
In the
United States Court of Appeals
For the Seventh Circuit

NOS. 72-1409, 1410, 1486

DOROTHY GAUTREAUX, etal.,
Plaintiffs-Appellees
vs.

CITY OF CHICAGO and RICHARD J. DALEY,
Mayor, etc.,
Defendants-Appellants
and

DOROTHY GAUTREAUX, etal.,
Plaintiffs-Appellees
vs.

FRED B. ROTI, etal., Members of the City Council of the
City of Chicago,
Defendants-Appellants
and

DOROTHY GAUTREAUX, etal.,
Plaintiffs-Appellees
vs.

CHICAGO HOUSING AUTHORITY
Defendant-Appellant

On Appeal From The United States District Court
For The Northern District Of Illinois
Eastern Division

**BRIEF AND APPENDIX FOR THE APPELLANT
EDWARD R. VRDOLYAK**

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U.S.C.A. — 7th Circuit
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CHICAGO HOUSING AUTHORITY

Defendant-Appellant

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

Brief and Appendix for the Appellant
EDWARD R. VRDOLYAK

ISSUES PRESENTED FOR REVIEW

1. WHETHER ALDERMAN VRDOLYAK HAS BEEN IMPROPERLY JOINED AS A PARTY DEFENDANT IN THIS CASE FOR THE PURPOSE OF GRANTING PLAINTIFFS RELIEF, WHERE THE RECORD DOES NOT SHOW THAT THE CITY COUNCIL'S FAILURE TO TAKE ACTION ON THE SITES SUBMITTED TO IT BY THE CHICAGO HOUSING AUTHORITY WAS RACIALLY MOTIVATED.

2. WHETHER THE CHICAGO HOUSING AUTHORITY SHOULD BE ALLOWED TO ACQUIRE REAL PROPERTY IN THE CITY OF CHICAGO FOR PURPOSES OF CONSTRUCTING PUBLIC HOUSING WITHOUT PRIOR APPROVAL BY THE CITY COUNCIL.

STATEMENT OF THE CASE

Edward R. Vrdolyak adopts and incorporates herein by reference the "Statement of Cases" appearing in the Brief of the City of Chicago, Mayor Richard J. Daley and the other Members of the City Council of the City of Chicago.

ARGUMENT

Edward R. Vrdolyak adopts and incorporates herein by reference the "Argument" appearing in the Brief of the City of Chicago, Mayor Richard J. Daley and the other Members of the City Council of the City of Chicago. In addition, Alderman Vrdolyak makes the following additional Arguments:

I.

ALDERMAN VRDOLYAK HAS BEEN IMPROPERLY JOINED AS A PARTY DEFENDANT IN THIS CASE FOR THE PURPOSE OF GRANTING PLAINTIFF RELIEF BECAUSE, AS TO ALDERMAN VRDOLYAK, PLAINTIFFS ARE NOT ENTITLED TO RELIEF UNLESS THE CITY COUNCIL'S FAILURE TO TAKE ACTION ON THE SITES SUBMITTED TO IT BY THE CHICAGO HOUSING AUTHORITY WAS RACIALLY MOTIVATED.

The only allegations in plaintiffs' Supplemental Complaint which relate (directly or indirectly) to Alderman Vrdolyak are contained in paragraphs 2 and 13. Paragraph 2 identifies Alderman Vrdolyak as a "duly elected and acting member of the City Council". Paragraph 13 merely states "Since June 13, 1971, the City Council has not approved the

acquisition by CHA of any real property for the purposes of providing Dwelling Units in conformity with the Judgement Order". Plaintiffs do not allege that the City Council's lack of action was racially motivated. In fact, plaintiffs ascribe no reason for the City Council's lack of action.

Prior to February 2, 1972, Alderman Vrdolyak was not a party to this cause of action. No orders of Court were directed to him. No findings of fact were entered which bound him. How then could the benign fact that the City Council took no action on the CHA's sites submission result in Alderman Vrdolyak hurting the plaintiffs or denying them a constitutionally protected right?

Presumably, after submitting its sites to the City Council for approval, as is required by both federal and state law (50 Stat. 888, as amended, 42 U.S.C. § 1401 et seq and Chapter 67-1/2, Section 9, Illinois Revised Statutes), the CHA would have submitted the approved sites to the Department of Housing and Urban Development (hereinafter "HUD"). If the sites submitted to HUD met certain criteria, HUD would have been authorized by The United States Housing Act of 1937 to loan CHA money to acquire and develop the property. However, neither federal law, state law nor the District Court's orders require the City Council to accept the federal aid that is offered. James v. Valtierra, 402 U.S. 137, 140 (1971). As the Supreme Court pointed out in James, "... even though plaintiffs may be eligible for such [low cost] housing,

assuming it exists, that may not require local governments to create or approve such housing". 402 U.S. at 140.

There are many good reasons, totally unrelated to race, that could account for the City Council's failure to take action on the sites CHA submitted for approval. The City of Chicago has a limited tax base and, consequently, a limited ability to provide the social services its citizens need and expect. It is the responsibility of the City Council to expend the City's scarce resources in a responsible manner. Without some showing of intentional and invidious discrimination against a particular racial, religious, ethnic, social or political group, the City Council should be permitted great latitude in choosing where to expend the City's resources. Smith v. Follett, 445 F 2d 955 (2nd Cir. 1971). In Smith, suit was brought to compel the State of New York to enlarge its program of treating and rehabilitating drug addicts to include a class of people that were not eligible to participate in the program. The Court denied the relief requested after discussing the State's ability to pay for the many meritorious programs presented to it. The importance of Smith lies in the Court's recognition, absent invidious discrimination, of the State's right and obligation to use its scarce resources in the manner the State

thought best. Obviously, constructing public housing in a section of the City of Chicago which heretofore has not had any public housing would result in some of the City's scarce resources being used up. Real estate would be taken off the tax rolls. There would be an increase in the demand for social services such as police and fire protection.

*refer to
CHA
annual
report*

It is submitted that the issue before this Court is not the same issue that was originally before the District Court in Gautreaux v. Chicago Housing Authority 304 F Supp. 736 (ND. Ill. 1969) i.e., discriminatory assignment of tenants to existing public housing, but rather is whether the City Council is to be required to take action on the CHA's request for approval of certain public housing sites without a showing that the Council's failure to take action was racially motivated. Alderman Vrdolyak contends that the City Council is not required to take such action.

II.

THE CHICAGO HOUSING AUTHORITY SHOULD NOT BE ALLOWED TO ACQUIRE REAL PROPERTY IN THE CITY OF CHICAGO FOR PURPOSES OF CONSTRUCTING PUBLIC HOUSING WITHOUT PRIOR APPROVAL BY THE CITY COUNCIL.

Chapter 67-1/2, Section 9 of the Illinois Revised Statutes, in conjunction with The United States Housing Act of 1937, require the CHA to obtain City Council approval of proposed public housing sites before the federal government will loan the funds needed to acquire the land. The requirement of City Council approval applies equally to sites located in so-called "White" and "Black" areas. In each case a Committee comprised of duly elected Alderman to the City Council hold hearings which are open to the public. In accordance with Rule 40 of the Rules of the City Council, notice is given of these hearings and the comments and opinions of the people of Chicago are solicited.

After the hearing is held, the Committee reports to the City Council and recommends a course of action which is either approved or rejected by the Alderman as a body. There is no evidence which binds Alderman Vrdolyak of, and no provision for, the informal pre-clearance of proposed public housing sites which the District Court refers to in its Order and memorandum opinion of February 10, 1969. (Appendix C, p. A16). Neither is there any finding that the pre-clearance procedure, assuming, for the sake of argument, that one in fact exists, is racially motivated. Gautreaux v. Chicago Housing Authority,

296 F. Supp. 907, 914 (ND. Ill., 1969). Consequently, we have a situation similar to that which existed in James v. Valtierra where the District Court enjoined the enforcement of a law, seemingly neutral on its face, because it was allegedly aimed at a racial minority. The decision of the District Court in this case should be reversed as it was in James because the record does not support the claim that the statute in question is aimed at a racial minority. All public housing sites, no matter where located, must be approved by the City Council. A uniform procedure is followed in each case. The mere fact that the procedure followed may or may not disadvantage a particular group does not necessarily deny to that group the equal protection of the laws. James v. Valtierra, 402 U.S. at 142.

no - relief
- primary
liability

Since none of the Members of the City Council were called to testify concerning the reasons for the Council's actions on sites submitted to it by CHA, no conclusions should be drawn as to their motives. Ranjel v. City of Lansing, 417 F 2d 321 (6th Cir. 1969), cert. denied, 397 U.S. 980 (1970).

For these reasons, the City Council's authority to approve public housing sites should not be abrogated.

CONCLUSION

For the reasons set forth herein, including the reasons enumerated in the Brief of the City of Chicago, Mayor Richard J. Daley and the Members of the City Council of the City of Chicago, all of which are incorporated herein by reference, Alderman Vrdolyak respectfully asks this Court to reverse the judgement of the District Court, to remand the cause to the District Court with directions to vacate its order of April 10, 1972 and to dismiss plaintiffs' Supplemental Complaint as to him.

Respectfully submitted

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