

FILED

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

MAR 13 1972

H. STUART CUNNINGHAM

At..... o'clock.....
CLERK

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

MEMORANDUM OF PLAINTIFFS IN OPPOSITION
TO MOTION OF SEVERAL ALDERMEN TO
DISMISS SUPPLEMENTAL COMPLAINT

This memorandum responds to the memorandum filed in support of the motion to dismiss the supplemental complaint of Aldermen Sperling and Bilandic, and adopted by Aldermen Roti, Adduci, Aiello, Naturus, Laurino, Hines, Stembark, Zydlo, Cullerton, Potempa, Gabinski, Casey, Marzullo, Burke, Laskowski, Stazcuk, Stewart, Filippini, Scholl, Vrdolyak, Swinarski, Cohen, Sande

The memorandum supporting the motion to dismiss makes two points: (1) that no facts are alleged in the supplemental complaint which show any liability on the part of, or warrant any relief against, the aldermen (pp. 2-3); and (2) that the supplemental complaint seeks no relief against the aldermen and they are therefore unnecessary or superfluous parties. (p.3.) The arguments will be answered in that order.

I. THE ALLEGATIONS OF THE SUPPLEMENTAL
COMPLAINT WARRANT RELIEF

The aldermen assert that no "liability" on their part is alleged. (pp. 2-3.) They apparently believe that wrongdoing on their part must be alleged before plaintiffs are entitled to the declaratory judgment they seek. But this is not the law. It is clear that if the effect of the operation of Section 9, Chapter 67-1/2, Illinois Revised Statutes, has been and is to deny plaintiffs relief to which they are entitled, then plaintiffs may have the declaratory judgment they seek. See Louisiana v. United States, 380 U.S. 145, 154-55 (1965); Haney v. County Board of Education of Sevier County, 429 F.2d 364, 368-69 (8th Cir. 1970); United States v. Greenwood Municipal Separate School District, 406 F.2d 1086, 1094 (5th Cir. 1969); Bradley v. School Board of Richmond, Virginia, 324 F.Supp. 396, 397-98 (E.D. Va. 1971).

In each of these cases (each involved racial discrimination) a state law was set aside without any determination of racially discriminatory motivation or other form of wrongdoing in its application. The only determination made was that the effect of the state law in the circumstances was to frustrate the federal court from remedying a federal constitutional wrong. (See the quotations from these cases at pp. 9-11 of our supplemental memorandum, filed December 1, 1971, in support of plaintiffs' motion for further relief against CHA.)

On the basis of these and other authorities* plaintiffs are entitled to the declaratory judgment they seek if the supplemental complaint sufficiently alleges that the effect of the operation of Section 9 in the circumstances of this case is to frustrate federal constitutional relief to which they are entitled. The supplemental complaint does so allege. (§14.)

II. THE ALDERMEN ARE PROPER PARTIES

The second argument in the memorandum supporting the motion to dismiss is that the supplemental complaint seeks no specific relief against the aldermen and that they are therefore unnecessary or superfluous parties. But this is plainly incorrect since the supplemental complaint seeks a declaratory judgment with respect to a statute under which the aldermen have specific duties and responsibilities.

The Declaratory Judgment Act authorizes federal courts to "declare the rights and other legal relations of any interested parties seeking such declaration, whether or not further relief is or could be sought." 28 U.S.C.A. §2201, emphasis added.

*Other cases similarly have held that state law may be disregarded when necessary to remedy the effects of past discrimination. See, for example, Aytch v. Mitchell, 320 F.Supp. 1372 (E.D. Ark. 1971); United States v. State of Texas, 321 F.Supp. 1043 (E.D. Texas 1970); and Burleson v. County Board of Election Commissioners, 308 F.Supp. 352 (E.D. Ark. 1970). HUD has said to this Court that there is "ample precedent" for the type of order plaintiffs seek. (HUD's memorandum in opposition to plaintiffs' motion, filed December 17, 1971, p.4.)

The Act also provides, "Further necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment." 28 U.S.C.A. §2202, emphasis added. Thus there is plainly no requirement that relief be sought in addition to the declaratory judgment itself.

The test for determining when it is proper to utilize the declaratory judgment statute is a liberal one. In Diamond Shamrock Corp. v. Lumbermen's Mutual Casualty Co., 416 F.2d 707, 709 (7th Cir. 1969), the Court of Appeals for the Seventh Circuit quoted this test as set out in another case:

"... whether the facts alleged, under all the circumstances, show that there is a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment." [Quoting from Maryland Casualty Co. v. Pacific Coal & Oil Co., 312 U.S. 270, 273 (1941).]

There can be no doubt, given the allegations of the supplemental complaint, that there is such a controversy and immediacy here with respect to the manner in which Section 9 has affected the ability of this Court to provide full relief to the plaintiffs. Indeed, a number of the aldermen have answered the supplemental complaint, rather than moved to dismiss it, thereby evidencing their concurrence as to such controversy and immediacy.

It is clear that in these circumstances the aldermen are proper parties.

"[I]f the [declaratory judgment] action is to serve a useful purpose and put an end to the controversy, all persons interested in the subject matter of litigation should be made parties." 6A Moore's Federal Practice, p. 3146.

In Diamond Shamrock the court noted that "all parties who have an interest in or could be affected by the outcome of the declaratory judgment action here have been joined" (416 F.2d at 709), and then said:

"To avoid a partial disposition of a controversy, all persons who have an interest in the determination of the questions raised in a declaratory judgment suit should be before the court. 28 U.S.C. §2201 contemplates a pragmatic approach to the determination of legal relations in a controversy between interested parties." 416 F.2d at 710.

Indeed, the Supreme Court has observed that courts may refuse declaratory relief "for the non-joinder of interested parties who are not, technically speaking, indispensable." Abbott Laboratories v. Gardner, 387 U.S. 136, 155 (1967). And see General Investment & Service Corp. v. Wichita Water Co., 236 F.2d 464, 466 (10th Cir. 1956), where the Court said that the City was the real party in interest and was properly made a defendant in a suit against a water company where the real issue involved action taken by the water company pursuant to a city ordinance.

"Alternatively," the aldermen say, if positive action were required of them that would be improper judicial interference with legislative discretion. (p. 4.) Although that issue is

premature, the Court of Appeals for the Seventh Circuit, in Connett v. City of Jerseyville, 125 F.2d 121, 124 (7th Cir. 1941), settled the legal question long ago:

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

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

CONCLUSION

The motion to dismiss should be denied and the defendants required to answer the supplemental complaint.

Respectfully submitted,

Alexander Polikoff
Milton I. Shadur
Roger Pascal
Cecil C. Butler
Bernard Weisberg
Merrill A. Freed
Attorneys for Plaintiffs

By: 

Alexander Polikoff

March 13, 1972

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

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

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

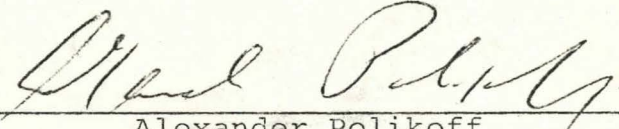
NOTICE

To: Patrick W. O'Brien, Esq. 231 S. La Salle Street Chicago, Illinois 60604	James Murray, Esq. U.S. Attorney's Office 219 S. Dearborn Street Chicago, Illinois 60604
Richard L. Curry, Esq. Corporation Counsel 511 City Hall Chicago, Illinois 60602	Alex Elson, Esq. Elson Lassers & Wolff 11 S. La Salle Street Chicago, Illinois 60603
Wilson Frost, Esq. 134 N. La Salle Street Chicago, Illinois 60602	Marylou Hedlund 930 Castlewood Terrace Chicago, Illinois 60602
Alan N. Lasky, Esq. 209 S. La Salle Street Chicago, Illinois 60604	Harold T. Berg, Esq. 33 N. La Salle Street Chicago, Illinois 60602
Seymour Simon, Esq. 39 South La Salle Street Chicago, Illinois 60603	Claude W. B. Holman, Esq. 54 W. Randolph Street Chicago, Illinois 60601
Thomas E. Keane, Esq. 111 W. Washington Street Chicago, Illinois 60602	

PLEASE TAKE NOTICE that we have this day filed the
memorandum of plaintiffs in opposition to the motion of several

aldermen to dismiss the supplemental complaint, a copy of which memorandum is attached hereto.

March 13, 1972



Alexander Polikoff
One of the Attorneys for Plaintiffs

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

CERTIFICATE OF SERVICE

The undersigned, one of the attorneys for plaintiffs, hereby certifies that he served a copy of the foregoing notice and the memorandum in opposition referred to therein, by mailing a copy of the same to the persons named in the notice at the addresses shown, this 13th day of March, 1972.



Alexander Polikoff