

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

DOROTHY GAUTHREUX, et al.,	)	
	)	
Plaintiffs,	)	No. 66 C 1459
	)	
vs.	)	No. 66 C 1460
	)	
CHICAGO HOUSING AUTHORITY,	)	(Consolidated)
et al.,	)	
	)	
Defendants.	)	

MEMORANDUM IN SUPPORT
OF MOTION TO DISMISS

Defendants Jack I. Sperling and Michael Bilandic, elected aldermen of the City Council of the City of Chicago, herewith submit a Memorandum in support of their Motions to Dismiss the Supplemental Complaint.

Applicable Law

It is well settled that under Federal Rule 12(b)(6) a motion to dismiss for the reason that the complaint fails to state a claim against a defendant upon which relief can be granted will be allowed if it appears to a certainty that the plaintiff would be entitled to no relief under any state of facts which could be proved in support of his claim. See Holmes v. New York City Housing Authority, 398 F.2d 262, 265 (2d Cir. 1968).

It appears equally well settled that under Federal Rule 19, a court in its discretion may join additional parties for purposes of relief. This was done in the case of Bradley v. School Board of City of Richmond, Virginia, 51 F.R.D. 139 (E.D. Va. 1970), cited by Plaintiffs in the instant cause in their Motion to Add Parties Defendant and To File Supplemental Complaint. In the Bradley case, the court decided to grant the motion to add parties defendant in light of the relief sought, which was to effect school integration by means of consolidating school districts. Thus, the court joined as parties defendant members of school boards and state educational authorities with the power and authority to perform acts that would be required when the districts were consolidated.

Finally, it has been historically true that courts cannot interfere in the legislative domain of enacting legislation. The judiciary has no powers of supervision over the legislative branch , and courts cannot dictate or enjoin the passage of legislation. See Fletcher v. City of Paris, 377 Ill. 89, 35 N.E. 2d 329, 332 (1941). It is axiomatic that it is the province of the judiciary to construe but not to enact legislation. See Association of F. Sisters, etc. v. Vermillion County, 304 Ill. App. 243, 26 N.E. 2d 163, 165 (1940).

Reasons for Granting Defendants'
Motion to Dismiss

First, Plaintiffs allege no set of facts in their Supplemental Complaint which if proved would result in any liability

on the part of said Defendants towards Plaintiffs or would warrant any concomitant relief. Plaintiffs in fact allege no facts that bear any relation or have any relevance to said Defendants.

Second, in light of the order of this Court of January 3, 1972 (Supplemental Complaint, par. 15) and the relief requested by Plaintiffs (Supplemental Complaint, p.6), it is plain that said Defendants, as individual adlermen of the City Council of the City of Chicago, are unnecessary and, indeed, superfluous parties in the case at bar. Plaintiffs' Supplemental Complaint prays for relief in the form of a declaratory judgment that the effect of the operation of Section 9, Chapter 67½ of the Illinois Revised Statutes has been to deny Plaintiffs relief. Section 9 in effect requires the approval of the City Council of the City of Chicago before the Chicago Housing Authority can acquire land. Plaintiffs further pray for an order directing the Chicago Housing Authority to acquire land regardless of any action or inaction on the part of the Chicago City Council. Thus, unlike the school authorities joined as parties in Bradley v. School Board of City of Richmond, Virginia, supra, said Defendants' legislative powers would not extend to or be involved in the acquisition of land by the Chicago Housing Authority processes pursuant to Plaintiffs' requested relief in the case at bar.

Alternatively, it should be noted that the only instance in which said Defendants could possibly be considered a proper party in this cause would be if Plaintiffs were to request relief in the form of a mandatory injunction or some order requiring Defendants in their legislative capacity to take positive action. However, it is well settled that any such judicial interference with legislature discretion prior to its exercise would be improper. See Fletcher v. City of Paris, supra.

CONCLUSION

For the foregoing reasons, said Defendants respectfully request that this Court grant Defendants' Motion to Dismiss as to them.

Respectfully submitted,

Jack I. Sperling and Michael Bilandic,
Defendants,

by:

RICHARD L. CURRY
Corporation Counsel of the City of Chicago
511 City Hall, Chicago, Illinois 60602
Attorney for Defendants Sperling and Bilandic.

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Defendants.	)	

NOTICE OF MOTION

TO: James R. Thompson	Patrick W. O'Brien, Esq.
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PLEASE TAKE NOTICE that on February 28, 1972 the undersigned caused to be filed a Memorandum in Support of Motion to Dismiss the Supplemental Complaint on behalf of Defendants Jack I. Sperling and Michael Bilandic, a copy of which is attached hereto and served upon you.

RICHARD L. CURRY
Corporation Counsel of the City of Chicago
511 City Hall, Chicago, Illinois 60602
Attorney for Defendants Jack I. Sperling
and Michael Bilandic

CERTIFICATE OF SERVICE

I, Gayle F. Haglund, certify that on February 28, 1972
I served copies of the attached Memorandum In Support of
Motion to Dismiss to the persons named above by placing copies
with proper prepaid postage in the United States Postal Service
Mail Chute at City Hall, Chicago, Illinois
