

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

NO. 71-1073 SPETEMBER TERM 1970 - APRIL SESSION 1971

DOROTHY GAUTREAUX, et al.,	)	
	)	
Plaintiffs-Appellants,	)	
	)	
vs.	)	Appeal From The United
	)	States District Court
	)	For The Northern
GEORGE W. ROMNEY, Secretary of	)	District of Illinois
the Department of Housing and	)	
Urban Development,	)	
	)	
Defendant-Appellee.	)	

OBJECTIONS TO MOTION TO ISSUE MANDATE FORTHWITH

Now comes the City of Chicago, a municipal corporation,
objecting to the motion by the Department of Justice to issue
the mandate forthwith, for the following reasons:

On September 10, 1971, this Court remanded this cause
to the District Court, holding that the United States Department
of Housing and Urban Development, through its Secretary, violated
the Due Process Clause of the Fifth Amendment and Section 601 of
the Civil Rights Act of 1964. It concluded that, as a result,
summary judgment should be granted in favor of the plaintiffs below.

Shortly thereafter an order was entered by Chief Judge Swygert, upon motion of the Government, staying the mandate of the Court of Appeals until November 15, 1971.

On September 17, 1971, after the filing of the opinion but before issuance of the mandate, plaintiffs moved in District Court for an order enjoining the defendant from releasing any funds to the City of Chicago under its "Model Cities Program." The City of Chicago, not a party to the original proceedings, was given leave to intervene. A hearing was held, from September 21 to September 24, 1971. Testimony was taken and affidavits filed with respect to the propriety of the relief requested.

On October 1, 1971, the district court entered an order, purportedly pursuant to Rule 62 (c) of the Federal Rules of Civil Procedure (stay pending appeal) and to the September 10 opinion of this Court, enjoining the defendant, George W. Romney, from making available to the City of Chicago "pending termination of the appeal", any funds for the second period of the Model Cities Program of the City, unless the City complies with a stated condition.

On October 13, 1971, the City, among others, filed a notice of appeal from the order of the district court (71-1732, 33, 34). On October 29, 1971, an order was entered by Judges Fairchild, Cummings, and Kerner accelerating the briefing schedule so that the appellants' briefs are due November 12, 1971.

The government's motion to issue the mandate forthwith is based upon an invalid presumption. The government contends that the issues under the Rule 62(c) stay will become moot upon filing of the mandate. This is not the case. The district court has made its views known. Even if the court does not, upon termination of the appeal, re-enter essentially the same order, based upon the same evidence, the threat of its doing so may effectively inhibit the Department of Housing and Urban Renewal from releasing the desperately needed funding for Model Cities. As a result, there being a threat without an order, the City as well as the other interested parties would be denied the opportunity to appeal. Under similar circumstances, where the problem was "capable of repetition, yet evading review," Southern Pacific Terminal Co. v. ICC, 219 U.S. 498, 515, expiration of a short-term order has been held not to render a cause moot. It is clear that there is nothing to indicate that the district court would reach a different conclusion under the present facts and thus the "mere possibility [of recurrent action]...serves to keep the case alive," U.S. v. W.T. Grant Co., 345 U.S. 629, 633.

It may certainly be argued that the Rule 62(c) stay is the functional equivalent of a preliminary or even a permanent injunction, since it is apparent the district court would simply re-enter the order. It would seem prudent for this Court to withhold its mandate under these circumstances, until such time as the important

issues are resolved. Moreover, a stay of mandate would raise no problems inasmuch as a decision determining the Rule 62(c) order would without question determine as well a similar "final order."

Therefore, it is respectfully requested that this Court stay its mandate in this matter pending a final disposition of the cause.

Respectfully submitted,

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Defendant-Appellee.	)	

NOTICE OF FILING OBJECTIONS

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Hon. John Mitchell Attorney General of the United States Department of Justice Washington, D.C. 20530 Attn: Alan S. Rosenthal Anthony J. Steinmeyer	

PLEASE TAKE NOTICE that on November 2, 1971, I filed in the United States Court of Appeals, Seventh Circuit, the attached Objections to Motion to Issue Mandate Forthwith .

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