No. 17-1807

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

DOROTHY GAUTREAUX, ET AL.,

Plaintiffs-Appellees,

v.

GEORGE W. ROMNEY, Secretary
of the Department of Housing
and Urban Development,

Defendant-Appellant,

and

CITY OF CHICAGO, CENTRAL ADVISORY COUNCIL,
and CHICAGO HOUSING AUTHORITY,

Intervenors-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

BRIEF FOR THE APPELLANT SECRETARY OF THE
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

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ISSUE PRESENTED

Whether the district court abused its discretion by enjoining the Secretary of Housing and Urban Development from releasing approximately $26,000,000 in Model Cities funds to the City of Chicago until the City approves 700 sites for low-income public housing located in areas of Cook County one mile or more from any area having a Negro population of 30 percent or more.

STATEMENT OF THE CASE

1. The Model Cities Statutory Framework.

The Model Cities Program was established by the Demonstration Cities and Metropolitan Development Act of 1966. 80 Stat. 1255. This Act constituted the legislative response to what Congress determined was "the most critical domestic problem facing the United States," the problem of "improving the quality of urban life * * *." 42 U.S.C. 3301. Both the complex nature of the problem and the comprehensive scope of the Model Cities Program are indicated by the Act's broad purposes:

> * * * to provide additional financial and technical assistance to enable cities of all sizes (with equal regard to the problems of small as well as large cities) to plan, develop, and carry out locally prepared and scheduled comprehensive city demonstration programs containing new and imaginative proposals to rebuild or revitalize large slum and blighted areas; to expand housing, job, and income opportunities; to reduce dependence on welfare payments; to improve educational facilities and programs; to combat disease and ill health; to reduce the incidence of crime and delinquency; to enhance recreational and cultural opportunities; to establish better access between homes and jobs; and generally to improve living conditions for the people who live in such areas, and to accomplish these objectives through the most effective and economical concentration and coordination of Federal, State, and local public and private efforts to improve the quality of urban life.
>
> [42 U.S.C. 3301.]

While expanding housing opportunities is one of these purposes, the Model Cities Program treats housing as one aspect of its broad social aim of improving the quality of urban life.

To accomplish these goals, the Act provides federal grants-in-aid to city demonstration agencies for the specific projects and activities included within a city's Model Cities Program. 42 U.S.C. 3305(c) and (d). The Act also authorizes grants to pay 80 percent of the costs of planning, developing, and administering the city's program. 42 U.S.C. 3304, 3305(b). In addition to the financial assistance, the Secretary of HUD is authorized to provide technical assistance. 42 U.S.C. 3306. The Act also requires that city programs include a relocation plan for individuals, families, business concerns, and nonprofit organizations displaced by the Model Cities Program. 42 U.S.C. 3307(a). Moreover, to be eligible for federal assistance, a city program must satisfy the criteria set forth in 42 U.S.C. 3303, including the requirement that:

> * * * the program, including rebuilding or restoration, will contribute to a well-balanced city with a substantial increase in the supply of standard housing of low and moderate cost, [and] maximum opportunities in the choice of housing accommodations for all citizens of all income levels * * *.
>
> [42 U.S.C. 3303(a)(3).]

In implementing the Act's provisions, however, the Secretary is directed to "emphasize local initiative in the planning, development, and implementation of comprehensive city demonstration programs * * *." 42 U.S.C. 3303(b)(1). Congress intended the Model Cities Program "to be a local program, planned and carried out by local people, and based on local judgment as to the city's needs and its order of priority in meeting these needs." S. Rep. No. 1439, 89th Cong., 2nd Sess. 6 (1966).

2. <u>The Chicago Model Cities Program</u>.

Planning for the Chicago Model Cities Program commenced in November 1967, and implementation began in September 1969 (App.

337[1/]). The program is designed to develop and carry out many projects directly benefiting the residents of Chicago's four Model Cities target areas during a five-year period (App. 337-344, 354-357). These target areas were selected because they are neighborhoods for the poor and the disadvantaged and places of considerable disorganization in the community (App. 187). Three of the four target areas have predominantly Negro populations (App. 342). Two Chicago Housing Authority ("CHA") low-income public housing projects are located within a Model Cities target area (App. 569-570). These two projects have a population of 36,000 (Affidavit of Harry J. Schneider, attached to Memorandum of CHA in Opposition to Plaintiffs' Rule 62(c) Motion for Injunction, filed September 20, 1971.) The district court's finding in the companion case, Gautreaux v. Chicago Housing Authority, 296 F. Supp. 907, 910 (N.D. Ill., 1969), indicates that virtually all of these 36,000 CHA tenants residing in a target area are Negroes and, hence, are members of the plaintiff class in this litigation.

Among the projects and activities in the Chicago Model Cities Program to help target area residents are those pertaining to health, education, child care and social services, economic development, criminal justice, and law enforcement (App. 338). Priorities among these programs are determined by the residents of the target areas and local agencies (App. 174, 347). Educational programs have thus far been accorded highest priority (App. 338). The Model Cities funds are raising the per capita expenditure for pupils in seven target area schools from approximately $675 to $1500 (App. 340). Free hot breakfasts and lunches

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1/ The reference "App. ___" is to the Appendix filed by the City. "Exh. App. ___" refers to the Volume of Exhibits filed as part of that Appendix. "Tr. ___" refers to portions of the transcript not reproduced in the Appendix.

are being provided to the school children. Teacher training programs are being implemented, and 500 teacher aides have been hired. These aides are all residents of the area served by the schools. Model Cities funds have also enabled school health care services to be expanded and physical plants to be improved (App. 340-341).

The residents of the target areas, including the public housing tenants, have given health services the second highest priority (App. 338). Serious health problems exist in the target areas both among children and adults (App. 350-351). To meet these problems, the Chicago Model Cities Program includes plans to establish a comprehensive neighborhood family health center in each of the four target areas by the end of the program's five-year duration. During the first Model Cities period, which lasted from September 1969 to June 15, 1971 (App. 355), clinics were established in rented facilities, medical staffs assembled, and equipment purchased (App. 176). Money was also allocated for site acquisition and construction for permanent health centers. During the second Model Cities period, June 15, 1971, to December 31, 1971 (App. 357), construction of the permanent facilities is to be completed (App. 176, 352).

The expansion of employment opportunities for the disadvantaged target area residents is a vital goal of the Chicago program pursued in conjunction with its other projects and activities (App. 348). Eighty percent of the 4,000 persons employed through the Model Cities Program are target area residents (App. 347-348). Three-quarters of these employees are the primary wage earners of their households (App. 348). In addition to serving as teacher aides, for example, area residents are also employed in eighteen day care centers (App. 573) which serve over 1100 children daily (App. 388).

Only six of the fifty or more Chicago Model Cities Program activities place a major emphasis on housing (App. 167, 446). The first of these six projects is a new leasing program established with $1,000,000 in Model Cities funds matched with $1,000,000 in funds provided by the City of Chicago (App. 372; Exh. App. 19). Under this program the Chicago Dwellings Association enters contracts with private real estate firms to lease units to low-income families. The units are to be selected "throughout the Chicago Metropolitan area" to ensure equal housing opportunities and a broad choice of neighborhoods without regard to race (Exh. App. 19-20).

The second housing-related project is Project Threshold, by which CHA assists its public housing tenants in moving into private housing (App. 372). Under the third project, vacant land is being acquired for conveyance to community-based, not-for-profit housing developers (App. 372). Fourth, the Chicago Mortgage Bankers Association is providing technical assistance to these not-for-profit housing developers in the Development Action program. The fifth project, the new construction program, provides seed money to pay such expenses as legal and architectual fees for not-for-profit developers until these expenses are reimbursed by FHA (App. 373). Finally, the sixth housing-related project is the Community Building Maintenance Corporation (App. 373). This corporation will be operated by community residents as a business enterprise performing minor repairs to existing housing.

These six housing projects entail annual expenditures of approximately $3,000,000 (App. 374). By comparison, the total Chicago Model Cities Program received $50,000,000 in its first period (App. 355). The second-period federal grant, the subject matter of this appeal, is approximately $26,000,000 (App. 358). The City is also planning to apply for an additional $38,159,000 federal grant for the third proposed Model City period, January 1, 1972, to December 21, 1972 (App. 424-425).

3. Events Preceding the Letter of Intent.

In approving the initial $38,000,000 grant for Chicago's Model Cities Program on June 26, 1969, HUD stated:

> The City has identified discrimination as a basic problem which must be dealt with if the Model Cities program is to succeed. The Department concurs and, in this connection, expects full compliance by the City and all its agencies with all HUD equal opportunity requirements, and with the provisions of any decree finally entered by the U. S. District Court in the case of Gautreaux v. Chicago Housing Authority (Civil Action No. 66 C 1459, U. S. District Court, Northern District of Illinois, Eastern Division).
>
> [Exh. App. 1.]

Subsequently, on November 19, 1970, a joint team representing HUD and the City of Chicago issued a preliminary report on Chicago's housing supply (Exh. App. 3). This staff report indicated that "HUD would not approve for execution any new programs which involved displacement or for which a relocation plan was required" until the City could meet two tests (Exh. App. 9). First "the City must be able to show that each unit removed from the housing supply by the governmental action * * * [between July 1, 1969, and

June 30, 1971] will be replaced during the same period by a new addition to the housing supply which will suit the income and size characteristics of the family occupying the dwelling before it was removed * * *" (Exh. App. 8). Secondly, "the City must be able to show that it will make it possible for each family displaced through governmental action to relocate into a standard dwelling of the appropriate size which rents for not more than 25% of the family's income" (Exh. App. 8). The second-period Model Cities Program and the second-year Neighborhood Development Program ("NDP") were specified as the two HUD programs affected by this decision (Exh. App. 9).

Based upon this staff report, HUD's Acting Regional Administrator, Don Morrow, determined that the number of Chicago housing units to be demolished between July 1, 1969, and June 30, 1971, indicated that housing opportunities for low-income families were being seriously reduced (Exh. App. 13). In a letter dated November 19, 1970, Mr. Morrow stated that "the City must provide HUD with specific plans to overcome this deficit of 4300 units for low income families and take the necessary actions to implement these plans before HUD can approve the NDP and Model Cities Program funds" (Exh. App. 14). Mr. Morrow suggested several methods which could be used to meet this deficit, including development of 1500 public housing units for which HUD had provided a funding reservation. The letter did not require any specific method, however, but instead plainly indicated that the choice of how to meet the 4,300 deficit necessary to secure HUD approval for the NDP and Model Cities Programs was a choice to be made by the City, not HUD.

In February, 1971, George J. Vavoulis became HUD's Regional Administrator (App. 489). He learned from his staff that HUD was withholding Model Cities and NDP funds from Chicago. Mr. Vavoulis established communications with the Mayor of Chicago, the Chairman of CHA, and other officials in Chicago and other cities within his jurisdiction (App. 491). Staff meetings were also held. The purpose of these meetings, Mr. Vavoulis testified, was to "attempt to unlock the funds in order to further the programs that Congress had intended them to be used for" (App. 491).

4. The Letter of Intent.

These meetings and negotiations culminated on May 12, 1971, in a Letter of Intent from the Mayor of Chicago to Mr. Vavoulis (Exh. App. 17). The purpose of this letter was to delineate "the proposed activities to be undertaken in the City of Chicago to accomplish the objectives of providing increased housing opportunities for all its citizens" (App. 17). Part I of the letter outlined the undertakings by the City and CHA. The City's undertakings were: (1) to reduce demolition of housing units by 500; (2) to specify sites for 500 units of Section 235 housing (see 12 U.S.C. 1715z), with 250 of these planned for low-income families; (3) to develop a new program with matching Model Cities and local funds to lease private units for up to 1,200 low-income families; (4) in conjunction with HUD, to require developers of Section 236 housing (see 12 U.S.C. 1715z-1) to make available 20 percent of their units for rent supplement contracts; and (5) to have the City Council and Chicago Plan Commission give expeditious and full consideration to 275 public housing sites for 1,746 units proposed by CHA with an anticipated schedule of approving sites for 1,700 units by December 15, 1971. CHA's undertakings were: (1) to enter a contract with the Cook County Housing Authority to provide approximately 500 low-income housing units; (2) to lease 600 units for low-income families under the Section 23 program (see 42 U.S.C. 1421b); and (3) to initiate a program to acquire 200 units from the Federal Savings and Loan Insurance Corporation for low-income families. In addition, CHA anticipated partnership arrangements with not-for-profit housing sponsors, and the City anticipated several long-range programs for increasing the housing supply.

Part II of the Letter of Intent set forth HUD's undertakings which included: (1) issuing a letter of consent to permit the City to acquire specified property for the Neighborhood Development Program, "provided the City has made reasonable progress toward achieving [its] objectives set forth in Part I" of the letter; (2) executing annual contributions contracts with CHA and others for the development of public housing described in Part I; (3) issuing commitments for 500 units of Section 235 housing and promptly approving use of Model Cities funds for providing Section 235 units to low-income families; (4) approving up to $1,000,000 in Model Cities funds as its matching share of the City's special leasing program described in Part I. In addition, HUD agreed (5) to approve the second-period Chicago Model Cities Program "provided that the City by June 15, 1971, has approved sites for 500 units of public housing suitable for use by [CHA] and has made reasonable progress toward achieving the objectives set forth in Part I" of the letter (Exh. App. 30). HUD also agreed (6) to approve the second-year NDP and (7) to approve a $3,000,000 rehabilitation project "provided that HUD finds the City has by September 30, 1971, reasonably accomplished [its] objectives set forth in" the letter (Exh. App. 30).

Finally, the parties to the Letter of Intent agreed that modifications of the undertakings could be made upon the concurrence of all parties. The letter was signed by Mayor Daley, concurred in by Charles R. Swibel, Chairman of CHA, and approved by Mr. Vavoulis, all of whom pledged their best efforts in carrying out the letter. The Letter of Intent was never submitted to the Chicago City Council for its approval (App. 209).

5. Chicago's June 15th Report.

On June 15, 1971, the City of Chicago submitted a report (Exh. App. 39) which HUD evaluated as showing "a great deal of progress toward achieving the objectives set forth in the Letter of Intent" (Exh. App. 110). Specifically, HUD determined that the objectives of reducing projected demolition by 500 units had been met. The City reported a reduction of 560 units (Exh. App. 40). With respect to the Section 235 housing goal of locating sites for 500 units (Exh. App. 18), the City submitted a list of 664 proposed units (Exh. App. 48, 110). Discussions between CHA and the Cook County Housing Authority had produced a draft of an agreement (Exh. App. 94) contemplated in the Letter of Intent (Exh. App. 23). In addition, the City listed new or rehabilitated units capable of providing 823 units for Section 236 rent supplements

(Exh. App. 88). HUD concluded that the City made "reasonable progress" toward achieving the goal of leasing 75 units under the Section 23 program by having executed 58 leases and having 5 more in process (Exh. App. 110).

With respect to its other undertakings, however, the City's progress was more limited. The Letter of Intent had anticipated that the City Council would have approved 500 public housing units by June 15, 1971 (Exh. App. 22). Although the City Council had approved 92 sites for 675 units (Exh. App. 89), only 242 of these units (Exh. App. 111) complied with the decision in Gautreaux v. Chicago Housing Authority, 296 F. Supp. 907 (N.D. Ill., 1969). Also the objective of identifying and making available for occupancy 200 low-income units under the City's leasing program had not been met in that, although 229 apartments had been identified (Exh. App. 77), none of them had been leased (Exh. App. 111). Finally, the letter of intent had foreseen the acquisition of 200 units from the Federal Saving and Loan Insurance Corporation (Exh. App. 24), but the FSLIC had not been able to provide those units (Exh. App. 106).

6. HUD's June 22nd Letter to Proceed.

On the basis of the City's progress by June 15th, HUD announced that it would release the $26,082,256 in second-period Model Cities funds:

> * * * on the condition that the City Council will continue to approve public housing sites "suitable for use by Chicago Housing Authority in accord with applicable law" at each regular Council session and that the other City Agencies and Chicago Housing Authority

will continue to show progress toward meeting the housing goals set forth in the Letter of Intention. Should this progress not continue the Model Cities Letter of Credit will be cancelled.

[Exh. App. 111.]

HUD's letter of consent for the $20,000,000 in NDP funds was to be issued as "soon as the City has completed approval of sites 'suitable for use by the Chicago Housing Authority in accord with applicable law' for the 500 units for public housing and has made major progress in the" City leasing program (Exh. App. 111). HUD formally approved the second-period Chicago Model Cities Program in its letter to proceed issued on June 22, 1971 (Exh. App. 113).

On the basis of HUD's letter to proceed, the City began implementing the second-period program by committing funds to 35 program sponsors by contract (App. 177, 363). Of the $26,082,256 grant, $20,905,123.80 was committed to program sponsors, $4,000,000 was set aside for developing a multi-service center, and $1,687,228 was reserved for administrative expenses (App. 366-368; Affidavit of Erwin A. France, Exhibit D to City of Chicago's Suggestions in Support of Emergency Motion to Suspend, etc. (C.A. 7, No. 71-1732-33-34). The program sponsors then began delivering the educational, health, and other Model Cities services to the residents of the target areas (App. 364). The City spent $8,000,000 of its own money by September 23, 1971 (App. 371) in anticipation of reimbursement by federal funds (Tr. 858). As the City's budget provides no appropriation for the Model Cities Program (App. 386), this $8,000,000 was advanced from budget items which had not yet become payable (Tr. 858).

7. Chicago's September 15th Report.

On September 15, 1971, the City transmitted another report of its progress toward the objectives specified in the Letter of Intent. HUD's June 21st letter had released the Model Cities funds "on the condition that the City Council will continue to approve public housing sites" (Exh. App. 111), but between June 15 and September 15, 1971, the Council approved sites for only 46 additional units (App. 34) meeting the criteria established in Gautreaux v. Chicago Housing Authority, 296 F. Supp. 907 (N.D. Ill., 1969), and acceptable to HUD (App. 34, 47). Thus, although the anticipated schedule in the Letter of Intent set an objective of 850 units by September 15th (Exh. App. 22), only 288 had been approved.

With respect to the June 21st HUD requirement that the City and CHA "continue to show progress toward meeting the housing goals set forth in the Letter of Intention" (Exh. App. 111), the City's September 15th report showed progress but not a complete achievement of every goal (See, Exh. App. 168). The objective to reduce the demolition of housing units by 500 units continued to be surpassed (Exh. App. 130).

As to Section 235 program, the City had only identified proposed sites by June 15th, but by September 15th contracts had been awarded for 429 units, many of which were under construction (Exh. App. 131). Contracts for 71 more units were being negotiated. The goal set in Letter of Intent was to execute contracts for 500 units by September 15th (Exh. App. 18). The Letter of Intent also set the goal of establishing procedures and agreements to assure that at least 250 of the Section 235 units would be available for low-income families. HUD was satisfied that the City had met this objective (App. 97). A third goal specified in the Letter of Intent was to provide 50 to 100 sites for Section 235 housing in areas of Chicago having a non-white population of 30 percent or less (Exh.App. 19). The City had identified 97 such sites (Exh. App. 168).

Progress under the City's leasing program was more limited. By September 15th, 60 units had been leased, 40 more leases were in process, and 638 units had been identified (App. 105, Exh. App. 168). As the City had executed no leases and identified only 229 units by June 15th (Exh. App. 77), most of the performance reported on September 15th had occurred between the two reports and after the Model Cities letter to proceed had been issued. The performance under the leasing program, however, fell short of the goal of the Letter of Intent which had set an objective of making 800 units available for occupancy by September 15th (Exh. App. 20). The City encountered difficulty in matching owners willing to lease with families willing to move. The 638 units were scattered both inside and outside the City. Many families including specifically some target area residents who receive Model Cities benefits, were unwilling to accept accommodations in areas other than those in which they were presently living (App. 222-225).

With respect to the Section 236 rent supplement program, the City identified 624 future low-income units in addition to the 823 units specified in the June 15th report (Exh. App. 148).

These 1,447 units represent 20 percent of the total units to be built or rehabilitated by Section 236 project sponsors (See, App. 226 - 228). The Letter of Intent stated HUD and the City would require the sponsors to make 20 percent of their units available to low-income families (Exh. App. 21). This 20 percent requirement is not an express obligation under the sponsors' contracts with HUD, but the contracts authorized the funds necessary to fulfill the 20 percent requirement, and HUD's contractual understanding is that the sponsors will, to the best of their abilities, fully utilize these funds so as to make the full 20 percent of their units available for low-income families. (App. 522-527; Exh. App. 127). The agreement between CHA and the Cook County Housing Authority, which had been in negotiation on June 15th, had been mutually approved by September 15th (App. 544; Exh. App. 164). As envisioned in the Letter of Intent (Exh. App. 23), the agreement provides for the approval of sites for construction of up to 500 public housing units, and CHA has submitted sites for 270 units within Cook County but outside the City (Exh. App. 151).

The Letter of Intent, also established the goal of leasing 300 units to low-income families pursuant to Section 23 (Exh. App. 24), but by September 15, CHA had leased only 133 units (App. 67). As of June 15th, however, only 58 units had been leased under Section 23 (Exh. App. 110). Under the order in Gautreaux v. Chicago Housing Authority, 304 F. Supp. 736 (N.D. Ill., 1969), three-fourths of the Section 23 units must be located in the general housing area, i.e., an area more than one mile from any Cook County census tract having a non-white population of 30 percent or more (App. 536).

Finally, CHA's program with Federal Insurance Savings and Loan Insurance Corporation, which had as its objective the acquisition of 200 units for low-income families, had produced only vacant lots for construction of 20 units (Exh. App. 169; App. 541).

8. HUD's Decision to Release Model Cities Funds Unconditionally.

After reviewing the City's September 15th report, Mr. Vavoulis decided the $26,000,000 in Model Cities Funds, for which the June 22nd Letter to Proceed had been issued, should be unconditionally released (App. 152). Although he did not regard the City's progress toward the objectives in the Letter of Intent as "the kind of progress that I fully appreciate," Mr. Vavoulis saw that "since I have been here [the various HUD programs in Chicago] went from zero to something which means that some progress" was being made (App. 124). Mr. Vavoulis regarded the evaluation of the degree of progress as "an administrative judgment which I have to make concerning the Model Cities funds" (App. 109).

In the end, however, two other factors were decisive. First, Mr. Vavoulis considered what effect a cut-off of Model Cities funds would have:

> * * * I have walked through Woodlawn, I have walked through Lawndale, I have looked at these 235 units throughout the City in different wards. I have looked at 236's, and coupled with what I have seen and what it means to the people in those homes, what the problem of the responsibility that I would have in making a decision as to the day care centers that I saw and the people that they were serving, the work training programs that I know something about, because I used to be the Manpower Commissioner, the Health Service and so on, all entered into my arriving at a decision * * *. [App. 109-110.]

Secondly, Mr. Vavoulis considered whether "if I cut the funds off from the City of Chicago in terms of the Model Cities Program, will it in fact have leverage on the City Council to approve additional housing sites" (App. 144). Mr. Valvoulis concluded:

> * * * after witnessing what has been happening in Chicago, the posture of the Mayor, and actions of the City Council, that no amount of money that I would cut off from the City of Chicago would in any way [affect] the decisions of the City Council. I am a former Mayor of a first class city, and I think I understand the politics of the Council and the only effect that I could see the Council's responding to would be the people's pressures, the voting, whether they represent their ward opinion.
>
> Viewing that in that context, my decision was that when the appropriate documents were signed and approved by the City Council and delivered to me I would release them all the Model Cities funds. [App. 144-145.]

9. The District Court Proceedings.

On September 17, 1971, the plaintiffs moved to enjoin HUD from releasing the $26,000,000 for Chicago's second-period Model Cities Program. As the mandate from this Court's September 10th decision, Gautreaux v. Romney, 448 F. 2d 731 (C.A. 7, 1971) (No. 71-1073), had not then been transmitted to the district court, plaintiffs styled their motion as a motion to preserve the status quo pending a hearing (App. 9). The City of Chicago, CHA, and the Central Advisory Council all intervened as defendants. In four days of testimony in the district court, witnesses described the Chicago Model Cities Program and the events leading to HUD's decision to release the $26,000,000.

There was also much testimony regarding the impact of preventing the release of the Model Cities funds. Mr. Theodore Robinson, the Model Cities officer in HUD's regional office, testified the effect would be "devastating" (App. 184). This effect, he continued, would be wrought upon the poor and the disadvantaged who reside in the four target areas (App. 187-188). Thousands of these people would lose their Model Cities jobs and face difficulties in finding other employment (App. 191). Because of the need for continuity in the Model Cities Program, Mr. Robinson stated, a delay or a shutdown in the program "would be devastating to the interest of the people in the target area who come to rely very heavily upon the services that are being delivered by the Model Cities program in the area of education, welfare, jobs, health and so forth" (App. 175).

Mr. Erwin A. France, who directs Chicago's Model City Program, testified that without the $26,000,000, nearly 4,000 people would lose their jobs (App. 386) and Model Cities services to thousands of people would be halted (App. 388). Eighteen day care centers serving 1,100 children would close; hot breakfasts and lunches for over 10,000 school children daily would be discontinued; teacher-training projects and construction of captial programs would be ended, Mr. France testified (App. 388).

Mrs. Artensa Randolph, who is a member of the plaintiff class and also the Chairman of Health, Education and Welfare for the defendant Central Advisory Council (App. 569-570), testified:

> In the near target area where I live there is free breakfasts, lunch, recreation facilities. Before the Model Cities came along,

> as you know, when housing developments were put up there were no recreational facilities for our children. Since the Model Cities have come along and the evening schools are open, there are recreational facilities, arts and crafts, educational status where, as in the building where I live, most people were all on public aid, but since the Model Cities have come along, most families are now off of public aid and working for the Model Cities as teacher aids, lunch room helpers, recreational aids and so forth.
>
> Our children do have a chance through the Model Cities program to participate in the library program which they never had a chance because the Model Cities furnished the funds for them to go to and from the library. [App. 571-572.]

When asked what would happen to these people if the Model Cities Program ceased to function, she replied, "I don't know what would happen to them" (App. 574).

In addition, CHA filed affidavits of its Deputy Executive Director, Harry J. Schneider; its Day Care Administrator, Barbara Bell; and its Director of Project Threshold, Thomas L. Flemming. See, Memorandum of CHA in Opposition to Plaintiffs' Rule 62(c) Motion for Injunction filed September 20, 1971. Mr. Schneider stated that 36,000 CHA tenants reside in a Model Cities target area and a very substantial percentage of all 150,000 CHA tenants are direct beneficiaries of Model Cities projects. Should Model Cities funds not be available, he stated, "CHA families would suffer obvious and irreparable harm." Barbara Bell stated in her affidavit that without Model Cities funds, CHA's day care program, which employs 25 CHA tenants and has served 681 children, would not exist. Similarly, Thomas L. Flemming stated that without Model Cities funds, Project Threshold would not exist. This project employs five CHA tenants, who are their families' prime wage earners, and it has counseled more than 400 CHA tenants who are prospective home buyers.

10. The District Court's October 1st Order.

On October 1, 1971, the district court (Austin, J.) granted the injunction plaintiffs' sought (App. 25). Pending termination of the appeal decided by this Court's September 10th decision, the Government was enjoined from making any of the second-period Model Cities funds available to the City unless the Government certifies: (1) that the Chicago City Council has approved 700 sites located in the general housing area, and (2) that CHA is using its best efforts in developing these sites as rapidly as possible (App. 26).

In its memorandum opinion, the district court first reviewed the history of this litigation indicating that CHA did not submit any proposed housing sites to the City Council until twenty months after the district court's order requiring that the first 700 such sites be located in the general housing area. Next the court discussed the Letter of Intent, and concluded: "It is becoming increasingly clear that there was no intention by each of the above parties [i.e., Mayor Daley, Chairman Swibel, and Regional Administrator Vavoulis] to comply with their undertakings" (App. 21). The Court then reviewed HUD's June 21st letter and held:

> It is apparent that the planned release of the Model Cities funds was conditional.

> It is also perfectly clear that the conditions set forth have not been met, and it is becoming obvious that they never will be. [App. 22.]

The court then stated it would "give the chief executive and his City Council an opportunity to repent and reconsider their conduct" (App. 23):

> In order for the City to qualify for the 26 million dollar grant, the court will not require at this time that they approve fourteen hundred fifty units in the general or white areas, which they undertook to supply; the court will require merely approval for their current deficit as of September 15, 1971, those seven hundred such units, less than half of their total undertaking. This in no way relieves the City of the balance of its undertaking, spelled out in the letter of May 12. [App. 23.]

The derivation of the 700 figure is unclear as the number of units anticipated in the Letter of Intent (850) minus the number of sites already approved (288) does not equal 700. Moreover, the Order is inconsistent with this portion of the opinion in that the order refers to 700 sites, but the opinion refers to 700 units.

The court also stated:

> The court agrees that failure to continue the Model Cities Program for the next three months would have a devastating effect on tens of thousands of the citizens of this City. Four thousand would lose their jobs and many other thousands would be deprived of the benefits derived from the Model Cities Program. Only the City of Chicago, by failing to comply with its undertakings, and neither the plaintiffs nor this court, would be responsible for such a catastrophe. [App. 22.]

11. Subsequent Proceedings.

The City, CHA, and the Central Advisory Counsel each appealed to this Court from the October 1st order. The Government did not appeal, but instead moved that this Court's mandate from its September 10th decision be issued forthwith. This motion was granted, and on November 11, 1971, the mandate was issued.

That same day, the district court entered an order "pending further order" of the district court which was otherwise similar to the October 1st injunction:

> Pending further order of this Court, defendant George W. Romney, Secretary of the Department of Housing and Urban Development, is hereby enjoined from paying or making available to the City of Chicago ("City") or any of its agencies, any funds or monies for or on account of the second period or year of the Model Cities Program of the City except as follows:
>
> The funds or monies may be so paid or made available to the City or agencies thereof at any time after the defendant files with this Court a certification to the effect that,
>
> (a) not fewer than seven hundred sites located in the general public housing area of the City, as such area is defined in this Court's final decree in the companion case Gautreaux, et al. vs. Chicago Housing Authority, No. 66 C 1459, which housing is to be provided by the Chicago Housing Authority, have been identified and processed by the City [including approval thereof by the City Counsel of the City] so as to permit acquisition thereof by Chicago Housing Authority to begin; and
>
> (b) Chicago Housing Authority is using its best efforts to proceed as rapidly as possible with the acquisition and development of the sites so processed.

The Government then moved to consolidate this action with the companion suit against CHA. This motion was granted by the district court on November 24, 1971. The Government also moved to alter or amend the November 11th order so as to permit the release of the Model Cities funds and substitute other relief. Under the Government's proposed relief the City would be ordered to process the remaining 190 sites and CHA has heretofore submitted and to report to the district court "the specific reason or reasons why any such site or sites were found unacceptable * * *." In addition, the Government proposed that CHA be ordered to file with HUD a development program for the 274 units of low-income housing already approved by the City and HUD. The Government's motion to alter or amend was denied by the district court on November 24, 1971.

The City, CHA, and the Central Advisory Council have appealed from the district court's November 11th order. From that order, the Government has also appealed.

ARGUMENT

THE DISTRICT COURT ABUSED ITS DISCRETION BY ENJOINING THE RELEASE OF FEDERAL MODEL CITIES FUNDS UNTIL THE CITY OF CHICAGO APPROVES 700 SITES FOR LOW-INCOME PUBLIC HOUSING UNITS LOCATED IN THE GENERAL PUBLIC HOUSING AREA.

A. The Only Possible Basis for the District Court's Order Is Its Equity Power to Remedy Past Discrimination in the Public Housing Program.

The district court's Memorandum Opinion demonstrates that the November 11th injunction is not founded upon any violation of the Model Cities statute or regulations. The statute does, of course, require a relocation plan for persons and businesses displaced by Model Cities activities. 42 U.S.C. 3307(a).[2/] Only a small number of persons would be displaced by second-period Chicago Model Cities activities, however, and HUD was satisfied that the statutory and regulatory relocation requirements had been met by the City (App. 169-172, 206, 375).[3/] The district court did not overturn HUD's determination in this regard.

Instead, the rationale of the district court's opinion is that the City must comply--at least to the extent of approving 700 public housing sites--with its undertakings in the Letter of Intent and the conditions imposed in HUD's Letter to Proceed. Principles of contract law, however, would not support the November 11th injunction. First, the text of the Letter of Intent shows that

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2/ The application of this provision to the first-period Chicago Model Cities Program was at issue in Coalition for United Community Action v. Romney, 316 F. Supp. 742 (N.D. Ill., 1970) (Austin, J.).

3/ In contrast, HUD's refusal to approve funding for the second-year Neighborhood Development Program indicates that the City may not have adequately provided for the persons to be displaced by that program (see Exh. App. 12, 111). See also, 42 U.S.C. 1455(c); 24 C.F.R. 3.3.

its signatories did not intend to create a contractual obligation for the City to approve 1,700 housing units by December 15, 1971. That schedule was "anticipated" (App. Exh. 22), not promised. Indeed, the parties apparently specifically rejected any such promisory agreement during the negotiations which preceded the Letter of Intent (App. 210). Secondly, any agreement for the City to approve housing sites, in contrast to the Letter of Intent, would have been improper without the approval of the City Council inasmuch as the Council is the governmental unit having the statutory authority to approve or veto housing sites. Ill. Rev. Stat., Ch. 67 1/2, §9. The Letter of Intent, of course, was never submitted for the Council's approval (App. 209). Thirdly, the fact that the signatories to the Letter of Intent expressly reserved the right to modify the undertakings (App. Exh. 31), demonstrates that it was not intended that the Letter of Intent vest any third party with the right to specific enforcement of the undertakings. Finally, even if some class of third-party beneficiaries had been created, that class would be the persons to be displaced by the Model Cities and Neighborhood Development Programs, not the plaintiff class in this litigation.

Similarly, the plaintiff class did not acquire any specifically enforceable right to terminate the Chicago Model Cities Program by virtue of HUD's conditional release of the funds in issue on June 22, 1971. Establishing those conditions entailed an exercise of administrative discretion in applying the statutory relocation provisions to the Chicago housing situation. It was equally within HUD's discretion to modify those conditions and to release the Model Cities funds unconditionally, especially in light of the City's progress in its various undertakings specified in

Letter of Intent. The district court did not rule that HUD abused its discretion in deciding to release the $26,000,000 unconditionally, and the record would not support such a claim.

In sum, there was no violation of the Model Cities statute or regulations to provide support for the November 11th injunction, and the correspondence between HUD and the City gives the plaintiffs no contractual right to prevent the release of the Model Cities funds. Therefore, the only possible basis for the November 11th injunction--and the sole basis upon which the district court purported to act--is its power to remedy the past discrimination in the low-income housing program that prior decisions in this suit and the companion litigation held to exist.

B. The District Court's Order Violates Established Principles of Equitable Remedies Because It Risks Devastating and Irreparable Harm and Is Unlikely to Prove Effective.

This Court cautioned that its September 10th decision "should not be construed as granting a broad license for interference with the programs and actions of an already beleaguered federal agency." Gautreaux v. Romney, 448 F. 2d 731, 740 (1971). The district court's November 11th order has precisely that effect because it jeopardizes the Chicago Model Cities Program with its many vital social and economic projects. The first equity principle which the November 11th order violates, therefore, is the principle that "the nature of the violation determines the scope of the remedy." Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1, 16 (1971). Here, both in this Court's September 10th decision and the companion litigation, the violation was held to exist only in the low-income public housing program. The district court specifically stated during the proceedings below that there was no indication of any discriminatory practices in the Model Cities Program (Tr. 852). In these circumstances, the "nature of the violation" plainly does not justify an order which imperils the Chicago Model Cities Program.

The policies underlying Section 602 of the 1964 Civil Rights Act, 42 U.S.C. 2000d-1, and Board of Public Instruction of Taylor County v. Finch, 414 F. 2d 1068 (C.A. 5, 1969), confirm that the November 11th order exceeds the proper scope of relief. Under Section 602, a termination of federal assistance "shall be limited in its effect to the particular program, or part thereof," which has been found to violate agency rules, regulations, or orders implementing the non-discrimination policy of Section 601, 42 U.S.C. 2000d. The Taylor case held that HEW acted improperly in terminating all federal funds to the Taylor County School District under three educational programs without finding that each separate program was "administered in a discriminatory manner" or "infected by a discriminatory environment." 414 F. 2d at 1078.

It may well be that neither Section 602 nor the Taylor decision expressly applies to judicial, as opposed to administrative, terminations of funds. It is also true that the relocation requirement of the Model Cities Program provides a link between the two programs in issue here which was not present in the educational programs in the Taylor case.[4/] Nonetheless, despite these two

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4/ As previously noted, although HUD's delay in approving the Model Cities funds was based upon this link, the district court's injunction is not (Tr. 792). Thus, in the absence of a violation of the statutory relocation requirement, the Model Cities Program remains distinctly separate from the public housing program.

differences, the policies underlying both the statute and the Fifth Circuit decision bear directly upon the question of whether the district court properly enjoined Model Cities funding as a means of coercing City Council approval of 700 low-income housing sites. The legislative history indicates Section 602 was "not intended to be vindictive or punitive" but rather it was intended "to make sure that funds of the United States are not used to support racial discrimination." 110 Cong. Rec. 7062, 7063 (1964) (Remarks of Senator Pastore). As the Taylor decision notes, the purpose of the limitation in Section 602 was "for the protection of the innocent beneficiaries of programs not tainted by discriminatory practices." 414 F. 2d at 1075 (Emphasis in original). The same policies which prompted the enactment of Section 602 and the decision in Taylor demonstrate that the November 11th order violates the principle that the scope of equitable relief is confined by the nature of the violation.

Because the November 11th order is not tailored to the nature of the violation found, it also violates a second principle of equitable relief. Equity is characterized by its "facility for adjusting and reconciling public and private needs" by taking into account the public interest. Brown v. Board of Education, 349 U.S. 294, 300 (1955). The district court acknowledged, and the evidence fully confirms, that:

> * * * failure to continue the Model Cities Program for the next three months would have a devastating effect on tens of thousands of the citizens of this City. Four thousand would lose their jobs and many other thousands would be deprived of the benefits derived from the Model Cities Program. * * * [App. 22.]

Moreover, the record indicates that it is unlikely that Chicago will be able to avoid this "catastrophe" (App. 22) by continuing its Model Cities Program, certainly at the present level, without the $26,000,000 in federal funds. The City had advanced $8,000,000 of its own money by September 23, 1971, so that the second-period Model Cities services could commence prior to the issuance of HUD's formal letter of credit (App. 371). The City budget, however, provides no appropriation for the Model Cities Program so the $8,000,000 had been budgeted for other expenses which had not become due (App. 386; Tr. 858). Thus, the record simply does not indicate any way that the Chicago Model Cities services can be provided on a permanent basis without the $26,000,000 which the November 11th injunction prevents from being released. 5/ Without those services, "tens of thousands of the citizens" of Chicago--including virtually all of the 36,000 CHA tenants who reside in target areas and are members of the plaintiff class--will suffer a devastating effect (App. 22). Any order with that potential cannot be justified in terms of the public interest.

The third principle violated by the district court's injunction pertains to the improbability that the order will prove effective. "The measure of any desegregation plan is its effectiveness." Davis v. Board of School Commissioners of Mobile County, 402 U.S. 33, 37 (1971). The November 11th injunction will not be effective unless the Chicago City Council approves the 700 housing

5/ In any event, assuming the City finds an alternative state or local source for the $26,000,000, the effect of the November 11th decree would then be either (1) to curtail other state or local governmental services by $26,000,000; or (2) to raise state or local taxes by that amount; or (3) a combination of these two alternatives. Under the second alternative, the November 11th decree becomes a $26,000,000 fine borne ultimately by some undetermined group of taxpayers. None of the three alternatives furthers the cause of integrated housing.

sites, but the evidence at the hearing indicates that will not occur. The only direct testimony on this issue was by Mr. Vavoulis who concluded that "no amount of money that I would cut off from the City of Chicago would in any way [affect] the decisions of the City Council" (App. 144). Although plaintiffs' counsel predicted that "if the money is released with an appropriate string, we will have those units" by December 1971 (Tr. 41), that prediction has proved wrong.

The district court's opinion provides no indication as to why the court rejected Mr. Vavoulis' experienced political judgment regarding the effect of a cut-off. The transcript suggests that the court relied upon the fact that 242 acceptable housing units had been approved prior to June 15th, but after HUD conditionally released the $26,000,000, only 46 more units were approved by September 15th (Tr. 771-772). This evidence, however, provides an extremely tenuous basis for inferring that the confrontation produced by the judicial cut-off of funds would cause the City to respond in the same manner it did immediately following negotiation of the terms upon which the City could be assured its funding request would be approved; the inference ignores the political differences between a judicial "stick" and an administrative "carrot."

Thus, none of the evidence at the trial significantly detracts from Mr. Vavoulis' judgment that a cut-off of Model Cities funds would not induce the City to approve more housing sites. Secretary Romney recently expressed a similar judgment as a general principle:

> I believe that our execution of our fair housing responsibilities demonstrates that we are clearly and vigorously committed to a leadership role in equal opportunity in housing. There are those who would say that we are not doing enough. They would say that

you cannot have too much pressure to impose their conception of what _ought to be_.

Now I have a profound commitment to what _ought to be_, but the real question is how to get things done to _achieve_ what _ought to be_. I am totally convinced that those who are enthralled by the idea of sweeping Federal force run the risk of preventing not only what _ought to be_, but also what can be.

For example, if you wanted to block progress in the housing field in the years immediately ahead, you would try to institute a national program that focused on the idea that you are going to force low and moderate income housing on every suburban community in this country; and every community which would not fall in line would be cut off from all Federal funds.

I am convinced that most Americans are receptive to the kind of affirmative action for equal housing opportunity embodied in our administration of HUD's programs. But I do not think the people of this country are ready to support the kind of forcible approach which some advocate. And Congress does not appear ready to support it either.

[Statement of George Romney before the Subcommittee on Civil Rights Oversight of the House Committee of the Judiciary, 92nd Cong., 1st Sess. 38-39 (December 9, 1971) (Emphasis in original).]

By substituting its own assessment of the political consequences of the November 11th injunction for the assesment of HUD, the district court entered an order which the evidence indicates will prove ineffective, thereby violating a third principle of equitable relief. 6/

6/ In their _amicus curiae_ brief, the Chicago Chapter and Operation Breadbasket of the Southern Christian Leadership Conference do not venture an express prediction as to whether the "vital" Model Cities funds (Br. 14; But cf., Br. 9), will be released under the district court's injunction. Their characterization of the defendant City of Chicago as "wreak[ing] with the odor and filth of racism" (Br. 9) suggests they do not expect the City to approve 700 more housing sites. Ultimately, the _amicii_ take the position that the district court's injunction is not sufficient, and they ask this Court to order "all parties to this cause of action to take those steps necessary * * * that would result in the immediate release of the model cities funds" (Br. 14).

In addition to the principles relating to the scope of relief, the public interest, and effectiveness, the November 11th order violates the principle that equitable remedies must be flexible. See Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1, 15 (1971). The November 11th injunction was issued "[p]ending further order" of the district court. This provision could suggest that by retaining jurisdiction, the district court retains the power to avert a "catastrophe" should the City decide to terminate Model City services rather than to approve 700 additional housing sites. The threatened harm to the Model City beneficiaries is in most cases irreparable, however, so that once the services are discontinued, it will be impossible to avoid a devastating impact merely by promptly releasing the $26,000,000. For example, if the Model Cities project that furnishes hot, nutritional breakfasts and lunches daily to more than 10,000 school children (App. 388) is terminated, the children would find little comfort in an assurance that the project might be resumed again. Because the beneficiaries of the Model Cities Programs are the poor and the disadvantaged, they are apt to lack the resources necessary to tide them over a gap in the program without sustaining some degree of irreparable injury. The November 11th injunction lacks the flexibility to prevent this irreparable harm.

Moreover, if, as the evidence indicates, the November 11th order proves ineffective, the harm will not be confined to a devastating, irreparable impact in terms of human welfare. The progress toward integration will also be impaired.

Those few projects in the second-period Chicago Model Cities Program which do relate to housing would foster integration. Ninety-seven of the sites selected by the City for Section 235 housing, for example, are in areas having a non-white population of 30 percent or less (Exh. App. 168). The Model Cities funds would have assisted this project (App. Exh. 18). The City leasing program, to be financed by matching local and Model Cities funds (App. Exh. 19), identified 638 units for low-income families on sites scattered both inside and outside the City (App. 223). Project Threshold assists CHA tenants in moving out of public housing and into the private housing they select. If these Model Cities activities are curtailed, progress toward reducing residential racial concentrations will be impaired.

Integration will be slowed in a second, more fundamental manner if the Model Cities funds are not released. The purpose of the Model Cities Program is to narrow the social and economic gulf between blighted central cities, which so often have predominantly black populations, and the prosperous suburbs, which most frequently are predominantly white. Indirectly, this approach may also prove to be the most effective means of overcoming racial polarization in metropolitan areas. Note, Public Housing and Urban Policy: Gautreaux v. Chicago Housing Authority, 79 Yale L.J. 712 (1970). In testifying upon a bill designed to spur investment in central city slums, Senator Robert F. Kennedy stated:

> To seek a rebuilding of our urban slums is not to turn our backs on the goal of integration. It is only to say that open occupancy laws alone will not suffice and that sensitivity must be shown to the aspirations of Negroes and other non-whites who would build their own communities and occupy decent housing in neighborhoods where they now live. And, in the long run, this willingness to come to grips with blight of our center city

> will lead us toward an open society. For it is comparability of housing and full employment that are the keys to free movement and to the establishment of a society in which each man has a real opportunity to choose whom he will call neighbor. [Hearings on S. 3029 Before the Subcomm. on Housing and Urban Affairs of the Senate Banking and Currency Comm., 90th Cong., 2nd Sess. 641 (1968).

Certainly, the problem of racial concentration cannot be overcome unless whites are attracted into areas which are presently predominantly black, and that is unlikely to occur if the black areas continue to deteriorate physically. The Model Cities Program is a comprehensive attempt to arrest and prevent that type of deterioration. By jeopardizing the Chicago Model Cities Program, the November 11th order jeopardizes one means of reducing racial concentrations in areas which are presently either almost totally black or totally white.

Because the November 11th order violates four established principles of equitable relief, it trenches upon the doctrine of separation of powers in two important respects. First, the district court is using $26,000,000 to influence votes of the Chicago City Council on the policy questions regarding public housing. (See, Tr. 801, 855.) HUD's affirmative actions to persuade Chicago to approve more public housing (see e.g., Exh. App. 15), indicates the Government fully supports the end which the district court seeks to achieve. The issue, however, relates to the means. If the situation were reversed, and the City Council used $26,000,000 to influence the district court's decision, there would be no question as to its impropriety.

The second separation of powers question is whether or not a court, acting on a constitutional plane, can properly seek to override all citizen opposition to public housing in the suburbs. Although it was found in the companion case that no criterion other than race could explain the City Council vetoes of public housing in white areas during 1950 to 1966, Gautreaux v. Chicago Housing Authority, 296 F. Supp. 907, 912 (N.D. Ill., 1969), not all opposition to public housing is racially motivated. Cf. James v. Valtierra, 402 U.S. 137 (1971). In Palmer v. Thompson, 403 U.S. 217 (1971), the Supreme Court upheld the decision of the City Council of Jackson, Mississippi, to close down its public swimming pools after a district court had declared that racial segregation of the pools was unconstitutional. By analogy, it is not at all clear that the plaintiff class in this litigation has a constitutional right to have public housing provided to them in the suburbs. See, Note, 118 U. Pa. L. Rev. 437, 446 n. 57 (1970). In any event, it is plain that any attempt to enforce such a constitutional right would "impose upon the judiciary difficult demands for continuing intrusion upon and supervision of a wide range of legislative decisions." Note, The Supreme Court, 1970 Term, 85 Harv. L. Rev. 38, 42 (1971).

These two separation of powers issues arise because the November 11th injunction exceeds the proper scope of relief. An application of the policies underlying 42 U.S.C. 2000d-1 and the Taylor decision to this case would render it unnecessary for these issues to be decided. Particularly in light of the available alternative remedies (e.g., the relief suggested in the Government's motion to alter or amend the November 11th order), the district court abused its discretion by enjoining the release of Model Cities funds to remedy past discrimination in the public housing program.

In sum, this case graphically illustrates the wisdom of this Court's admonition in its September 10 decision against judicial interference with the execution of Federal programs which are essentially unrelated to the specific program in issue in the particular litigation. Dissatisfied with the City of Chicago's conduct in connection with the public housing program authorized by the United States Housing Act, the district court both could and should have fashioned a remedy within the framework of that program. Instead, it chose to restrain the operation of the entirely discrete Model Cities program, which is authorized by a wholly different federal statute and, as to which, there is no claim of constitutional or statutory violations by either HUD or the City. While the obvious purpose of this restraint was to coerce the City into approving housing sites under the public housing program, in point of fact (as we have seen) this excursion into an unrelated program is most likely to have quite a different effect. Specifically, unless this Court intervenes, tens of thousands of disadvantaged Chicago residents may well be deprived of vitally needed social and economic services. Needless to say, not a single one of these needy persons was at all responsible for the failure of Chicago to approve the housing sites.

CONCLUSION

For the foregoing reasons, the district court's order entered on November 11, 1971, should be vacated.

Respectfully submitted,

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DECEMBER 1971

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of December, 1971, I served a copy of the foregoing Brief for the Appellant Secretary of Housing and Urban Development, upon counsel for the appellees, the other appellants, and the amicus curiae, by mailing copies thereof, air mail, postage prepaid, to:

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Court
fil

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

DOROTHY GAUTREAUX, et al.,

Plaintiffs-Appellees,

v.

No. 17-1807

GEORGE W. ROMNEY, Secretary of the Department of Housing and Urban Development,

Defendant-Appellant,

and

CITY OF CHICAGO, CENTRAL ADVISORY COUNCIL, and CHICAGO HOUSING AUTHORITY,

Intervenors-Appellants.

MOTION OF APPELLANT SECRETARY OF HOUSING AND URBAN DEVELOPMENT FOR LEAVE TO FILE BRIEF IN TYPEWRITTEN FORM OUT OF TIME

The appellant, Secretary of Housing and Urban Development, by his undersigned attorneys, respectfully moves this Court for leave to file the attached brief in typewritten form, out of time, for the reasons set forth below:

1. By order of this Court entered on December 9, 1971, the briefs for the appellants were due December 23, 1971.

2. Primary responsibility for the preparation of the brief for the appellant Secretary is assigned to Anthony J. Steinmeyer, an attorney in the Appellate Section, Civil Division, Department of Justice.

3. A copy of this Court's December 9th order was not received by the Appellate Section so that Mr. Steinmeyer was unaware of the expedited briefing deadline until learning of that deadline on the date that the brief for the Secretary was due.

4. The Secretary's brief in this case is being reproduced by a multilithing process, but the printer will be unable to complete the duplication process before January 6, 1972.

5. One copy of the Secretary's brief in typewritten form is today being filed for the use of the Court until the printed copies are received. Additional typewritten copies are also today being served upon counsel for the appellee, the other appellants, and the amicus. As soon as the multilithed copies are delivered to us by the printer, the requisite number of briefs will be filed with the Court and also served upon all counsel.

Respectfully submitted,

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IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

DOROTHY GAUTREAUX, et al., Plaintiffs-Appellees, v. GEORGE W. ROMNEY, Secretary of the Department of Housing and Urban Development, Defendant-Appellant, and CITY OF CHICAGO, CENTRAL ADVISORY COUNCIL, and CHICAGO HOUSING AUTHORITY, Intervenors-Appellants.	No. 17-1807

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of December, 1971, I served a copy of the foregoing motion, together with one copy of the Brief for the Appellant Secretary of Housing and Urban Development, in typewritten form, upon counsel for the appellees, the other appellants, and the amicus curiae, by mailing a copy, air mail, postage prepaid, to:

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