Nos. 71-1732, 1733, 1734, and 71-1807

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

DOROTHY GAUTREAUX, ET AL.,

Plaintiffs-Appellees,

v.

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

Defendant-Appellant,

and

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

Intervenors-Appellants.

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

OPPOSITION OF APPELLANT SECRETARY OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT TO APPELLEES' PETITION FOR REHEARING

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On March 8, 1972, this Court held that "it was improper for the District Court to threaten the termination of a program which was not tainted with discriminatory action [*i.e.*, the Model Cities Program,] in order to bring about a cure of a separate program which was found to have been so tainted" (*i.e.*, the Low-Rent Public Housing Program) (Slip op. 4). The plaintiffs have filed a petition for rehearing from that decision and have suggested that the matter be reheard in banc.

In responding to the arguments put forth in that petition, we shall first discuss the Model Cities relocation requirements and demonstrate that the plaintiffs' assertion that those requirements have been violated is without merit. In the course of that discussion, we shall also show that, contrary to plaintiffs' contention, the district court found no such improper administration of the Model Cities Program. We then shall respond to plaintiffs' arguments that the district court did not abuse its discretion by enjoining the Model Cities Program, which is untainted by racial discrimination or relocation illegality, to remedy the wrongs found in the pre-1966 site-selection procedures of the Low-Rent Public Housing Program. Because this Court correctly held that the court below did abuse its discretion, the petition for rehearing should be denied.

1. The statutory Model Cities relocation provision 1/ is 42 U.S.C. 3307(a):

> A comprehensive city demonstration program shall include a plan for the relocation of individuals, families, business concerns, and nonprofit organizations displaced or to be displaced in the carrying out of such program. The relocation

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1/ Relocation of those displaced after January 2, 1971, is also governed by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 84 Stat. 1894, new regulations, 24 C.F.R. 42.1 *et seq.*, and a new HUD Relocation Handbook, No. 1371.1 (July 1971).

plan shall be consistent with regulations prescribed by the Secretary to assure that (1) the provisions and procedures included in the plan meet relocation standards equivalent to those prescribed under section 105(c) of the Housing Act of 1949 with respect to urban renewal projects assisted under title I of that Act, and (2) relocation activities are coordinated to the maximum extent feasible with the increase in the supply of decent, safe, and sanitary housing for families and individuals of low or moderate income, as provided under the comprehensive city demonstration program, or otherwise, in order to best maintain the available supply of housing for all such families and individuals throughout the city.

Plaintiffs proceed as though the fact that the relocation standards for Model Cities are equivilent to those for the Neighborhood Development Program (NDP) means that a Model Cities Program cannot be funded unless it provides for the relocation of all those displaced by both Model Cities and NDP (See Pet. 7, 9). The statute refutes this argument by clearly providing that a Model Cities plan must provide only for those displaced "in the carrying out of such program." 42 U.S.C. 3307(a). NDP displacees are protected by a different statute. 42 U.S.C. 1455(c).

The other pertinent statutory provision is 42 U.S.C. 3303. This section requires, inter alia, that a local Model Cities Program must have a relocation plan to be eligible for federal assistance. 42 U.S.C. 3303(a)(4). Plaintiffs rely upon Section 3303(a)(3) which provides that a Model Cities Program is eligible for federal assistance only if it "will contribute to * * * a substantial increase in the supply of standard housing of low and moderate cost" (Pet. 9). This provision must be read in the context of the multiple social and economic aims enumerated in that same section. Moreover, it must also be read in light of the requirement of 42 U.S.C. 3303(b) that local initiative be emphasized in planning, developing, and implementing a program. While housing is one aspect of Chicago's program, local target area residents and local agencies have accorded higher priority to education, health, and employment (App. 174, 338).

These Model Cities statutory provisions were implemented by HUD Handbook MC 3165.1 (Appended to Objections of Plaintiffs to Motion of Intervenor-Appellants to Suspend and Vacate an Order of the District Court, filed with this Court).[2/] Paragraph 7 of that Handbook sets forth the relocation submission requirements "which constitute the relocation plan required by the Model Cities statute" (Paragraph 1).

The relocation plan for the Model Cities Program in Chicago submitted pursuant to this Handbook is not included in the record of this case either before this Court or the district court. It is, therefore, surprising that plaintiffs should ask this Court to declare that relocation plan unlawful (See Pet. 2, 5-9).

2/ This Handbook has since been superseded by the new Relocation Handbook in the case of projects governed by the new act. See note 1 *supra*.

2. It is even more surprising that plaintiffs argue that the district court "so found" that the relocation plan requirements had not been met (Pet. 5). To begin with, the district court was proceeding pursuant to this Court's decision of September 10, 1971, remanding this case "to remedy the wrongs which have been found to have been committed" regarding the pre-1966 site-selection procedures for low-rent housing. 448 F. 2d 731, 741. The remand was not for the purpose of enabling the plaintiffs to assert new causes of action in different HUD programs; indeed, this Court cautioned that its "holding should not be construed as granting a broad license for interference with * * * [HUD's] programs and actions * * *." 448 F. 2d at 740. Moreover, the district court's opinion (App. 15) does not even refer to any statute or regulation supposedly violated.[3/] The opinion does, of course, cite the correspondence between HUD and the City of Chicago and the court found "that the conditions set forth" in the Letter of Intent (Exh. App. 17) "have not been met" (App. 22). Plaintiffs maintain that this factual finding is the equivalent of a conclusion of law that HUD was improperly

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3/ In fact, a different plaintiff who was seeking to establish violations of the Model Cities relocation requirements moved to consolidate his case with this one (see Tr. 3-6), but the district court denied that motion. Obviously, then, the district court did not believe that it was ruling on the adequacy of Model Cities relocation. If the plaintiffs were correct and the district court did proceed to decide the issue of whether or not the Model City relocation requirements had been violated, the other plaintiff may well find his suit is now controlled by _stare decisis_ or even barred by _res judicata_, if he happens to be a member of the plaintiff class in this litigation.

administering the Model Cities Program by its planned unconditional release of the Second Period funds. Even to argue such equivalence, however, the plaintiffs must rely upon a statute, a HUD handbook, and HUD regional correspondence and a preliminary report (Pet. 3) which the district court does not even mention. It is plain, therefore, that this Court correctly read the district court's decision when it concluded, "There are no District Court findings that the Chicago Model Cities Program has been improperly administered * * *" (Slip op. 3). We shall now show that plaintiffs' contention that there was such improper administration lacks merit.

3. The plaintiffs assert that Chicago failed to meet the Model Cities relocation plan requirements (Pet. 6), and that HUD never determined Chicago had an adequate relocation plan (Pet. 7), but simply decided to fund the Model Cities Program notwithstanding this non-compliance (Pet. 9). In the end these assertions are all based not upon the Model Cities statute and handbook discussed above, but rather upon the correspondence between HUD's regional office and the City. The argument (Pet. 9-10) seems almost to be that, once Mr. Vavoulis (HUD's Regional Administrator) or one of his predecessors had stated in writing that Model Cities funding was conditional, those conditions could not be altered (1) even though the conditions were not required by statute or regulation, (2) even though circumstances regarding relocation feasibility may have changed,

and (3) even though the conditions lead to "catastrophe" -- the district court's description of the "devastating effect" that a failure to continue the Chicago Model Cities Program will have upon tens of thousands of innocent, disadvantaged citizens (App. 22). In the court below, Mr. Vavoulis gave the reasons why he decided to release the Model Cities funds unconditionally. First, he considered this devastating effect (App. 109-110), and secondly, he concluded that a Model Cities fund cut-off would serve to have no further "leverage on the City Council to approve additional housing sites" (App. 144).4/ Originally, plaintiffs' counsel disagreed with Mr. Vavoulis and predicted "that if the money is released with an appropriate string, we will have those [1,458 low-rent housing] units" by December 1971 (Tr. 41). That prediction has proved wrong, and subsequent events with respect to the district court's injunction and the NDP funding (see, March 8th Decision, 5-6) confirm Mr. Vavoulis' experienced judgment of the effects of a termination of funding. It is interesting to note that the petition for rehearing hazards no new guess as to

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4/ Plaintiffs emphasize (Pet. 6, 10, 12) Mr. Vavoulis' statement to the Mayor of Chicago that he "was in no position to make an administrative judgment concerning the release of funds * * *" (App. 77). The context of that statement is unclear, but Mr. Vavoulis might well have been referring to the NDP funds rather than the Model Cities funds (Cf. App. 79, 81). That interpretation is supported by Mr. Vavoulis' other testimony regarding the reasons for his decision to release the Model Cities funds.

what would happen if the district court's injunction had been affirmed.[5/]

4. Instead, plaintiffs' response is that the interests of the poor people (thousands of whom are members of the plaintiff class), who are the intended beneficiaries of the Model Cities Program must be disregarded because Congress has determined that the Program must have an adequate relocation plan (Pet. 13). As discussed above, however, that plan is not before this Court, nor was it before the district court, which plaintiffs erroneously assert found it unlawful. Nevertheless, the record does show that only about sixty families were displaced by the Second Period Chicago Model Cities Program (App. 206, 375). HUD's regional Model Cities officer testified that HUD "made a finding that there was relocation feasibility" (App. 171). Between

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5/ The Government's objections to plaintiffs' Rule 62 motion, filed September 20, 1971, in the district court, stated (at pp. 12-13):

> [I]f this Court were to deny HUD the authority to release the second year Model Cities funds, it would have a pronounced negative impact at a very critical stage in HUD's relationship with the City of Chicago. While the City has not achieved the targeted housing goals set forth in the Letter of Intent as rapidly as anticipated, nevertheless there has been, and continues to be, visible progress toward reaching those goals. Without doubt, the most sensitive element of that program is the approval of sites for public housing. An arbitrary withdrawal of the Model Cities funds at this time would serve only to shore up hostility to that program and impede further approval of public housing sites by the City Council.

May 12, 1971, when the Letter of Intent was signed and September 1971 when HUD decided to release the Second Period funds unconditionally, 180 dwelling units had been leased under the CHA Section 23 program and the City's special leasing program; demolition had been reduced by 500 units; contracts had been awarded for 429 units under the Section 235 program, many of which were under construction; and progress had been made toward the other goals specified in the Letter of Intent (See Exh. App. 131, 168-169). In short, plaintiffs cannot justify enjoining $26,000,000 and threatening irreparable injury to tens of thousands of intended Model Cities beneficiaries by claiming improper relocation of the sixty families displaced by that program -- families who presumably are not members of the plaintiff class and who, in any event, have not testified in this case.

Although the record is not developed on the issue, this Court correctly concluded (March 8th Decision 6) that the relocation and housing-related activities under the Neighborhood Development Program, which HUD refused to fund, are vastly different. The City's Second Year Revised NDP application was submitted in July 1971.[6/] It shows project activities in twenty-two areas. Only three of these areas involve acquisition of property which is predominantly non-residential. Only 268 non-residential establishments were to be acquired, but the projected displacement of families and individuals was

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6/ Plaintiffs cite the outdated unrevised application (Pet. 8).

1,350 -- over twenty times the number displaced by Model Cities.[7/] Accordingly, plaintiffs' attacks upon that portion of this Court's March 8 decision relating to NDP are insubstantial.

Those attacks do indicate that the attempted interference with HUD's programs is indeed proceeding apace. Having established liability in the site-selection aspect of the Low-Rent Public Housing Program under the United States Housing Act of 1937 (42 U.S.C. 1401 *et seq.*), plaintiffs first suggested relief be accorded through HUD's programs under Sections 235 and 236 of the National Housing Act (12 U.S.C. 1715z, 1715z-1). See 448 F. 2d 731, 736 n.9. Next, they obtained an injunction against Model Cities funding under the Demonstration Cities and Metropolitan Development Act of 1966 (42 U.S.C. 3301 *et seq.*). Now, they direct their challenges to NDP under the urban renewal title of the Housing Act of 1949 (42 U.S.C. 1441 *et seq.*). All such forays into programs other than the one in which liability has been established are beyond the proper scope of relief in this case.

In sum, the district court did not find that HUD had improperly administered the Model Cities relocation requirements. Particularly because the City's relocation plan is not before this Court, plaintiffs' arguments that the plan was

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7/ Although the NDP funds would have been used for acquisition and clearance, there are other HUD programs designed to assist in the redevelopment of housing in urban renewal areas. *E.g.*, 12 U.S.C. 1715k.

inadequate and that HUD ignored the non-compliance should be rejected. Finally, for the reasons set forth in this Court's March 8 decision, our brief in this appeal, and this opposition, this Court correctly concluded that the district court abused its discretion by enjoining funding under the Model Cities Program, which is untainted by racial discrimination or relocation illegality, as a remedy for violations in the Low-Rent Public Housing Program. That injunction, which all the evidence indicates will prove ineffective, threatens devastating and irreparable harm to thousands of innocent, disadvantaged persons.

For these reasons, the plaintiffs' petition for rehearing and suggestion for rehearing in banc should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of April, 1972, I served a copy of the foregoing Opposition of Appellant Secretary of the Department of Housing and Urban Development to Appellees' Petition for Rehearing, upon counsel for the appellees and the other appellants, by mailing copies thereof, air mail, postage prepaid, to:

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