

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

DOROTHY GAUTREAUX, ET AL.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action
	)	No. 66 C 1459
THE CHICAGO HOUSING AUTHORITY,	)	
ET AL.,	)	
	)	
Defendants.	)	

MOTION FOR FURTHER RELIEF

Now come plaintiffs, by their attorneys, and move the Court for the entry of an order directing the defendant Chicago Housing Authority ("CHA") to:

(1) File with the Court and serve upon attorneys for the plaintiffs within 15 days from the date of such order a specific plan for,

- (a) the prompt acquisition by CHA of sites for public housing units previously submitted by CHA to the City Council of the City of Chicago ("City Council") pursuant to this Court's orders of July 20, 1970 and March 1, 1971, and since approved by the City Council, and
- (b) the prompt construction of public housing units thereon;

(2) File with the Court and serve upon attorneys for the plaintiffs within 30 days from the date of such order a specific plan for,

- (a) the prompt acquisition by CHA, regardless of any action taken or not taken by the City Council, of such number of additional sites for public housing units as will, when added to the sites referred to in paragraph 1 of this motion, permit the construction of the 1500 public housing units referred to in this Court's orders of July 20, 1970 and March 1, 1971 and
- (b) the prompt construction of public housing units thereon; and

(3) File with the Court and serve upon attorneys for the plaintiffs within 45 days from the date of such order a specific plan for,

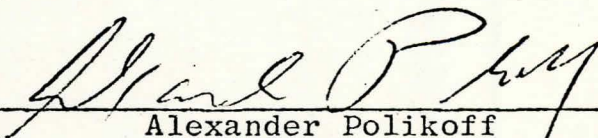
- (a) the prompt acquisition by CHA, regardless of any action taken or not taken by the City Council, of such number of additional sites for public housing units as will permit the construction of 7,000 public housing units in addition to the 1500 such units hereinabove referred to (being the

number of additional public housing units
for which CHA has made application to the
Department of Housing and Urban Development),
and

- (b) the prompt construction of public housing
units thereon.

In support of this motion plaintiffs submit herewith
a memorandum.

Respectfully submitted,



Alexander Polikoff
One of the Attorneys for Plaintiffs

November 24, 1971

Alexander Polikoff
109 North Dearborn Street
Chicago, Illinois 60602
641-5570

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MEMORANDUM IN SUPPORT OF
MOTION FOR FURTHER RELIEF

This memorandum is submitted in support of plaintiffs' motion for further relief of even date herewith.

THE FACTS

The relevant facts may be succinctly stated:

1. On February 10, 1969, this Court rendered its opinion finding de jure segregation in the administration of the public housing system in Chicago. The parties were directed to "prohibit the future use and to remedy the past effects of CHA's unconstitutional site selection..." 296 F. Supp. 907, 914, emphasis added.

2. On July 1, 1969, this Court entered an order designed among other things, "to remedy the past effects of defendant Chicago Housing Authority's unconstitutional site selection..." 304 F.Supp. 736, 737. To that end, CHA was ordered to "use its best efforts to increase the supply of

Dwelling Units as rapidly as possible in conformity with the provisions of this judgment order and shall take all steps necessary to that end..." 304 F.Supp. at 741. The Court retained jurisdiction for all purposes, including the issuance of further orders "to achieve results consistent with this order..." 304 F.Supp. at 741.

3. On July 20, 1970, no new Dwelling Units having been provided pursuant to the order of July 1, 1969, this Court ordered CHA to advise the Chicago City Council of sites appropriate for the construction, in conformity with the provisions of the Judgment Order of July 1, 1969, of not fewer than 1,500 Dwelling Units.

4. On March 1, 1971, following CHA's unsuccessful appeal of the order of July 20, 1970, this Court again ordered CHA to advise the Chicago City Council of such sites.

5. On March 5, 1971, CHA did so advise the City Council.

6. To date, sites for fewer than 300 Dwelling Units have been approved by the City Council.

7. To date, no sites have been acquired by CHA pursuant to this Court's order of July 1, 1969.

8. It will soon be 2-1/2 years since the order of July 1, 1969 was entered, but not one new Dwelling Unit has been provided by CHA pursuant to that order.

THE LAW

Given the foregoing circumstances, it is clear that the time has come for specific, affirmative relief. The duty of the Court, as the Court itself recognized in its opinion of February 10, 1969 and in its Judgment Order of July 1, 1969, is not only to prevent future discrimination but also to remedy the effects of CHA's discrimination of the past.* This duty can only be performed by assuring the provision of new public housing, as was recognized in the order of July 1, 1969 (directing CHA to use its best efforts to that end), and by the orders of July 20, 1970 and March 1, 1971 (directing CHA to advise the City Council of sites for the provision of new public housing). Since these prior orders have not been effective, more specific affirmative relief is

* "[T]he court has not merely the power but the duty to render a decree which will so far as possible eliminate the discriminatory effects of the past..." Louisiana v. United States, 380 U.S. 145, 154 (1965).

"We approve the district court's...decree directed at undoing the effects of the unconstitutional segregation..." U.S. v. School District 151 of Cook County, Ill., 432 F.2d 1147, 1151 (7th Cir. 1970).

"An appropriate remedy therefore should undo the results of past discrimination...A court of equity is not powerless to eradicate the effects of former discrimination." United States v. Duke, 332 F.2d 759, 768-69 (5th Cir. 1964).

"[T]he trial court erred in not issuing an injunction to guarantee that the effects of the discrimination should be eliminated..." 332 F.2d at 770.

now required. Plaintiffs' motion for further relief is the first step to provide that relief.

I. CHA HAS THE BURDEN OF COMING FORWARD WITH
A SPECIFIC PLAN THAT PROMISES TO WORK

The law is clear that the party responsible for discrimination in the provision of public services (for example, education) has the duty to come forward with a plan which promises meaningful and immediate progress to correct the effects of past discrimination. In United States v. School District 151 of Cook County, Ill., 286 F.Supp. 786, 798-99 (N.D. Ill. 1968), this Court said:

"The defendants' present constitutional obligation is to take all appropriate affirmative steps to correct the effects of their racially discriminatory policies and practices..."

Affirming, the Court of Appeals for the Seventh Circuit said:

"Defendants have the burden...of presenting a plan which 'promises meaningful and immediate progress toward disestablishing' the existing unconstitutional discrimination. Green v. County School Board, 391 U.S. at 439, 88 S.Ct. at 1695, Northcross v. Board of Education, 333 F.2d 661 (6th Cir. 1964)." 404 F.2d 1125, 1135 (7th Cir. 1968).

In the Green case, cited by the Court of Appeals for the Seventh Circuit, the Supreme Court said:

"The burden on a school board today is to come forward with a plan that promises realistically to work, and promises realistically to work now." 391 U.S. at 439, emphasis is the Court's.

Numerous other cases have similarly imposed upon responsible governmental bodies the burden of coming forward with a plan to remedy the effects of their past discrimination. See, for example, Hawkins v. Town of Shaw, 437 F.2d 1286, 1293 (5th Cir. 1971).

Under these circumstances, the burden must now be placed upon CHA of coming forward with a specific plan to remedy the effects of its past discrimination that promises realistically to work and to work now.

II. THE CHA PLAN MUST BE ONE THAT PROMISES
TO WORK NOW

For emphasis, we wish to point out that under the circumstances of this case delays are no longer tolerable and the CHA plan must be one designed to provide for immediate relief.

In Green the Court said:

"[D]elays are no longer tolerable..."
391 U.S. at 438.

In United States v. Duke, 332 F.2d 759, 769 (5th Cir. 1964), the Court said:

"The case has been pending two and a half years.
Effective relief is long overdue."

This case has been pending over 5 years. It is 2-1/2 years since CHA was ordered to use its best efforts

to provide new public housing as rapidly as possible. Here too, "effective relief is long overdue," and CHA's plan must therefore provide for immediate action.

III. CITY COUNCIL INACTION MAY NO LONGER BAR
PLAINTIFFS FROM THE RELIEF TO WHICH THEY
ARE ENTITLED

Under the circumstances of this case it is no longer appropriate to delay prompt and effective relief because of inaction on the part of the Chicago City Council. It is clear that, while it may have been appropriate for this Court to defer in the first instance to the local agencies involved, the Court's equitable powers are not circumscribed or limited by the state law which gives the City Council the power to approve or disapprove proposed CHA sites. In Haney v. County Board of Education of Sevier County, 429 F.2d 364, 368-69 (8th Cir. 1970), the Court said:

"Appellees' assertion that the District Court for the District of Arkansas is bound to adhere to Arkansas law, unless the state law violates some provision of the Constitution, is not constitutionally sound where the operation of the state law in question fails to provide the constitutional guarantee of a non-racial unitary school system. The remedial power of the federal courts under the Fourteenth Amendment is not limited by state law. Louisiana v. United States, 380 U.S. 145, 154, 85 S.Ct. 817, 13 L.Ed.2d 709 (1965)...

"Consequently, we can only conclude that regardless of the constitutionality of The Arkansas

Quality Education Act, it in no way limits the equity power of a federal district court in fashioning a decree which will effectuate 'a completely non-racial school system in Sevier County.'"

In Bradley v. School Board of Richmond, Virginia, 324 F.Supp. 396 400-401 (E.D. Va. 1971), the Court said:

"Assuming arguendo that this Court, in granting the relief requested, required certain of the defendants to fail to comply with a requirement of state law, such an order would not necessarily imply a holding that the statute violated was unconstitutional....The question of the law's validity never arises; its disregard is directed as a matter of remedy alone, in order to undo the effects of proved unconstitutionally discriminatory acts. A single judge can enter such an order."

In cases involving discriminatory standards for voting, courts have not been reluctant to require election officials to fail to impose onerous registration requirements, fixed by state law, on new applicants when it is proved that they have not been imposed on some in the past. No finding that the state laws were invalid was made; their application was enjoined as a matter of remedy." Emphasis added. //

In United States v. Greenwood Municipal Separate Sch. Dist., 406 F.2d 1086, 1094 (5th Cir. 1969), the Court said:

// "The school board protests that it is powerless to do what we ask because of state laws. ... Of course, one answer to the argument that state laws prevent the board from taking the necessary affirmative steps is that local teacher hiring statutes may not be interposed to frustrate a constitutional mandate. United States v. Board of Education of City of Bessemer, 396 F.2d at 51,...

The Board further protests that it cannot achieve faculty desegregation by transferring teachers to different schools because under state law teacher contracts are for specific schools, thus making the reassignment of a teacher a breach of contract. Again, however, a state law is invalid to the extent that it frustrates the implementation of a constitutional mandate." //

IV. THE MEMBERS OF THE CITY COUNCIL COULD
BUT NEED NOT BE MADE PARTIES

Were it necessary to the granting of the relief now sought, the members of the Chicago City Council could be made parties to this action. Rule 21 of the Federal Rules of Civil Procedure provides in relevant part:

"Parties may be...added by order of the Court on motion of any party...at any stage of the action and on such terms as are just."

Rule 19(a) of the Federal Rules of Civil Procedure provides in relevant part:

"A person who is subject to service of process and whose joinder will not deprive the Court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties..."

These and related rules have been utilized to join new parties at the relief stage of a case where their presence is necessary to afford complete relief. For example, in Griffin v. County School Board of Prince Edward County, 377 U.S. 218 (1964), additional parties were joined in order to

effect full relief a decade after the commencement of the litigation and seven years after the determination of liability. See 377 U.S. at 220-21 and 224. In remanding the case to the District Court for still further relief, the Supreme Court said:

"[T]he cause is remanded to the District Court with directions to enter a decree which will guarantee that these petitioners will get the kind of education that is given in the State's public schools. And, if it becomes necessary to add new parties to accomplish this end, the District Court is free to do so." 377 U.S. at 234.

In a number of cases, members of city councils have been made parties to litigation where their presence was necessary to afford full relief. An example of such a case is Bradley v. School Board of City of Richmond, Virginia, 51 F.R.D. 139 (E.D. Va. 1970), where joinder of members of the City Council of the City of Richmond was ordered by the Court at the relief stage of a school desegregation case. 51 F.R.D. at 143. The Court there said, "[A]bsent parties should be joined if it is probable that the relief sought cannot be achieved or can be achieved only partially or conditionally, without them." 51 F.R.D. at 141.

Here, however, no necessity appears for joining members of the Chicago City Council since, at this stage of the case at least, no relief against such members is presently sought. All that is now requested is a specific plan for the

acquisition of sites for public housing by CHA without regard to City Council action or inaction. Upon presentation of such a plan, and appropriate consideration thereof, an order will be sought directing CHA to acquire such sites, without regard to action taken or not taken by the City Council. Such an order will not require the City Council to do or to refrain from doing anything, and it is for this reason that it does not appear necessary or even appropriate that the members of the City Council be joined as parties to this action.

It may be, however, that members of the City Council will desire to petition this Court to intervene with respect to the further proceedings in this case. Plaintiffs take no position at this time as to whether such intervention should be permitted, but they will, and hereby do, undertake to provide members of the City Council with notice of the accompanying motion and the action of the Court taken with regard thereto (and to file proof of such service with this Court), so that members of the City Council will have an opportunity to petition to intervene should they desire to do so.

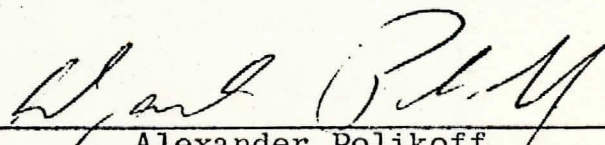
CONCLUSION

Plaintiffs are entitled to effective relief.

Such relief, in the circumstances of this case, can only be afforded by the prompt provision of new public housing. CHA has the duty to provide such relief. The Court has the power and the duty to see to it that it is done.*

For two-and-a-half years this Court and the plaintiffs have been waiting for relief. The time for waiting is now over.

Respectfully submitted,



Alexander Polikoff
One of the Attorneys for Plaintiffs

November 24, 1971

Alexander Polikoff
109 North Dearborn Street
Chicago, Illinois 60602
641-5570

* In the Griffin case, supra, the Supreme Court held explicitly that if the district court deemed it necessary the court even had the power to require county supervisors to levy taxes - "require the Supervisors to exercise the power that is theirs to levy taxes to raise funds adequate to reopen, operate and maintain without racial discrimination the public school system in Prince Edward County like that operated in other counties in Virginia." 377 U.S. at 233.

