
In the
United States Court of Appeals
For the Seventh Circuit

Nos. 71-1732, 33, 34 and 71-1807

DOROTHY GAUTREAUX, et al.,

Plaintiffs-Appellees,

vs.

GEORGE W. ROMNEY,

and

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

Intervenor-Appellants.

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

BRIEF OF PLAINTIFFS-APPELLEES

ALEXANDER POLIKOFF

MILTON I. SHADUR

BERNARD WEISBERG

CECIL C. BUTLER

CHARLES R. MARKELS

MERRILL A. FREED

Attorneys for Plaintiffs-Appellees

ALEXANDER POLIKOFF
109 N. Dearborn Street
Chicago, Illinois 60602
641-5570

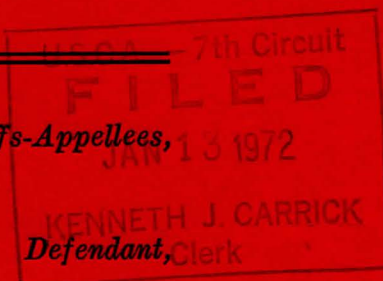


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v.

GEORGE W. ROMNEY,

Defendant-Appellant,

and

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

Intervenor-Appellants.

On Appeal from the Judgment of the United States
District Court for the Northern District of Illinois

BRIEF OF PLAINTIFFS-APPELLEES

STATEMENT OF THE ISSUE PRESENTED

Whether, following issuance of the mandate on a prior appeal in this case (pursuant to this Court's opinion of September 10, 1971, 448 F.2d 731), and "for the purpose of

enabling the [District] Court to grant to the plaintiffs the full relief to which they may be entitled" (page 2 of the November 11, 1971 order appealed from)*, the District Court was empowered to enjoin the Department of Housing and Urban Development ("HUD") from granting unconditionally to the City of Chicago ("City") \$26,000,000 for the City's model cities program, where,

(1) HUD model cities regulations precluded HUD from making the grant in question without substantial compliance by the City with HUD-imposed conditions designed to satisfy such regulations;

(2) HUD itself had determined not to make the grant without such substantial compliance but then reversed its decision notwithstanding it was admittedly in no position to make the administrative judgment required to support the reversal; and

(3) the City's failure to meet HUD's conditions was frustrating achievement of relief for the plaintiffs in this case - a case in which, as this Court observed in its opinion of September 10, 1971, the District Court is confronted with "a difficult and time-consuming task, presenting unique problems for resolution." 448 F.2d at 734.

*The order is contained in the Short Record filed in No. 71-1807. The Appendix and the Volume of Exhibits filed by the City of Chicago are cited "App." and "Ex. App.", respectively. The record on appeal is cited by appropriate references, such as "Tr." for the transcript.

STATEMENT OF THE CASE

The facts should not be in dispute but the Statements of the Case in the briefs of the appellants are seriously incomplete, necessitating the following statement of the case. Relevant background of course appears in this Court's opinion of September 10, 1971, and will not be repeated here.

1. Model Cities Statutory Provisions

The so-called model cities programs of HUD are authorized by Subchapter I ("Comprehensive City Demonstration Programs") of the Demonstration Cities and Metropolitan Development Act of 1966. 42 U.S.C. §§3301-3313. The statute contains a congressional finding that, among other things, "the concentration of persons of low income in older urban areas, and the unmet needs for additional housing ... have resulted in a marked deterioration in the quality of our environment and the lives of large numbers of our people ..." 42 U.S.C. §3301; and that federal assistance, in addition to that already authorized under other programs, is essential to enable cities to, among other things, "increase their supply of adequate housing for low- and moderate-income people ..." Ibid. One of the stated purposes of the statute is to enable cities "to expand housing." Ibid.

The statute also provides that a local model cities program is eligible for federal assistance only if the program will

contribute, among other things, to 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), and only if "there exists a relocation plan meeting the requirements of the regulation referred to in section 3307 of this title." 42 U.S.C. §3303(a)(4). Section 3307 provides, among other things, that a model cities relocation plan shall be consistent with regulations prescribed by the Secretary of HUD to assure that relocation standards equivalent to those prescribed for urban renewal projects are met. 42 U.S.C. §3307(a).

2. Model Cities Regulations

Pursuant to the requirements of 42 U.S.C. §§3303(a)(4) and 3307(a), HUD has promulgated a regulation governing model cities relocation plans entitled, "Policies and Requirements for Model Cities Relocation, CDA Letter No. 5 (Revised)." (A copy of this regulation is attached to plaintiffs' objections to the motion of intervenor-appellants to suspend and vacate a prior order of the District Court, previously filed in Appeal Nos. 71-1732, 33, 34.) Among other relocation plan requirements of the regulation is the following:

"Make maximum use, as a rehousing resource, of housing covered by Title IV of the Civil Rights Act of 1964 and Executive Order 11063; for example, federally assisted low-rent public housing ..."
CDA Letter No. 5 (Revised), Appendix A, p.3.

Other "Policies and Requirements" include the following:

"The Program must be directed towards providing decent, safe and sanitary low- and moderate-income housing both within and without the model neighborhood."
(Ibid.)

"There is no adequate substitute for the public responsibility to plan for, encourage and assist the construction of the necessary volume of low- and moderate-income housing." (Id. p.2.)

The relocation plan is described as "an essential component" of the model cities plan. (Id. p.3.)*

*As noted above, model cities relocation standards must be "equivalent" to relocation standards prescribed for urban renewal projects. 42 U.S.C. §3307(a). HUD's regulations setting forth relocation requirements for urban renewal projects include Regional Circular No. 907 - Urban Renewal Relocation. Among other provisions this Circular states the following as a "Basic HUD Policy on Vacancies and Replacement Housing":

"[T]he relocation plan may be found approvable on the basis of locality programs which will restore the ... minimum 3 percent [vacancy] rate. This will obviously require provision of additional housing inside and outside the project area through rehabilitation of substandard vacant units or through new construction ... [L]ow rent public housing units programmed to meet relocation needs will be counted as units which fulfill this requirement." (p. 11.)

The vacancy rate in Chicago is well below the minimum 3 percent rate. (Plaintiffs' Ex. No. 2, pp. 5-6, App. 5-6.)

3. The Chicago Model Cities Plan - First Year*

The inception of the Chicago Model Cities Plan is described in Coalition for United Community Action v. Romney, 316 F.Supp. 742, 744-45 (N.D. Ill. 1970), and the Court is respectfully referred to that description.

It was admitted in that case that the first year Chicago Model Cities Program "did not at the time of submission contain a full relocation plan which would meet the procedural and substantive requirements" contained in HUD relocation plan regulations. 316 F.Supp. at 748. However, because HUD regulations were "published and distributed much later than expected and because HUD felt that the programs of the early cities would be unable to comply with its standard, interim procedures and requirements on relocation plans were developed. ..." 316 F.Supp. at 748-49. The District Court (the same judge before whom this case is pending below), finding that HUD's interim procedures were not violative of plaintiffs'

*Model cities programs are designed to run for 5 years or periods. (App. 354.) The first year or period in Chicago ran from September 1969 to September 1970, but the period was later extended to June 15, 1971. (App. 355.) \$50,000,000 in federal funding has been made available by HUD to the City of Chicago for the first model cities period. (App. 355.) The second model cities period runs from June 15, 1971 to December 31, 1971 (App. 357); the City is seeking \$26,000,000 from HUD for this period. (App. 358.) The third period is expected to run from January 1, 1972 to December 31, 1972 (App. 424) and the City intends to apply for \$38,000,000 for that period. (App. 425.) Funding by HUD is on a reimbursement basis, that is, the City expends funds and is then reimbursed by HUD. (App. 369-70, 415.)

rights, and because HUD "has indicated that Chicago's full relocation plan is now being reviewed for formal submission to HUD," 316 F.Supp. at 750, declined to interfere with the first year program.*

4. The Chicago Model Cities Plan - Second Year

Recognizing that, consistent with the model cities statute and HUD regulations, the second year of the model cities program could not be funded without full compliance with relocation plan requirements, HUD and the City set to work to identify those requirements as applied to the Chicago facts and to prepare an appropriate plan. In February, 1970, "HUD and the City of Chicago established a joint staff team to review the housing and relocation problems of low and moderate income families in Chicago." Letter dated November 19, 1970 from Don Morrow, Acting Regional

*The first year program was formally approved by HUD by the letter which is in evidence as Plaintiffs' Ex. No. 1 in this case, Ex. App. 1. That letter says, among other things,

"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)."

Administrator [of HUD] to Honorable Richard J. Daley,
Mayor of the City of Chicago, Plaintiffs' Ex. No. 3, p.1,
Ex. App. 12. With respect to that review HUD said:

"It was anticipated that HUD programs having housing and relocation requirements would not be refunded or newly funded until the City took the appropriate actions to meet the identified housing and relocation problems.

Pursuant to this policy, HUD has held up the execution of the City's second year of Neighborhood Development Program since May 1, 1970. HUD has also postponed until December 1, action on the City's application for the second action year of the Model Cities Program." (Ibid.)*

The joint HUD-City team worked from February to November, 1970, having "frequent and lengthy meetings." (Ibid.) During the latter stages of the team's deliberations the HUD Regional Administrator met with Mayor Daley to make certain that the Mayor was aware of the probable team findings "and their consequences for the NDP and Model Cities Program." (Id. pp. 1-2.)

The team report was issued on November 19, 1970. Plaintiffs' Ex. No. 2, Ex. App. 3. HUD said of the report:

*The Neighborhood Development Program ("NDP") is a particular type of urban renewal program which is funded on an annual basis. The team report said that HUD "would not approve for execution any new programs which involved displacement or for which a relocation plan was required" until housing and relocation tests could be met. "The second year of the Neighborhood Development Program (urban renewal) and the second action year of the model cities program are the two primary HUD programs affected by this decision." Plaintiffs' Ex. No. 2, p.4, Ex. App. 9.

"With the team report now complete, it is possible to state with more precision the actions that the City must take to meet HUD housing and relocation requirements. When these actions are taken, it will be possible to fund the NDP and Model Cities Program." Plaintiffs' Ex. No. 3, App. Ex. 13.

According to HUD, "The thrust of the team report is quite clear. There is a serious need for the City to provide more housing units for low income families." Ibid. The report advised 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.

(Ex. App. 9.) The first of these two tests was:

"[T]he City must be able to show that each unit removed from the housing supply by 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 from the supply." (Ex. App. 8.)*

HUD then specified the amount of this replacement housing it required:

"To maintain the July 1, 1969, housing supply level for low income families demolition must be reduced and new units provided for low income families in some combination of 6200 units." (Ex. App. 13.)

*The second test was to provide for the relocation of specific families displaced by government action. The first test is thus a general housing replacement requirement, the second a specific family relocation requirement.

HUD said, however, that in view of the magnitude of the housing deficiency and the late date at which the necessary information had become available, it would reduce its minimum requirement to 4300 units. (Ex. App. 14.) It added, "This reduction of the minimum requirement can only be justified if the plans to provide the lesser number of units are quite precise." (Ibid.)

HUD then concluded:

"Therefore, 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 [Neighborhood Development Program] and the Model Cities Program funds. And it should be clear that new units provided must be available for occupancy by June 30, 1971 or very shortly thereafter." (Ibid., emphasis added.)

Subsequently, on May 12, 1971, the Mayor, Charles R. Swibel (chairman of the Chicago Housing Authority), and George J. Vavoulis, the Regional Administrator of HUD, executed a so-called letter of intent setting forth programs "directed at providing 4300 units of low-income housing." Plaintiffs' Ex. No. 4, Ex. App. 31. Of the minimum requirement of 4300 units, 1700 units were to be provided through construction by or for the CHA. As to this, the May 12 letter said:

"It is anticipated, however, that sites suitable for use by Chicago Housing Authority in accord with applicable law* will be

*The phrase, "in accord with applicable law," means in compliance with Judge Austin's decision in the companion case. (Tr. 879.)

identified and processed by the City to permit acquisition by CHA to commence in accordance with the following schedule:

Sites for 500 units by June 15, 1971;
Sites for 350 units by September 15, 1971;
Sites for 850 units by December 15, 1971;

To the extent that sites are necessary in addition to those already given preliminary approval by HUD ... such sites will be submitted to HUD for review and determination in an expeditious manner so as not to interfere with the foregoing timetable." (Id. pp. 22-23.)

In the letter of intent HUD agreed, among other things, as follows:

"Upon acceptance of this letter of intent, HUD will approve an amendment to the first year Model Cities Program, extending through June 30, 1971.

HUD promptly will approve the second year Model Cities Program, said second year ending December 31, 1971, provided that the City by June 15, 1971, has approved sites for 500 units of public housing suitable for use by the Chicago Housing Authority and has made reasonable progress toward achieving the objectives set forth in Part I, above." (Id. p. 30, emphasis added.)

The City failed to approve sites for such 500 units of public housing by the June 15 date specified in the letter of intent; instead, sites for only 242 units were approved by that date. Plaintiffs' Ex. No. 6, Ex. App. 111. Nonetheless, HUD determined to approve the second year model cities program, but only conditionally. On June 21, 1971, the Regional Administrator, Mr. Vavoulis, wrote Mayor Daley as follows:

"The Model Cities funds are being released 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 the housing
goals set forth in the Letter of Intention."
(Ibid., emphasis added.)

Further action on the public housing program as well as on
other letter of intent undertakings was described in the
letter as "steps toward providing relocation feasibility for
the Model Cities and Neighborhood Development Programs."

(Id. pp. 111-112.)*

The so-called Letter to Proceed which HUD provided to
the City the next day (letter dated June 22, 1971, from
Alan Goldfarb to Mayor Daley, City of Chicago Ex. No. 3,
Ex. App. 113) reiterated the condition upon which the model
cities funds were to be granted:

"As recited in the Regional Administrator's
letter to you dated June 21, 1971, the
Model Cities Funds are being released 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
other City Agencies and Chicago Housing
Authority will continue to show progress
toward meeting the housing goals set forth
in the City's Letter of Intention dated
May 12, 1971." (Ex. App. 113.)

Although HUD was thus prepared to release the second year
model cities funds conditionally in June, in fact the funds
were not released because the City Council did not formally

*Mr. Robinson of HUD testified that the relocation plan for the
second year model cities program was approved by HUD, but the
"approval" to which he referred was Mr. Vavoulis' June 21 letter.
(App. 166.)

approve the second year model cities contract until the middle of September, such approval being a requisite to release of funds. (App. 58-59; 64; 169.) The commencement of ancillary proceedings by the plaintiff below (pursuant to Federal Rule 62(c)) precluded release of the funds at that point. (App. 60; 64; 65.) Accordingly, since the beginning of the second model cities period on June 15, 1971, the City has been supporting the program financially. (App. 416.)

On September 15, 1971, as required by the letter of intent, the City submitted a report to HUD. Plaintiffs' Ex. No. 7, Ex. App. 128. Among other things, the report (and other evidence) disclosed that the condition upon which the funds were conditionally authorized to be released in June had not been met, for the City Council had met in regular session a number of times in June, July and September, 1971, without approving public housing sites. Plaintiffs' Ex. Nos. 10-14, App. 276. Moreover, whereas the letter of intent called for sites for 850 units to be processed by the City so that CHA could commence acquisition of them by September 15, 1971, sites for only 288 units had been approved by the City Council by that date (Plaintiffs' Ex. No. 8, p.1, Ex. App. 168), and CHA had not yet commenced acquisition of any of them. (Tr. 669, 672-73.)

Many of the other City undertakings in the letter of intent were not complied with at all, or compliance was grossly deficient. (See Plaintiffs' Ex. No. 8, Ex. App. 168. A review of some of the evidence on this subject in the closing argument

of plaintiffs' counsel appears at Tr. 747-52.) The Assistant United States Attorney said:

"We do not argue nor do we contend in this matter that the city's progress under its letter of intent has met up to full expectations, nor do we contend that there was substantial progress, but we do indicate that there was some progress." (Tr. 799.)*

Following receipt of the City's September 15 report HUD reviewed the situation. (App. 50-51.) Then, on September 20, Mr. Vavoulis met with Mayor Daley. (App. 49.) At the meeting Mr. Vavoulis asked the Mayor for additional information concerning the City's performance and plans with respect to the letter of intent (App. 77-78), not including, however, any information with respect to further action on public housing sites. (App. 79.)** The Administrator also told the Mayor that until he was provided the information, he

"was in no position to make an administrative judgment concerning the release

*The District Judge observed, "That is very wise, to make that admission in view of the evidence in the case." (Tr. 799.)

**Mr. Vavoulis testified that he had had no conversations with any city official respecting the City Council's failure to approve sites for 850 units by September 15 (App. 49-50), that he had not discussed that question "with anybody" (App. 65), that he had received no communications from the City as to when such approval might be expected (App. 50), and that he had not sought to obtain that information. (App. 51.) He also testified that he did not discuss with the Mayor what effect withholding model cities funds might have on the City Council (App. 148) or whether the Mayor was in a position to affect the Council on the question of approving public housing sites. (App. 149.) He said, "I just didn't," when asked why he did not discuss these questions. (App. 148, 149.)

of funds ..." (App. 771.)

The Mayor agreed to provide the information. (App. 77-78.)

Notwithstanding his statement that he was "in no position to make an administrative judgment concerning the release of funds," Mr. Vavoulis testified that he had decided that when the appropriate documents were approved by the City Council, signed and delivered to him, he would release all the model cities funds. (App. 145.) He said that this decision was based on a review of the situation as of September 15 (App. 64), but that public announcement of it was precluded by the commencement of proceedings by the plaintiffs under Rule 62(c) of the Federal Rules of Civil Procedure designed to prevent release of the model cities funds pending termination of the prior appeal (i.e., No. 71-1073) in this case. (App. 65.) Since those proceedings commenced on September 17, it appears that Mr. Vavoulis made his decision sometime between September 15 and September 17, that is, before he told Mayor Daley on September 20 that he was in no position to make an administrative judgment concerning the release of funds. In making his decision Mr. Vavoulis did not consider whether the release of funds should be conditional. He testified, "All I knew is that I was going to release the money." (App. 151.)

Following a hearing on plaintiffs' Rule 62(c) motion which lasted four days the District Court entered an order on

October 1, 1971, which stayed the release of second period model cities funds pending termination of the prior appeal, but authorized their release before that time if a specified condition (approval of sites for 700 new CHA housing units) were met. An appeal was taken from that order (Nos. 71-1732, 33, 34) by the intervenors but not by HUD. On November 11, 1971 the mandate in the prior appeal issued and the District Court's Rule 62(c) order lapsed by its terms. (For that reason a motion to dismiss the appeal taken from that order was filed and is now pending.) Thereupon, on November 11, 1971, the District Court entered the order now appealed from. (The order is contained in the Short Record in No. 71-1807.) The order recites that it appeared to the Court that entry of the order was appropriate pursuant to this Court's opinion of September 10, 1971 and the order and mandate issued pursuant thereto, pursuant to the proceedings had and the opinion entered in connection with plaintiffs' Rule 62(c) motion, "and for the purpose of enabling the Court to grant to the plaintiffs the full relief to which they may be entitled in this cause." (Order of the District Court of November 11, 1971, p.2.)

Subsequent to the evidentiary hearings and shortly after the entry of the October 1, 1971 order below, Mr. Vavoulis sent to Mayor Daley a letter dated October 4, 1971 (a copy of which is attached hereto as Exhibit A). The letter stated that its purpose was to inform the Mayor that Mr. Vavoulis was

"deeply concerned" about the City's "lack of progress in carrying forth the commitments in the May 12 Letter of Intent ..., " the purpose of which, according to Mr. Vavoulis, was "to develop a specific action program to provide necessary relocation housing resources for low-income families ..."

(Exhibit A, p.1.) The letter then said that HUD had been withholding over twenty million dollars in NDP funds "pending the City's development of a satisfactory program for housing and relocation of low-income families ..., " that the rate of progress in achieving the objectives of the letter of intent was short of scheduled performance, and that HUD's reservation of NDP funds would be terminated if the letter of intent objectives were not substantially accomplished by December 15. (Id. pp. 1-2.)

On January 6, 1972, Mr. Vavoulis addressed another letter to Mayor Daley (a copy of which is attached hereto as Exhibit B). This letter stated HUD's conclusion that "the City and the Chicago Housing Authority have failed to achieve the objectives for the development of housing for low-income families, as set forth in the May 12, 1971, Letter of Intent ..." (Exhibit B, p.1.) The letter said that the purpose of the letter of intent had been to set forth a time and action table "to establish relocation feasibility for low income individuals and families displaced or to be displaced as a result of HUD assisted and other governmental programs in the City," and that "such relocation

feasibility [is] a basic prerequisite for federal urban renewal assistance." (Ibid.)

The letter continued that it was HUD's belief that City and CHA proposals outlined in the letter of intent would lead to a meaningful replacement and expansion of the housing supply for Chicago's low-income families, but that since that result had not occurred HUD was left with no alternative but to redistribute elsewhere the funds which had been reserved for Chicago's Second Year NDP. (Ibid.) The letter added the "profound hope" that efforts to improve the low-income housing situation in the City of Chicago "whether they be court ordered or initiated by the City or CHA," would place HUD in the future "in a position to approve federal programs for which adequate relocation housing is a requirement." (Id. p.2.)

ARGUMENT

The several briefs of the appellants argue that the District Court's order should be reversed because the order allegedly (1) improperly interfered with HUD's administrative discretion, (2) violated §602 of the Civil Rights Act of 1964, and (3) is contrary to the public interest and various equitable principles. Each of these arguments will be answered

in the order stated. (Parts III, IV and V below.)* First, however, we will deal with the HUD assertion (implicit in the briefs of the other appellants) that the order appealed from is not founded upon the City's failure to comply with HUD's Model Cities regulations (Part I below); and we will put in proper context the equitable powers of the district judge, as a chancellor, to deal with the difficult and complex situation that confronts him. (Part II below.)

I. The District Court's Order Rests Independently on the City's Failure to Comply with HUD's Regulations

HUD baldly asserts that it was "satisfied" that the Model Cities "statutory and regulatory relocation requirements had been met by the City." (p. 26.) It also says that the District Court's order was "not founded upon any violation of the model cities statute or regulations." (Ibid.) The first assertion is patently incorrect (as HUD's own testimony and administrative actions clearly demonstrate), and the second is an ostrich-like posture which ignores half of the testimony in the case as well as what the district judge said in his opinion.

The fact is that HUD's relocation requirements were not complied with (there is no really serious argument to the

*The City makes a fourth argument (pp. 24-26) concerning the District Court's powers under Rule 62(c) of the Rules of Civil Procedure which need not be answered now that the Rule 62(c) order has lapsed. Other subsidiary arguments will be answered under the headings stated in the text above.

contrary) and that such failure of compliance is an independent ground of support for the District Court's order. (Indeed, although we believe that remedial Gautreaux considerations also constitute an independent ground upon which the order rests, see Part II below, one cannot read the district judge's mind and say whether or not he would have acted as he did in the absence of such non-compliance.)

HUD's assertion that it was satisfied that the statutory and regulatory relocation requirements had been met is easily disposed of. The only support given for this misstatement is a reference to the testimony of Mr. Robinson of HUD and of Messrs. Hill and France of the City. The Robinson reference suggests that HUD approved "relocation feasibility" (App. 171) for the model cities program. But HUD's brief disingenuously ignores the fact that the approval to which Mr. Robinson referred was Mr. Vavoulis' June 21 letter of conditional approval. (App. 165-66.) HUD was never "satisfied"; it was only conditionally satisfied and the condition was never met.

The Hill and France references (and some of Mr. Robinson's testimony) are designed to suggest that model cities relocation requirements are limited to providing relocation housing for the very few families to be displaced by the model cities program itself, and none other. This too is demonstrably incorrect, and is not how HUD interpreted and applied its own regulation. The language of the model cities statute and regulations is plainly

not so limited (see the references in sections 1 and 2 of the Statement of the Case, supra). Moreover HUD interpreted the statute and regulations as requiring that two tests be met before HUD would approve "any new [Chicago] programs which involved displacement or for which a relocation plan was required." (Ex. App. 9.) The two tests were specifically said to be applicable to the second year model cities program. (Ibid.) The second of these tests is the one to which Messrs. Hill and France referred - to relocate displaced families. (Ex. App. 8.) But they - and HUD's brief - completely ignore the other test:

"[T]he City must be able to show that each unit removed from the housing supply by governmental action [between July 1, 1969 and June 30, 1971] will be replaced during the same period..." (Ex. App. 8.)

This test obviously is not limited to relocating displaced families. It is not even limited to replacing units removed from the housing supply by the model cities program itself, for (apart from the phrase "governmental action" which embraces any governmental program) the model cities program in Chicago was not even in effect on July 1, 1969. (App. 355.) See also HUD's letter of January 6, 1972, describing the purpose of the May 12 letter of intent as, "to establish relocation feasibility for low-income individuals and families displaced or to be displaced as a result of HUD assisted and other governmental programs in the City ...," a requirement plainly not limited to individual HUD assisted programs, or even to HUD assisted

programs at all. (Exhibit A, p.1.) Indeed this letter, denying funding for the NDP program to which the identical relocation requirements were applied by HUD as it applied to the model cities program, shows definitively that those requirements were not met by the City.*

Thus, the assertion in HUD's brief that model cities relocation requirements had been satisfied flies in the face of its own statements and actions to the contrary and is unsupportable.**

The second assertion, that the order appealed from was not founded upon non-compliance with relocation requirements,

*HUD argues (p.26) that its refusal to fund the NDP indicates that the City did not adequately provide for persons to be displaced by that program, suggesting again that such provision is the only relocation requirement under HUD regulations. (See also the CHA brief, p.24.) This indirection ignores the first of the two tests discussed in the text as well as the fact that HUD repeatedly coupled the NDP and model cities programs without distinction between them in telling the City what its relocation requirements were. For example, the two tests referred to in the text above were said to be applicable to "any new programs ... for which a relocation plan was required," after which HUD specifically mentioned the "second year of the Neighborhood Development Program (urban renewal) and the second action year of the Model Cities program" as the two primary HUD programs to which the tests applied. (Ex. App. 9.)

**This is so clear that we have not burdened the Court with an accumulation of all the HUD statements showing the City's failure of compliance with HUD relocation requirements. See, for example, Mr. Vavoulis' June 21 letter calling the letter of intent undertakings "steps toward providing relocation feasibility for the Model Cities and Neighborhood Development Programs." (Ex. App. 111-112, emphasis added.)

is equally unsupportable. Indeed, a substantial part of the District Court's opinion is given over to a discussion of the letter of intent undertakings as a HUD-imposed condition for model cities funding (App. 19-22), a discussion which would have been wholly unnecessary under HUD's interpretation of the opinion. The discussion concludes,

"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 ..." (App. 22.)

What HUD is apparently asserting is that because the opinion does not state the obvious - that the condition referred to was a relocation feasibility requirement - the order is not founded upon the City's failure to meet that requirement. Serious arguments require more substance than that.*

It is clear that the City failed to comply with HUD relocation requirements in its model cities (as in its NDP) program. It is also clear that the district judge listened to and read the evidence of that failure, and discussed and properly relied upon it in his opinion.

*The HUD argument is pointless as well as wrong. Even if the district judge had not relied on the City's failure to meet HUD's requirements as a ground for his decision, that ground would nonetheless be available to this Court under the familiar rule that if the decision below is correct, it must be affirmed even though on a ground not relied upon by the lower court. See Hilvering v. Gorvran, 302 U.S. 238, 245 (1937), and 222 East Chestnut Street Corp. v. Lakefront Realty Corp., 256 F.2d 513, 517 (7th Cir. 1958), cert. denied 358 U.S. 907.

II. The District Court's Order Rests Independently
on the Broad and Flexible Equitable Powers of a
Court of Equity.

This Court's opinion of September 10, 1971 made it plain that, in accordance with traditions of equity jurisdiction in a complex, multi-faceted case such as this one,

"[A] determination of just what type of equitable remedy might be appropriate in cases of this sort is a question best left initially to the sound discretion of the District Court ..."

"This Court would be extremely reluctant to interfere with the exercise of that District Judge's sound discretion in matters pertaining to this controversy ..." 448 F.2d at 734.

These statements implicitly recognize the duties and broad powers of courts of equity in cases in which unconstitutional discrimination has been found. In Louisiana v. United States, 380 U.S. 145, 154 (1965) the Supreme Court said:

"[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. ..."

In Pettway v. American Cast Iron Pipe Company, 411 F.2d 998, 1003 n.9 (5th Cir. 1969), the court emphasized the flexibility available to a district judge to prevent a case from getting beyond judicial redress. In Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1, 15 (1971), involving the scope of a district court's equity powers in fashioning a remedy for a racially separate school system, the Court said:

"Once a right and a violation have been shown the scope of a district court's equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies."

The Court added that the remedy for school segregation may be "administratively awkward, inconvenient and even bizarre in some situations and may impose burdens on some." 402 U.S. at 28. But the Court concluded that the remedial techniques used in the district court's order "were within that court's power to provide equitable relief." 402 U.S. at 30. See also, Local 53 of International Association v. Vogler, 407 F.2d 1047, 1051-53 (5th Cir. 1969); United States v. Frazer, 317 F.Supp. 1079, 1090 (D.C.M.D. Ala. 1970).

But notwithstanding this Court's recognition of the duties and powers of the district judge, and of the fact that he is confronted with "a difficult and time-consuming task, presenting unique problems for resolution," 448 F.2d at 734, we doubt that this Court can fully appreciate the pervasive intransigence with which the local agencies have confronted the district judge, and the almost equally frustrating posture of non-cooperation on the part of HUD. Following consolidation of the CHA and HUD cases the district judge directed HUD and the plaintiffs to prepare a remedial plan. (A copy of the order is attached as Exhibit C.) HUD fought the order and indicated it might decline to comply. The district judge then entered a second order directing CHA to take remedial steps, particularly to avoid the

obstacle presented by a recalcitrant City Council which has thus far refused to approve more than a token number of sites for new CHA housing. (A copy of this order is attached as Exhibit D.) CHA fought this order and has indicated that it will appeal rather than comply, exactly as it did with respect to an earlier order seeking to prod it into remedial action. See this Court's opinion at 436 F.2d 306. It must also be remembered that it is now over two and one half years since the district judge ordered CHA to use its best efforts to provide new housing to remedy its past wrongs. None has so far been provided.

It is in this context that the district court's order must be viewed. Faced with local inaction, HUD itself - long before the proceedings below in this phase of the case commenced - conditioned its grant of model cities funds on City Council action on public housing sites at each succeeding regular City Council session. From the very outset of the model cities program HUD had put the City on notice that it expected compliance by the City and all its agencies with orders entered in the Gautreaux litigation. After years of frustrating non-compliance, and after a determination that HUD was equally responsible for the segregated housing pattern of the past, was the district judge obliged to sit idly by and allow one of the responsible parties to reward a defaulting City for its role in frustrating the court's orders?

We think the answer to that rhetorical question is obvious. Even if HUD's proposed action had not been inconsistent with its own relocation requirements, the district judge would have been justified in taking the step he did solely as a means of seeking compliance with his remedial orders. When it appeared, as the discussion in Part I above shows, that the action HUD proposed to take was inconsistent with its own requirements, the district judge was certainly not barred from insisting upon adherence to those requirements merely because, as a by-product, the likelihood of compliance with his remedial orders in Gautreaux was increased thereby.

III. The District Court's Order Did Not Improperly
Interfere with HUD's Administrative Discretion

On several different grounds the appellants argue that the District Court's order was an improper interference with HUD's administrative discretion. One of these is the City's assertion that the model cities program has no connection with the public housing program and that therefore it was arbitrary for the District Court to deal with a HUD model cities decision in a case primarily concerned with public housing. Thus, the City's brief says the Chicago model cities program is not "functionally related" to the programs before the District Court in this case (p.5), and that "Model Cities has neither a 'connection with' nor does it 'support' public housing in Chicago ..." (p. 24.)

The assertion that the model cities program has no connection with public housing in Chicago is of course incorrect. The Statement of the Case, supra, shows how model cities and public housing programs are closely "connected" by the language of the model cities statute and through relocation plan requirements both in the statute and HUD regulations. (See Sections 1 and 2 of the Statement of the Case, supra. HUD's model cities regulation says, among other things, that making "maximum use ... [of] federally assisted low-rent public housing" is one of HUD's "requirements." CDA Letter No. 5, Appendix A, supra, pp. 2-3.)

Indeed, HUD's brief specifically acknowledges the "link" between the two programs. (p. 29.) It could scarcely do otherwise because HUD itself administratively "connected" Chicago's second year model cities program and its public housing program, including, with special particularity, Judge Austin's decree with respect to the public housing program. Thus, without restating all the facts (see section 4 of the Statement of the Case, supra), HUD agreed to release the second year model cities funds only upon the condition that the City Council continue to approve public housing sites at each regular Council session; and the sites so approved had to comply with Judge Austin's Gautreaux decree. In other words, the model cities program was viewed by HUD as so closely connected to the public housing program that HUD itself made performance in the

one an express condition for receipt of funds in the other.

The predicate for this argument - that by reason of this supposed lack of connection the District Court's action was arbitrary interference with administrative discretion - is thus swept away. With its predicate gone, the argument falls.*

Next some of the appellants argue that, apart from the lack of connection point, the District Court's order fails to meet the normal criteria for judicial review of administrative agency action. (Part IV of the City brief and Part 3 of the CHA brief.) The argument is of course wide of the mark because here the administrative agency is a wrongdoer with an affirmative duty to remedy its past wrongs, and the District Court is charged with effectuating that remedy. But the Administrative Procedure Act argument may be met on its own terms.

Courts may set aside agency action which is either "not in accordance with law" or is "arbitrary." 5 U.S.C.A. §706. HUD's proposed unconditional release of second period model cities funds was both. We have already seen that HUD itself

concluded that the applicable law - i.e., its own relocation plan *Several of the appellants also argue that, "No rights were created by the letter of intention" (City brief, p.17), and that in any event "it must be conceded that the City has achieved significant performance in meeting the goal of 4300 units of housing." (Id. p. 24.) No one has asserted or relied on any "rights" said to be created by the letter of intent. As to "significant performance," notwithstanding the strenuous efforts of several appellants, including HUD, to paint such a picture, HUD itself admitted there was not even "substantial progress," let alone substantial compliance, with the letter of intent. (Tr. 799.) HUD's letter of January 6, 1972 (Exhibit B to this brief) should end discussion of this point.

requirements - precluded funding of Chicago's second period model cities program unless the City overcame the relocation deficit of 4300 units. In its letter to Mayor Daley of November 19, 1970, HUD said:

"Therefore, 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 the Model Cities Program funds. And it should be clear that new units provided must be available for occupancy by June 30, 1971 or very shortly thereafter." (Ex. App. 14.)

Since it is clear that the necessary actions to implement the plans were not taken (see section 4 of the Statement of the Case, supra), unconditional release of second period model cities funds would, by HUD's own account, not be "in accordance with law."*

Moreover, Mr. Vavoulis' reversal of position (his decision to fund the second period program unconditionally) was - again by HUD's own account - arbitrary. Thus, Mr. Vavoulis candidly acknowledged that he,

"was in no position to make an administrative judgment concerning the release of funds ..."
(App. 77.)

This admission, plus a record which independently of it compels the same conclusion, show the arbitrariness of Mr. Vavoulis' decision. "All I knew," Mr. Vavoulis said, "is that I was going

*Moreover, HUD's discretion "must be exercised within the framework of the national policy against discrimination in federally assisted housing, 42 U.S.C. §2000d, and in favor of fair housing. 42 U.S.C. §3601." Shannon v. HUD, 436 F.2d 809, 819 (3rd Cir. 1970).

to release the money." (App. 151.)* On this separate ground judicial review was justified.**

In the final analysis, of course, HUD's own action with respect to the NDP program is the proof of the pudding. If HUD is justified in refusing to fund the NDP program (a program whose relocation requirements are the "equivalent" of model cities relocation requirements), it can hardly have been an abuse of discretion for the district judge on the record in this case to direct HUD to take the same position with respect to the model cities program, a position HUD itself had initially adopted.

IV. The District Court's Order Did Not Violate
Either the Letter or the Spirit of Section 602
of the Civil Rights Act of 1964.

Next the appellants assert that the District Court's order violated Section 602 of the Civil Rights Act of 1964. However, as HUD's brief acknowledges (p. 29), Section 602 expressly

*Mr. Vavoulis said he did not give consideration to whether any release of funds should be conditional. (App. 151.)

**"HUD has a duty ... to see that [a local agency] properly executes its relocation plan." M. M. Crockin v. Portsmouth Redevelopment and Housing Authority, 437 F.2d 784, 789 (CA 4 1971). In a number of cases HUD's approval of relocation plans has been upset. See, e.g., Crockin, supra; Norwalk CORE v. Norwalk Redevelopment Agency, 395 F.2d 920 (CA 2 1968); and Powelton Civic Home Owners Ass'n. v. HUD, 284 F.Supp. 809 (E.D. Pa. 1968). In none of these cases did HUD admit, as it did here, that relocation requirements had not been met and that it was in no position to make the administrative judgment it finally made.

applies only to administrative, not to judicial, terminations of funds. Nor can that section be interpreted as restricting or withdrawing equitable remedial powers from federal courts. In Swann v. Charlotte-Mecklenberg Board of Education, 402 U.S. 1 (1971), the Supreme Court gave short shrift to an analagous contention that Title IV of the Civil Rights Act of 1964, 42 U.S.C. §2000c, had limited the equity powers of federal district courts to order bussing in school desegregation cases. Rejecting this contention even though §2000c, unlike Section 602, does refer to courts, the Supreme Court said,

"There is no suggestion of an intention to restrict those powers [of federal courts to enforce the Equal Protection Clause] or withdraw from courts their historic equitable remedial powers." 402 U.S. at 17.*

*42 U.S.C. §2000c-6 provides: "[N]othing herein shall empower any official or court of the United States to issue any order seeking to achieve a racial balance in any school by requiring the transportation of pupils ..." In U.S. v. School District 151 of Cook County, Illinois, 286 F.Supp. 786, 799, this section was held inapplicable to a judicial effort to remedy de jure segregation. Affirming, this Court said:

"The Constitution forbids the enforcement by the Illinois School District of segregation of Negroes from Whites merely because they are Negroes. The congressional withholding of the power of courts in Section 2000c-6 cannot be interpreted to frustrate the constitutional prohibition." 404 F.2d 1125, 1130.

See also, Board of Public Instruction v. Finch, 404 F.2d 1068, 1076 n. 13 (6th Cir. 1969), where, speaking of Section 602, the Court said, "The legislative history of 42 U.S.C.A. §2000d-1 ... makes perfectly clear that the requirements of the statute are directed exclusively at the administrative agency."

Apart from this, no reasoning in the appellants' briefs explains how Section 602 precludes HUD from withholding model cities funds for a failure to meet model cities relocation plan requirements (or a District Court from requiring HUD to do so). The City phrases the argument, "HUD could not ... have terminated the Chicago Model Cities funds for the violations involved in either of the Gautreaux cases." (p. 13.) This involves some semantic dexterity. The issue is whether HUD was obligated to make a grant of funds although the condition upon which it had offered the grant was not met. So put, the City's statement is of course its own response.

"It is settled law that the United States has the authority to fix the terms and conditions upon which its money allotments to states shall be disbursed." U.S. v. Frazer, 317 F.Supp. 1079, 1083 (D.C.M.D. Ala, 1970).

Moreover, the very case relied upon by the appellants makes it clear that Section 602 does not require "that a program must be considered in isolation from its context." Board of Public Instruction v. Finch, 414 F.2d 1068, 1079 (5th Cir. 1969). Withholding of funds under Section 602 is proper not only if the funds are administered in a discriminatory manner, but also "if they support a program which is infected by a discriminatory environment ..." 414 F.2d at 1078. Here HUD made a specific determination that the model cities program in Chicago was infected by a discriminatory environment, including particularly the discriminatory environment created by the public housing

segregation found in and sought to be remedied in the Gautreaux cases. In its initial approval of the Chicago Model Cities Program HUD said:

"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 1460. U.S. District Court, Northern District of Illinois, Eastern Division)." (Ex. App. 1.)

For these several reasons it is clear that the order appealed from violates neither the letter nor the spirit of Section 602.

V. The District Court's Order is Not Contrary to the Public Interest or Equitable Principles

Finally, the appellants argue that because the District Court's order supposedly will have a "devastating effect" on the public, and because according to HUD it violates certain related alleged "principles of equity," the Court's order is contrary to the public interest. The argument is based upon an incomplete summary of the relevant facts as well as on a simplistically narrow assessment of the "public interest."

First, the argument assumes that the effect of the order below will be to terminate the second year model cities program, presumably because money for the program will be exhausted before

the order is complied with, or because the condition in the order will not be met. As to the first presumption, the second year model cities program has in fact operated without federal funding from its commencement on June 15, 1971. (App. 416.) Indeed, the program is now technically over, having ended on December 31, 1971. (App. 357.) Although no contention is made that the appeal is moot on that account, it is clear that no breakfasts, jobs or other good things supposed to have been provided by the second year model cities program have been or will be lost by reason of the District Court's order. As HUD's brief recognizes (p. 31), if the condition in the order is ultimately not complied with the effect may be to curtail some other, unspecified local or state expenditure but not the second year model cities program. There is, of course, no showing as to what that expenditure might be, or what effect its curtailment would have on the public interest.

However, this Court should not assume that the condition will not be complied with and that such other, unspecified expenditure will ultimately be curtailed. Youngstown Sheet & Tube Co. v. Sawyer, 103 F.Supp. 569 (D.D.D.C. 1952), aff'd 343 U.S. 579 (1952), is instructive as to that. There, in the "steel seizure" case (Sawyer, the Secretary of Commerce, having been directed by executive order of the President to take possession of such plants of various steel companies as he deemed necessary in the interest of national defense), it was

strenuously argued by the Government that the action taken was "necessary to avert a national catastrophe," 343 U.S. at 582, and that an injunction against the seizure would produce "disastrous effects on our defense efforts and economy." 103 F.Supp. at 576. Among other responses to this in terrorem argument, the District Judge declined to accept the hypothetical chain of events urged upon him:

"[T]he disastrous effects ... can come about only in case of a strike, and that presupposes that the United Steel Workers will strike notwithstanding the damage it will cause our defense effort." 103 F.Supp. at 576.

Paraphrasing to fit this case (assuming it were not otherwise clear for the reason just given that the second year model cities program has not suffered, and will not suffer from the entry of the order below), the devastating effects can come about only in case of a cessation of the second year model cities program, and that presupposes the Chicago City Council will ultimately refuse to approve public housing sites notwithstanding the damage that would cause to Chicago and its citizens. Moreover, the devastating effects could come about only if, in the event of such ultimate refusal, the District Court lacks the power to take other and further steps to avert those effects while at the same time assuring plaintiffs of the equitable relief to which they are entitled. It may not be assumed that a court of equity is without such power. As pointed out in Part II of this brief, the District Court has

already taken further action looking to the possible by-passing of the requirement for City Council approval in an intensifying effort to produce some effective relief. See also the authorities cited in Part II, supra.*

Apart from the speculative nature of the appellants' "public interest" argument, the conception of the "public interest" it embodies is too narrow. Thus, the appellants fail to take account of the fact that there is a "public interest" in adequate housing as well as in the non-housing model cities programs. HUD said that discrimination had been identified as a basic problem which must be dealt with "if the model cities program is to succeed," and that "in this connection" HUD expected "full compliance by the City and all its agencies" with the order in the Gautreaux case. Ex. App. 1, emphasis added.

Moreover, as we have seen, the model cities statute ties model cities programs to "unmet needs for additional housing," 42 U.S.C. §3301, and to the need of cities to "increase their

*As the HUD brief notes (p. 34), the District Court order is effective only "pending further order." HUD argues that the order lacks "flexibility," one of the "principles of equity" it believes to have been violated, citing Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1, 15 (1971). But Swann's reference to "flexibility" supports the kind of judgment the District Court's order embodies:

"The essence of equity jurisdiction has been the power of the Chancellor to do equity and to mould each decree to the necessities of the particular case. Flexibility rather than rigidity has distinguished it." Hecht Co. v. Bowles, 321 U.S. 321, 329-330 (1944), quoted in Swann at 402 U.S. 15, emphasis added.

supply of adequate housing for low- and moderate-income people." (Ibid.) The statute provides that a model cities program is not eligible for federal assistance unless the program contributes to "a substantial increase in the supply of standard housing of low and moderate cost," 42 U.S.C. §3303(a)(3), and it requires a feasible relocation plan. 42 U.S.C. §3303(a)(4). The appellants ignore these strong Congressional expressions of the "public interest" in increasing the housing supply, so strong that model cities programs which fail to comply with relocation plans are not eligible for funding - that is, they are not, in that case, in the public interest.*

Appellants also ignore the "public interest" which inheres in the duty of a court of equity to remedy fully violations of constitutional rights. Here the District Court has the obligation, in the public interest as well as in the interest of the plaintiff class, to effect such a remedy. The District Court has determined that in order to preserve its power in that regard it is necessary to provide that the funds for the second period of the model cities program not be released unconditionally, without at least minimal performance of housing obligations by the City and CHA. The appellants are silent on the

*Another of HUD's equitable principles - that the nature of the violation determines the scope of the remedy - is really just another way of phrasing the public interest argument. These statutory provisions, as well as HUD's own actions conditioning model cities funds on housing performance, show that this principle was not violated.

"public interest" in thus preserving to the District Judge the power to grant effective relief in a case in which he has the duty to do so.*

HUD argues (pp. 31-33) that the District Court's order will not be "effective," another principle of equity, citing Davis v. Board of School Commissioners of Mobile County, 402 U.S. 33, 37 (1971). The Davis decision is hardly support for HUD's assertion. Davis said that, "A district court may and should consider the use of all available techniques," and reversed a decision below because of "inadequate consideration" of available remedies. 402 U.S. 33, 37-8, emphasis added. The judgment of Mr. Vavoulis that a conditional release of funds will not produce City Council action on housing sites may or may not be sound (we will not know until this appeal is over),

*In Youngstown the District Judge said:

"... [I]f I consider the public interest from another viewpoint, I believe that the contemplated strike, if it came, with all its awful results, would be less injurious to the public than the injury which would flow from a timorous judicial recognition that there is some basis for this claim to unlimited and unrestrained Executive power. ..." 103 F.Supp. at 577.

Here a comparable injury might flow from a timorous judicial attitude which permitted housing obligations embodied in statutes and regulations, the performance of which had become essential to help remedy "twenty years of deliberate housing segregation" (App. 16) constituting a gross violation of the constitutional rights of thousands of citizens of Chicago, to be ignored by violators themselves, particularly after more than two years of dilatory tactics had so far frustrated the District Judge's efforts to achieve that remedy.

for there can never be advance assurance that court orders will be fully complied with. But "effectiveness" in Davis refers not to whether ultimate compliance is in fact achieved, but to whether the court has endeavored to fashion a remedy based on full consideration of the alternatives available to it. The record in this instance supports the district judge's sensitive and continuing efforts to fashion such a remedy in difficult and trying circumstances, and (it may be added) with precious little help from the federal agency to which he should be able to turn for aid.*

We think that exactly where the "public interest" lies in the circumstances of this case is clear. But whether all agree with the District Court's judgment in this respect is hardly the issue. The question is whether, in exercising his discretion to enter the order below, the district judge so violated some applicable standard or requirement as to have

*At the conclusion of its argument HUD asserts (pp. 36-37) that somehow the alleged violation of equitable principles "trenches upon the doctrine of separation of powers" in two respects. We do not pretend to understand either of the respects. The first is that the order appealed from may "influence" the City Council on "the policy questions regarding public housing." (p. 36.) Why this presents a separation of powers problem is not explained. See Hawkins v. Town of Shaw, 437 F.2d 1286, 1292 (5th Cir. 1971). The second relates to overriding "citizen opposition to public housing in the suburbs." (pp. 36-37.) What this issue is supposed to be, or how it is supposed to be presented by the order appealed from, is not made clear.

abused his powers. The "public interest" and "equitable principles" arguments show no such abuse.

The district judge is plainly in the best position to make the discretionary judgment which is reflected in the order. This Court's recent statement that it "would be extremely reluctant to interfere with the exercise of that District Judge's sound discretion in matters pertaining to this controversy ..." 448 F.2d at 734, echoes its statement many years ago that a similar view was "bottomed on manifest grounds of propriety." American Strawboard Co. v. Indianapolis Water Co., 81 Fed. 423, 424 (7th Cir. 1894). Here we have not only an exercise of sound discretion to preserve the District Court's power to remedy effectively serious violations of federal constitutional rights, but also a positive requirement of law - the relocation plan requirement - which dictates the same course of action that discretion urges.

Under these circumstances it is plain that that discretion, supported by legal as well as equitable considerations, should not now be interfered with.*

*The original decision below and the decision in Coalition for United Community Action v. Romney, 316 F.Supp. 742 (N.D. Ill. 1970), show that the district judge is sensitive to the various considerations suggesting deference to administrative judgments. It is not irrelevant to observe that the order appealed from was entered by such a judge.

CONCLUSION

At bottom this appeal rests on a fundamental inaccuracy: that the model cities program has nothing, or very little, to do with housing. But, as we have seen, the model cities statute and HUD regulations enacted pursuant to it make housing a major objective and component of a model cities program and an adequate relocation plan a prerequisite to model cities funding. Here, both HUD and the City determined that Chicago's relocation plan was 4300 units short of adequacy, and a program for meeting the 4300 unit deficit, eventually embodied in the letter of intent, was agreed upon. The failure on the part of the City to comply with that program left HUD no choice but to decline to fund the second year model cities program. HUD's last-minute decision to release the funds unconditionally cannot be justified under the statute and its own regulations (as its own writings, and later its own NDP decision, show), or in terms of any view of administrative discretion (Mr. Vavoulis himself having admitted he was "in no position" to make the administrative judgment to release the model cities funds unconditionally).

Moreover, performance of the public housing undertakings in the letter of intent constituted a vital step in remedying the constitutional wrongs done to the plaintiff class by CHA and HUD over a period of twenty years. Perhaps it was that fact that led HUD to single out the public housing undertakings

and make them, in particular, a precise and explicit condition of the release of model cities funds - especially in light of the recalcitrance of the local authorities in providing the desperately needed new housing which it was their duty to provide. One of the plaintiffs, less impressed than are the appellants with how much he and his class would benefit from the City's model cities programs, put the issue in less lawyer-like language:

"CHA was what I was about. Segregated housing, stacked into concentration camps ... trying to raise my children ... and have to keep them cooped up like chickens within a chicken coop for fear of the reprisal from neighborhood gangs ... [M]y concern is housing, not only in the black community. We have enough prisons within our community. Put them in the outlying areas."
(App. 405-406.)

Under these circumstances the district judge who, as this Court has observed, has a "difficult and time-consuming task, presenting unique problems for resolution," clearly had discretion to act as he did. Apart from Gautreaux considerations, HUD was not free to fund the model cities program without compliance with relocation requirements. When the heavy obligations now imposed upon the district judge by this Court's decision of September 10, 1971 are added to those non-Gautreaux considerations, it appears beyond doubt that the district judge had discretion to enter the order appealed from. His action should be affirmed, thereby leaving him free to continue to try to deal effectively with the difficult remedial task

with which he is confronted.

Respectfully submitted,

Alexander Polikoff
Milton I. Shadur
Bernard Weisberg
Cecil C. Butler
Charles R. Markels
Merrill A. Freed
Stuart Cohn

By: 

Alexander Polikoff

One of the Attorneys for Plaintiffs-
Appellees

January 13, 1972

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

October 4, 1971

Honorable Richard J. Daley
Mayor, City of Chicago
Chicago, Illinois

Dear Mayor Daley:

The purpose of this letter is to inform you that I am deeply concerned about the City's lack of progress in carrying forth the commitments in the May 12 Letter of Intent between the City, Chicago Housing Authority, and HUD.

As you are aware, this Department has been withholding over twenty million dollars in Neighborhood Development Program funds for better than a year, pending the City's development of a satisfactory program for housing and relocation of low-income families displaced from dwellings as a result of HUD assisted programs and local code enforcement activities carried on by the City. The purpose of the May 12 Letter of Intent was to develop a specific action program to provide necessary relocation housing resources for low-income families, and commit you and the City of Chicago to achieve the objectives of the Workable Program and thereby provide a basis for release of the Neighborhood Development Program money.

Throughout my involvement with you and your staff, I have attempted to remain flexible and sensitive to the problems which the City faces in providing decent, safe and sanitary dwellings for the low-income families residing in the City.

EXHIBIT A

It was for that reason that the Department consented to the staggered performance dates of June 15, September 15 and December 15 as set forth in the Letter of Intent. Unfortunately, the rate of progress to date in achieving the objectives of the Letter of Intent is short of the scheduled performance. I believe that it is incumbent at this time to advise that the Department cannot continue to hold indefinitely the reservation for the MDP funds. Therefore, if the City has not substantially accomplished the objectives set forth in the Letter of Intent by December 15, the Neighborhood Development Program reservation amounting to approximately twenty million dollars will be terminated and those funds will be re-distributed to other communities.

I trust that the City will be successful in achieving the commitments which it has made in the May 12 Letter of Intent. Naturally, you can count on this Department to extend every effort in assisting the City to accomplish those objectives.

Sincerely,

/s/ George J. Vavoulis

George J. Vavoulis
Regional Administrator



DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
300 SOUTH WACKER DRIVE, CHICAGO, ILLINOIS 60606

REGION V

IN REPLY REFER TO:

January 6, 1972

Honorable Richard J. Daley
Mayor, City of Chicago
City Hall
Chicago, Illinois

Dear Mayor Daley:

This office and the Chicago Area Office have completed the review of the report submitted on December 23, 1971 by Commissioner Lewis W. Hill and have concluded that the City and the Chicago Housing Authority have failed to achieve the objectives for the development of housing for low-income families, as set forth in the May 12, 1971 Letter of Intent between the City, CHA and HUD. As you are aware, the purpose of the Letter of Intent was to set forth a time and action table to establish relocation feasibility for low-income individuals and families displaced or to be displaced as a result of HUD assisted and other governmental programs in the City, such relocation feasibility being a basic prerequisite for federal urban renewal assistance.

It was our sincere belief that the City and CHA proposals as outlined in the Letter of Intent would lead to a meaningful replacement and expansion of the housing supply for Chicago's low-income families. Inasmuch as that result has not occurred, however, we are left with no alternative but to redistribute, as of this date, the Chicago Second Year Neighborhood Development Program funds which we have been holding in abeyance since August, 1970 in the expectation that sufficient low income housing units would be constructed, thereby making this urban renewal program fundable. Accordingly, we will now complete procedural steps to close out the First Year Neighborhood Development Program, working with Commissioner Hill's office.

EXHIBIT B

The action outlined above should in no way be interpreted as a cessation of efforts on the part of this Department to work with the City in every way possible to come to grips with housing problems for low-income people. We certainly will continue to do our part in assisting the City, the Chicago Housing Authority, or any eligible sponsor to implement plans for the development of low income housing in the Chicago area. It is our profound hope that efforts to improve the low income housing situation in the City of Chicago, whether they be court ordered or initiated by the City or CHA, will place this Department in the future in a position to approve federal programs for which adequate relocation housing is a requirement.

To this end, Mr. John L. Waner, Director of our Chicago Area Office will be in touch with you and your staff to offer all assistance at our command.

I personally regret that the action which I have taken today was required. However, I know we are both anxious to move on toward solutions to Chicago's housing and development problems. I personally stand ready to work with you on all facets of these problems, not only in the City, but in the greater Chicago Metropolitan area.

Sincerely,

/s/ George J. Vavoulis

George J. Vavoulis
Regional Administrator

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

ENTERED
12/23/71

DOROTHY GAUTREAUX, et al.,)

Plaintiffs,)

v.)

No. 66 C 1460

GEORGE W. ROMNEY,)

Defendant.)

ORDER

This matter coming on to be heard pursuant to plaintiffs' motion for further relief, and the Court having considered the opinion of the Court of Appeals for the Seventh Circuit of September 10, 1971 in this cause and the mandate issued pursuant thereto, and this Court's order herein of November 11, 1971, and the Court having heard the presentations of the parties and being fully advised,

It is hereby ordered:

1. The parties shall attempt to formulate a comprehensive plan to remedy the past effects of unconstitutional site selection procedures in the public housing system in the City of Chicago and present the same to the Court within sixty days from the date hereof;

2. If the parties cannot agree, each party shall file with the Court a proposed judgment order embodying a comprehensive plan to remedy the past effects of such unconstitutional site

EXHIBIT C

selection procedures within ninety days from the date hereof;
and

3. In the preparation of such plan or plans, the parties are requested to provide the Court with as broad a range of alternatives as seem to the parties feasible as a partial or complete remedy for such past effects, including, if the parties deem it necessary or appropriate to provide full relief, alternatives which are not confined in their scope to the geographic boundary of the City of Chicago.

ENTER: .

December 23, 1971

/s Richard B. Austin
Judge

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

FILED

DEC 29 1971

STUART CUNNINGHAM
At _____ o'clock

DOROTHY GAUTREAUX, et al.,	)	
	)	
Plaintiffs,	)	No. 66 C 1459
	)	
v.	)	No. 66 C 1460
	)	
GEORGE W. ROMNEY, and CHICAGO	)	(Consolidated)
HOUSING AUTHORITY, et al.,	)	
	)	
Defendants.	)	

ORDER

This matter coming on to be heard pursuant to plaintiffs' motion for further relief filed November 24, 1971, and the Court having considered the oral and written presentations of the parties and being fully advised; and the Court having retained jurisdiction of this matter for all purposes, specifically including enforcement of this Court's judgment order of July 1, 1969, which order, among other things, obligates the defendant Chicago Housing Authority ("CHA") to "use its best efforts to increase the supply of Dwelling Units as rapidly as possible in conformity with the provisions of [such] judgment order," and directs CHA to "take all steps necessary to that end, including making applications for allocations of federal funds and carrying out all necessary planning and development;" and it appearing to the Court that

EXHIBIT D

pursuant to such reservation of jurisdiction further orders are necessary to enforce such judgment order and "to remedy the past effects of CHA's unconstitutional site selection" as provided in this Court's Memorandum Opinion of February 10, 1969;

IT IS HEREBY ORDERED:

1. CHA shall file with the Court and serve upon attorneys for plaintiffs within 15 days from the date hereof (i.e., on or before January 18, 1972) a specific plan for,

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

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

such plan to include specific identification of sites to be acquired, the number of housing units to be constructed thereon, and a specific time schedule by which all major steps to and including the completion and renting of housing units thereon are proposed to be accomplished;

2. CHA shall file with the Court and serve upon attorneys for the plaintiffs within 30 days from the date hereof (i.e., on or before February 2, 1972) a specific plan for,

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

(b) the prompt provision of public housing units thereon,

such plan to include specific identification of sites to be acquired; the number of housing units to be constructed or otherwise supplied thereon, and a specific time schedule by which all major steps to and including the completion and renting of housing units thereon are proposed to be accomplished; and

3. CHA shall file with the Court and serve upon attorneys for the plaintiffs within 45 days from the date hereof (i.e., on or before February 17, 1972) a specific plan for,

(a) the prompt acquisition by CHA, regardless of any action taken or not taken by the City Council, of such number of additional sites for public housing units as will permit CHA to provide 7,000 public housing

units in addition to the 1500 such
units hereinabove referred to, and
(b) the prompt provision of public housing
units thereon,

such plan to include the proposed method for specific identification of the sites to be acquired and a specific time schedule by which all major steps to and including the completion and renting of housing units thereon are proposed to be accomplished.

4. A hearing for the consideration of each of such plans, respectively, and the entry of further orders in connection therewith, is hereby set, without further notice, 15 days following the last day for the filing and service thereof, at 10 o'clock A.M., to wit, on February 2, 1972, February 17, 1972 and March 3, 1972, respectively.

ENTER:

/s Richard B. Austin

Judge

January 3, 1972