

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

DOROTHY GAUTREAUX, et al.,	)	
	)	
Plaintiffs,	)	66 C 1459
	)	
v.	)	
	)	Hon. Marvin E. Aspen
CHICAGO HOUSING AUTHORITY,	)	
	)	
Defendant.	)	

**REPLY MEMORANDUM IN SUPPORT OF
CHA'S EMERGENCY MOTION TO CLARIFY INJUNCTION,
AND RESPONSE TO RECEIVER'S STATEMENT**

This Reply Memorandum responds to each of Parts I through IV of the Plaintiffs' Response to CHA Emergency Motion to Clarify Injunction (the "Response").

I. There Is No Need To "Clarify" The Motion.

The Chicago Housing Authority's Emergency Motion To Clarify Injunction (the "Motion") asks the Court to declare that the Injunction, properly interpreted, does not apply to replacement public housing units funded under HOPE VI. The CHA basically is asking the Court for a determination that the Injunction does not bar the CHA from applying for HOPE VI funds, as it has been doing for the past three years, and using those funds, as it is about to, in accordance with the terms and conditions of HOPE VI neighborhood revitalization programs approved by HUD.

**A. Neither The CHA Nor Plaintiffs
Have Moved To Modify The Injunction.**

The plaintiffs seek to "clarify" the issue in order to introduce issues that would only be relevant to a motion to modify the Injunction, such as whether the plaintiffs have received

“full relief” for the constitutional violation adjudicated in 1968, or whether the “principal objectives” of the Injunction have been met. Response at 11-17. They seek to “clarify” the issue raised by the Motion, and assert that “the issue is whether CHA advances any persuasive reason for removing [HOPE VI-funded units] from the coverage of the judgment order. . . .” Response at 3. The CHA has not asked the Court to remove HOPE VI-funded units from the coverage of the Injunction, and it has no burden of persuading the Court that the coverage of the Injunction should be changed. Despite plaintiffs’ wish to have the Court treat the Motion as a motion to modify, (Response at 3 n.1, 17), the Motion seeks an interpretation -- not a modification -- of the Injunction.

Plaintiffs also want to avoid the burden of filing their own motion to modify and proving the grounds for modification recently set forth by this Court in its opinion on Section 8 certificates. See Gautreaux, et al. v. CHA, et al., 1997 U.S. Dist. LEXIS 12924, *5-*8 (N.D. Ill. Aug. 26, 1997) (attached to Memorandum In Support Of The Chicago Housing Authority’s Emergency Motion To Clarify Injunction (the “Memorandum”) as Exhibit A). They argue that if the Court accepts the CHA’s interpretation that HOPE VI-funded units are beyond the scope of the Injunction, but agrees that the plaintiffs nevertheless are entitled to such additional relief, then (1) the Court has the inherent power to adjust the remedy under the current Injunction, (Response at 13-16), or (2) the Court could treat the Response as plaintiffs’ motion to modify the Injunction.¹ Response at 17. Before any modification of the Injunction is considered, it must

¹ Plaintiffs want the Court to treat the Response as a Motion to Modify only if the Court agrees with plaintiffs that they should win such a motion: “Should the Court be of the view that such housing is to be treated as a new and further remedy not presently covered by the judgment order, we request that Part III of this Response be accepted as plaintiffs’ motion for such an

(continued...)

first be decided whether a modification is necessary. This will be determined, one way or the other, by the Court's ruling on the Motion. The plaintiffs' effort to interject irrelevant issues should be rejected.

B. The Funding Source of New Construction Is Critical.

The plaintiffs argue that the CHA has improperly framed the issue as "whether the judgment order against CHA govern[s] HOPE VI funding and programs," (Response at 1), and that the correct issue is whether the construction of replacement units is covered by the Injunction. The plaintiffs propose that the applicability of the Injunction to the construction of new units does not turn on the particular HUD funding stream employed; that the construction of new units is expressly covered by the Injunction; and that the analysis ends there. Response at 3. In other words, plaintiffs want to separate out one part of a fully integrated, complex HOPE VI program and subject it to a set of rules that are inherently inconsistent with the programmatic requirements and goals of the program; and they see no adverse impact resulting from this.

The source of funding of the new units is HOPE VI and its requirements and goals must be considered in determining the scope of the Injunction. The HOPE VI program is designed to create viable neighborhoods through community-based rehabilitation and reconstruction projects where distressed housing is located, by (1) demolishing the worst buildings that economically cannot be rehabilitated; (2) creating mixed-income replacement housing; (3) requiring one-third of the demolished housing units to be replaced by Section 8 certificates; (4) requiring consideration of the preferences of public housing tenants; (5) allowing tenants to

¹(...continued)

exercise of the Court's equity power." Response at 17. They do not want to risk losing such a motion on the basis of the record they have made.

choose where they want to live; (6) requiring local government economic support of the program; (7) permitting the concurrent use of funding for community-based housing redevelopment and reconstruction of public housing provided under the Housing and Community Development Act of 1992, 42 U.S.C. § 5301 et seq.; and (8) providing substantial funds (20% of the grant plus 15% of that amount contributed by the City) for a community services program that has been approved by the Commission on National and Community Services, and for supportive services such as job training services. See HOPE VI and HUD HOPE VI Handbook (Attached to Memorandum as Exhibit B).

This is the public housing program that Congress is willing to fund. The construction of replacement housing is one part of Congress' complex solution for the poorest neighborhoods -- neighborhoods that are economically and socially isolated and contain severely distressed, high-density public housing. HOPE VI focuses on neighborhoods.² In contrast, the Injunction does not purport to provide a remedy for these neighborhoods located in Limited Areas. It provided for just the opposite: the creation of new scattered-site public housing in General Areas, originally on a three to one ratio, outside of the very neighborhoods that Congress

² This focus on specific neighborhoods is ignored by the plaintiffs throughout their Response, but it is critically important and cannot be denied. For example, as noted in 42 U.S.C. § 1437f (attached to the Memorandum as Exhibit B):

Pub. L. 102-389, Title II, Oct. 6, 1992, 106 Stat. 1579 provides . . . \$300,000,000 shall be for grants to carry out an urban revitalization demonstration program involving major reconstruction of severely distressed or obsolete public housing projects, to be administered by local public housing agencies: Provided, That such funding shall be made available to up to 15 cities. . . ; Provided further, That no more than \$50,000,000 shall be provided to each participating municipality; Provided further, That no more than 500 units shall be funded for each participating city and such units shall be located in up to 3 separately defined areas containing the community's most severely distressed projects, including family high-rise programs . . . (emphasis added).

wants revitalized through its series of HOPE VI programs. The Injunction and HOPE VI cannot both govern the CHA's HOPE VI projects. Removing one part of the program and subjecting it to the locational requirements of the Injunction would destroy the entire HOPE VI program.³

II. The Injunction, Properly Interpreted, Does Not Apply to HOPE VI-Funded Public Housing Units.

The CHA's position is that the Injunction applies to newly constructed units that add to the CHA's aggregate housing stock, and does not apply to replacement housing funded under a new federal program, initiated by Congress decades after the Injunction issued, and targeted at addressing the deterioration of large, public housing projects. Memorandum at 13-17. Plaintiffs would look only to one provision of the Injunction, the definition of "Dwelling Unit," defined as any unit of housing initially made available for occupancy after the entry of the Injunction, and to the absence of any provision that refers to "replacement" housing. Response at 2-3. Based on the theory that all newly-constructed public housing is the same, the plaintiffs end their inquiry and conclude that HOPE VI-funded units, being new construction, are covered by the Injunction. Response at 3.

³ Plaintiffs are clearly wrong in contending that there is no such inconsistency between the Injunction and HOPE VI because (1) HOPE VI has no locational requirements so that the CHA could choose to submit a plan that included building 50% of the new units in General Areas (Response at 4), or (2) the CHA could get a waiver of the Injunction's proscriptions in order to construct new units in Limited Areas. Response at 5-6. HOPE VI has clear locational requirements, see supra note 2, and any waiver process subjects the CHA to negotiating the contours and details of the entire program with the plaintiffs, who would seek to fashion the program so that it promotes their goal of integration. The plaintiffs' goal of achieving integration of public housing tenants in General Areas is absolutely inconsistent with the HOPE VI program that promotes both economic and racial integration through the revitalization of inner city neighborhoods. The Injunction should be looked at for what it requires and prohibits, not what could possibly happen if the CHA applied for a waiver of the Injunction. Plaintiffs' suggestion that a wavier could solve the problem merely highlights the fact that HOPE VI is inconsistent with the Injunction's locational restrictions.

The CHA does not disagree that a “Dwelling Unit” is a public housing unit made available for occupancy after the entry of the Injunction, and that HOPE VI-funded units, being made available for occupancy 30 years later, would come within the definition. But that only begins the inquiry as to the proper interpretation of the Injunction. Newly constructed housing units are treated differently by the local public housing agencies and the federal government: if the unit adds to an authority’s housing stock, it is considered “new” housing; but if the unit replaces existing housing stock, it is considered “replacement” housing.⁴ HOPE VI deals exclusively with replacement housing, and even more specifically, with replacement housing built for a specific purpose.

The plaintiffs contend that there is no distinction between new and replacement housing. The absence in the Injunction of a reference to replacement housing is understandable; in 1969 replacement housing was not an issue. It is undisputed that the Injunction’s remedy is to require the building of new units that would add to the CHA’s 1969 public housing stock, and leaves the modernization and rehabilitation of pre-1969 public housing to the CHA. The Injunction does not directly answer the question of whether it covers or leaves to the CHA replacement of demolished public housing funded under a new federal law that focuses on the revival of neighborhoods, isolated in poverty and suffering from extremely distressed, high-density public

⁴ Many funding decisions depend on the size of a housing authority’s aggregate housing stock, and the authority’s competency record with regard to its aggregate housing stock. See 42 U.S.C. §§ 1437l(d)-(p), 1437p. For example, the criteria for receiving federal funding to add to or to demolish aggregate units of housing stock is distinct from the criteria that a housing authority must meet to receive funding to revitalize or rebuild its aggregate housing stock, and Congress each year specifies the amount of money available for these different tasks. See 42 U.S.C. §§ 1437b, 1437c, 1437l, 1437p.

housing. For this reason, the Injunction requires an interpretation to determine whether it prohibits the CHA from participating in this new federally-funded program.

The answer depends on analysis of the factors that courts take into account in interpreting injunctions, including the intent of the drafter of the injunction, and the history of its enforcement. These factors support the CHA's interpretation of the Injunction.

A. The Drafter's Intent.

The CHA's Memorandum demonstrates that Judge Austin, in crafting the Injunction, attempted to desegregate Chicago's public housing by forcing the CHA to increase the housing stock in the General Area, and not by requiring the destruction or the retirement over time of the housing stock in the Limited Areas, as he could have, or barring the CHA from receiving federal funding, as he was specifically requested to do by the plaintiffs. See Memorandum at 13-16.

The plaintiffs argue that the intent of the drafter of the Injunction is not relevant in interpreting the scope of relief provided under the Injunction: "The judgment order is not a consent decree to be construed or 'interpreted' as a bargain between parties . . . it is a remedial desegregation order entered after an adjudication of liability." Response at 10. This argument has been squarely rejected in this Circuit. Both parties cite to Youakim v. McDonald, 71 F.3d 1274, 1283 (7th Cir. 1995), for the proposition that injunctions, "like other disputed writings, are to be construed in their proper context. . . ." Memorandum at 15; Response at 9 n.8. The injunction being interpreted in Youakim was a judgment order -- not a consent decree, 71 F.3d at 1283, and the goal in interpreting an injunction is to determine the intent of its drafter. See Florida East Coast Ry. Co. v. CSX Transp., Inc., 42 F.3d 1125, 1129-30 (7th Cir. 1994). Clearly

injunctions that result from adjudications are subject to judicial interpretation in the same way as consent decree judgments.

B. History of Enforcement.

The history of the enforcement of the Injunction, set forth in the CHA's Memorandum at 12-13, demonstrates not only the existence of a relevant distinction between development funding and modernization funding (such as HOPE VI), but also that the Injunction itself has been interpreted as respecting and even adopting that distinction.

(1) Federal Public Housing Regulatory Scheme.

It is the source of funding for any particular public housing project that distinguishes new from replacement housing. Compare 42 U.S.C. §§ 1437b, 1437c, 1437l, 1437p. A housing authority that has been granted funding for a particular purpose under a specific program cannot use that funding for any other purpose; the funds must be used in accordance with the terms and conditions of the program. Plaintiffs' assertion that "newly developed public housing, whatever its manner of development or source of funding" is all just "good, old, familiar public housing," (Response at 3, 4, 5) entirely ignores the regulatory scheme in which the Injunction has been enforced in the last two decades.

It also ignores the political fact that in 1969 the Congressional policy was to add to the nation's aggregate public housing stock, and today Congress has determined that it will not fund any increases to the existing public housing stock. See Plaintiffs' Motion To Modify, filed March 21, 1997, ¶ 4 ("virtually no new incremental funding for public housing construction is being provided by Congress").

Finally, plaintiffs' argument ignores the momentous change in the development of public housing that HOPE VI was intended to provide. As the HOPE VI Guidebook states:

HOPE VI was originally conceived as a demonstration program which would promote fundamental changes in the way PHAs developed and administered public housing, and in the way HUD related to those PHAs. Its purpose was and remains to revitalize severely distressed or obsolete public housing developments. HOPE VI is a key ingredient in the Department of Housing and Urban Development's Transformation of Public Housing efforts.

Exhibit B at 1.A.1, attached to Memorandum. There is no such thing as good old public housing that has existed unchanged from 1969.

(2) Prior Waivers

Plaintiffs also argue that two past waivers of the Injunction jointly sought by the parties in conjunction with the building of replacement units at Horner and Lawndale, demonstrate that the Injunction "covers" the building of replacement housing in Limited Areas. Response at 5, 8-9. Plaintiffs' reasoning is flawed. At the time the waivers were sought, the issue was not whether the Injunction covered the building of replacement housing in Limited Areas. The Lawndale units were built with "development" funds. Congress did not subject development funds to the same restrictions that it has now placed on HOPE VI funds. The development funds used at Lawndale could have been used to build scattered-site housing. Indeed the terms of the Injunction required the CHA to use those funds to build scattered-site housing. Because of the Injunction, the CHA had to seek a waiver (to which plaintiffs agreed) to use, in a Limited Area, funds that were otherwise available for scattered-site housing.

HOPE VI funds are not "otherwise available" for scattered-site housing. Such funds are made available only for specific, approved projects and no diversion of money from the

scattered-site housing program to the rehabilitation/reconstruction projects is required. The CHA does not have to seek a diversion of funds intended for building units in the General Areas, and, therefore, a waiver of the terms of the Injunction with regard to HOPE VI funding would not be necessary.⁵ No agreement among the parties and no order of this Court can alter the restrictions that Congress has placed on the use of HOPE VI funds. See Alliance To End Repression v. City of Chicago, 742 F.2d 1007, 1019 (7th Cir. 1984); Mobil Oil Corp. v. Higginbotham, 436 U.S. 618, 625-26, 98 S. Ct. 2010, 2015 (1978). Plaintiffs' disagreement is with Congress's limitations on HOPE VI funding, not with the CHA. Cf. United States v. Board of Educ. of the City of Chicago, 11 F.3d 668 (7th Cir. 1993).

(3) Gautreaux v. Romney

The Memorandum refers to the Seventh Circuit's past treatment of a specially-funded program similar to HOPE VI, the Model Cities Program, in Gautreaux v. Romney, 457 F.2d 124 (7th Cir. 1992). Memorandum at 13 n.9. Plaintiffs' response is that Model Cities funds were not used to build new housing. Response at 6 n.5. This is irrelevant to the import of Romney.

In Romney, the Gautreaux plaintiffs sought to bar HUD from releasing (i.e., the CHA from using) Model Cities funds. Those funds had been awarded to the CHA by HUD, and

⁵ Plaintiffs also argue that "[i]t would indeed be a novel application of equitable principles if defendant could avoid remedial obligations simply by changing the form of their programs." Response at 4 n.3. HOPE VI is not a CHA program. It is a federal program. Most local housing authorities' "programs" are defined by federal programs. Without federal funding, and compliance with the requirements of the federal programs, there would be no local public housing programs. The CHA has not changed its program from building scattered-site units in General Areas to building replacement units in Limited Areas. The first program is no longer being funded by Congress. Only the new program is being funded.

HUD was prepared to release \$26,000,000 to the CHA for use in accordance with the Model Cities legislation. Plaintiffs attempted to stop the release of funds to the CHA, arguing that the funds should not be released until the CHA came into compliance with (or at least into better compliance with) the Injunction. The Seventh Circuit ruled against the plaintiffs on the ground that the CHA's participation in a national demonstration program could not be conditioned on compliance with the Injunction, where the Injunction was designed to remedy a harm not related to the implementation of the demonstration program: "The District Court here proceeded [in enjoining the Model Cities Program] as though HUD, in some court proceeding, had been found guilty of some wrongdoing in administering the Model Cities Program in Chicago. This, of course, is not the case." Id. at 127.

Nor is it this case. No wrongdoing is associated with HOPE VI. HOPE VI, like the Model Cities Program, is a demonstration program created by Congress as an experiment in revitalizing certain urban neighborhoods, including in the case of Chicago, the neighborhoods in which the Robert Taylor Homes are located. As in Romney, the CHA's ability to participate in the HOPE VI program should not be conditioned on compliance with the Injunction, when the Injunction and HOPE VI were designed to remedy different harms.⁶

The plaintiffs have not sought to enjoin CHA's participation in the HOPE VI program or from spending any HOPE VI funds in a manner that does not accord with the

⁶ The harm resulting from the unconstitutional conduct of the CHA to which the Injunction was directed was the lack of opportunity for African Americans to reside in public housing in the General Areas. The remedy fashioned by Judge Austin was to require substantial new building in General Areas. HOPE VI's goal is to remedy conditions that did not exist in 1968 but that now exist in neighborhoods that have a concentration of poverty and high density public housing -- public housing that is no longer economically viable and which, under new federal rules, has to be demolished and replaced, rather than rehabilitated.

Injunction.⁷ However, the reality of the situation is the same as in Romney. The CHA cannot participate in HOPE VI and comply with the Injunction at the same time. The plaintiffs disingenuously claim that because HOPE VI has no locational requirements, the CHA could apply for a HOPE VI program that meets the terms of the Injunction (50% new units in General Areas).
Response at 20.

This ignores the requirement that HOPE VI programs concentrate on neighborhoods, as well as the highly competitive nature of HOPE VI. It is a voluntary program in which housing authorities compete for funding that is awarded based on the quality of the programs proposed by the authorities. The remedial scheme of the Injunction is so inconsistent with the programmatic requirements of the HOPE VI program that any application that provided for locating 50% of the units in General Areas would not meet HOPE VI requirements. The plaintiffs may not have filed a motion to enjoin the CHA's use of HOPE VI funds, but they are seeking the functional equivalent of such an injunction.

(4) Plaintiffs' Own Actions

The Memorandum pointed to certain actions of the plaintiffs that the CHA argued were consistent with its interpretation of the Injunction. Memorandum at 16-18. Plaintiffs disagree with the CHA's description of their conduct. Response at 5-8. The CHA stands by its version of the events as described in the Memorandum. Response at 7 n.6. However, the Motion does not require resolving factual disputes.

⁷ Of course, the Injunction, entered only a few months after the enactment of the Fair Housing Act, had the general goal of racial integration. Today, a suit like Gautreaux alleging racial segregation in federally-funded public housing would be brought against HUD under the Fair Housing Act.

Some actions of the plaintiffs, however, are not in dispute. First, the CHA pointed out that:

[I]n the recent litigation over Section 8, plaintiffs argued to this Court that funding for the scattered-site building program was almost exhausted. Motion To Modify Judgment Order, filed March 21, 1997, ¶ 4. This statement was made in the face of nearly \$120 million unspent dollars of HOPE VI funding, and the fact that the scattered-site building program permits building of scattered-site housing in the Limited Areas in which HOPE VI work is taking place. Thus, plaintiffs as recently as six months ago, did not appear to believe that HOPE VI money could be used for the Gautreaux scattered-site housing program or that HOPE VI was somehow governed by the Injunction.

Memorandum at 16. In response, the plaintiffs state that their “explicit reference, which CHA ignores, was to ‘incremental funding’ as one of two ‘principle’ (sic) remedial mechanisms.”⁸ Response at 8 n.7. The CHA respectfully disagrees. The principal theme of plaintiffs’ motion was that without the Section 8 remedy, the provision of a remedy under the Injunction would cease. See, e.g., Plaintiffs’ Reply Brief In Support Of Motion To Modify CHA Judgment Order, filed July 27, 1997, at 5 (“[There will not] be future HUD set-asides to fund scattered-sites, the Gautreaux Section 8 Program, or other Gautreaux desegregation opportunities.”) (emphasis added).

Virtually all of the CHA’s money comes from the federal government through HUD. Thus, the CHA interprets plaintiffs’ statement as meaning that, absent HUD’s Section 8 program, there is currently no federal funding available to be used for “Gautreaux desegregation opportunities.” This must mean that HOPE VI money is not available for Gautreaux desegrega-

⁸ Paragraph 4 of Plaintiffs’ Motion To Modify states that there is an “impending exhaustion of scattered-site funds (virtually no incremental funding for public housing construction is being provided).” Scattered-site building is, of course, the remedy provided by the Injunction. The above-quoted sentence appears to, at most, predict the ending of funding for the remedy provided in the Injunction. At the very least, the sentence links the scattered-site remedy to “incremental funding for public housing,” that is, to funding for new or aggregate increases in public housing.

tion opportunities. If the plaintiffs believed otherwise, they easily could have enlarged their motion to include both the Section 8 and HOPE VI programs, since their arguments would be substantially the same on each program. The undisputed fact is that the plaintiffs knew that years earlier the CHA had applied for and obtained HOPE VI funding, and they chose to limit their motion to Section 8.

Plaintiffs second telling act is their failure to act when the CHA applied for HOPE VI funding in 1993, 1996 and 1997. The 1987 order appointing the Receiver clearly prohibits the CHA from making "applications" for federally-funded "development programs." Order Appointing Receiver (August 14, 1987) at C, ¶ 2(a)(i).⁹ The CHA's HOPE VI applications were for programs that did not meet the locational requirements of the Injunction. Yet the plaintiffs did nothing. The plaintiffs agree that they did nothing but they excuse their inaction because, they say, they were respecting that the limits of the Injunction require a practical accommodation. They state:

This is correct; a decent respect for the limits of the judgment order requires a practical accommodation -- to which CHA initially agreed -- between CHA's entitlement to control HOPE VI funds not subject to the judgment order (e.g., for social services) and the Receiver's responsibility respecting HOPE VI-funded new public housing that is subject to the order. Moreover, the applicability of the judgment order cannot be determined definitely at the HOPE VI application stage; HOPE VI applications, once granted, may be and have been subsequently amended before a final commitment of funds.

Response at 8.

⁹ The question of the Receiver's authority over HOPE VI programs is not yet ripe because it depends, in part, upon the interpretation of the Injunction sought here. If HOPE VI is not covered by the Injunction, it is axiomatic that the Receiver lacks authority to implement HOPE VI. As indicated in the Memorandum at 10 n.7, in the event that the Court determines that the Injunction covers HOPE VI, the CHA will ask the Court to clarify the Receiver's authority over HOPE VI, or alternatively to amend the order appointing the Receiver. Such motions would require extensive briefing by the parties.

What incredible back-pedaling. Each of the CHA's HOPE VI applications focused on a particular neighborhood that contained some of the worst public housing in the City, and asked for funding to revitalize that neighborhood in accordance with HOPE VI's complex requirements. Each called for the replacement of some demolished units with new units on site. All new construction was designated for neighborhoods that were in Limited Areas. No application called for the building of any new units in any General Area. The plaintiffs cannot seriously seek to excuse their inaction to a "respect for the limits of the [Injunction]" or to some possibility that the CHA's application at some later date would be metamorphosed into a proposal consistent with the Injunction.¹⁰

The bottom line is that neither the plaintiffs nor the Receiver seriously contested the CHA's right to apply for and implement HOPE VI programs outside the scope of the Injunction. The very best example of this is Cabrini Green. The plaintiffs admit that the HOPE VI Cabrini project has gone forward without any involvement of the Receiver because the CHA and the Receiver never entered into a contract under which the Receiver would act as "development manager." Response at 6. The plaintiffs then state that "since the Receiver is in fact involved in the development of the new public housing portion of Cabrini HOPE VI activities, it has chosen to continue to try to work out suitable arrangements with CHA without seeking the Court's intervention." Response at 6. The Receiver, however, has admitted that the CHA has

¹⁰ The notion that the plaintiffs have the right to enforce or not enforce the terms of the Injunction based on their own concept of a "decent respect" for the limits of the Injunction shows that the Injunction is ambiguous and requires a proper interpretation regarding its applicability. An injunction cannot be so vague and unenforceable that one of the parties is entitled to forego enforcement proceedings out of its own concept of a "decent respect" for the limits of the Injunction.

never entered into any contractual relationship with the Receiver, and that the Receiver has no role at Cabrini except for a minor role in connection with the negotiation of 40-year leases of privately-developed housing units in the Cabrini-Green areas. The Receiver's Statement Regarding the Chicago Housing Authority's Emergency Motion to Clarify Injunction filed December 19, 1997 ("Receiver's Statement") states:

The Receiver agreed to work with the CHA to prevent the loss of these units, despite the fact that the CHA did not involve the Receiver in the lease negotiations. The Receiver has prepared and submitted to HUD a development proposal to obtain final HUD approval.

Receiver's Statement at 9. There is no dispute that the Receiver has had no development role at Cabrini. Despite the fact that the Receiver has asked for a "developer's fee," based on the size of the entire Cabrini redevelopment project, as its "fee" for the minimal assistance it provided in connection with the lease of 140 units, the CHA has consistently refused to pay a developer's 3% fee to the Receiver. The fact is that the Receiver has had no role in the Cabrini HOPE VI project.

**III. Plaintiffs Have Neither Pleaded Nor
Proved a Basis for Modifying the Injunction.**

Plaintiffs have not filed a motion to modify the Injunction, and a brief in opposition to a motion cannot be transformed into a separate motion, yet they devote 7 pages and multiple page affidavits to arguing that HOPE VI-funded housing is needed to "reach the unachieved remedial goal in this case." Response at 11-17. While the plaintiffs purport to make the case for a modification to include HOPE VI-funded units, they fall short of even pleading the evidence required for the Court to even consider modifying the Injunction. Less than six months ago, this Court set forth the standard by which a motion to modify must be judged:

In order to prevail on a motion to modify the judgment order, the plaintiffs must show that the "principal objects" of the order have not been achieved. . . . Importantly, even if the

“principal objects” of the original order have not yet been fully achieved, we must consider whether other reasons outside the control of the defendant have prevented success and whether adherence to, rather than modification of, the current injunction may be the most fair alternative.

* * * *

While it might be expedient to simply accept the plaintiffs’ assertion that “the vast majority of CHA’s family public housing still consists of the same segregated units, in the still segregated neighborhoods,” as well as the plaintiffs’ unstated assumption that the allegedly segregative situation is entirely a result of CHA’s original discrimination, we must insist on specific facts supported by evidence. For example, relevant information to test the first assertion would include the number of public housing projects that remain predominantly white and the number of projects located in the Limited Area and the General Area. If the evidence shows that segregation in public housing still exists, then we must explore the link between the current segregation and CHA’s original discrimination, past remedial efforts (or lack thereof), current remedial efforts, and future plans. For example, we would examine the quantity and location of affordable land in the General Area remaining for site selection, the effects of private decision making on the current segregative state, and the effects of the shift in demographics over the years.

Gautreaux v. CHA, 1997 U.S. Dist. LEXIS 12924, *5-*8 (N.D. Ill. Aug. 26, 1997) (Attached to Memorandum as Exhibit A).

While the issue has no bearing on the Motion, the CHA points out that the plaintiffs’ assertions and the “evidence” they cite do not address sufficiently whether there is existing segregation, and, if any, whether it can be proximately linked to the CHA’s original discrimination. To show segregation, the plaintiffs state that 99½% of the CHA’s total family units in 1968 were located in Limited Areas, and today the percentage is 85%. That does not establish that the CHA’s public housing system is still segregated. The cited “statistic” would have to be compared against the growth of the African American population and the decline of the majority population that has occurred over the years. Segregation is a relative concept, depending upon, among other things, the demographics of the City and region as a whole,

patterns of residential segregation and/or desegregation within the City as a whole, the demographics of the CHA's tenant and applicant population, and the current demographics of the formerly all "White" CHA developments. See id; see also Freeman v. Pitts, 503 U.S. 467, 494-95, 112 S. Ct. 1430, 1447-48 (1992).

The plaintiffs have not addressed many of the factors the Court has stated must be considered with regard to the link between current alleged segregation and the CHA's past discrimination. They only argue that "[s]ince all of today's units located in Black neighborhoods are the identical units found by Judge Austin to have been wrongfully sited, today's racial imbalance in unit location is directly and causally linked to CHA's original wrong." Response at 12 (citation omitted). This clearly does not show a link between the past and the present.

The fact that the CHA has not demolished units in the Limited Areas does not demonstrate anything about the overall racial balance of Chicago's public housing system. Judge Austin did not order the CHA to tear down housing in Limited Areas, and in fact, he permitted the CHA to continue to erect new housing in Limited Areas. Moreover, any lack of progress during the past 10 years occurred on the Receiver's watch. Since the Receiver had free reign to construct public housing in General Areas, to the extent it was not able to build more units, it probably was not possible to build more. This alone severs the current statistics from the 1969 statistics.

Because the plaintiffs have not presented any evidence regarding all of the factors relevant to determining if the City's public housing system is still segregated, or any link to the CHA's conduct, the plaintiffs have not made even a prima facie case for modification.

IV. Federalism/Separation of Powers

The CHA has already submitted to HUD and HUD has already approved the CHA's HOPE VI plans that do not contemplate one-for-one scattered-site building,¹¹ and in fact require most of the building to take place in the Limited Areas. These plans are consistent with Congress's intended use of HOPE VI to revitalize neighborhoods such as those in the Limited Areas. Clearly, the imposition of the Injunction on HOPE VI would have perverse results in direct conflict with the goal of HOPE VI intended by Congress when it created the program. Memorandum at 18-19.

Finally, the CHA has the right and the responsibility to "make the most" of the federal funds that the federal government has made available to Chicago and the State of Illinois for assistance with public housing. Today, HOPE VI money is available for the revitalization and rehabilitation of certain neighborhoods in which large public housing projects are located. Funding that can be used for such projects may not be available in the future. For example, the CHA may not be able to use future funding for the development of more aggregate units of public housing in the Limited Areas that are now benefitting from HOPE VI. While a federal court can enjoin a housing authority from violating the constitution, it should not enjoin a housing authority from making efficient use of federal housing dollars. See Hoover v. Wagner, 47 F.3d 845, 850

¹¹ The HOPE VI application process required the CHA to submit its plans for HOPE VI funding at the time of the application; this is so because the HOPE VI program is a competitive funding program. The CHA could not have submitted as a part of its HOPE VI applications a plan to build one-for-one scattered-site housing, as required by the Injunction. HOPE VI's programmatic requirements would not permit such a plan. See supra note 2. And, even if HOPE VI would technically permit such a plan, it is clear that the CHA simply would not have been competitive with other housing authorities (and thus would not have obtained any HOPE VI funding) if it had submitted such a plan.

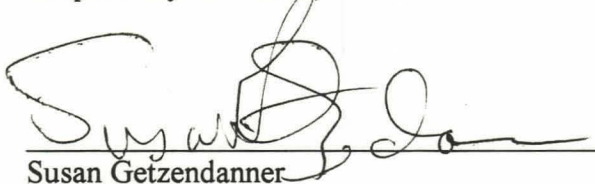
(7th Cir. 1995). The HOPE VI program has not been “tainted” with discrimination. Accordingly, the State of Illinois and the City of Chicago (through the CHA) should be permitted to maximize their use of federal funds over time, for the benefit of the collective interests of the CHA’s tenants, many of whom are plaintiffs in this case.¹²

¹² Cf. Romney, 457 F.2d at 127 (the district court should not have “ignored the interests of poor people, mostly black, intended by Congress to be the beneficiaries of the Model Cities Programs, while seeking enforcement of a timetable for the erection of housing units in white areas which, although laudable, could not be achieved in time to prevent the catastrophe threatened by the District Court’s order terminating federal funds to a program not found to be discriminatory.”)

Conclusion

For the reasons stated in its Memorandum and this Reply, the CHA respectfully requests that this Court grant the CHA's Emergency Motion to Clarify the Injunction and declare that the Injunction does not apply to the CHA's applications for and use of HOPE VI funds.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Susan Getzendanner", is written over a horizontal line.

Jerome Butler
General Counsel
Chicago Housing Authority

Susan Getzendanner
Nancy S. Eisenhauer
Tracy Staidl
Skadden, Arps, Slate, Meagher & Flom (Illinois)
333 W. Wacker Drive, Suite 2100
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(312) 407-0700

Counsel for Defendant
CHICAGO HOUSING AUTHORITY

CERTIFICATE OF SERVICE

I, Tracy L. Staidl, an attorney, hereby certify that on Friday, January 16, 1998, I caused a copy of DEFENDANT'S REPLY MEMORANDUM IN SUPPORT OF CHA'S EMERGENCY MOTION TO CLARIFY INJUNCTION, AND RESPONSE TO RECEIVER'S STATEMENT to be served via hand delivery on counsel listed below:

Alexander Polikoff, Esq.
BUSINESS AND PROFESSIONAL
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FOR THE PUBLIC INTEREST
17 E. Monroe Street, Suite 212
Chicago, Illinois 60603

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January 16, 1998

The Honorable Marvin E. Aspen
Chief Judge
United States District Court
for the Northern District of Illinois
219 South Dearborn, Room 2548
Chicago, Illinois 60604

Re: Gautreaux, et al. v. CHA, 66 C 1459

Dear Chief Judge Aspen:

As a courtesy, enclosed please find a copy of the CHA's Reply
Memorandum In Support Of CHA's Emergency Motion To Clarify Injunction, And
Response To Receiver's Statement, filed today in the above-captioned case.

Respectfully submitted,



Nancy S. Eisenhower
Counsel for Defendant
CHICAGO HOUSING AUTHORITY

cc: Alexander Polikoff, Esq.

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

DOROTHY GAUTREAUX, et al.,	)	
	)	
Plaintiffs,	)	66 C 1459
v.	)	
	)	Hon. Marvin E. Aspen
CHICAGO HOUSING AUTHORITY	)	
	)	
Defendant.	)	

NOTICE OF MOTION

TO:

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77 West Jackson Boulevard, Suite 2620
Chicago, Illinois 60604

PLEASE TAKE NOTICE that on Friday, January 23, 1998, at 9:30 a.m., or as soon thereafter as this motion may be heard, we shall appear before the Honorable Marvin E. Aspen, or any Judge sitting in his place or stead, in the courtroom usually occupied by him at 219 S. Dearborn, Chicago, Illinois, and present CHICAGO HOUSING AUTHORITY'S MOTION FOR LEAVE TO FILE INSTANTER MEMORANDUM IN EXCESS OF FIFTEEN PAGES, a copy of which is attached hereto and served upon you.

Dated: January 16, 1998

Respectfully submitted,



Nancy S. Eisenhower
Skadden, Arps, Slate, Meagher & Flom (Illinois)
333 W. Wacker Drive, Suite 2100
Chicago, Illinois 60606
(312) 407-0700

Counsel for Defendant
Chicago Housing Authority

WHEREFORE, the CHA respectfully requests the Court to grant the CHA's
Motion for Leave to File Instant Memorandum in Excess of 15 Pages.

Dated: January 16, 1998

Respectfully submitted,

Jerome Butler
General Counsel
Chicago Housing Authority



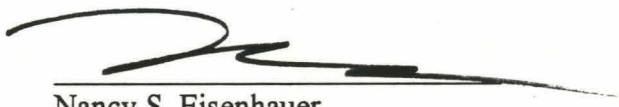
Susan Getzendanner
Nancy S. Eisenhauer
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(312) 407-0700

Counsel for Defendant
Chicago Housing Authority

CERTIFICATE OF SERVICE

I, Nancy S. Eisenhauer, an attorney, hereby certify that on Friday, January 16, 1998, I caused a copy of **CHICAGO HOUSING AUTHORITY'S MOTION FOR LEAVE TO FILE INSTANTER MEMORANDUM IN EXCESS OF FIFTEEN PAGES** to be served via hand delivery on counsel listed below:

Alexander Polikoff, Esq. BUSINESS AND PROFESSIONAL PEOPLE FOR THE PUBLIC INTEREST 17 E. Monroe Street, Suite 212 Chicago, Illinois 60603	Linda Wawzenski, Esq. Deputy Chief, Civil Division OFFICE OF THE U.S. ATTORNEY 219 South Dearborn Street, Suite 500 Chicago, Illinois 60604
Michael L. Shakman, Esq. Barry A. Miller, Esq. MILLER, SHAKMAN, HAMILTON, KURTZON & SCHLIFKE 208 South LaSalle Street, Suite 1100 Chicago, Illinois 60604	Lewis M. Nixon, Esq. John Jensen, Esq. U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT 77 West Jackson Boulevard, Suite 2620 Chicago, Illinois 60604


Nancy S. Eisenhauer

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

DOROTHY GAUTREAUX, et al.,	)	
	)	
Plaintiffs,	)	66 C 1459
	)	
v.	)	
	)	Hon. Marvin E. Aspen
CHICAGO HOUSING AUTHORITY,	)	
	)	
Defendant.	)	

NOTICE OF FILING

TO:

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BUSINESS AND PROFESSIONAL
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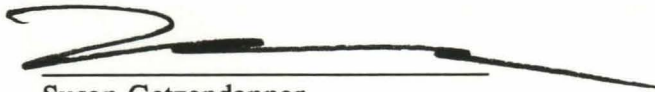
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77 West Jackson Boulevard, Suite 2620
Chicago, Illinois 60604

PLEASE TAKE NOTICE that on Friday, January 16, 1998, we filed in the
United States District Court for the Northern District of Illinois, Eastern Division, REPLY
MEMORANDUM IN SUPPORT OF CHICAGO HOUSING AUTHORITY'S EMERGENCY

MOTION TO CLARIFY INJUNCTION, AND RESPONSE TO RECEIVER'S STATE-
MENT, a copy of which is attached hereto and served upon you.

Dated: January 16, 1998
Chicago, Illinois

Respectfully submitted,



Susan Getzendanner
Nancy Eisenhower
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