

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

FILED

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DOROTHY GAUTREUX, et al.,	)	
	)	
Plaintiffs,	)	Civil Action Nos.
	)	
v.	)	66 C 1459
	)	66 C 1460
CHICAGO HOUSING AUTHORITY	)	
and GEORGE W. ROMNEY, et al.,	)	(Consolidated)
	)	
Defendants.)	)	

SUPPLEMENTAL MEMORANDUM IN SUPPORT OF
PLAINTIFFS' MOTION FOR FURTHER RELIEF
AGAINST THE CHICAGO HOUSING AUTHORITY

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This supplemental memorandum is submitted in further support of plaintiffs' motion for further relief, filed November 24, 1971. The Court has asked that this memorandum address zoning questions, which is done (Part V hereof). Authorities in addition to those included in plaintiffs' memorandum of November 24, 1971, are also supplied. For convenience, this memorandum incorporates all of the material included in the prior memorandum so that no further reference need be made to that earlier document.

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 submit proposed judgment orders 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 its judgment 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 [to] 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 ..." Ibid.

3. On July 20, 1970, no new Dwelling Units having been provided pursuant to the order of July 1, 1969, CHA was ordered 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.*

* "[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 ..." Id. at 770.

This remedial duty can only be performed by assuring the provision of new public housing. The Court is not obligated to accept - indeed, it is duty-bound to reject - the notion that non-production of housing is an option available to CHA. In Hawkins v. Town of Shaw, 437 F.2d 1286 (5th Cir. 1971), the court dealt with the argument that the correction of past discrimination is not a judicial function. The Court said:

"Having determined that no compelling state interests can possibly justify the discriminatory results of Shaw's administration of municipal services, we conclude that a violation of equal protection has occurred.

RELIEF

"In reaching this decision and in fashioning an appropriate remedy, we are not unaware of the fundamental institutional problems involved. The need for judicially discoverable and manageable standards as well as an awareness of the distinctions between the roles played by the coordinate branches of government must, of course, be foremost in our mind. Nevertheless, having carefully considered the problems involved, we feel this case warrants judicial intervention ...

"Yet, it may also be argued that even though this Court has adequate standards to determine fairly that municipal services have been allocated in a discriminatory manner, the correction of this problem is not a judicial function. We disagree. The separation of powers principle assumes that we have a system of checks and balances. In Madisonian terms, each department or power center is to act as a curb on other departments or centers. Indeed, 'unless these departments be so far connected and blended, as to give to each a constitutional control over the others, the

degree of separation which the maxim requires as essential to a free government, can never in practice, be duly maintained.' Madison, The Federalist, No. 48. Utilizing the power vested in this court to check an abuse of state or municipal power is, in effect, consistent with the separation of powers principle." 437 F.2d at 1292, emphasis added in the last paragraph.

Moreover, this Court has already recognized in this case that a realistic remedy requires more public housing, not an end to it. Thus, the order of July 1, 1969 directed CHA to use its best efforts to increase the supply of such housing, and the orders of July 20, 1970 and March 1, 1971 directed CHA to advise the City Council of sites for new public housing. Since these prior orders have not been effective, more specific affirmative relief is now required. Plaintiffs' motion for further relief is the first step to that end.

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 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), the 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 in the Court of Appeals opinion, 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 government 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, supra, 437 F.2d at 1293.

Under these circumstances, the burden must now be placed upon CHA to come forward with a specific plan to remedy the effects of its past discrimination. The plan must be one that "promises realistically to work." Thus, it must deal with the obstacle of the City Council veto power which has thus far precluded the plaintiffs from obtaining relief. (See Part III, below.) And the plan must be one that promises "meaningful progress." Thus, it must deal not with token numbers of living units but with the legacy of the more than 30,000 segregated units provided over the past three decades.

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 Henry v. Clarksdale Municipal Separate School Dist., 409 F.2d 682, 689 (5th Cir. 1969), the Court said:

"The Board should bear in mind that it bears the burden of proving that its existing plan of desegregation is adequate now 'to convert [the dual system] to a unitary system in which racial discrimination would be eliminated root and branch.' If the plan does not promise 'realistically to work now', the Board bears the burden of taking corrective action."

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.*

*CHA has on a number of occasions proclaimed its good faith in attempting to carry out the Court's prior orders and has
(continued on page 8)

III. CITY COUNCIL INACTION MAY NO LONGER BAR PLAINTIFFS FROM THE RELIEF TO WHICH THEY ARE ENTITLED; THE COURT HAS THE POWER AND THE DUTY TO DIRECT CHA TO DISREGARD THE CITY COUNCIL VETO POWER OVER SITES

Under the circumstances of this case prompt and effective relief may no longer be delayed 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
(footnote continued from p.7)

invited plaintiffs to initiate contempt proceedings if they disbelieve these proclamations. This misconceives the nature of CHA's duty. See United States v. Board of Education of City of Bessemer, 396 F.2d 44, 48 (5th Cir. 1968), where the court said:

"We think putting it [the proceeding in the district court] in the mold analogous to a contempt proceeding is a mistake of more than formal, procedural consequences. It just puts emphasis on the wrong things, burdens on the wrong parties. At this very, very late date in the glacial movement toward school racial integration it should no longer be an issue of good faith. The question is and must always remain: Is the constitutional imperative being met? That duty is not on plaintiffs, nor on the government, nor on school children. It is squarely on the back of the State and here, the State's Agents, the School Boards. Next, by the nature of things, the Court itself has something more than the passive role of private litigation. It has the right - indeed it has the duty - in the face of facts showing little, if any, compliance to cry out in a juridically scriptural way to those on whom its orders pin the burden: 'When, oh when? What is being done? What, exactly what are you going to do? Not what are your hopes?'"

disapprove proposed CHA sites. The remedial power of the federal courts under the Fourteenth Amendment is not limited by state law.

In Louisiana v. United States, 380 U.S. 145 (1965), a voting discrimination case, the Supreme Court expressly declined to pass on the validity of a new state voter-qualification test, 380 U.S. at 154, n.17, but nonetheless affirmed the district court's order enjoining use of the test in 21 Louisiana parishes until past voter discrimination in those parishes had been remedied. 380 U.S. at 154-55.

In Haney v. County Board of Education of Sevier County, 429 F.2d 364 (8th Cir. 1970), the remedy for segregation in a school system required the annexation of one school district by another and the establishment of a new school board for the resulting enlarged district. In fashioning these remedies the district judge assumed he was bound by the state law governing annexation of school districts and the composition of school boards. The Court of Appeals for the Eighth Circuit said this was erroneous and that, "regardless of [its] constitutionality," the state law "in no way" limited the equity powers of the district court in fashioning its decree.

"The appellants ... contend that the District Court ... erred in its initial premise by assuming that it was bound by Arkansas law ... We agree. 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 (1965). Therefore, it was not mandatory that the District Court model its Order dealing with annexation and the composition of the new school board after a state law ...

"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.'" 429 F.2d at 368-69, emphasis added.

Similarly, in United States v. Greenwood Municipal Separate Sch. Dist., 406 F.2d 1086 (5th Cir. 1969), steps deemed appropriate to desegregate a school faculty were not taken because of the mistaken view that state laws governing the hiring and assignment of teachers blocked the way. 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." 406 F.2d at 1094, emphasis added.

In the Bessemer case, cited in Greenwood, the court said:

"[W]e are emphatic that the school board could not use local tenure or teacher hiring-security statutes as a justification for failing to initiate and maintain desegregation of faculties." 396 F.2d 44, 51 (5th Cir. 1968).

In Bradley v. School Board of Richmond, Virginia, 324 F.Supp. 396 (E.D. Va. 1971), the defendants contended that the relief sought in a school desegregation case would have the effect of enjoining them from enforcing or complying with state law in the operation of public schools. 324 F.Supp. at 397-98. The court disagreed, but nonetheless went on to say:

"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." 324 F.Supp. at 400-401, emphasis added.

Other cases have similarly held that local officials may be directed to ignore state law, or that actions taken or proposed to be taken pursuant to otherwise valid state laws may be enjoined, wherever such directions or injunctions are necessary to remedy the effects of past discrimination. See, for example, Aytch v. Mitchell, 320 F.Supp. 1372 (E.D. Ark. 1971); United States v. State of Texas, 321 F.Supp. 1043

(E.D. Texas 1970); and Burleson v. County Bd. of Election Commissioners, 308 F.Supp. 352 (E.D. Ark. 1970). 1a

Although most of the foregoing authorities are school desegregation cases, Louisiana v. United States illustrates the application of the same principles in other contexts. See also, U.S. v. Logue, 344 F.2d 290 (5th Cir. 1965); United States v. Duke, 332 F.2d 759 (5th Cir. 1964); and Meredith v. Fair, 298 F.2d 696 (5th Cir. 1962).*

*Both CHA and HUD have said a number of times that this is not a school case. But they have never explained why constitutional principles applicable to school cases (developed, we should recall, in transportation cases, and since applied to all manner of public services) should not be applicable to racial discrimination in housing. There is of course a direct relationship between school and housing discrimination, as the following cases indicate:

"[T]he public housing program in Atlanta has contributed, in no small way, to racial concentration in a compacted area. One of the consequences of this racial concentration is that it has become virtually impossible to achieve meaningful school desegregation. Indeed, as even a glimmering of objectivity will disclose, a dispersal of urban housing patterns is the only alternative to massive bussing if desegregation, rather than resegregation, is to be achieved." Crow v. Brown, F.Supp. ___, Civil No. 14954 (N.D. Ga., September 7, 1971), p.20.

"There is a direct relationship between the selection of sites for public housing projects and the selection of sites for public schools." Bradley v. School Board of City of Richmond, 317 F.Supp. 555, 561 (E.D. Va. 1970).

"[N]o real hope for the dismantling of dual school systems appears to be in the offing unless and until there is a dismantling of the all Black residential areas." Bradley, supra., 317 F.Supp. at 566.

"Pupil racial segregation in the Detroit Public School System and the residential racial segregation resulting primarily from public and private racial discrimination are interdependent phenomena." Bradley v. Milliken, F.Supp. ___, Civil No. 35257, (E.D. Mich., September 27, 1971), p.24.

The principle at work in these cases is simply an aspect of the familiar rule that a law which is neutral on its face may have a discriminatory effect. For example, in the Louisiana case, voting registrars were instructed to disregard facially neutral qualification requirements of state law when the effect of applying such qualifications would have been to frustrate the effort to remedy the past discrimination in voter registration. Here, in like manner, the future use of the facially neutral City Council consent requirement should be avoided to the extent necessary to prevent frustration of the Court's effort to remedy past discrimination.*

It is plain, of course, that the Court has the power and the duty to decree such avoidance without any determination of a present discriminatory motivation in the application of the state law in question - the frustrating effect of the state law is the only determination required. Whether or not the state law requirement had been used as an instrument of discrimination in the past (in Louisiana, Haney, Greenwood,

* "[A] relationship otherwise rational may be insufficient in itself to meet constitutional standards - if its effect is to freeze-in past discrimination. For example, a rational relationship exists between literacy or citizenship tests (fairly administered) and the right to vote. But we enjoin the use of such tests when they freeze into a voters' registration system the effects of past discrimination." Henry v. Clarksdale Municipal Separate School Dist., 409 F.2d 682, 688 (5th Cir. 1969).

Bessemer and Bradley it had not been), its disregard is ordered if adherence to it frustrates the exercise of remedial powers by a federal court under the Fourteenth Amendment.*

Finally, although some of the cases speak loosely of the invalidity of the state law - "a state law is invalid to the extent that it frustrates the implementation of a constitutional mandate," Greenwood, supra, 406 F.2d at 1094 - the correct view is that, "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." Bradley, supra, 324 F.Supp. at 400. And see Louisiana, supra. In any event, and regardless of the verbal formulation, a single judge may enter the appropriate "disregard" order; a three-judge court is not required. Bradley, supra, 324 F.Supp. at 400-401. See also, Southern Alameda Span. Sp. Org. v. City of Union City, Cal., 424 F.2d 291, 296 (9th Cir. 1970), and Bradley v. Milliken, 433 F.2d 897, 900, n.2 (6th Cir. 1970).

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,

*Although, as noted, the distinction referred to in the text is irrelevant, this case is in the category of those in which the state law requirement has been the instrument of past discrimination.

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:

* "The [city] council is not a legal entity but is merely a body composed of a mayor and councilmen vested with certain corporate powers, and has no capacity to sue or be sued. The individual members of the council may sue and be sued, and the same is true as to the City of Huntington, a municipal corporation." Gates v. Council of City of Huntington, 93 F.Supp. 757, 759 (S.D.W.Va. 1950).

a
"[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, emphasis added. a

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.*

There is, of course, no question but that a federal court has the power to grant affirmative relief against city councils, even with respect to the exercise of discretionary legislative functions. Thus, in Connett v. City of Jerseyville, 125 F.2d 121, 124 (7th Cir. 1941) the Court said:

*Other cases in which members of city councils have been joined as parties defendant include Hawkins v. Town of Shaw, 437 F.2d 1286 (5th Cir. 1971); Kennedy Park Homes Ass'n v. City of Lackawanna, 436 F.2d 108 (2nd Cir. 1970); and Ellis v. Mayor and City Council of Baltimore, 234 F.Supp. 945 (D.Md. 1964).

"It must be apparent by now that the law of this case is that this court has the power and will exercise it to compel the City to perform its clear legal duty.

"Courts have for years compelled city councils to do their legal duty, though the performance of that duty may require the exercise of discretion and be in the performance of legislative functions, such as levying taxes." [citations omitted]

In the Griffin case, supra, the Supreme Court held explicitly that if the district court deemed it necessary the court 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.

More recently, the Supreme Court has said:

"Although the forms and functions of local government and the relationships among the various units are matters of state concern, it is now beyond question that a state's political subdivisions must comply with the Fourteenth Amendment. The actions of local government are the actions of the State. A city, town, or county may no more deny the equal protection of the laws than it may abridge freedom of speech, establish an official religion, arrest without probable cause, or deny due process of law." Avery v. Midland County, 390 U.S. 474, 480 (1968).

In Franklin v. Quitman County Board of Education, 288 F.Supp. 509 (N.D. Miss. 1968), the defendant board of education had been ordered in 1967 to desegregate its school system. In 1968

a/ the plaintiffs joined the County Board of Supervisors and the State Educational Finance Commission as additional parties to the litigation and sought ancillary relief against the members of those bodies. The relief was granted. As to the County Board the court said:

"[T]he Board of Supervisors may not act to defeat the constitutionally required obligations of the County Board of Education to plan for, and effectuate, facilities for a biracial, unitary school system. Indeed, this constitutional duty also rests upon the Board of Supervisors to the extent that it must cooperate with, and not impede, the County Board of Education in the fulfillment of its plans." 288 F.Supp. at 518.

As to the State Educational Finance Commission, the court said:

"Viewed in any light, the Commission is extensively involved in the business of public school education and is, therefore, not in a position to adopt a 'hands-off policy' as regards the disestablishment of state-imposed segregation in a public school system. The affirmative obligation to seek means of disestablishing state-imposed segregation must be shared by all agencies, or agents of the state, including Educational Finance Commission, who are charged by law with, and who exercise, official public school functions. Neutrality must be forsaken for an active, affirmative interest in carrying out constitutional commands." 288 F.Supp. at 519. /a

Thus it is clear that should it become necessary to do so, members of the City Council and other local officials and agencies could be joined as parties to the action and that the Court would be empowered to grant appropriate relief with respect to them. However, no necessity appears for joining

members of the Chicago City Council at this time since, at this stage of the case at least, no relief against such members is presently sought. All that is now requested is that CHA prepare a specific plan for the acquisition of sites for public housing 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 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 now be joined as parties.

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 action taken by the Court with regard to plaintiffs pending motion (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.

*CHA has the power of eminent domain. Ill.Rev.Stat. 1969, ch. 67-1/2, §9.

V. THE COURT HAS ADEQUATE POWER TO DEAL WITH ZONING PROBLEMS, SHOULD THEY ARISE

The court has asked whether it has the power to deal with zoning problems should they arise. The answer is unequivocally yes.

In Kennedy Park Homes Ass'n. v. City of Lackawanna, 318 F.Supp. 669 (W.D.N.Y. 1970), the court, having found racial discrimination to be at the root of Lackawanna's efforts (including use of the zoning power) to block a low income housing project, entered a comprehensive but very specific injunction against the defendants who included Lackawanna's Mayor and the members of its City Council. Among other things the defendants were,

"enjoined from using any of the City's municipal powers regarding land use to prevent or interfere with the construction of Kennedy Park Subdivision." 318 F.Supp. at 697.

The Court of Appeals for the Second Circuit affirmed "the comprehensive and well-documented decision and order of the learned trial judge ..." Kennedy Park Homes Ass'n v. City of Lackawanna, 436 F.2d 108, 109 (2nd Cir. 1970); cert. denied, 401 U.S. 1010 (1971).

Similarly, in Dailey v. City of Lawton, Oklahoma, 296 F.Supp. 266 (W.D. Okla. 1969), the City of Lawton sought to block a low-income housing project for racial reasons. The device employed was a refusal to issue a building permit based on improper zoning, coupled of course with a refusal to change the

zoning. "The district court enjoined the [city officials] from denying the building permit on the ground of a zoning violation," and the Tenth Circuit Court of Appeals affirmed. Dailey v. City of Lawton, Oklahoma, 425 F.2d 1037, 1038 (10th Cir. 1970).

In Southern Alameda Spanish Speaking Organization (SASSO) v. City of Union City, Cal., 424 F.2d 291 (9th Cir. 1970), the Court said:

"Given the recognized importance of equal opportunities in housing, it may well be, as matter of law, that it is the responsibility of a city and its planning officials to see that the city's plan as initiated or as it develops accommodates the need of its low-income families, who usually - if not always - are members of minority groups." 424 F.2d at 295-96.

On remand the district court concluded as follows:

"Failure of the City to thus far solve its housing problem and to accommodate to the housing needs of its low income residents by using its fiscal and eminent domain powers if necessary for that purpose, has not persisted over a period sufficiently long to support a finding that the City has contributed to the problem either affirmatively by its action or negatively by its inaction, thoughtlessness or indifference. Therefore, failure of the electorate to approve the rezoning of the Baker Road site, even considered in the light of the City's past performance, is not such as to amount in effect at this time to failure of the City to accommodate to the housing needs of its low income residents within the meaning of the law." SASSO v. City of Union City, No. 51590 (N.D. Calif., July 31, 1970), p.20.

The court went on to say, however:

"If, however, the City fails to take within a reasonable time all steps necessary and reasonably feasible under the law to accommodate the needs of its low income residents, the existing housing situation has the potential to become and may reasonably be expected soon to become such that failure or refusal to rezone a particular site for private developers of low cost housing, such as SASSO, considered in the context of any future, persistent failure of the City, would become, in effect, a denial of the needs of low cost housing residents and a denial of equal protection of law." Id. at 21.

Here, of course, the court has already made the determination of a denial of equal protection. But even without that determination the court in SASSO concluded,

"[P]laintiffs should be granted, however, relief insofar as they pray that the City take steps necessary and reasonably feasible under the law to accommodate within a reasonable time the needs of low income residents of Union City.

"Such steps shall include, so far as necessary and reasonably feasible under the law, ... public housing programs requiring the exercise of the fiscal and eminent domain powers of the City if such be necessary and reasonably feasible under the law to accomplish the object of this order." Id. at 21-22.

The Court also reserved jurisdiction,

"to grant plaintiffs relief in respect to rezoning if and when the court finds, upon such further hearing as it may order, that the housing situation has become such that failure to rezone has become in effect, denial of decent housing to low income residents and denial of equal protection of law." Id. at 22.

See also, De Simons v. Greater Englewood Housing Corp., 267 A.2d 31, 39 (N.J. 1970), where the Supreme Court of New

Jersey said that, in view of the strong public policy "to furnish housing for minority or under-privileged segments of the population outside of ghetto areas" (p.38), denial of a zoning change which was designed for the sole purpose of opening up non-ghetto residential areas to low income housing "could not well be sustained." (p.39.)

In Crow v. Brown, ___ F.Supp. ___, Civil No. 14954, (N.D. Ga., September 7, 1971), the court not only ordered county officials to issue building permits for low income housing projects and enjoined them from interfering in any way with the construction and completion of the projects, but also directed them to meet with representatives of the Atlanta Housing Authority to select sites for public housing and to plan and implement a development program for such sites, all "with a view toward full compliance with the national housing policy of balanced and dispersed public housing." The relevant portions of the order in Crow are set out in Appendix A to this memorandum, together with a portion of the accompanying opinion.

Under these authorities there can be no doubt that this Court has the power to deal effectively with any zoning or related problems that may arise should it be necessary to do so to effectuate the remedy to which plaintiffs are entitled. At this point, however, it is premature to focus on such possibilities. All that is sought now is a plan for the acquisition of specific sites on a prescribed timetable. When that plan is produced it

will be time enough to consider zoning and other problems, if any, presented by particular sites.

However, it should not be anticipated that any such problems will necessarily arise. As required by the National Housing Act, CHA and the City of Chicago have entered into a so-called "Cooperation Agreement" covering 60,000 units of public housing, built and to be built, in Chicago. In addition to obligating the City to furnish all public services to CHA projects which are furnished to other dwellings in the City, and to "cooperate with the Local Authority [CHA] by such other lawful action or ways as the City and the Local Authority may find necessary in connection with the development and administration of such Projects," the Cooperation Agreement specifically provides that the City shall,

"Insofar as the City may lawfully do so, grant such deviations from the Building Code of the City as are reasonable and necessary to promote economy and efficiency in the development and administration of such Project, and make such changes in any zoning of the site and surrounding territory of such Project as are reasonable and necessary for the development and protection of such Projects;" p.7. ¶6(c).

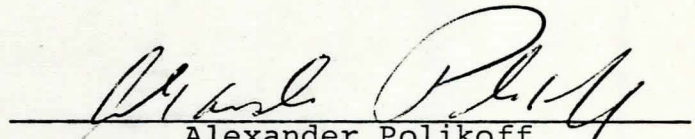
CONCLUSION

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

In the circumstances of this case, effective relief can

only come through the prompt provision of new public housing. CHA has the duty to provide the necessary new housing. The Court has the power and the duty to see that it is done. Plaintiffs' pending motion for further relief should be granted as the first step to that end.

Respectfully submitted,


Alexander Polikoff
One of the Attorneys for Plaintiffs

December 1, 1971

Alexander Polikoff
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APPENDIX A

- I. Excerpt from the Order entered in Crow v. Brown,
F.Supp. ____ (Civil No. 14954, N.D. Ga., September
7, 1971).
-

IV. REMEDY

For the foregoing reasons it is hereby ORDERED that,
effective today:

1. The Commissioners of Roads and Revenues of Fulton County are enjoined from issuing any instructions to any Fulton County official to refrain from issuing building permits for the "Boatrock" and "Red Oak" projects;

2. Defendant Garner shall issue building permits for the "Boatrock" and "Red Oak" projects;

3. All Fulton County officials are enjoined from interfering in any way with the construction and completion of the "Boatrock" and "Red Oak" projects; .

4. (a) The Commissioners of Roads and Revenues of Fulton County and other County officials such as the Director of the Department of Planning are to meet with representatives of the Atlanta Housing Authority within 10 days to appoint a joint committee which will draw up a list of general areas that lie both within the unincorporated sections of Fulton County and the jurisdiction of the Atlanta Housing Authority in which low-rent public housing would be appropriate.

(b) This joint committee shall, within 30 days after such meeting, draw up such a list with a view toward full compliance with the national housing policy of balanced and dispersed public housing;

(c) Within 60 days after the completion of such a list, the joint committee shall prepare detailed site evaluation and planning reports and recommendations for more specific localities within the general areas that would be appropriate for low-rent public housing under the national housing policy. Representatives of the City of Atlanta and the federal government may be called upon for assistance in the preparation of such reports.

(d) Copies of all lists and reports shall be served upon the Atlanta Housing Authority, the regional office of HUD, the Commissioners of Roads and Revenues of Fulton County, and this court;

(e) Within 30 days after the submission of such reports and recommendations by the joint committee, the Commissioners of Roads and Revenues shall meet with representatives of the Atlanta Housing Authority for the purpose of implementing the recommendations of the joint committee. The results of that meeting shall be reported to this court.

II. Excerpt from the Opinion entered in Crow v. Brown,
F.Supp. _____ (Civil No. 14954, N.D. Ga.,
September 7, 1971), pp. 17-21.

For better or worse, both by legislative act^{7/} and judicial decision, this nation is committed to a policy of balanced and dispersed public housing. See Kennedy Park Homes Ass'n. v. City of Lackawanna, 318 F.Supp. 669 (W.D.N.Y.), aff'd, 436 F.2d 108 (2d Cir. 1970), cert. denied, 401 U.S. 1010 (1971); Dailey v. City of Lawton, Okla., 296 F.Supp. 266 (W.D. Okla. 1969), aff'd, 425 F.2d 1037 (10th Cir. 1970); Gautreaux v. Chicago Housing Authority, 296 F.Supp. 907 (N.D. Ill. 1969), enforced in 304 F.Supp. 736, aff'd, 436 F.2d 306 (7th Cir. 1970), cert. denied, 402 U.S. 922 (1971); Hicks v. Weaver, 302 F.Supp. 619 (E.D. La. 1969). Among other things, this reflects the recognition that in the area of public housing local authorities can no more confine low-income blacks to a compacted and concentrated area than they can confine their children to segregated schools. Moreover, the court in Lackawanna held that even though the deprivation of plaintiffs' equal housing rights had been caused to some extent by the sheer neglect and thoughtlessness of local officials, there was, nevertheless, a violation of the Equal Protection Clause. In so holding the court there cited Hobson v. Hansen, 269 F.Supp. 401 (D. D.C. 1967), aff'd sub nom., Smucks v. Hobson, 408 F.2d 175 (D.C. Cir. 1969) (en banc) in which Judge J. Skelley Wright held:

"The complaint that analytically no violation of equal protection vests unless the inequalities stem from a deliberately discriminatory plan is simply false. Whatever the law was once, it is

^{7/}"No person in the United States shall, on the ground of race, color, or national origin, be excluded from participating in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance." Civil Rights Act of 1964, 42 U.S.C. §2000d (1964).

a testament to our maturing concept of equality that, with the help of Supreme Court decisions in the last decade, we now firmly recognize that the arbitrary quality of thoughtlessness can be as disastrous to private rights and the public interest as the perversity of a willful scheme" At 497.

The Fifth Circuit, quoting the above, adopted Judge Wright's view in Hawkins v. Town of Shaw, Mississippi, 437 F.2d 1286 (5th Cir. 1971) and held that in civil rights suits alleging racial discrimination in contravention of the Fourteenth Amendment actual intent to discriminate need not be directly proved. The Second Circuit adopted this view specifically in a housing context both in Lackawanna and in Norwalk CORE v. Norwalk Redevelopment Agency, 395 F.2d 920 (2d Cir. 1968). The Ninth Circuit has hinted that it agrees with the Second Circuit in this matter. Southern Alameda Spanish Speaking Organization v. City of Union City, California, 424 F.2d 291, 295-96 (9th Cir. 1970). Only a showing of compelling governmental interest could overcome a finding of unconstitutionality in such thoughtlessness and inaction on the part of municipal officials. Shapiro v. Thompson, 394 U.S. 618 (1969); McLaughlin v. Florida, 379 U.S. 184 (1964).

It is also clear that the policy of HUD requires that public housing be dispersed outside racially compacted areas. At trial, the regional director of the southeastern office of HUD testified that he was now operating under the written instructions of former HUD Secretary Robert C. Weaver in a memorandum dated September 27, 1967 to direct the building of public housing outside "ghetto" areas. Such instructions were substantially repeated by President Nixon on June 11, 1971, and are part of the national housing policy. Indeed, relief has been granted against HUD for failing to comply with this affirmative duty to disperse public housing which is implicit in the Housing Act of 1949, the Civil Rights Act of 1964, and the Civil Rights Act of 1968. Shannon v. U.S. Dep't. of Housing and Urban Development, 436 F.2d 809 (3rd Cir. 1970).

As this court pointed out, the public housing program in Atlanta has contributed, in no small way, to racial concentration in a compacted area. One of the consequences of this racial concentration is that it has become virtually impossible to achieve meaningful school desegregation. Indeed, as even a glimmering of objectivity will disclose, a dispersal of urban housing patterns is the only alternative to massive bussing if desegregation, rather than resegregation, is to be achieved. See Calhoun v. Cook, Civil No. 6298 (N.D. Ga., July 28, 1971). A second consequence has been a swelling of the unemployment

rolls in the City since job opportunities have become more scarce each year, although they have increased in the suburbs. In a report to Congress and the President, the National Commission on Urban Problems stated:

"The overwhelming majority of the future nonwhite population growth is likely to be concentrated in central cities unless major changes in public policies come about.

...

Slums in our big cities, which are now in the midst of social decay, may well become social and economic disaster areas.

It is entirely possible that a greater concentration of Negroes in the central cities would be accompanied by an increase in tension and violence. If this violence is met by repressive measures there could be a further polarization of blacks and whites, and the flight of more and more businesses, and therefore, jobs from the city.

The suicidal consequence that such a possibility suggests are not pleasant to contemplate. They threaten our country."
NATIONAL COMM'N ON URBAN PROBLEMS, BUILDING
THE AMERICAN CITY, H. R. DOC. NO. 91-34,
91st Cong., 1st Sess. 5 (1969).

Given the decisions previously cited it is abundantly clear that, in the absence of supervening necessity, any county action or inaction intended to perpetuate or which in effect does perpetuate the conditions just described cannot stand. Nor can county action or inaction which would thwart their correction be permitted to continue.

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

DOROTHY GAUTREAUX, et al.,	)	
	)	
Plaintiffs,	)	Civil Action Nos.
	)	
v.	)	66 C 1459
	)	66 C 1460
CHICAGO HOUSING AUTHORITY and	)	
GEORGE W. ROMNEY, et al.,	)	(Consolidated)
	)	
Defendants.	)	

NOTICE

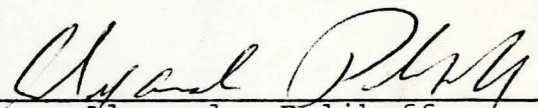
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PLEASE TAKE NOTICE that we have this day filed with the Clerk of the United States District Court for the Northern District of Illinois, Eastern Division, the Supplemental Memorandum in Support of Plaintiffs' Motion for Further Relief Against the Chicago Housing Authority, copies of which memorandum are hereby served upon you.

December 1, 1971

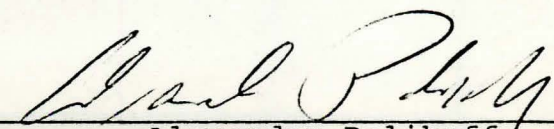
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Alexander Polikoff
One of the Attorneys for Plaintiffs.

PROOF OF SERVICE

The undersigned, one of the attorneys for plaintiffs, hereby certifies that he served a copy of the supplemental memorandum of plaintiffs, together with the foregoing notice, by mailing copies of the same to the persons and at the addresses shown on the notice, all this 1st day of December, 1971.



Alexander Polikoff