

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

DOROTHY GAUTREUX, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	No. 66 C 1459
	)	
THE CHICAGO HOUSING AUTHORITY,	)	
et al.,	)	
	)	
Defendants.	)	

MOTION FOR STAY OF ORDER ENTERED MARCH 1, 1971
PENDING DECISION BY THE SUPREME COURT OF THE UNITED STATES
ON DEFENDANTS' APPLICATION TO STAY ALL PROCEEDINGS
PENDING DISPOSITION OF PETITION FOR CERTIORARI

Now come defendants (hereinafter collectively referred to as "CHA"), by their attorneys, and respectfully move this Court to enter an order staying the effect of its order entered March 1, 1971, compelling CHA to disclose certain housing sites to the Chicago Plan Commission and the Chicago City Council on or before March 5, 1971, until March 10, 1971, or until such time as the Supreme Court of the United States has acted upon defendants' emergency application for relief pending consideration by the Supreme Court of defendants' petition for certiorari. In support of this motion, CHA states as follows:

1. On March 1, 1971 this Court entered an order, on motion of the plaintiffs, requiring that CHA refer to the Chicago

Plan Commission and the Chicago City Council, on or before March 5, 1971, sites appropriate for the construction of not fewer than 1500 dwelling units.

2. On February 24, 1971 CHA filed in the United States Supreme Court a Petition for a Writ of Certiorari (No. 1386, 1970 Term), seeking review of the judgment and the two-to-one decision of the Court of Appeals for the Seventh Circuit, which affirmed the order of this Court modifying its Judgment Order of July 1, 1969.

3. On February 25, 1971 CHA filed in the United States Supreme Court an Application For Stay Of All Proceedings Pending Disposition of Petition For Certiorari, directed to the Honorable Thurgood Marshall, Circuit Justice for the Seventh Circuit. This Application was denied by Mr. Justice Marshall on March 3, 1971.

4. On March 3, 1971 an Application For Recall Of Mandate And Stay Of All Proceedings Pending Disposition Of Petition For Certiorari, directed to the Honorable Warren E. Burger, Chief Justice of the United States, and the Associate Justices of the Supreme Court, was filed in the Supreme Court. Copies of this stay application, together with the letter of transmittal to Chief Justice Burger, are attached hereto as Exhibits A and B. As of the time when the present motion was filed, no action had been taken on CHA's application to the Chief Justice.

5. In its Petition for Certiorari, CHA seeks review of the Court of Appeals' holding that CHA had "waived" its rights to appropriate notice and a hearing prior to the modification of this Court's July 1, 1969 Judgment Order. Moreover, in its applications for stays in the Supreme Court CHA has contended that the mandate of the Court of Appeals improperly issued to this Court on February 25, 1971 because prior to the issuance of the mandate, during the period of the automatic stay granted upon the denial of rehearing, CHA filed a petition for a writ of certiorari in the United States Supreme Court. Under Rules 41(a) and 41(b) of the Federal Rules of Appellate Procedure, the issuance of the Court of Appeals' mandate was erroneous since notice of CHA's Petition for Certiorari was received by the Court of Appeals within the time of the stay created by Rule 41(a) and since under Rule 41(b) the filing of the certiorari petition in these circumstances should have operated to keep the stay in effect pending disposition of the Petition for Certiorari by the Supreme Court.

6. If this Court's order of March 1, 1971 is not stayed for a short period in order to give the United States Supreme Court an opportunity to act on CHA's application for a stay, CHA will be compelled to comply with the order on or before March 5, 1971, and, as CHA has many times sought to prove in a

hearing, the damage which CHA seeks to avert will have been done. Moreover, once CHA has complied with the order of March 1, the matters raised in its application to the Supreme Court, including its contention that the mandate of the Court of Appeals to this Court issued erroneously, will become moot. The action of this Court, if the March 1 order is not stayed, will effectively deprive CHA of the opportunity to pursue its legal recourse in the Supreme Court.

WHEREFORE, CHA prays that an order be entered by this Court staying its order of March 1, 1971, until March 10, 1971, or until such time as the United States Supreme Court has had an opportunity to act on CHA's stay application.

Respectfully submitted,

OF COUNSEL:

KATHRYN M. KULA
The Chicago Housing Authority

MAYER, BROWN & PLATT
231 South LaSalle Street
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(312) 782-0600

Patrick W. O'Brien
One of the attorneys for
defendant

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March 3, 1971

The Honorable Warren E. Burger
Chief Justice of the United States
Supreme Court of the United States
Supreme Court Building
Washington, D. C. 20530

Re: No. 1386 - Chicago Housing Authority,
et al., v. Dorothy Gautreaux, et al.

Dear Sir:

The undersigned personally filed the enclosed Application with the Clerk this afternoon upon learning that Justice Marshall had denied the Application addressed to him.

The Application asks the Court to stay matters below pending disposition of the Petition For Certiorari. We ask this in a case where petitioners have been denied the stay granted them by Rule. Petitioners were entitled to a stay since "during the period of the stay there [was] filed with the clerk of the court of appeals a notice from the clerk of the Supreme Court that the party who has obtained the stay has filed a petition for the writ in that court" and, therefore, the stay "shall continue until final disposition by the Supreme Court" Fed. F. App. p. 41.

Of more significance is the fact that absent a stay from this Court the important issues set forth in the Petition will become moot when petitioners are compelled to submit on Friday to the March 1, 1971 order of the district court. That compliance will threaten irreparable injury to the supply of desperately needed public housing in Chicago.

EXHIBIT A

The Honorable Warren E. Burger

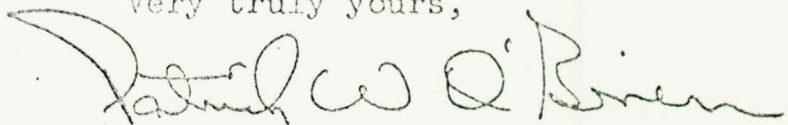
March 3, 1971

Page Two

Furthermore, this is not a case controlled by a district court's findings of fact. It is a case where the court of appeals divided on the question of whether petitioners waived their right to a hearing on the enormously complicated question of the best way to increase the supply of public housing in Chicago.

On behalf of petitioners, I earnestly submit that the Court act on this Application on March 4, but if that is not practical, that there be entered a temporary stay holding in abeyance the district court's order of March 1. In that connection, I request the honor of appearing before the Court and will respond immediately if summoned for that purpose.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Patrick W. O'Brien". The signature is fluid and cursive, with a large initial "P" and "O".

Patrick W. O'Brien
Counsel for Petitioners

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1970

No. 1386

THE CHICAGO HOUSING AUTHORITY, et al.,

Petitioners,

v.

DOROTHY GAUTREAUX, et al.,

Respondents.

REQUEST FOR ORAL ARGUMENT

Because of the importance of the matters raised in the accompanying Application for Stay, petitioners respectfully request, pursuant to Rule 50 of the Supreme Court Rules, that oral argument be granted on the accompanying Application.

Respectfully submitted,

Patrick W. O'Brien

[EXHIBIT B]

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1970

No. 1386

THE CHICAGO HOUSING AUTHORITY, et al.,

Petitioners,

v.

DOROTHY GAUTREAUX, et al.,

Respondents.

APPLICATION FOR RECALL OF MANDATE AND STAY OF ALL
PROCEEDINGS PENDING DISPOSITION OF PETITION FOR CERTIORARI

To The Honorable Warren E. Burger, Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Petitioners, The Chicago Housing Authority and C. E. Humphrey (hereinafter collectively referred to as "CHA"), pray that an order be entered ordering the recall of the mandate issued by the Court of Appeals for the Seventh Circuit on February 25, 1971, in the above-entitled case (No. 18681 in the Court of Appeals) and staying all proceedings in the District Court

for the Northern District of Illinois (No. 66 C 1459 therein) and the United States Court of Appeals for the Seventh Circuit pending the disposition by this Court of the Petition for a Writ of Certiorari filed in this Court on February 24, 1971 during the period of the stay of mandate. In support of this Application, CHA respectfully states as follows:

1. CHA is a municipal corporation charged with the duty of providing housing for the low income citizens of the Chicago area. Suit was brought by respondents against CHA in the United States District Court for the Northern District of Illinois challenging as discriminatory certain of CHA's methods of operation. In 1969, on motion of respondents, the district court granted summary judgment against CHA, holding that CHA's methods of providing housing violated respondents' constitutional rights. By judgment order of July 1, 1969 (A-1-7)*, the district court established certain formulas, or ratios, to be applied by CHA in the location and allocation of public housing, and ordered CHA to employ its "best efforts" (A-6) to carry out the order's provisions. CHA did not appeal that decision or order.

2. During the year following July 1, 1969, CHA set

* References are to the Appendix to Petitioners' Petition For a Writ of Certiorari.

about acquiring housing sites in accordance with the provisions of the judgment order (A-62-71). In June and July of 1970, a series of conferences took place between counsel for CHA, counsel for plaintiffs, and the district judge. The result of these conferences was an order of July 20, 1970, -- the district judge summarily modified his original order and required CHA to take certain specific steps (presenting housing sites to the Chicago City Council) on or before certain specific dates (A-9). Respondents had not sought such an order -- the order they proposed at the last conference on July 13, 1970 said nothing about such a timetable (A-81-83). CHA appealed the latter order to the United States Court of Appeals for the Seventh Circuit on the ground that it was entered without notice or hearing and that, as entered, the order constituted an abuse of discretion. The Court of Appeals by a two-to-one vote affirmed the July 20, 1970 order by judgment dated December 16, 1970 (A-10-26), and CHA's timely petition for rehearing (A-26-41) was denied by order dated February 18, 1971 (A-43).

3. CHA's petition for rehearing automatically stayed the mandate of the Court of Appeals until seven days after the disposition of the petition for rehearing (Rule 41(a), Federal Rules of Appellate Procedure). Accordingly, the stay of the Court of Appeals' mandate remained in effect until February 25, 1971.

4. On February 22, 1971, CHA filed in the Court of Appeals a Motion to enlarge the stay from February 25 to March 13; a copy of said motion is attached hereto as Exhibit A. Although respondents opposed CHA's motion to enlarge the stay, they did not ask that the time for the issuance of mandate be shortened, although the court clearly had the power to shorten such time under Rule 41(a) of the Federal Rules of Appellate Procedure. CHA's motion to enlarge the stay was denied by order dated February 23, 1971. The court did not, however, order that the time for the issuance of its mandate be shortened. Rather, the court confirmed the period of the stay pursuant to Rule when it ordered that its mandate issue on February 25. A copy of the order denying CHA's motion and confirming the fact that the mandate was stayed until February 25, 1971 is attached hereto as Exhibit B.

5. On February 24, 1971, while the stay created by CHA's petition for rehearing, and confirmed by the Court of Appeals' order of February 23, was still in effect, CHA filed in this Court its Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit (No. 1386, 1970 Term). Notice of the filing of the petition for certiorari was received by the Clerk of the Court of Appeals from the Clerk of this Court on the same day.

6. Under Rules 41(a) and 41(b) of the Federal Rules of Appellate Procedure, the events described in paragraphs 3, 4 and 5 of this application automatically stayed - barred - the issuance of the Court of Appeals' mandate, since notice of CHA's petition for certiorari was received by the Court of Appeals within "the period of the stay" created by Rule 41(a) -- which had been confirmed, and had not been shortened, by order of court -- and since under Rule 41(b) such circumstances operate to keep the stay in effect pending disposition of the petition by this Court. Notwithstanding the foregoing, on February 25, 1971 CHA's counsel was informed by the Clerk of the Court of Appeals that the mandate would issue on that date.

7. Therefore, on February 25, 1971, only hours prior to the issuance of the Court of Appeals' mandate, CHA filed in that Court a Motion for Stay of Mandate Pending Decision by the Supreme Court of the United States on Defendants' Petition for Certiorari; a copy of this motion is attached hereto as Exhibit C. This motion was denied by order dated February 25, 1971, and the mandate of the Court of Appeals issued promptly thereafter. A copy of the said February 25, 1971 order is attached hereto as Exhibit D.

8. On February 25, 1971, CHA filed in this Court an Application for Stay of All Proceedings Pending Disposition of

Petition for Certiorari, directed to the Honorable Thurgood Marshall, Circuit Justice for the Seventh Circuit.

9. On March 1, 1971, the District Judge, on Motion of Respondents and over the objection of Petitioners who argued that "We believe that the motion of [Respondents] should be set over until there is action by the Supreme Court on our motion for a stay. We think we owe that to the Supreme Court" (Exhibit F, p. 7), signed an order requiring CHA to submit the proposed housing sites to the Chicago City Council on or before March 5, 1971. Exhibit G.

10. On March 2, 1971, CHA filed with the Clerk of this Court a letter motion which set forth the events of March 1, 1971, and asked for a stay of the district court's order of March 1. A copy of this letter is attached hereto as Exhibit E and the enclosures as Exhibits F and G, respectively.

11. On March 3, 1971, Justice Marshall denied both the Application of February 25, 1971, and the letter motion of March 2, 1971.

12. The jurisdiction of this Court to review the case on petition for certiorari rests upon 28 U.S.C. § 1254(1). Jurisdiction to issue the stay requested is granted by 28 U.S.C. § 2101(f).

13. The importance of Subject matter of this litigation. -- This Court can and should take judicial notice of the fact that public housing is one of the great problems now confronting our cities. What has happened below is that a judgment order which properly recognized the expertise of CHA in using its "best efforts" to effectively create a plan of public housing has been modified so as to replace CHA's discretion with a specific timetable, and, we urge, without notice or hearing to CHA. Had CHA been granted a full hearing on such a timetable, CHA fully expects that the record would have made abundantly clear the fact that a timetable such as imposed by the district court was not only ill-advised but potentially disastrous for the entire Chicago metropolitan housing program (See A-46-48). CHA has maintained in the district court, in the court of appeals, and in its application for a writ of certiorari which has been filed in this Court, that the order appealed from was entered without notice or hearing, all to the severe detriment of the Chicago metropolitan housing program (See A-72-77).

14. Irreparable Injury to CHA. -- The order appealed from, dated July 20, 1970, required CHA to do certain acts on or before September 20, 1970. CHA obtained a stay of that order pending its appeal to the Seventh Circuit Court of Appeals

and on that occasion that Court noted that compliance with the timetable "presents a clear danger that there will be no low income housing units built anywhere" (A-26). Following the issuance of the mandate (issued in violation of Rule 41 of the Rules of Appellate Procedure) respondents took immediate steps to obtain an order establishing a new timetable. In a hearing on respondents' motion to impose a new timetable (See Exhibit F), held in the District Court on March 1, 1971, the District Judge signed an order requiring petitioners, on or before March 5, 1971, to submit housing sites to the Chicago City Council. Exhibit G. Unless that order against CHA is stayed, CHA will be compelled to comply with it on March 5, and the damage to the cause of public housing which CHA has sought to avert will have been done.

Moreover, once CHA has complied with the new "timetable" order of the District Court, the matter before this Court will become moot.

WHEREFORE, CHA prays that an order be entered recalling the mandate of the Court of Appeals and that any and all further proceedings in the United States District Court for the Northern District of Illinois and in the Court of Appeals for the Seventh Circuit be stayed pending the disposition of CHA's

Petition for a Writ of Certiorari and a final determination of
the matter by this Court.

Respectfully submitted,

Patrick W. O'Brien
One of the Attorneys for
Defendants-Petitioners

OF COUNSEL:

KATHRYN M. KULA
The Chicago Housing Authority

MAYER, BROWN & PLATT
231 South LaSalle Street
Chicago, Illinois 60604
(312) 782-0600

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on March , 1971, three copies of the foregoing Application for Recall of Mandate and Stay of All Proceedings Pending Disposition of Petition for Certiorari were served upon one of Respondents' attorneys, Alexander Polikoff, 109 North Dearborn Street, Chicago, Illinois 60602.

Patrick W. O'Brien

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 18681

DOROTHY GAUTREAUX, et al.,

Plaintiffs-Appellees,

v.

THE CHICAGO HOUSING AUTHORITY, et al.,

Defendants-Appellants.

MOTION FOR STAY OF MANDATE
PENDING PETITION FOR CERTIORARI

Defendants-appellants (hereinafter collectively called "CHA"), by their attorneys, respectfully move this court to stay the issuance of its mandate to the United States District Court for the Northern District of Illinois, Eastern Division, until March 13, 1971, so that CHA may file with the Supreme Court of the United States a petition for writ of certiorari. In support of said motion, CHA states as follows:

1. On December 16, 1970 this court entered judgment affirming the order appealed from and ordering the cause remanded

EXHIBIT A

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to the district court for further proceedings; on December 30, 1970, CHA filed a timely petition for rehearing.

2. This Court denied CHA's petition for rehearing on Thursday, February 18, 1971. Notice of this fact to CHA's attorneys was receipt of the order denying said petition on Monday, February 22, 1971. Unless otherwise ordered, the mandate of this Court will issue on February 25, 1971.

3. CHA is presently preparing a petition to the United States Supreme Court for a writ of certiorari, and CHA will file said petition with the clerk of the Supreme Court of the United States on or before the close of business on March 8, 1971, so that the clerk of this Court should receive from the clerk of the Supreme Court of the United States a notice of the filing of said petition no later than March 13, 1971 (allowing five days for said notice to issue and be delivered to the clerk of this Court).

For the foregoing reasons, CHA respectfully requests that this Court stay the issuance of its mandate until March 13, 1971.

Respectfully submitted,

Patrick W. O'Brien

Watson B. Tucker

Of Counsel:

Attorneys for Defendants-Appellants

KATHRYN M. KULA
General Counsel
The Chicago Housing Authority

MAYER, BROWN & PLATT
231 South LaSalle Street
Chicago, Illinois 60604

CERTIFICATE OF SERVICE

The undersigned, Patrick W. O'Brien, hereby certifies that on the 22nd day of February, 1971, three copies of the above and foregoing Motion for Stay of Mandate Pending Petition for Certiorari were delivered to counsel for Plaintiffs-Appellees.

Patrick W. O'Brien

United States Court of Appeals

For the Seventh Circuit

Chicago, Illinois 60604

February 23, 1971

Before

Hon. WILBUR F. PELL, JR., Circuit Judge

Hon. _____

Hon. _____

DOROTHY GAUTREUX, et al.,
Plaintiffs-Appellees,
No. 18681 VS.
THE CHICAGO HOUSING AUTHORITY,
et al.,
Defendants-Appellants.

} Appeal from the
United States District
Court for the Northern
District of Illinois

This matter is before the court on the motion of defendants-appellants for stay of mandate pending petition for certiorari to the United States Supreme Court.

On December 16, 1970, this court entered judgment affirming the order appealed from and ordering the cause remanded to the district court for further proceedings. On December 30, 1970, appellants filed a timely petition for rehearing with suggestion of rehearing en banc.

This court denied the petition for rehearing on February 18, 1971 and unless otherwise ordered, the mandate of this court will issue on February 25, 1971.

Plaintiffs have filed their memorandum in opposition to the motion for stay and counsel for the parties have presented their respective contentions orally.

The matter having been taken under advisement, the stay of mandate is denied and the clerk is ordered to issue the mandate of the court on February 25, 1971.

EXHIBIT B

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 18681

DOROTHY GAUTREAUX, et al.,

Plaintiffs-Appellees,

v.

THE CHICAGO HOUSING AUTHORITY, et al.,

Defendants-Appellants.

MOTION FOR STAY OF MANDATE PENDING
DECISION BY THE SUPREME COURT OF THE UNITED STATES
ON DEFENDANTS' PETITION FOR CERTIORARI

Defendants-Appellants (hereinafter collectively called "CHA"), by their attorneys, respectfully move this court to stay the issuance of its mandate to the United States District Court for the Northern District of Illinois, Eastern Division, until final disposition by the Supreme Court of the United States on the Petition for a Writ of Certiorari which CHA filed in the Supreme Court of the United States on February 24, 1971.

EXHIBIT C

In support of said motion, CHA states as follows:

1. On December 16, 1970 this court entered judgment affirming the order appealed from and ordering the cause remanded to the district court for further proceedings. CHA filed a timely petition for rehearing, which this court denied by order dated February 18, 1971.

2. On February 22, 1971, CHA filed in this court a Motion for Stay of Mandate Pending Petition for Certiorari, representing to the court that CHA was preparing its application for a writ of certiorari. CHA's motion for a stay was denied by order dated February 23, 1971.

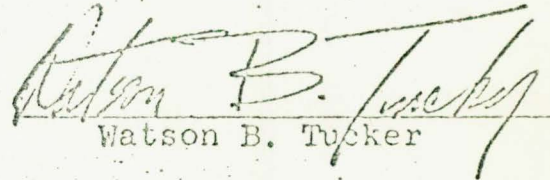
3. On February 24, 1971 CHA filed a Petition for a Writ of Certiorari, and notice of the filing of said petition was given to the clerk of this court on February 24 and February 25, 1971.

4. The issues raised in CHA's Petition for a Writ of Certiorari will or may be rendered moot if the mandate of this court issues to the United States District Court for the Northern District of Illinois, Eastern Division, causing CHA irreparable harm, prior to the disposition of such petition by the Supreme Court of the United States.

For the foregoing reasons, CHA respectfully requests

that this court stay the issuance of its mandate until final disposition of CHA's Petition for a Writ of Certiorari by the Supreme Court of the United States.

Respectfully submitted



Watson B. Tucker

one of the attorneys for
Defendants-Appellants

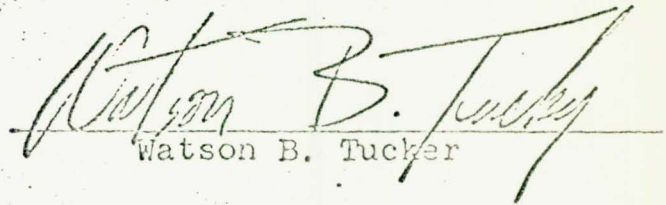
Of Counsel:

Kathryn M. Kula
General Counsel
The Chicago Housing Authority

Mayer, Brown & Platt
231 South LaSalle Street
Chicago, Illinois 60604

CERTIFICATE OF SERVICE

The undersigned, Watson B. Tucker, hereby certifies that on February 25, 1971 three copies of the above and foregoing Motion for Stay of Mandate Pending Decision by the Supreme Court of the United States on Defendant's Petition for Certiorari were delivered to counsel for Plaintiffs-Appellants.


Watson B. Tucker

United States Court of Appeals

For the Seventh Circuit

Chicago, Illinois 60604

Thursday, February 25, 1971

Before

Hon. WILBUR F. PELL, JR., Circuit Judge

Hon. _____

Hon. _____

DOROTHY GAUTREAUX, et al.,
Plaintiffs-Appellees,

No. 18681 vs.

THE CHICAGO HOUSING AUTHORITY, a
corporation and ALVIN E. ROSE,
Executive Director,
Defendants-Appellants.

} Appeal from the United
States District Court
for the Northern District
of Illinois, Eastern
Division

This matter comes before the Court on the motion of defendants-appellants for stay of mandate pending decision by the Supreme Court of the United States on defendants' petition for writ of certiorari. The Court having duly considered said motion of defendants-appellants,

IT IS HEREBY ORDERED that the said motion be and the same is hereby DENIED; and the mandate of this Court is ordered to issue instant to the United States District Court for the Northern District of Illinois, Eastern Division.

IT IS FURTHER ORDERED that that portion of the order of this Court heretofore entered on August 19, 1970 which stayed the order of the United States District Court for the Northern District of Illinois, Eastern Division entered therein on July 20, 1970 in case #67 C 1459 until the further order of this Court, be and the same is hereby vacated and set aside.

EXHIBIT D

MAYER, BROWN & PLATT

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March 2, 1971

Mr. Robert Boyer
Office of the Clerk
Supreme Court of the United States
Supreme Court Building
Washington, D. C. 20530

Re: No. 1386 - Chicago Housing Authority,
et al., v. Dorothy Gautreaux, et al.

Dear Mr. Boyer:

On behalf of petitioners, I supplement the documents previously filed in this cause by petitioners and respondents by the attached copies of:

(1) The transcript of proceedings in the district court yesterday, March 1, 1971;

(2) The order entered by the district court yesterday, March 1, 1971.

Yesterday's action of the district court was taken even though:

(1) The Petition for Certiorari in this cause was filed in this court on February 24 during the period of the stay and notice of that fact was received by the clerk of the Court of Appeals for the Seventh Circuit on the same day (see Fed. R. App. P. 41);

EXHIBIT E

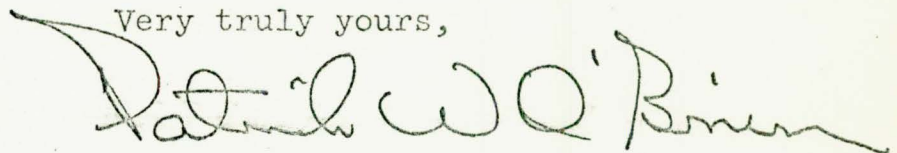
Mr. Robert Boyer
March 2, 1971
Page Two

(2) Petitioners, on February 25, filed with this Court an "Application for Stay of All Proceedings Pending Disposition of Petition for Certiorari" which (p.4) pointed out that the filing of the Petition for Certiorari during the period of the stay should have effected an automatic stay of the mandate but was deemed by the U. S. Court of Appeals for the Seventh Circuit not to have done so.

On behalf of Petitioners I hereby move for a stay of the District Court's Order of March 1, 1971 until this Court has rendered its decision on Petitioners' February 25, 1971 "Application for Stay of All Proceedings". In that connection, and for that reason only, I request the honor of appearing before Justice Marshall and am available for that purpose at any time that suits the court's convenience. If advised that it is practical to wait in the Supreme Court building, I will wait. If that is not practical, I can be summoned at the above Washington number and will immediately respond.

I respectfully request that this letter and the attachments be transmitted promptly to Mr. Justice Marshall.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Patrick W. O'Brien". The signature is fluid and cursive, with a large initial "P" and a long, sweeping underline.

Patrick W. O'Brien

Attorney for Petitioners

POB:jl
Encs.

cc: Alexander Polikoff, Esq.

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

DOROTHY GAUTREUX,
et al.,

Plaintiffs,

vs.

CHICAGO HOUSING AUTHORITY,
et al.,

Defendants.

NO. 66 C 1459

TRANSCRIPT OF PROCEEDINGS

had in the above-entitled cause before the
HONORABLE RICHARD B. AUSTIN, one of the Judges
of said Court, in his courtroom in the United
States Courthouse, Chicago, Illinois, on Monday,
March 1, 1971, at 10:00 o'clock a.m.

PRESENT:

MR. ALEXANDER POLIKOFF,
MR. MILTON I. SHADUR,

on behalf of Plaintiffs;

MR. PATRICK O'BRIEN
MISS KATHRYN KULA
MR. WATSON TUCKER
MR. DOUGLAS A. POE

on behalf of Defendants.

EXHIBIT F

THE CLERK: 66 C 1459, Gautreaux vs. CHA,
motion for entry of order pursuant to mandate.

MR. O'BRIEN: Good morning, Judge.

THE COURT: Good morning. I see you did not
lose your airplane ticket in Vegas.

MR. O'BRIEN: No, sir, I didn't. I did spend
a little more time on the telephone than I planned,
however.

THE COURT: I can understand that.

MR. O'BRIEN: Your Honor, I would like a moment
of the court's time this morning to comment upon
the charges that have been made that the CHA has
engaged in, is now engaging in every known method
of procrastination.

THE COURT: We put this over so that we could
hear the eloquence of your voice, Mr. O'Brien.

MR. O'BRIEN: It will be brief, your Honor.

THE COURT: And there are no sanctions applied.
You may speak at whatever length you wish on any
subject that is relative to what is confronting me
here today.

MR. O'BRIEN: Thank you, sir.

Your Honor, we submit that CHA has not
stalled, has not procrastinated, is not now pro-

crastinating and does not intend to procrastinate or stall, that neither CHA as a body, its general counsel, its previous outside counsel nor myself have engaged in any such activity.

What we have done and what we intend to do is to exercise every right that we have to seek redress for what we consider to be a wrong in any court of proper jurisdiction, whether it be this court, the Court of Appeals or the United States Supreme Court.

Now, if our appeal had been dismissed as frivolous, possibly such a charge could be laid. Our appeal was not dismissed. In fact, a strong dissenting opinion by an experienced jurist was filed.

We submit, your Honor, that counsel for the plaintiffs, counsel for the defendants and this court are all handcuffed by the applicable procedural rules. Procedure, the United States Supreme Court said this term, is that which works much of the difference between the rule of law and rule by fiat. That case is *Wisconsin v. Constantino*, 91 Sup. Ct. 507 at 509.

We don't think, for instance, your Honor,

that the plaintiffs, through Mr. Polikoff, are subject to criticism for delay when they filed an appeal from your Honor's decision against them in their action against HUD. That case, I might point out, is on appeal from your order of September 1, and the record was just filed in January, whereas in our appeal, an expedited appeal, the whole thing was submitted on briefs and orally argued by October 6, and the petition for rehearing was filed promptly within fourteen days after the adverse opinion, from CHA's point of view. And furthermore, Judge, I don't know of any client that I have ever represented or that our firm has ever represented that has filed a petition for certiorari printed, delivered to the Supreme Court within two days after notice of an adverse ruling on a petition for rehearing.

THE COURT: I think that was very wise, because it gave you two shots to get a stay upstairs.

MR. O'BRIEN: Your Honor --

THE COURT: You are a very expeditious lawyer in a very expeditious firm.

MR. O'BRIEN: Thank you, sir.

THE COURT: And the CHA will get their money's worth regardless of what your fee is, although no results up to this point.

MR. O'BRIEN: Now, Judge, to the current motion -- but, first, let's look at what the situation is right now, and I will have to get my calendar out, Judge, because I think it is fair to state that on each day last week an event occurred, a courtroom event in some court somewhere in the United States.

Our petition was argued by myself and Mr. Shadur in Judge Pell's chambers for a stay until March 13th of the mandate on Tuesday, February 23rd. He denied it late that afternoon and reaffirmed that the mandate would issue on the 25th of February, Thursday.

THE COURT: You immediately, very expeditiously, then filed your petition for cert. so that you could go back before Judge Pell on Thursday and tell him, "Judge, the situation has changed. Tuesday we said we were going to file one and you denied a stay. Here we are back again on Thursday, having filed a petition for cert., and now the conditions being different than they were, give us a stay now." Otherwise you could not have gone in on Thursday if you had not done it that way.

MR. O'BRIEN: Your Honor, I think -- and Mr. Shadur, I think, will confirm this -- that I told

Judge Pell in chambers on the 23rd that we wanted the stay, but if we did not get it we would bend every effort to file a petition for certiorari on the 24th.

THE COURT: And I am glad that you kept your word to Judge Pell, because now we have two denials of a stay up in the Court of Appeals instead of one

MR. O'BRIEN: And on the 26th, Judge -- now, on the 25th, we --

THE COURT: Went back and it was denied again.

MR. O'BRIEN: Yes, sir, because on Monday morning at 9:00 o'clock we were before Judge Pell calling his attention to the fact, giving the Court of Appeals an opportunity to correct what we considered to be -- might have been and proved to be an erroneous issuance of the mandate. On the 26th, at 4:00 o'clock in the afternoon -- on the 25th, at 4:00 o'clock in the afternoon, we filed, in Washington, with the Supreme Court, our petition for a stay pending a decision on our petition for certiorari.

All we are doing, we submit, your Honor, is trying to get a ruling on this, and we will accept cheerfully whatever the ruling might be, including any ruling on our motion for a stay.

THE COURT: I don't know about this "cheerfully" business.

MR. O'BRIEN: We try to be cheerful, Judge.

As of 10:25 this morning Washington time a phone call from our office revealed that as yet Justice Marshall has not yet acted on our petition. Our position this morning, Judge, is simple. We believe that the motion of the plaintiffs should be set over until there is action by the Supreme Court on our motion for a stay. We think we owe that to the Supreme Court.

In the alternative, Judge, if you feel that an order must be entered this morning, it certainly should be contingent insofar as any requirement that CHA do this or do that until there is a ruling at least on the motion for a stay in the Supreme Court

THE COURT: Mr Polikoff?

MR. POLIKOFF: I will say nothing about procrastination, your Honor. I think the record speaks for itself in that regard.

THE COURT: First of all, I think the record ought to be clear that you never said anything about it in the first place, it was me, so that you don't have to

reply to that.

MR. POLIKOFF: All right, and I do not intend to, your Honor.

I do want to point out a couple of facts that are in the record before this court, and that is that --

THE COURT: Anything you want to give me that will strengthen my response to Mr. O'Brien I will listen to.

MR. POLIKOFF: That is that by reason of its having chosen to exhaust every procedural opportunity available to it, CHA's conduct has already seriously prejudiced the low income families in this city that desperately need low income housing.

My affidavit, which is part of the record before this court, states that I have been advised by the executive director of CHA that CHA has not applied to HUD for a reservation for non-elderly units allocable to the current fiscal year and that the reason they haven't done so is that Mr. Humphrey probably correctly --

MR. O'BRIEN: I will object to that.

MR. POLIKOFF: -- perceives that since CHA has not used up the units that HUD has already reserved

for it, the 1,500 units that are in dispute, HUD is unlikely to give it additional units. And my affidavit further says that by reason of its chosen course of action, all of the allocation HUD has available for fiscal year 1971 has been allocated to applicants therefor, not including CHA, since CHA has not applied, and that CHA's current ostrich-like posture also prejudices it with respect to getting allocations from the following fiscal year, 1972, because the excess '71 allocations, not including any from CHA, are already being allocated to 1972.

So Mr. O'Brien, speaking on behalf of CHA, can tell you that CHA has not stalled and is not procrastinating and that they are merely exhausting procedural avenues open to them. I just ask: where in this picture the low income families of the city come out.

As to the law, your Honor, whether you ought to wait pending action by Mr. Justice Marshall, I think the law is perfectly clear that you not only need not so wait, but are obligated not to wait because the law is that when a mandate comes down from the Court of Appeals to a District Court, until

the District Court's hand is stayed by action of the Court of Appeals or the Supreme Court, the District Court is obligated to act from the moment the mandate comes down.

We have, as you know, deliberately changed our proposed date in the order from March 3rd to March 5th precisely to give Mr. Justice Marshall more time so that he will have ample time, if he chooses to do so, to act before the March 5th date which we have suggested.

Thank you, your Honor.

THE COURT: Any response?

MR. O'BRIEN: Yes, Judge. I noted an objection to what I consider to be the unethical and irregular procedure of my adversary attorney at every opportunity testifying as to what the facts are, standing at the podium, as to what people told him under circumstances --

THE COURT: As I understand it, he is reading from an affidavit.

MR. O'BRIEN: His own affidavit, your Honor.

THE COURT: Yes.

MR. O'BRIEN: At every turn in this case we are confronted, whenever the record does not satisfy the

other side, with an affidavit from the attorney. I object to this, your Honor. I find it irregular and unethical. I wouldn't do it and I don't expect to have it done to me. We cannot cross examine Mr. Polikoff. We don't know who he has talked to or when he has talked to them, and the procedure is highly irregular and, I think, a clear violation of due process, and I am not going to ever let him do it without objecting on the spot.

THE COURT: I don't think I have ruled on that objection. The objection is overruled, to clear the record.

What is next?

MR. O'BRIEN: The 1969 injunction, your Honor, the permanent injunction, states in plain English that the Chicago Housing Authority shall use its best efforts to increase the supply of dwelling units as rapidly as possible in conformity with the judgment order.

Now, sir --

THE COURT: Is it your position that they have done so, Mr. O'Brien?

MR. O'BRIEN: Yes, sir. And it is my position and the position of the CHA that if they really had

some evidence, they would file a motion for a rule to show cause and bring us in for contempt of court, and they don't care to do it.

Thank you.

THE COURT: The court reiterates what it said the other day that this order of July 1, 1969, which required them to use their best efforts has resulted in nothing being done up to March 1, 1971, other than to take advantage, which they have a legal right to do, of all procedural rights that are available to them. However, it has been demonstrated three times in the Court of Appeals, first on the opinion and then on the two motions for stays, that they so consider the matter of sufficient consequence to warrant staying the hands of the District Court in trying to bring about what we endeavored to do by our order of July 1 1969. I will say that the stalls and the procrastination and the delays were all legal stalls and procrastinations and delays, but apparently you have been unsuccessful in convincing anybody that they have any merit.

MR. O'BRIEN: Except Judge Kiley.

THE COURT: And I question your high hopes for a reversal in view of this background in Washington.

This has resulted in a callous disregard for the hardships that have been produced in this city in regard to furnishing housing since the date of July 1, 1969

I charge that the CHA has not, pursuant to the order, used their best efforts to obtain housing and to comply with that order, and while my hands are still untied, I am signing the order requiring that they file these with the Chicago Plan Commission and the City Council on or before March 5th. and that a copy of what you file be submitted to the attorneys for the plaintiffs, and that a document be filed in the court on March 5th indicating the method of service by you of these units and the sites on those to whom you are ordered to furnish them on the 5th of March.

MR. POLIKOFF: Your Honor, there are two places in the order that the date has to be changed.

THE COURT: I have got it changed on the first line and on the fourth line.

MR. POLIKOFF: Thank you, your Honor.

THE COURT: That takes care of that.

We will stand in recess, Mr. Marshal.

(Which were all of the proceedings had and taken in the above-entitled matter on the above-mentioned date.)

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

DOROTHY GAUTREUX,
et al.,

Plaintiffs,

vs.

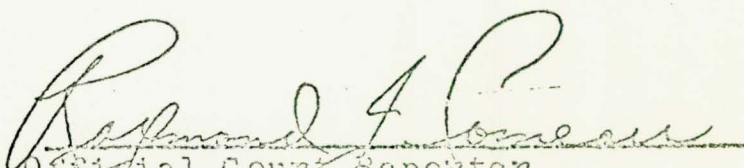
CHICAGO HOUSING AUTHORITY,
et al.,

Defendants.

NO. 66 C 1459

C E R T I F I C A T E

I hereby certify that the foregoing 13
pages are a full, true and accurate transcript of
my official shorthand notes, taken in the above-
entitled matter before the HONORABLE RICHARD B.
AUSTIN on March 1, 1971


Official Court Reporter
United States District Court
Northern District of Illinois
Eastern Division

DOROTHY GAUTREUX, et al.,

Plaintiffs,

v.

THE CHICAGO HOUSING AUTHORITY,
et al.,

Defendants.

No. 66 C 1459

ORDER

This matter coming on to be heard on the motion of plaintiffs for an order in accordance with the Mandate of the United States Court of Appeals for the Seventh Circuit, issued in this cause on February 25, 1971, and the Court having heard the presentations of the parties and being fully advised,

IT IS HEREBY ORDERED that on or prior to March ⁵ 2, 1971, CHA shall refer to the Chicago Plan Commission pursuant to ch. 24, §11-12-4.1, Ill. Rev. Stat. 1969, and on or prior to March ⁵ 3, 1971, CHA shall advise the Chicago City Council pursuant to ch. 67-1/2, §9, Ill. Rev. Stat. 1969 of, sites appropriate for the construction, in conformity with the provisions of the Judgment Order entered herein on July 1, 1969, of not fewer than 1,500 Dwelling Units.

ENTER:

March 1
February 26, 1971

Judge, United States District Court

~~EXHIBIT~~ G

CHA
files

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

DOROTHY GAUTREUX, et al.,	)	
	)	
Plaintiffs	)	
	)	
v.	)	No. 66C 1459
	)	
CHICAGO HOUSING AUTHORITY, et al.,	)	
	)	
Defendants	)	

NOTICE OF MOTION

To: Alexander Polikoff
109 North Dearborn Street
Chicago, Illinois 60602

Please take notice that on March 5, 1971, at the hour of 10:00 A.M., we shall appear before the Honorable Richard B. Austin, or any judge sitting in his stead, in the courtroom usually occupied by him in the United States Courthouse, 219 South Dearborn Street, Chicago, Illinois 60604 and present a motion (a copy of which is attached hereto) for a stay of this court's order of March 1, 1971 to March 10, 1971, or until such time as the Supreme Court of the United States shall have passed upon CHA's Application for Recall of Mandate and Stay of all Proceedings Pending Disposition of Petition for Certiorari which was filed on March 3, 1971.

Watson B. Tucker

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on March 4, 1971,
at the hour of ____ P.M., he served a copy of the foregoing
Notice of Motion, and of the motion referred to therein, by
leaving same at the office of Alexander Polikoff, 109 North
Dearborn Street, Chicago, Illinois 60602.

Watson B. Tucker