the FHA is more properly applied to a motion for summary judgment or by the

factfinder at trial. *Cf. Arlington Heights,* 558 F.2d at 1290-93 (applying four factors to a record developed after trial); *Gomez v. Chody,* 867 F.2d 395 (7th Cir. 1989) (determining whether a genuine issue of triable fact existed in order to defeat motion for summary judgment). At the motion-to-dismiss stage of the proceedings, the more appropriate question is whether plaintiff's allegations of disparate impact are sufficient to establish a *prima facie* case under the FHA.

In any event, defendants are incorrect in their assertion that *Arlington Heights* and its progeny make clear that "some showing of discriminatory intent is required" to establish a Fair Housing Act violation. (*See* Def. Mem., at 22). Defendants' reliance on cases such as *Burrell v. City of Kankakee,* 815 F.2d 1127 (7th Cir. 1987) and *Gomez v. Chody,* 867 F.2d 395 (7th Cir. 1989), is not persuasive. For example, the court in *Burrell* specifically stated that "a showing of discriminatory intent is not required under § 3604(a)." 815 F.2d at 1131. Likewise, *Gomez* is explicit that "discriminatory effect, without discriminatory intent, may constitute a violation of the [Fair Housing Act]." 867 F.2d at 402 (emphasis omitted). Thus, despite defendants' contention, plaintiff need not allege that defendants were acting with intent to discriminate to state a claim under § 3604(a). *Cf. Arlington Heights,* 558 F.2d at 1290 ("A strict focus on intent permits racial discrimination to go unpunished in the absence of evidence of overt bigotry. As overtly bigoted behavior has become more unfashionable, evidence of intent has become harder to find."). The court finds that plaintiff's allegations of discriminatory effects are enough to state a claim for relief under the FHA.[6]

3. Standing to Sue Under Count 5

Defendants also argue that plaintiff does not have standing to sue under Count 5 of its complaint. In that count, plaintiff alleges that the CHA Plan will result in the net loss of 1000 public housing units, the impact of which will fall disproportionately on African-Americans, in violation of Title VI of the Civil Rights Act of 1964.[7] Defendants assert that plaintiff does not have standing to assert a claim under Title VI because it has failed to allege that it is injured by a reduction in dwelling units. In addition, defendants argue that plaintiff has failed to state a claim under Title VI because it has failed to allege that defendants are proposing the CHA Plan "on the ground of" race. Furthermore, defendants argue that while plaintiff may have an interest in this case as a representative of the residents of Cabrini-Green, the black residents of Cabrini-Green are "already well-represented by their class counsel in *Gautreaux [v. Chicago Housing Authority].*" *See* 304 F. Supp. 736 (N.D. Ill. 1969). Defendants have therefore requested that the court transfer this count to the judge of this court that is overseeing *Gautreaux.* The court will treat each of these arguments in turn.

***14** First of all, the court notes that it has already addressed defendants' standing arguments in Part III.B, *supra.* Second, the court finds that plaintiff's complaint is sufficient to establish a *prima facie* case of discrimination under Title VI because it has alleged disparate impact. In *Guardians Association v. Civil Service Commission,* 463 U.S. 582, 584 n.2, 103 S. Ct. 3221, 3223 (1983), the Supreme Court held that a plaintiff may use a theory of disparate impact to vindicate rights secured by agency regulations promulgated pursuant to Title VI and which incorporate an "effects" standard. *See also Gomez v. Illinois St. Bd. of Educ.,* 811 F.2d 1030, 1044-45 (7th Cir. 1987) (noting that disparate impact claim could be maintained under regulations promulgated pursuant to Title VI). Because HUD has promulgated such regulations, *see 24 C.F.R. § 1.4(b)(2)(i)* (barring recipients of HUD funds "from utiliz[ing] criteria or methods of administration which have the *effect* of subjecting persons to discrimination because of their race, color or national origin" (emphasis added)), plaintiff has stated a claim under Title VI by alleging disparate impact.

Finally, the court finds that plaintiff's allegations in Count 5 cannot necessarily be read as a collateral attack on *Gautreaux v. Chicago Housing Authority,* 304 F. Supp. 736 (N.D. Ill. 1969). *Gautreaux* prohibits CHA from building housing in racially segregated communities without court approval. CHA notes that one element of the relief requested by LAC is the construction of replacement housing and argues that this claim for relief brings the case "squarely within the scope of *Gautreaux.*" (Def. Reply, at 15). The court disagrees. It is not clear that granting plaintiff's requested relief -- i.e., ordering CHA to specifically perform on its contractual agreements with LAC and its members -- will necessarily bring this case within the scope of *Gautreaux.* This conclusion is based on the fact that the agreement that plaintiff seeks to have enforced specifically states that the agreement is "[s] ubject to ... Federal Court guidelines under *Gautreaux.*" (Compl., ¶ 38). Any relief that this court directs must necessarily take this provision into account.

E. Do Plaintiff's Claims Rely upon Statutes that Create Enforceable Rights?

Defendants also argue that Count 6-12 of plaintiff's complaint do not rely upon statutes that create enforceable rights with the meaning of 42 U.S.C. § 1983, and that plaintiff has therefore failed to state a claim for each of those counts. In particular, defendants argue that the wording relied upon by the plaintiffs in those statutes is "too amorphous" to be judicially enforceable.

In *Suter v. Artist M.,* 503 U.S. 347, 357, 112 S. Ct. 1360, 1367 (1992), the Supreme Court stated that, when determining whether enforceable rights are created by language in a statute, the court must perform a critical analysis of the statute and must particularly examine that which is required by the statute. The statute at issue in *Artist M.* provided that the State make "reasonable efforts" to reunite foster children with their biological families, but merely required that a plan detailing such reasonable efforts be submitted to and approved by the federal government. The Court found that, without further statutory or regulatory definition of "reasonable efforts," the plaintiffs could not bring an action under 42 U.S.C. § 1983 to enforce the provision. *Id.* at 363, 112 S. Ct. at 1370. The court will examine Counts 6-12 in turn to determine whether the statutory language upon which each of those counts relies provides an objective benchmark for the court to apply.

1. Count 6

***15** Count 6 alleges that under the CHA Plan, 1000 units of very low-income public housing will be permanently lost and 50% of the displaced families will be ineligible for the newly constructed replacement housing. Plaintiff alleges that this violates HOPE VI, 42 U.S.C. § 1437*l,* note, and the Revitalization of Severely Distressed Public Housing Program, 42 U.S.C. § 1437v(d)(2), which provide for grants for the "revitalization" of public housing communities, because the Plan would result in the dismantling and relocation, rather than the revitalization, of Cabrini-Green. (Compl., ¶ 85). CHA argues that neither Congress nor HUD have defined "revitalization," and that Congress has given no indication that it intended to create a private remedy for parties such as LAC.

HOPE VI provides for $300 million to be used to "carry out an urban revitalization demonstration program involving major reconstruction of severely distressed or obsolete public housing projects." *42 U.S.C. § 1437l, note.* Other provisions of HOPE VI state a desire to assist "troubled housing authorities" and "severely distressed projects." HOPE VI further provides that funded activities should include "capital costs of major reconstruction, rehabilitation and other physical improvements" and "capital costs of replacement units." It seems apparent, therefore, that while HOPE VI may not define "revitalization" as such, the language of the statute indicates what results Congress *would not* consider to be "revitalization." For example, HOPE VI funds could not be used for a project that simply obliterated a public housing development. In addition, some HOPE VI funds must be used to improve existing public housing structures. Furthermore, HOPE VI does not allow a public housing authority to turn its back on "severely distressed projects," such as Cabrini-Green. The court finds, therefore, that the language of HOPE VI gives the court sufficient guidance in determining whether the CHA Plan complies with that statute's "revitalization" requirements.[8]

2. Counts 7 and 8

Counts 7 and 8 allege that the net loss of 1000 public housing units (Count 7) and the fact that 50% of the newly constructed replacement housing will be unavailable to very low-income public housing residents (Count 8) are inconsistent with the City of Chicago's Consolidated Plan, *see supra* note 1, to preserve affordable public housing units and to improve the quality of life for very low-income public housing residents. As such, plaintiff alleges that the CHA Plan violates HOPE VI, 42 U.S.C. § 1437*l,* note, which requires that plans developed under HOPE VI be consistent with the Consolidated Plan. (Compl., ¶¶ 86-87). CHA argues that there is "no objective benchmark from which this court could create its own scale to determine if the CHA Plan is inconsistent with the City's Consolidated Plan." (Def. Mem., at 31). CHA further argues that the City's Consolidated Plan cannot be used to create federal rights for the plaintiff and that HOPE VI's requirement of consistency with the Consolidated Plan is solely for the benefit of cities.

***16** The court finds that the Consolidated Plan is even more explicit than the HOPE VI statute in defining what is required regarding the "revitalization" and "rehabilitation" of public housing. The Consolidated Plan is directly addressed to the needs of low- and moderate-income residents. It speaks of "creating stable communities." It explicitly associates "revitalization" with "preservation of affordable housing units and rehabilitation of existing housing stock." Thus, the court finds that the Consolidated Plan provides an appropriate benchmark by which to assess any HOPE VI-funded projects. The court further finds that HOPE VI's requirement of consistency with the Consolidated Plan does create enforceable rights on the part of LAC and its members. As plaintiff points out, Congress created HOPE VI

> for the empowerment of residents of severely distressed and obsolete public housing.... For too long, these areas have been the victim of either gross neglect by government or the victim of large bureaucracies that have wasted limited resources in an attempt to impose top down strategies to do good to the residents of these areas. Neither approach has worked.... [HOPE VI] is a program that calls upon both the residents and political leaders of America's large cities to join together to develop strategies that will transform these distressed areas into productive residential and commercial centers.

S. Rep. No. 102-356, 102d Cong., 2d Sess. p.40 (1992). It would be inconsistent with the purposes of HOPE VI to allow a Consolidated Plan to be developed (with input from public housing residents), but then to allow a public housing authority to simply ignore that plan. Giving the residents of public housing projects enforceable rights against CHA to comply with the Consolidated Plan will further the purposes of HOPE VI.

3. Counts 9 and 10

In Counts 9 and 10, plaintiff alleges that the CHA Plan violates HOPE VI, 42 U.S.C. § 1437*l,* note, and 42 U.S.C. § 1437p(b)(2) which, when read together, require that persons displaced by HOPE VI reconstruction activities shall be eligible for replacement units of their choice, to the "maximum extent practicable." (Compl., ¶¶ 88-89). The court agrees with defendants that this language is "too amorphous and vague" to be enforced by the court. Exactly what the "maximum extent" is would vary from case to case and would depend on what was "practicable" in a particular instance. It seems unlikely that Congress would leave this determination to courts without giving them greater guidance. Unlike the language that it used to flesh out the term "revitalization," Congress has done little to give courts direction as to how many replacement units should be built to replace those that will be demolished or exactly how much deference is to be given to resident "choice." For these reasons, the court finds that plaintiff does not have a cause of action to enforce the "maximum extent practicable" provisions of HOPE VI and § 1437p(b)(2). Counts 9 and 10 are dismissed.

4. Count 11

***17** Count 11 of plaintiff's complaint alleges that 42 U.S.C. § 1437p(b)(1), providing that housing authorities must "meaningfully consult" with local advisory councils, and the language of the Notice of Fund Availability, providing that "residents be fully briefed and meaningfully involved," create federally enforceable rights. (*See* Compl., ¶¶ 90, 26).

As noted in *Concerned Tenants Association of Father Panik Village v. Pierce,* 685 F. Supp. 316, 320 (D. Conn. 1988), the creation of a right to consultation under § 1437p is clear. The court in that case discussed *Edwards v. District of Columbia,* 821 F.2d 651 (D.C. Cir.1987), in which § 1437p was found not to have created an enforceable right that might be violated by a *de facto* demolition. Congress promptly amended § 1437p by adding § 1437p(d), which now reads:

> A public housing agency shall not take any action to demolish or dispose of a public housing project or a portion of a public housing project without obtaining the

> approval of the Secretary and satisfying the conditions [[[regarding tenant consultation] specified in subsection[b]....

42 U.S.C.A. § 1437p(d) (pocket part). When adding this provision, Congress stated:

> This provision is intended to correct an erroneous interpretation of the existing statute by the United States Court of Appeals for the D.C. Circuit in *Edwards v. District of Columbia* and shall be fully enforceable by tenants of and applicants for the housing that is threatened.

H.R. Conf. Rep. No. 426, 100th Cong., 1st Sess. 172 (1987), *reprinted in,* U.S. Code Cong. & Admin. News pp.3317, 3458. The Congressional disagreement with the *Edwards* court, and the reference to enforceability, manifest intent to create a private right of action. Furthermore, the obvious purpose of the statute is to benefit low-income tenants; therefore, permitting a private right to enforce it is consistent with the purpose of the statute. *See Wright v. Roanoke Redev. & Hous. Auth.,* 479 U.S. 418, 430, 107 S. Ct. 766, 773 (1987); *see also, Cannon v. University of Chicago,* 441 U.S. 677, 703, 99 S. Ct. 1946, 1961 (1979).

Because § 1437p provides a federal right enforceable by tenants, plaintiff may enforce its provisions under 42 U.S.C. § 1983. *See Maine v. Thiboutot,* 448 U.S. 1, 4, 100 S. Ct. 2502, 2504 (1980) (Section 1983 encompasses claims based purely on federal statutory law); *Henry Horner Mothers Guild v. Chicago Hous. Auth.,* 780 F. Supp. 511, 513-15 (N.D. Ill. 1991); *Concerned Tenants,* 685 F. Supp. at 318-21.[9]

5. Count 12

Plaintiff alleges in Count 12 that CHA's plan to demolish 1158 N. Cleveland violates 42 U.S.C. § 1437p(a)(1), which governs the demolition of public housing and states a desire to preserve housing with a "useful life." Plaintiff alleges that the building is neither obsolete nor is its demolition necessary to assure the useful life of the remaining portion of Cabrini-Green. (Compl., ¶ 91). As with the "maximum extent practicable" language in Counts 9 and 10, the court finds that Congress has given little direction as to what factors should be considered in determining a public housing project's "useful life." However, even beyond the difficulties in applying this standard to the facts of the instant case, the court notes that § 1437p(a)(1) merely states a "desire" that housing with a useful life be preserved and does not create a *requirement* that such housing be preserved. For these reasons, the court finds that Count 12 should be dismissed.

F. Implied Cause of Action for Violation of Illinois Housing Authorities Act

***18** Defendant also moves to dismiss plaintiff's claim under the Illinois Housing Authorities Act, 310 ILCS 10/2 (Count 15). In that count, plaintiff alleges that the CHA Plan will result in the net loss of 1000 public housing units and thus exceeds the powers conferred upon the CHA by the Act "to relieve the shortage of decent, safe, affordable, and sanitary dwellings." 310 ILCS 10/2. Defendant contends that this count should be dismissed because there is no implied cause of action under Illinois law for violations of such "vague and ambiguous statutory language." (Def. Mem., at 38).

The Illinois Housing Authorities Act contains no express provision conferring upon individuals a cause of action to enforce the provisions of the statute. And while it is true that Illinois courts routinely find implied private rights of action in statutes, such private rights of action are commonly found in statutes that also provide for specific criminal or administrative penalties. *See, e.g., Rodgers v. St. Mary's Hosp. of Decatur,* 149 Ill. 2d 302, 309, 597 N.E.2d 616, 619-20 (1992); *Corgan v. Muehling,* 143 Ill. 2d 296, 315, 574 N.E.2d 602, 610 (1991); *Sawyer Realty Group, Inc. v. Jarvis Corp.,* 89 Ill. 2d 379, 391, 432 N.E.2d 849, 854-55 (1982); *Kelsay v. Motorola, Inc.,* 74 Ill. 2d 172, 185, 384 N.E.2d 353, 358-59 (1978). Though the Illinois Housing Authorities Act is not such a statute, finding an implied private right of action is not foreclosed.

In *Sawyer,* 89 Ill. 2d at 391, 432 N.E.2d at 854-55, the court set out the elements of a test that has subsequently been used by Illinois courts to determine whether there is an implied right of action under a statute. Such an implied right of action has been found when the following circumstances exist:

> 1. The plaintiff is a member of the class of persons for whose benefit the statute was enacted;
>
> 2. The plaintiff's injury is one which the statute was designed to prevent;
>
> 3. A private right of action is consistent with the underlying purpose of the statute; and
>
> 4. A private right of action is necessary to effectuate the purposes of the act.

See id.

First of all, the court notes that no Illinois court has found an implied private right of action under the Act. While this is not dispositive of the issue of whether such a right of action does indeed exist, consideration of the third and fourth factors set out in *Sawyer* counsels against finding a private right of action. In regard to the third factor, the court finds that the Illinois Housing Authorities Act was not enacted in order to *regulate* housing authorities, but to *create* them and to vest them with powers to address housing problems. The court finds that a private right of action would be inconsistent with this underlying purpose. In addition, the general mandate of the Illinois Housing Authorities Act does not provide the court with enough guidance as to how the Act's provisions should be enforced. For similar reasons, the court finds that the fourth element of the *Sawyer* test is not satisfied. The Illinois General Assembly, by enacting the Act, has taken on the responsibility of monitoring housing authorities in the execution of their general powers; thus, a private right of action is not necessary to effectuate the purposes of the act. Count 15 of plaintiff's complaint is dismissed.

G. Contract Claims

***19** CHA also moves to dismiss Counts 16-21. CHA argues that LAC is not a party to the March 13, 1995 agreement that is the basis of Counts 16, 17, 19, and 20 and therefore has no right to enforce the document. Furthermore, CHA contends that LAC has failed to allege facts that show that either the March 13, 1995 agreement or the May 28, 1993 agreement are enforceable for the following reasons: (1) conditions precedent to both alleged agreements did not occur (i.e., HUD failed to approve the original CHA Plan) and the agreements therefore were impossible to perform; (2) Vincent Lane lacked authority to bind CHA; and (3) the March 13, 1995 agreement is not a contract because its terms are unascertainable.

LAC's complaint, however, contains allegations sufficient to state a claim for breach of contract. First, LAC has alleged that it is a party to both the May 28, 1993 and the March 13, 1995 agreements and that those agreements are enforceable. (*See* Compl., ¶¶ 38, 43 (stating that "CHA and plaintiff entered into a Memorandum of Agreement" and that "CHA, through its Chairman, Vincent Lane, agreed in writing with the plaintiff")). Second, the pleadings in this case do not establish that the agreements were impossible to perform because of conditions precedent that did not occur. Finally, the court finds that the terms of the March 13, 1995 agreement are not unascertainable. Evidence may be produced during discovery or trial that fleshes out any ambiguity in that document.

H. Promissory Estoppel Claim

In Count 22, plaintiff alleges that some families moved out of 1158 N. Cleveland in detrimental reliance on CHA's promise to rehabilitate that building. (Compl., ¶ 101). Defendants argue that this promissory estoppel claim must be dismissed because it fails to establish an unambiguous promise to families that they could return to 1158 N. Cleveland after if was rehabilitated. The court finds, however, that plaintiff's has adequately pled such a promise. Plaintiff relies on the fact that the original HOPE VI application provided for the rehabilitation of 1158 N. Cleveland. Furthermore, plaintiff's allege that the March 15, 1995 agreement between LAC and CHA called for such rehabilitation. Moreover, at this stage of the proceedings, the court cannot say that CHA's promise was not directed to the individual tenant families. For these reasons, the court finds that plaintiff has properly stated a promissory estoppel claim.

IV. Conclusion

WHEREFORE, for the foregoing reasons, defendants' motion to dismiss plaintiff's complaint is granted in part and denied in part. Counts 9, 10, 12, and 15 of plaintiff's complaint are dismissed with prejudice.

ENTER.

All Citations

Not Reported in F.Supp., 1997 WL 31002

Footnotes

[1] The City's Consolidated Plan provides that the City will:

> (1) Serve the Full Range of Constituencies among Low- and Moderate-income Populations
>
> Coordinate affordable housing activities with new CHA initiatives to improve public housing and the quality of life for low-income public housing residents by creating stable communities that not only provide decent shelter but also social and economic opportunities for residents....
>
> (2) Promote Community Revitalization and Stability through a Range of Development Activities.
>
> Place primary emphasis on the preservation of affordable housing units and rehabilitation of existing housing stock....
>
> (3) Provide for Special Needs Populations.
>
> Increase the supply and availability of resources to address the needs of Chicago's homeless population....

(Compl., ¶ 53).

[2] Plaintiff also filed a motion for a preliminary injunction on November 8, 1996, asking the court to enjoin: (1) the demolition of 1158 N. Cleveland, including an order upon CHA to withdraw the demolition application that CHA recently submitted to HUD; (2) the demolition of 1150-60 N. Sedgwick prior to the construction of replacement housing; and (3) the unlawful relocation of the residents from 1150-60 N. Sedgwick. On December 19, 1996, the court held a hearing on that motion. The only issue considered by the court at that time was the request to enjoin the relocation of the residents from 1150-60 N. Sedgwick. On December 20, 1996, the court declined to issue an injunction prohibiting that relocation.

[3] In addition to its allegations that it has suffered organizational injury, LAC has alleged harm to its members. (*See* Compl., ¶¶ 74-75). *Hunt* suggested that individual participation of an organization's members is not normally necessary (and thus the third prong of the *Hunt* test would be satisfied) when an association seeks only prospective or injunctive relief, as opposed to monetary damages. *Hunt,* 432 U.S. at 343, 97 S. Ct. at 2441;*see also United Steelworkers of Am. v. University of Alabama,* 599 F.2d 56, 59 (5th Cir. 1979) (holding that union had standing to seek declaratory and injunctive relief for benefit of itself and its individual members); *cf. Warth,* 422 U.S. at 515, 95 S. Ct. at 2213 ("If in a proper case the association seeks a declaration, injunction, or some other form of prospective relief, it can reasonably be supposed that the remedy, if granted, will inure to the benefit of those members of the association actually injured."). In this case, plaintiff is merely seeking declaratory and injunctive relief, suggesting

that participation in the case by LAC members is not required.

[4] The court reiterates that it may only dismiss this suit based on lack of standing if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations. *Hishon,* 467 U.S. at 73, 104 S. Ct. at 2232. The court's decision, therefore, is based on reasonable inferences that the plaintiff must prove at trial. The standing inquiry can be revisited at trial if it appears that facts necessary for standing are not supported by the evidence adduced at trial. *See Jackson,* 21 F.3d at 1536 n.5 (citing *Gladstone, Realtors v. Village of Bellwood,* 441 U.S. 91, 116 n.31, 99 S. Ct. 1601, 1616 n.31 (1979)).

[5] Section 3604(a) of the FHA states that it is unlawful

> to refuse to sell or rent ... or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny a dwelling to any person because of race, color, religion, sex, familial status, or national origin.
>
> *42 U.S.C. § 3604(a).*

[6] CHA also argues that its interest in adopting the CHA Plan is to improve Cabrini-Green housing and open it to a wider range of residents, therefore suggesting that LAC has failed to state a claim for relief under the FHA. (*See, e.g.,* Def. Reply, at 11-12). However, as stated previously, an argument based on one of the *Arlington Heights* factors is more properly considered at summary judgment or at trial. At this stage of the proceedings, such an argument cannot defeat the allegations in a well-pleaded complaint that properly state a claim for relief under the FHA.

> Furthermore, the court rejects CHA's argument that allowing plaintiff to go forward with its FHA claims based in part on its allegations of discriminatory effect will necessarily mean "any housing strategy CHA proposes [for Cabrini-Green] will violate the FHA." (Def. Reply, at 11). This is not the case. At this stage of the proceedings, the issue is simply whether plaintiff has properly stated a claim. Plaintiff still has the burden to *prove* the alleged violations of the FHA.

[7] Title VI provides that:

> No person in the United States shall, on the ground of race, color or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.
>
> *42 U.S.C. § 2000d.*

[8] CHA has also argued that Count 6 should be dismissed because the CHA Plan is not required to comply with 42 U.S.C. § 1437v(d)(2), as alleged by plaintiff. The court declines to decide whether a "revitalization" requirement exists in § 1437v(d)(2), because it finds that Count 6 states a claim based solely on a violation of HOPE VI.

[9] CHA contends that there is no requirement that plans for disbursement of HOPE VI funds comply with the tenant consultation provisions found in 42 U.S.C. § 1437p. The court rejects this argument. HOPE VI cannot be read in a vacuum. Section 1437p specifically deals with the demolition of public housing. It is clear to the court that if HOPE VI funds are to be used to demolish public housing, then the plan submitted pursuant to HOPE VI must also comply with the tenant consultation provisions of § 1437p.