

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

DOROTHY GAUTREAUX, ET AL.,

Plaintiffs-Appellants-
Cross-Appellees,

v.

CHICAGO HOUSING AUTHORITY,

Defendant-Appellee,

and

JAMES T. LYNN, Secretary of
Housing and Urban Development,

Defendant-Appellee-
Cross-Appellant.

Nos. 74-1048 and
74-1049

SUPPLEMENTAL MEMORANDUM OF THE
SECRETARY OF HOUSING AND URBAN DEVELOPMENT

In response to this Court's order of August 7, 1974, this memorandum will discuss the impact of the Supreme Court's decision in Milliken v. Bradley, 42 U.S.L.W. 5249 (July 25, 1974). As will be shown, that decision strongly supports the district court's determination in the present case that a remedial order extending beyond the City of Chicago is unwarranted.

In Bradley, the Supreme Court held (42 U.S.L.W. at 5258):

The controlling principle consistently expounded in our holdings is that the scope of the remedy is determined by the nature and extent of the constitutional violation. Swann [v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1, 16 (1971)]. Before the boundaries of separate and autonomous school districts may be set aside by consolidating the separate units for remedial

purposes or by imposing a cross-district remedy, it must first be shown that there has been a constitutional violation within one district that produces a significant segregative effect in another district. Specifically it must be shown that racially discriminatory acts of the state or local school districts, or of a single school district have been a substantial cause of inter-district segregation. * * * [W]ithout an inter-district violation and inter-district effect, there is no constitutional wrong calling for an inter-district remedy.

Although Bradley involved school discrimination, this holding should also apply equally to public housing site-selection discrimination because in both types of cases the controlling principle is that the remedy must be tailored to the violation. See Gautreaux v. Romney, 457 F. 2d 124 (C.A. 7, 1972).

In light of the Bradley decision, the district court in the present case was plainly correct in not proceeding to formulate a metropolitan-wide decree. The district court found that "[i]t has never been alleged that CHA and HUD discriminated or fostered racial discrimination in the suburbs and, given the limits of CHA's jurisdiction, such claims could never be proved against the principal offender herein." (App. 46) (emphasis added). The plaintiffs have not challenged this finding as clearly erroneous. Instead, relying upon the lower court decisions in Bradley, which the Supreme Court has now reversed, plaintiffs contend that no wrong by the suburbs need be shown (see, e.g., Apts. Brief, pp. 5-8, 14-15; Apts. Reply Brief to HUD, p. 4).

Nor could it be maintained that the discriminatory site-selection procedure within Chicago was "a substantial cause of inter-district segregation" in the suburbs within the meaning of the Bradley decision. 42 U.S.L.W. at 5258. The Supreme Court held that no such relationship had been established in Bradley despite the facts, inter alia, that (1) in one instance, students from a predominantly Black suburban district had been transferred to a predominantly Black city school rather than predominantly White suburban schools, thereby causing "a segregatory effect on the school populations of the two districts involved". (42 U.S.L.W. at 5259); (2) the state had rescinded Detroit's voluntary desegregation plan (id.); and (3) the state had approved school sites which produced de jure segregation in Detroit (42 U.S.L.W. at 5260). If a metropolitan-wide remedy was improper in Bradley despite these facts, a fortiori it is improper in the present case.

Indeed, the plaintiffs attempt to justify their proposal for metropolitan relief on a basis similar in kind but weaker in force than the basis which the Supreme Court rejected in Bradley. There, the court of appeals had sustained the district court's finding that no Detroit-only desegregation remedy could achieve integrated city schools or avoid an overwhelmingly Black Detroit school district (42 U.S.L.W. at 5256). In the present case, the district court stated (App. 46), "The factual basis for [the plaintiffs'] request is an opinion of an urbanologist that by the

year 2000 the entire geographic area of the City of Chicago will be within the limited public housing area," i.e., within one mile of any census tract having a Black population of thirty percent or more (cf., Testimony of Dr. Hauser, November 27, 1972, Tr. 85-89). The Supreme Court's reversal in Bradley, therefore, demonstrates that a racial imbalance far greater than that predicted by plaintiffs' urbanologist does not justify imposing a remedy upon geographic entities where no violations have been established.

Finally, the Supreme Court held in Bradley that both lower courts had exceeded the scope of their discretion by imposing a metropolitan-wide remedy. A fortiori, the district court in this case did not exceed the broad scope of its discretion by declining to impose such a decree.

For the foregoing reasons, the Bradley decision shows that the district court's refusal to impose a metropolitan-wide remedy should be affirmed.

Respectfully submitted,



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