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Defendants.

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MAR 27 1979

John Powers, Jr., Judge
United States District Court

The Magistrate's recommendation appears to be based on the view that granting the relief plaintiffs request will "encumber" community development and housing assistance programs under the Housing and Community Development Act of 1974, and will "affect [the] impact" of those programs on members of the community involved. On that ground, and with citation only to Gautreaux v. Romney, 457 F.2d 124 (1972), the Magistrate concludes that judicial direction to HUD with respect to HUD's

exercise of its HCD Act powers is not an appropriate means of providing further relief to the plaintiff class.*

The decision in Gautreaux v. Romney was not based on a determination that the district court lacked power to direct HUD to withhold Model Cities funds.** Rather, the Court of Appeals concluded that on the facts present there - including a program viewed as having "minimal...involvement with low-cost public housing" (457 F.2d at 127) and "a timetable...which... could not be achieved in time to prevent the catastrophe threatened by the District Court's order..." (id.) - the district court had failed to balance properly the interests involved. (Id.) Indeed, the Court of Appeals said there had been no balancing at all.

Here, the balancing of all relevant interests under a statute whose "primary objective" includes the provision of housing (42 U.S.C. §5301(c), and under which all housing and community development activities are to be undertaken in a "coordinated and mutually supportive manner" (42 U.S.C. §5301(d)(4)), clearly justifies the relief plaintiffs seek.

* The Magistrate also accepts the view asserted by HUD that plaintiffs' motion must be viewed as seeking judicial review of an agency decision under an abuse of discretion standard. That position is dealt with at pages 3-4 of our Reply Memorandum filed on November 13, 1978.

** Title VI of the 1964 Civil Rights Act, the statute HUD has been found to have violated, limits administrative but not judicial discretion. Board of Public Instruction v. Finch, 414 F.2d 1068, 1076 n.13 (5th Cir. 1969). It is of course clear that restrictive statutory language is not in any event to be construed as an effort to limit the historic equitable remedial powers of federal courts to enforce federal constitutional rights. Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1, 17 (1971).

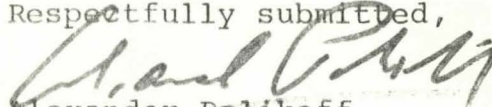
(See the discussion at pages 4-12 of plaintiffs' Reply Memorandum, and paragraphs 8-31 of plaintiffs' Motion for Further Relief.)^{*} Of course, the specific conditions to be ordered to be imposed by HUD have not yet been addressed by the parties, but they can and should be framed to avoid pitfalls such as impossible timetables.

Moreover, the Supreme Court's decision in Hills v. Gautreaux is specific authority for a judicial order directed to HUD's administrative powers under the HCD Act as an appropriate means of providing relief in this case. There, in the context of rejecting the argument that a remedial decree directed to HUD's powers under the HCD Act would impermissibly interfere with suburban communities not implicated in wrongful conduct, the Court spoke approvingly of a decree that "would have the same effect on the suburban governments as a discretionary decision by HUD to use its statutory powers [under the HCD Act]...", and of a "remedial plan designed to insure that HUD will utilize its funding and administrative powers in a manner consistent with affording relief to the respondents..." Hills v. Gautreaux 425 U.S. 284, at 306 and 303 (1976). The Court emphasized the broad scope of HUD's powers under the HCD Act (e.g., id. at 303-04), and the importance under the Act of "locating housing so as to promote greater choice of housing opportunities and to avoid undue concentrations of lower income persons" (id. at 303).

* HUD has itself taken the position that Chicago's housing plan under the HCD Act must address the needs of plaintiffs (see paragraph 15 of plaintiffs' Motion for Further Relief), and HUD did not object to the entry by this Court of an order dealing with HUD's exercise of its powers under the HCD Act with respect to Chicago's housing plans. Order of May 5, 1975.

Thus Hills v. Gautreaux upholds the power of the District Court to enter a remedial decree requiring HUD to use its HCD Act powers throughout the metropolitan area "to provide the respondents with alternatives to the racially segregated Chicago public housing system created by CHA and HUD." (Id. at 306.) There can be no doubt that the rationale of this determination applies a fortiori inside as well as outside Chicago, and to HUD's powers with respect to a City determined to have frustrated the provision of relief to plaintiff class families (Gautreaux v. City of Chicago, 480 Fed.2d 210 (1973)), as well as to unimplicated suburbs. The Magistrate's recommendation, which does not mention Hills v. Gautreaux, conflicts with that rationale.

Respectfully submitted,



Alexander Polikoff

Robert J. Vollen

Elizabeth Lassar

Attorneys for Plaintiffs

March 27, 1979

Alexander Polikoff
109 North Dearborn Street
Chicago, Illinois 60602
(312) 641-5570

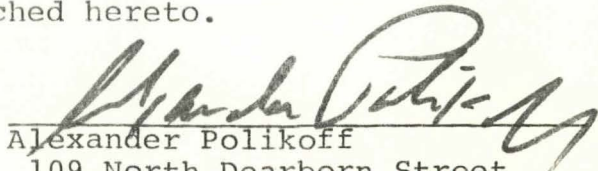
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DOROTHY GAUTREAUX, et al.,	)	
	)	
Plaintiffs,	)	
	)	
-v-	)	NO. 66 C 1459
	)	66 C 1460
PATRICIA R. HARRIS, Secretary	)	(Consolidated)
of the U.S. Department of	)	
Housing and Urban Development	)	
and CHICAGO HOUSING AUTHORITY,	)	
et al.,	)	
	)	
Defendants.	)	

NOTICE

TO: Richard Flando, Esq.	Earl L. Neal, Esq.
300 South Wacker Drive	111 West Washington Street
Chicago, Illinois 60606	Chicago, Illinois 60603
Thomas P. Sullivan, Esq.	Robert Retke, Esq.
United States Attorney	City Hall
219 South Dearborn Street	121 North LaSalle Street
Chicago, Illinois 60604	Chicago, Illinois 60602
Calvin H. Hall, Esq.	Jeffrey Jahns, Esq.
22 West Madison Street	120 South LaSalle Street
Chicago, Illinois 60602	Chicago, Illinois 60603

PLEASE TAKE NOTICE that we have this day filed with the Clerk of the Honorable Judge John Powers Crowley in the United States District Court for the Northern District of Illinois, Eastern Division, Response to the Recommendation of the Magistrate, a copy of which is attached hereto.


Alexander Polikoff
109 North Dearborn Street
Chicago, Illinois 60602
(312) 641-5570

DATED: March 27, 1979

CERTIFICATE OF SERVICE

The undersigned certifies that on March 27, 1979, he caused to be mailed to the offices of the attorneys listed on the foregoing notice copies of said notice and the response referred to therein.


Alexander Polikoff

March 27, 1979