

No. 98-1807, 98-2311

Defendants.

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**Appeal from the United
States District Court for the
Northern District of Illinois,
Eastern Division**

No. 66 C 1459

Chief Judge Marvin E. Aspen

Dated: June 29, 1998

CERTIFICATE OF INTEREST

Appellate Court No. 98-1807

Short Caption: Gautreaux, et al. v. CHA, et al.

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party or amicus curiae, or a private attorney representing a government party, must furnish a certificate of interest stating the following information in compliance with Circuit Rule 26.1. NOTE: Counsel is required to complete the entire certificate and to use N/A for any information that is not applicable.

- (1) The full name of every party or amicus the attorney represents in the case:

Chicago Housing Authority, a municipal corporation

Joseph Shuldiner, Executive Director, CHA

- (2) If such party or amicus is a corporation:

- i) Its parent corporation, if any, and

N/A

- ii) A list of stockholders which are publicly held companies owning 10% or more of the stock in the party or amicus:

N/A

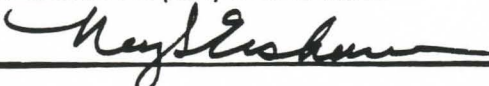
- (3) The names of all law firms whose partners or associates have appeared for the party in the case or are expected to appear for the party in this court:

Skadden, Arps, Slate, Meagher & Flom (Illinois) is the

only firm that has appeared in connection with the litigation

at issue in the current appeal.

This certificate shall be filed with the appearance form or upon the filing of a motion in this court, whichever occurs first. The attorney furnishing the certificate must file an amended certificate to reflect any material changes in the required information. The text of the certificate (i.e. caption omitted) shall also be included in from of the table of contents of the party's main brief.

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Attorney's Signature: _____

Nancy S. Eisenhauer

Attorney's Printed Name: _____

Date: June 29, 1998

CERTIFICATE

Pursuant to Circuit Rule 32, I certify that the brief attached hereto
contains 12,248 words.



Nancy S. Eisenhauer

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STATEMENT OF JURISDICTION

The District Court has jurisdiction over this civil action, which arises under the Fourteenth Amendment of the Constitution and 42 U.S.C. § § 1981, 1983, pursuant to 28 U.S.C. § 1331.

This Court has jurisdiction over this consolidated appeal pursuant to 28 U.S.C. §§ 1291 or 1292(a)(1) and the doctrine of pendent appellate jurisdiction. The orders being appealed were entered by the District Court on February 25, 1998 (the "February Order"), and May 19, 1998 (the "May Order"). The notices of appeal were filed on March 26, 1998, and May 20, 1998, respectively.

Section 1291 The February Order is a post-judgment order that sets forth the steps that defendants-appellants must take to comply with the injunction entered in this case in 1969 (the "Injunction"). (A-16) Specifically, the February Order declares that federal funds provided to the CHA under a 1992 federal housing program known as "HOPE VI" are subject to the Injunction and, accordingly, the CHA must build any public housing units funded by HOPE VI in accordance with the Injunction's locational requirements. (Id.) Therefore, the February Order is appealable as a final decision under Section 1291. See ACORN v. Illinois State Bd. of Elections, 75 F.3d 304, 306 (7th Cir. 1996) (holding that post-judgment orders setting forth the steps that a defendant must take to comply with an injunction are appealable as final decisions under section 1291).

Section 1292(a)(1) The February Order was issued in response to the CHA's motion to clarify and construe the Injunction, which sought a declaration that the CHA's HOPE VI programs are not subject to the Injunction. The February Order, described above, misinterprets the Injunction, and is a modification of the Injunction, "because it changes rather than

clarifies the meaning of the Injunction.” See ACORN, 75 F.3d at 306. Accordingly, the February Order is appealable as an interlocutory order modifying an injunction under Section 1292(a)(1). See Buckhanon v. Percy, 708 F.2d 1209, 1212-13 (7th Cir. 1983) (order issued in response to motion to clarify is appealable under section 1292(a)(1)); Motorola, Inc. v. Computer Displays International, Inc., 739 F.2d 1149, 1155 (7th Cir. 1984) (court must look beyond form of motion to the actual effect or function of the motion).

Pendent Jurisdiction The May Order declares that the August, 1987 order, appointing a receiver to implement the CHA’s “scattered site program,” grants the receiver “all powers of CHA” with respect to its HOPE VI housing redevelopment programs. (A-18) The May Order is dependent on the February Order, Id., and they should be reviewed at the same time. See Illinois v. Peters, 861 F.2d 164, 166 (7th Cir. 1988) (pendent jurisdiction over order refusing to terminate receivership is proper, where failure to review order might leave victorious appellant without benefit of victory). In addition, later and separate consideration of the May Order would “involve sheer duplication of effort by the parties and this court.” Patterson v. Portch, 853 F.2d 1399, 1403 (7th Cir. 1988) (citations omitted).

ISSUES PRESENTED FOR REVIEW

- I. May a federal court subject a local government agency's participation in a federal public housing program, created by Congress in 1992, to the terms of a mandatory injunction entered against the agency in 1969, where there is no claim that the program violates the Constitution or any other federal law, and where the program was created by Congress in 1992 for the express purposes of "transforming" public housing and rejecting "business as usual" public housing programs?
- II. Where a local government agency for more than four years has operated and administered several complex public housing redevelopment programs pursuant to a federal law enacted in 1992, may the District Court nevertheless transfer to a receiver "all powers" of the agency to develop and administer such programs without finding that (a) a receiver is necessary to enforce the orders of the federal court with regard to the programs or (b) that the receiver (a private housing developer originally appointed in 1987 for the purpose of building public housing in majority-white neighborhoods) is qualified to undertake the responsibilities of developing and administering such programs?

STATEMENT OF THE CASE

The current proceeding is a post-judgment proceeding in a housing discrimination action begun in August of 1966 on behalf of plaintiffs-appellees, a class of all African-American tenants of, and applicants for, public housing in Cook County, Illinois (the "class" or "plaintiffs"). A judgment order against defendants-appellants was entered in February of 1969, and the relief provided took the form of the Injunction.

The defendants-appellants are the Chicago Housing Authority (the "Authority") and Joseph Shuldiner, its Executive Director, sued in his official capacity (collectively, the "CHA"). The Authority is a municipal corporation created pursuant to Illinois law for the purpose of, inter alia, providing public housing in Cook County, Illinois. 310 ILCS 10/1 et seq. Following the 1995 transfer in operational control of the CHA from the CHA's Board of Directors to HUD, Joseph Shuldiner, the then-Assistant Secretary of HUD responsible for HUD's public housing programs, resigned from HUD to become the Executive Director of the Authority.

On appeal are two post-judgment orders of the District Court. The February Order concerns the proper interpretation of the Injunction. The February Order was entered in response to the CHA's Emergency Motion to Clarify the Injunction filed on September 30, 1997. Specifically, the February Order declares that federal funds provided to the CHA under a 1992 federal housing program known as "HOPE VI" are subject to the Injunction and that, accordingly, the CHA must build any public housing units funded by HOPE VI in compliance with the locational requirements of the Injunction. (A-16)

The May Order, dependent upon the February Order, interprets the District Court's 1987 order appointing a private housing developer and his for-profit corporation as a receiver to implement the Injunction's scattered site building program (the "Receivership Order"). The May Order was entered in response to the Receiver's Emergency Motion For Entry of Order Implementing CHA's Duty of Cooperation, filed on May 18, 1998, with respect to the CHA's 1998 HOPE VI application was filed on June 29, 1998. The May Order declares that the Receivership Order gives the receiver authority over HOPE VI, and thus requires the CHA to "cooperate" and to "coordinate" its 1998 HOPE VI application with the receiver.

STATEMENT OF FACTS

The Original Claims Against the CHA. On August 9, 1966, the class filed a complaint against the CHA, alleging that the CHA's site and tenant selection policies discriminated against the class on the basis of race.¹ 296 F. Supp. 907, 908 (1969).² This appeal

¹ At the same time, the class also filed a complaint against HUD, alleging that HUD had violated plaintiffs' equal protection rights by failing to properly supervise the CHA and its use of federal funds. 448 F.2d 731, 732-33 (1971). The case against HUD was stayed pending determination of this case. *Id.* The case ended in 1981 with the entry of a Consent Decree under which HUD, *inter alia*, agreed to provide sufficient funds to place 7100 public

(continued...)

implicates only the site selection issues raised in the case. (CHA Mem. at 1)³ The complaint alleged that the CHA discriminated against the class on the basis of race by using a “pre-clearance” procedure that had the effect of locating most of the CHA’s public housing developments in majority African-American neighborhoods. 296 F. Supp at 908. The CHA submitted proposed building sites to the aldermen for the wards in which the sites were located for “clearance”, before submitting those sites for City Council approval.⁴ Id. The aldermen in majority-white wards allegedly vetoed the proposed sites because of the makeup of the CHA’s waiting list (90% African-American). Id.

After extensive discovery, the District Court (Judge Richard B. Austin, presiding) decided the case on a motion for summary judgment, finding, inter alia, that the CHA’s site selection policies violated the plaintiffs’ equal protection rights under the Fourteenth Amendment. Id. at 909.

The Injunction. To remedy the then-current effects of the CHA’s discrimination in site-selection, the District Court required the CHA to implement a “scattered-site program” as established by the Injunction.” (CHA Mem. at 1-2; SA-Tab A, 304 F. Supp. 736 (1969) (Articles

¹ (...continued)

housing tenants/families in the General Area or in “Revitalizing Areas.” See 981 F. Supp. 1091, 1094-95 (1997). HUD recently fulfilled its obligations under the Consent Decree, and the case was terminated. Id.

² The name of the case and the court is omitted for citations to opinions published in connection with this case and the case against HUD.

³ “CHA Mem.” signifies the Memorandum filed on September 30, 1997, in support of the CHA’s Motion To Clarify.

⁴ At that time, Illinois law required the CHA to seek City Council approval before building public housing on a site. Id. In 1973, this Court affirmed the District Court’s ruling that the CHA need not abide by that law. 480 F.2d 210.

II, III, VI, and VIII)). The Injunction divides Cook County into the “General Area” and the “Limited Area.” (SA-2) The “Limited Area” is defined as “that part of the County of Cook in the State of Illinois which lies either within census tracts . . . having 30% or more non-white population, or within a distance of one mile from any point on the outer perimeter of any such census tract.” Id. The “General Area” is defined as the remaining part of Cook County. Id.

Article III of the Injunction originally prohibited the CHA from making available any unit of public housing in the “Limited Area” unless three housing units were made available in the General Area.⁵ (SA 3-4) The ratio is now one-to-one. (CHA Mem. at 1-2) This locational requirement would effectively slow the increase of public housing in the Limited Area and over time provide class members with the opportunity to move into the General Area. (CHA Mem. at 2) Article IV of the Injunction dictates the manner in which the CHA can build the new public housing, and prohibits the CHA from “concentrat[ing] large numbers of Dwelling Units in or near a single location.” (SA-4)⁶

⁵ The Injunction does not provide for the building of public housing in Revitalizing Areas. (CHA Mem. at 5) The concept of “Revitalizing Areas” – defined as areas which have a substantial minority population and are undergoing sufficient redevelopment to justify the assumption that the areas will become more integrated in a relatively short period of time – was introduced into the plaintiffs’ case against HUD in conjunction with the Consent Decree. Id. In order to build units of housing in Revitalizing Areas, the CHA must obtain a waiver of the Injunction from the District Court, after first negotiating the waiver with plaintiffs. Id.

⁶ Subsection A of Article IV prohibits the building of housing projects designed for more than, at a maximum, 240 persons; subsection B prohibits the concentration of public housing units in any one area of the City, by permitting only a 15% concentration of public housing in any one census tract; and, subsection C prohibits the building or leasing of dwelling units above the third story of any structure. Id.

The Injunction does not govern the CHA's activities with regard to the public housing that existed at the time of the entry of the Injunction, "whatever," as plaintiffs say, those activities might be. (Rsp. at 3)⁷ None of the Articles of the Injunction purports to bring all of the CHA's operations under the control of the District Court. (CHA Mem. at 13) None of the Articles refers to the maintenance or operation of, or requires the destruction, demolition, or retirement over time of, the housing stock that existed at the time of the entry of the Injunction, or the alteration of any of that stock to conform to the Injunction's "de-concentration" proscriptions. (CHA Mem. at 13-14)

August 1987 Appointment of Receiver.⁸ In August of 1987, pursuant to plaintiffs' motion (in which the CHA later joined), the District Court entered the Receivership Order appointing Daniel E. Levin, a private real estate developer, and his for-profit corporation, The Habitat Company, as the receiver "to develop and administer the scattered site program as effectively and expeditiously as possible." (SA-10) The receiver was appointed because the CHA had been unable to build public housing in the General Area. (SA-9)

The Receivership Order defined the "scattered site program" to include several specific projects already in the development "pipeline," as well as "all CHA non-elderly public housing development programs which may in the future be authorized by HUD during the

⁷ "Rsp." signifies Plaintiffs' Response to Motion To Clarify, filed December 19, 1997.

⁸ Between entry of the Injunction in 1969 and the entry of the Receivership Order in 1987, a number of proceedings ensued in the District Court, this Court, and the United States Supreme Court regarding the implementation of the Injunction and various rulings in the case against HUD. The citations to those cases are included in the Docketing Statement filed by the CHA in connection with case number 98-1807. During this period of time, the case was transferred in 1977 to District Judge John Crowley and in 1981 to District Judge Marvin E. Aspen.

pendency of [the case against the CHA].” (SA-10) The Receivership Order granted the receiver “all powers of the CHA respecting the scattered site program necessary and incident to the development and administration of such program”⁹ (*Id.*)

HOPE VI. HOPE VI is a model demonstration program created by Congress in 1992. Urban Revitalization Demonstration Program (“HOPE VI”), 42 U.S.C. § 1437f note, P.L. 102-389, Title II, 106 Stat. 1579.¹⁰ The purpose of the statute is to provide public housing authorities in large cities with competitive grants to demolish and rehabilitate severely distressed or obsolete public housing projects, and to revitalize the neighborhoods in which those housing projects are located. (Exh.A.1; Exh.A.4; SA-17; SA-20) HOPE VI has been described by HUD as the “key ingredient” in its efforts to “transform” the existing public housing system. (Exh.A.4)

HOPE VI does not specify where public housing units must be built, how many units must be built or in what ratio. Instead, HOPE VI requires community collaboration, participation by residents displaced by demolition of existing projects, and innovation in the use

⁹ The Receivership Order identifies the activities that are necessary and incident to the development and administration of the scattered site program, including: (i) submission to HUD of applications for funding, development programs and other documents; (ii) site selection and acquisition; (iii) construction of dwelling units and the design and specifications therefor; (iv) employing, transferring and discharging staff for the scattered site program; and, (v) “doing such other acts and things, including site selection and acquisition in the name of CHA, construction and rehabilitation of dwelling units and retaining the services of such personnel, consultants, attorneys, accountants and other professionals, as are determined by the Receiver to be necessary and appropriate to implement the scattered site program and to enable the Receiver to discharge its duties.” (SA-11-12)

¹⁰ The program was reauthorized and its requirements amended in 1995, 1996, and 1997. A copy of the statute, along with its amendments and excerpts of HUD’s HOPE VI Guidebook are attached hereto as Exhibit A.

of federal housing programs and funds. (Exh.A.1-Exh.A.4; SA-17-18)¹¹ Local housing authorities are encouraged to develop a HOPE VI plan that contains a mix of demolition of high rises, use of Section 8 rent vouchers, mixed income replacement housing, rehabilitation of other existing resources in the community, off-site building of replacement units, and an infusion of social services and infrastructure by the local government. (Exh.A.1-Exh. A.3) Provided that plan is approved by the residents of the public housing community that is the focus of the plan, and by the local government, the plan will be implemented with HOPE VI funds. (Id.)

HOPE VI is appended to Section 14 of the Low-Income Housing Act, which provides funds to be used to maintain the viability of a housing authority's existing aggregate housing stock, i.e., rehabilitation. (See 42 U.S.C. §1437L.) Thus, HOPE VI funding can be used to create replacement housing when other units are demolished, but it cannot be used by housing authorities to add to the aggregate existing housing stock. HOPE VI is not, however, merely a source of rehabilitation funding; HOPE VI is also about revitalizing public housing communities. (Exh.A.1-Exh.A.4)

The legislative history records:

HOPE VI is an attempt by the Committee to invest Federal resources directly into communities to create the conditions to bring about citizen self-responsibility and resident self-sufficiency in the most distressed areas of urban America. For too long, these areas have been the victim of either gross neglect by government or the victim of large bureaucracies that have wasted limited resources in an attempt to impose top down strategies to do good to the residents of these areas. Neither approach has worked.

As a result, the Committee, in HOPE VI, has adopted an empowerment strategy built on the twin anchors of self-sufficiency and self-responsibility. It is a program that calls upon both the residents and political leaders of America's large cities to join together to develop strategies that will transform these distressed areas into productive residential and commercial centers.

¹¹ See also Cabrini-Green LAC v. CHA, No. 96 C 6949, 1997 U.S. Dist. Lexis 625, *45-*54 (N.D. Ill. Jan. 21, 1997) (attached hereto as Exhibit B).

The Committee recognizes that these goals are, in fact, ambitious ones, that will not be realized through the enactment of HOPE VI alone. Nor will they be achieved with a large grant program that simply guarantees all urban centers and their residents with funds to conduct business as usual. But by making the program competitive among the Nation's largest cities, HOPE VI seeks to give those areas with the best proposals an opportunity to begin this transformation process.

(SA-17)

Eligible housing authorities, such as the CHA, are required to compete for HOPE VI grant money. (Exh.A.1;SA-17) The application must set forth a detailed plan for the revitalization of existing distressed public housing projects, and must comply with HOPE VI requirements. (Exh.A.1) Once a housing authority has been awarded HOPE VI funding for any given year, the authority must submit to HUD a program implementation plan that, inter alia, has been approved by the local governing body. (Exh.A.2) The CHA has been successful in applying independently for HOPE VI funds. (CHA Mem. at 7) For example, in 1993, the CHA was awarded \$50 million in HOPE VI funds for the Cabrini-Green redevelopment project. (CHA Mem. at 9)¹²

Litigation Over HOPE VI. On September 30, 1997, the CHA filed its Motion to Clarify, asking the District Court to declare that the CHA's HOPE VI programs are not governed by the Injunction. The Motion to Clarify was filed in response to an action taken by HUD. (CHA Mem. at 10-11) On September 9, 1997, HUD conditioned its approval of the draw-down of funds for the CHA's Cabrini-Green HOPE VI redevelopment project, which had been granted

¹² The CHA was also awarded HOPE VI funds in 1996, in response to two separate applications. (CHA Mem. at 8) Some of the funds were awarded to the CHA for work at the Robert Taylor Homes. (Id.) The remaining 1996 funds were awarded to the CHA as a "set-aside" for plaintiffs for the purpose of satisfying HUD's obligations to plaintiffs under the Gautreaux-HUD Consent Decree. (Id.) The statute was later amended to prevent such set-asides. (Id.)

by HUD in 1993, on, inter alia, the consent or approval of either the plaintiffs or the District Court with regard to the implementation plan.¹³ Id.

In support of the Motion To Clarify, the CHA made three principal arguments. First, the CHA relied on a recent decision of the District Court denying the plaintiffs' motion for further relief. (CHA Mem. at 11) In that opinion the District Court agreed that the Section 8 voucher program was not subject to the Injunction because it did not exist at the time the Injunction was entered. (Id.) The CHA argued that because HOPE VI was an entirely new program that did not exist at the time that the Injunction was entered, and is substantially different from the Injunction in scope and intent, that the drafter of the Injunction (Judge Austin) could not have intended to regulate the CHA's use of HOPE VI funds. (Id. at 11) Secondly, the CHA argued that given the structure of the Injunction, the context of its enactment, and the history of its enforcement, the proper interpretation of the Injunction is that it does not govern a new federal program that allows the CHA to demolish, rehabilitate and replace housing stock that existed at the time that the Injunction was entered, and which did not add to the aggregate supply of public housing in Chicago. (Id. at 13-16) Finally, the CHA argued that any other interpretation of the Injunction would raise serious separation of powers and federalism concerns because of the direct conflict between the requirements of the Injunction and the requirements of the HOPE VI statute. (Id. at 18-19)

¹³ HUD later clarified its position. On October 20, 1997, HUD filed "Response of the U.S. Department of Housing and Urban Development to CHA's Emergency Motion to Clarify Injunction" with the District Court, stating that the letter to the CHA had been intended not as a determination by HUD of the scope of the Injunction (i.e., that the Injunction applies to HOPE VI), but rather as a direction to the CHA to determine conclusively whether the Injunction applied to its use of HOPE VI funds. (HUD Response at 2)

The District Court's Decision Denying the Motion to Clarify. The District Court

denied the CHA's Motion to Clarify based on part of the definition of "Dwelling Unit," which the District Court stated was "the basic building block" of the Injunction. (A-14) A Dwelling unit is any unit "initially made available to and occupied by a low income, non-elderly family, subsequent to the [entry of the Injunction]." (*Id.*) According to the District Court, housing units constructed with HOPE VI funds "obviously qualify" as Dwelling Units because they will be initially "made available" after 1969. (*Id.*) Thus, the court concluded that HOPE VI funds are governed by the Injunction and any public housing units funded by HOPE VI must comply with its locational restrictions. (A-16)

Receiver's Role in HOPE VI. On May 18, 1997, the receiver filed its emergency motion to require the CHA to cooperate with the receiver in preparing the CHA's 1998 HOPE VI application that was due to be filed June 28, 1998. (A-9)¹⁴ Without providing the CHA with any opportunity to file a written response to the receiver's emergency motion, and without conducting a hearing into the need for a receiver to implement the CHA's HOPE VI programs or the receiver's qualifications, the District Court looked at the Receivership Order entered in August 1987 and concluded that the catch-all definition of "scattered site program" included HOPE VI-funded units. (A-18) The District Court accordingly delegated its own authority to implement its own orders, all of the governmental powers of the CHA with respect to its HOPE VI programs, and responsibility for a massive federally funded housing redevelopment program (that exceeds

¹⁴ The CHA has attached the docket sheet designating various proceedings during the period September 30, 1997 to June 29, 1998. The CHA will provide a copy of the docket sheet for all of the proceedings since 1966 at the request of the Court and/or the parties.

\$100 million) to a private real estate developer. (*Id.*) The CHA was thus required to “cooperate” and “coordinate” its 1998 HOPE VI application that is due to be filed June 28, 1998.

Motions for Stay Denied. The CHA’s motions for stays of the February and May Orders pending appeal were denied by the District Court and this Court.

SUMMARY OF ARGUMENT

In interpreting both the 1969 Injunction and the 1987 Receivership Order, the District Court improperly “stared hard” at catch-all definitions of “Dwelling Unit” and “scattered site program,” respectively, and ignored all of the factors this Court has held relevant in interpreting court orders. *Cf. Youakim v. McDonald*, 71 F.3d 1274, 1283 (7th Cir. 1995). The context of these definitions was not considered. The scattered site program created by the Injunction and implemented in the Receivership Order is a particular, well known, public housing program. Broad definitions do not expand that program beyond what it was and is.

The District Court’s interpretation raises constitutional concerns of federalism and separation of powers, which are avoided if the Injunction is properly interpreted. The most reasonable interpretation of the Injunction, when it is considered in the proper context, is that Judge Austin did not intend to subject a program such as HOPE VI to the strictures of the Injunction, or to the continuing supervision of the federal court.

The partial definition of Dwelling Unit does not unambiguously lead to the conclusion that Judge Austin, who entered the Injunction in 1969, intended to subject the CHA’s HOPE VI program -- created by Congress in 1992 -- to the Injunction’s strictures and the federal court’s continuing supervision. Given that the Injunction was entered more than twenty years before HOPE VI was enacted, Judge Austin could not have specifically intended for the definition of “Dwelling Unit” to have such a long reach. *Cf. Gautreaux v. CHA*, 981 F. Supp.

1091, 1093, n.3 (N.D. Ill. 1997) (holding that Section 8 program not governed by Injunction because Section 8 program “was not in existence when the [Injunction] was entered”).

The scope and intent of the Injunction and of HOPE VI are so different they cannot be merged into a single program.

Assuming arguendo that the District Court properly interpreted the Injunction, the February Order must be vacated because, by violating the principles of federalism and separation of powers, the order exceeds the federal court’s delegated powers under the United States Constitution. As a result, the February Order is unenforceable.

ARGUMENT

I. THE DISTRICT COURT DID NOT PROPERLY INTERPRET THE INJUNCTION

A. Standard of Review.

The standard of review of a district court’s interpretation of an injunction is plenary. Motorola, 739 F.2d at 1155.

B. The District Court “Stared Hard” At the Definition of “Dwelling Unit.”

The District Court’s interpretation of the Injunction is based entirely on the Injunction’s definition of the term “Dwelling Unit” – in the court’s words, “the basic building block” of the Injunction. (A-14) Specifically, the District Court relied on the following language from the Injunction in order to conclude that Judge Austin intended to subject HOPE VI to the Injunction: a Dwelling Unit is a public housing unit “initially made available to and occupied by a low income, non-elderly family, subsequent to the date hereof.” (Id.) According to the District Court, housing units constructed with HOPE VI funds “obviously qualify” as Dwelling Units because they will be initially “made available” after 1969. (Id.) Thus, HOPE VI

funded units are governed by the Injunction, and its locational restrictions. (A-16) (Article II of the Injunction requires, inter alia, that “[a]ll Dwelling Units provided for . . . shall be located in conformity with the provisions of Article III hereof [the one-for-one building/leasing requirement].) (SA-3) In other words, the District Court “stared hard” at one isolated phrase of the Injunction in order to interpret it. Cf. Alliance to End Repression v. City of Chicago, 742 F.2d 1007, 1013 (7th Cir. 1984) (en banc) (“It is a great fallacy to think that by staring hard at an isolated sentence one can come up with a meaningful interpretation”); Schering Corp. v. Illinois Antibiotics Co., 62 F.3d 903, 906 (7th Cir. 1995) (the invocation of “narrow literalism” is not a proper method for interpreting injunctions).

C. The Injunction Is Ambiguous In The Context of HOPE VI.

The CHA does not disagree that a “Dwelling Unit” is a public housing unit “made available” after the entry of the Injunction, and that HOPE VI-funded units, being “made available” 30 years later, would come within the literal language of the definition. But that is why the Injunction needs to be clarified. What does “made available” mean in the context of this Injunction?

The CHA does not argue, nor has it ever argued, that the District Court’s literal reading of the term “Dwelling Unit” is incorrect. Instead, the CHA argues that a literal interpretation of one phrase from the Injunction is not a sufficient or proper basis on which to base an interpretation of the Injunction as a whole -- and particularly not where the question to be answered by the interpretation is whether the Injunction was intended to govern a federal housing program that was enacted by Congress more than 20 years later. Despite the seeming clarity of the definition of Dwelling Unit, “the ambiguity of the [Injunction’s] application to the present case is plain.” See White v. Roughton, 689 F.2d 118, 120 (7th Cir. 1982). Construction of the

Injunction is necessary “to determine the intended rather than the literal meaning of the Injunction.” Id.

D. All Relevant Factors Must Be Considered.

In order to properly interpret the Injunction in this context, this Court must “resort to the circumstances surrounding the formation of the [Injunction] in order to construe its terms.” Id. See also Youakim 71 F.3d at 1283 (Injunctions must be construed in light of circumstances that produced them, which may include the nature of the original claim, the relief that was sought, the evidence presented at trial, the issues actually decided by the earlier tribunal, and the mischief the injunction was intended to eradicate). The District Court failed to consider the circumstances surrounding the formation of the Injunction -- the context of enactment. Nor did it consider the structure of the Injunction or the Injunction’s text as a whole. The proper interpretation based on a review of its language, structure, and context of enactment is that the Injunction was not intended to govern the CHA’s use of its HOPE VI funds.

E. Judge Austin Had No Specific Intent Regarding Replacement Units.

In order interpret the Injunction, the intent of its drafter, in this case Judge Richard B. Austin, must be considered. To conclude that HOPE VI is part of the relief granted under the Injunction, one would have to conclude that Judge Austin, when entering the Injunction in 1969, intended to subject to federal judicial supervision the CHA’s participation in a new federal program designed (a) to transform public housing, (b) to address the social, economic and racial isolation of neighborhoods in large cities in the Country that have suffered from high concentration of distressed public housing projects, and (c) to increase the self-reliance of the residents of those housing projects by empowering them to participate in planning their own communities and by granting to them the choice of where they want to live. (SA-Tab C) Clearly he had no

such intention. HOPE VI was not in existence in 1969, nor was the concept of demolishing the high-rise projects in the Limited Area and replacing those projects with mixed-income communities. The Injunction does not explicitly refer to or address the treatment of “replacement” housing or “re-construction” because the harms sought to be addressed by Congress in HOPE VI did not exist in 1969.

The parties agree that the Injunction was not intended to govern the CHA’s activities with regard to the public housing units that existed at the time that the Injunction was entered. (Rsp. at 3) The parties also agree that the units to be replaced with HOPE VI funds are, in Chicago, those units of housing that existed at the time that the Injunction was entered and, thus, are not governed by the terms of the Injunction. (Transcript at 7-8)¹⁵ How then does an Injunction which does not expressly address the concept of replacement housing -- because replacement housing did not exist when it was drafted -- treat a unit of housing built for the express purpose of replacing a unit that falls outside the Injunction’s scope?

If Judge Austin had a specific intent with regard to replacement housing, the Injunction would have provided a formula for locating units that are built to replace demolished units. If there were 10 units of distressed public housing located in the General Area to be demolished, would the Injunction require that only half of those units be rebuilt in the General Area, thereby decreasing the number of units in the General Area? More likely, if demolition had been an issue under consideration at the time the Injunction was entered, the Injunction would have specified that all 10 units must be replaced in the General Area. This is the interpretation of the Injunction proposed by the CHA: replacement units are not additions to the

¹⁵ “Transcript” signifies the transcript of the argument before the District Court on February 10, 1998.

aggregate housing stock of the CHA and therefore they may be built on site of the units they replace.

F. The CHA's Interpretation Is More Consistent With the Language, Structure, and Context of Enactment of Injunction Than is The District Court's Interpretation.

A review of the context of enactment, structure and language of the Injunction demonstrates that the scope of the Injunction was limited to CHA activities that had the effect of increasing the aggregate supply of public housing in Chicago. HOPE VI does not increase the supply of public housing in Chicago and, accordingly, the CHA's HOPE VI activities also fall outside the scope of the Injunction. The harm in this case -- segregation -- resulted not from the building of public housing in the Limited Area per se, but instead from the building of public housing in the Limited Area to the exclusion of building in the General Area, because such a building pattern denied African-American tenants and applicants with the opportunity to choose to live in the General Area. 296 F. Supp. at 914. To remedy that harm, the District Court did not order the CHA to deconcentrate the public housing in the Limited Area directly, i.e., by tearing down public housing units located in the Limited Area, as it could have done, or by barring the CHA from receiving federal funds to be used with regard to those public housing units (as it was requested to do), or by requiring the CHA to retire the units over time, or even by barring the CHA from increasing the supply of public housing in the Limited Area. Instead, the District Court deconcentrated public housing in the Limited Area *indirectly* by ordering the CHA (1) to use its best efforts to increase the supply of public housing in Chicago, SA-6, and (2) to build that new housing in the General and Limited Area in a specific ratio (3 to 1, later changed to 1 to 1), SA-3-4.

The true “building block” of the Injunction is not the “Dwelling Unit;” instead, it is the census tract (plus or minus perimeter) -- the General and/or Limited Area. HOPE VI replacement housing does not cause an increase in the aggregate supply of public housing in the Limited Area, nor does it cause a decrease in the aggregate supply of public housing in the General Area. In other words, the CHA’s HOPE VI activities, including the building of newly constructed replacement housing, does not interfere with or otherwise affect the Injunction’s scattered site building program.¹⁶

G. The Remedies Of the Injunction And HOPE VI Are Vastly Different.

While the Injunction and the CHA’s federally-funded HOPE VI program share some of the same goals, namely: (a) providing public housing tenants with a choice of where to live and work and (b) deconcentrating public housing in Chicago,¹⁷ HOPE VI, has the additional goal of improving and revitalizing the neighborhoods that contain some of the worst public housing projects in the country. The harm to be remedied by the Injunction was not the decay of existing public housing or the social, economic and racial isolation of the Limited Area. HOPE VI focuses on the housing that, in Chicago, is all in the Limited Area. The Injunction, in

¹⁶ See also SA-4, Article IV (B) (“No Dwelling Units shall be located in any census tract if, following such location, the aggregate number of apartments and single family residences theretofore made available . . . in such census tract would constitute more than 15% of the total number of apartments and single family residences in such census tract[.]”); SA-5, Article VII (A) (5) (requiring CHA to report “aggregate number of . . .” Dwelling Units and any changes thereto); SA-6, Article VIII(A) (CHA shall use best efforts to increase the supply of Dwelling Units in conformity with this order).

¹⁷ HOPE VI, like all housing programs administered by HUD, is subject to Title VIII, which requires HUD to affirmatively administer its grant programs to assist in ending discrimination and segregation “to the point where the supply of genuinely open housing increases.” NAACP v. Secretary of HUD, 817 F.2d 149, 155 (1st Cir. 1987) (Breyer, C.J.).

contrast, does not take any steps to affect the quality of such housing or the quality of life in the communities that contain such housing. (Rsp. at 3)

The HOPE VI “remedy” is “broader” than the harm in this case, because HOPE VI does more than plaintiffs requested of the District Court in 1966; it provides them with choice as to where to live and it provides them with an opportunity to improve the communities in which they may already live. HOPE VI is able to accomplish both goals -- revitalizing housing and neighborhoods -- because HOPE VI allows for the revitalization of public housing developments through major reconstruction, demolition, the building of replacement housing, and the use of other federal programs (such as Section 8) to create housing opportunities to replace demolished units. (Exh. A.1-Exh.A.2) (HOPE VI is premised on the fact that the cost of repairing some units of public housing -- such as severely distressed and obsolete public housing -- is greater than actually tearing down the units and replacing them with new public housing "replacement" units.) Under HOPE VI, revitalization is to be achieved through the deconcentration of public housing in the targeted neighborhoods -- allowing “space” for non-public housing and commercial development to move into the targeted neighborhood.

HOPE VI is not intended to work a decrease in the total supply of public housing within a city. Instead, under HOPE VI, a housing authority must provide tenants displaced by demolition with replacement units. See 24 CFR Part 941, Public Housing Development, Subpart B, PHA Eligibility and Program Requirements, at § 941.202(c)(2)(ii), Site and Neighborhood Standards. In order to accomplish the twin goals of deconcentration and the maintenance of the public housing supply, HOPE VI permits housing authorities to use Section 8 certificates as replacement opportunities, to build housing off-site, and to take advantage of rent-to-own public housing programs and other federal/state/local public housing opportunities, in addition to

building replacement housing back “on-site,” i.e., in and around the site of the demolished public housing development. (Exh.A.1-Exh.A.4) Under HOPE VI, the final “mix” of the various types of public housing that will replace the demolished high-rises -- as well as the final determination of exactly where to make that housing available -- is not set forth in the statute. Instead, it is arrived at through the collaborative process of creating a HOPE VI application, taking into account choices made by the residents, the participation of the local government, and the needs of the public housing authority and larger community.

II. THE FEBRUARY ORDER IGNORES THE CONSTITUTIONAL PRINCIPLE OF FEDERALISM, AND THUS EXCEEDS THE DISTRICT COURT’S POWERS

A. The Remedial Powers of the Federal Court Are Limited.

A federal court’s remedial authority in “institutional reform” cases that affect state and local governments is limited:

When we have discussed the remedial powers of a federal court, we have been alert to the limitation that “[the] power of the federal courts to restructure the operation of local and state government entities ‘is not plenary. . . .’ [A] federal court is required to tailor ‘the scope of the remedy’ to fit the nature and extent of the . . . violation.”

Fullilove v. Klutznick, 448 U.S. 448, 483 (1980) (quoting Dayton Board of Education v. Brinkman, 433 U.S. 406, 419-20 (1977) (quoting Milliken v. Bradley, 418 U.S. 717, 738 (1974), and Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1, 16 (1971)). In tailoring the scope of the remedy in civil rights cases to fit the nature and extent of the violation, “the Court’s task is ‘to correct, by a balancing of the individual and collective interests, the condition that offends the Constitution.’” Gautreaux v. Romney, 457 F.2d 124, 127 (7th Cir. 1972) (“Romney”) (citing Swann, 402 U.S. at 16).

B. The Injunction, as Interpreted by the February Order, Is Not An Appropriately Tailored Remedy.

In Gautreaux v. Romney, this Court considered the question whether a remedy provided to plaintiffs in their case against HUD was an appropriately tailored remedy. In Romney, the Gautreaux plaintiffs sought to bar HUD from releasing (i.e., the CHA from using) funds that the CHA had obtained pursuant to a federal program known as the “Model Cities Program.” Id. at 126. Those funds had been awarded to the CHA by HUD, and HUD was prepared to release \$26,000,000 to the CHA for use in accordance with the Model Cities legislation. Id. 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. Id. This Court, in balancing the individual and collective interests in this case, refused to allow plaintiffs to enjoin HUD from releasing the funds to the CHA because (a) the enjoining of the funds would harm the beneficiaries of the program, many of whom were members of the plaintiff class, and (b) the District Court made no finding that the program under which the funds were obtained had been improperly administered or that it was tainted with racial discrimination. Id. at 127.

C. The Injunction, as Interpreted by February Order, Extends Well Beyond The Harms Sought To Be Remedied by the Injunction.

The harm to be remedied by the Injunction’s scattered site building program was the then-current effects of the CHA’s segregationist pre-clearance procedure. However, the harmful effect of the discriminatory procedure was not the building of public housing in the Limited Area per se. Instead, the harmful effect of the pre-clearance procedure was the building of public housing in the Limited Area to the exclusion of the General Area for the purpose of denying African-Americans the right to choose where to live. 296 F. Supp. at 914. Thus, the

specific remedy provided to the plaintiffs, the Injunction's scattered-site building program, was designed to provide members of the class with the ability to live in a neighborhood of their own choosing. The Injunction's building program provides choice, over time, by creating a public housing system that approximates the public housing system that might have resulted in the absence of race discrimination. As plaintiffs described the remedy below:

The position victims in this case "would have occupied" is that of having a choice of public housing located in white or integrated as well as black neighborhoods. The [Injunction] seeks to provide that choice, over time, by requiring portions of new public housing to be provided in white or integrated neighborhoods and more recently, in revitalizing areas as well.¹⁸

(Resp. at 10)

The Injunction provides the class with an indirect choice "over time" by requiring the CHA to increase the supply of public housing units in the areas of the City where public housing was scarce, i.e., the General Area, at a greater rate (later the same rate) than it increased the supply of public housing units where most public housing was located, the Limited Area. Thus, the Injunction "deconcentrates" public housing in the Limited Area indirectly, by regulating the increase in the aggregate supply of public housing in Chicago as measured against the race of the residents in each neighborhood of the City. The Injunction uses a "dilution method" of pouring additional public housing into the system as a whole, rather than into the General Area alone, and/or by not requiring the demolition of existing public housing in the Limited Area.

¹⁸ Plaintiffs' reference to the "Revitalizing Areas" is mistaken. The Injunction does not provide the plaintiffs with the choice of living in revitalizing neighborhoods. The HUD Consent Decree did permit building in such neighborhoods. Instead, in order to build public housing in Revitalizing Areas, the CHA must obtain a waiver of the locational requirements of the Injunction. (See Resp. at 20).

The harms HOPE VI seeks to remedy are far broader than an overconcentration of public housing in the Limited Area. HOPE VI addresses the array of inner-city issues that arise in socially, economically and racially isolated neighborhoods. HOPE VI relies upon direct and immediate resident participation and planning and allows the residents freedom to choose where they want to live, including on the site of the demolished projects. Under HOPE VI, tenants can choose to leave the Limited Area in which they reside, either with a Section 8 voucher(which can be used in any location) or by moving to a housing unit built “off-site,” or they can stay and participate in the creation of a neighborhood that has the same kinds of economic and social opportunities that they might find in the General Area. Unlike the Injunction that seeks to deconcentrate public housing indirectly using the racial composition of census tracts as a guide, HOPE VI directly “deconcentrates” public housing in the Limited Area by encouraging the destruction of the large and severely distressed public housing developments, and then by regulating the replacement of that housing using the local community’s needs as a guide.

Individual members of the class -- as represented by their local tenant councils rather than by the Gautreaux class -- are and have been directly involved in the HOPE VI process of determining where the CHA will site public housing built with HOPE VI funds. See e.g., Ex. B, Cabrini-Green LAC, 1997 U.S. Dist. LEXIS 625 at *42-47 (holding that HOPE VI implementation plan created through collaboration with tenants and City of Chicago is enforceable against the CHA pursuant to HOPE VI statute). Under these circumstances, the District Court’s decision to subject the CHA’s use of HOPE VI funds to the Injunction and its one-for-one building requirement actually limits tenant choice by requiring some of them to move to the “replacement” housing built in the General Area.

D. There Is No Claim That HOPE VI Violates the Constitution.

The extent of the violation in this case is limited to a finding of intentional discrimination on the part of a prior CHA administration in connection with the placement of public housing in Chicago. Yet HOPE VI is a separate program for which there is no claim below -- let alone a finding -- that it, either on its face or as applied, also violates the United States Constitution (or the federal Fair Housing Act or any other federal law). Neither is HOPE VI a dilatory effect of past discrimination. The remedy in this case could not have been the exercise of "permanent" federal court supervision over the CHA. Accordingly, the current CHA administration's attempt to engage in constitutional conduct with regard to a separate program should not be interfered with on the ground that a prior CHA administration failed to conform its conduct to the same standard with regard to a separate program.

E. HOPE VI And The Injunction Are Incompatible.

In the February Order, the District Court found that there was no conflict or "incompatibility" between HOPE VI and the Injunction's scattered-site building program -- and thus concluded that the Injunction's scattered-site program and HOPE VI are in essence the same program -- because HOPE VI permits a housing authority to request funds to build some individual units of public housing in the General Area of Chicago.¹⁹ (A-14-15) Specifically, the

¹⁹ The District Court grossly distorted the CHA's argument, saying that the CHA's argument that HOPE VI requires replacement housing to be built on-site of the demolished housing project "rests on an illusion" because there is no such requirement in the HOPE VI statute. (A-14) The CHA never argued that it must build HOPE VI-funded replacement housing on the site of the demolished public housing developments, i.e., in the Limited Area. The CHA has never argued that HOPE VI bars a housing authority from using HOPE VI funds to build replacement units beyond the site of the demolished housing. Instead, the CHA argued that spending money in the General Area is inconsistent with the congressional mandate of revitalizing the very neighbor-

(continued...)

District Court relied on one sentence from a HUD HOPE VI guidebook and one sentence of the statute's legislative history -- both of which use the phrase "scattered site housing" -- to support its finding that the HOPE VI statute permits the CHA to use its HOPE VI grants to fund the Injunction's scattered site program. (*Id.*) There is nothing in the HOPE VI statute, legislative history, or HUD Guidebook that suggests that the use of the term "scattered-site" in the legislative history or HUD Guidebook is intended to refer to the specific building program set forth in the Injunction -- namely the "scattered site" building of public housing units on a one-to-one ratio in the General and Limited Areas of Chicago.

Under HOPE VI, local housing authorities are encouraged to develop a HOPE VI plan that contains a mix of demolition of high rises, use of Section 8 rent vouchers, mixed income replacement housing, rehabilitation of other existing resources in the community, and off-site building. Provided that plan is approved by the residents of the public housing community that is the focus of the plan, and by the local government, the plan will be implemented with HOPE VI funds. As the Senate Committee wrote with regard to HOPE VI:

The Committee recognizes that [the] goals [of HOPE VI] are, in Fact, ambitious ones, that will not be realized through the enactment of HOPE VI alone. Nor will they be achieved with a large grant program that simply guarantees all urban centers and their residents with funds to conduct business as usual. But by making the program competi-

¹⁹ (...continued)

hoods that have suffered from the over concentration of distressed public housing projects. In essence, the CHA has argued that the Injunction's mandatory building program conflicts with HOPE VI's "block grant" approach to addressing a similar, although not identical, problem. As a result of that collaborative process, the CHA might seek to use some of its HOPE VI money to build "conventional" units of replacement housing outside the site of the demolished projects. But that is a far cry from the pre-determined outcome of the Injunction's scattered site program, which requires the CHA to build conventional units of housing, in specific concentrations, and in specific locations.

tive among the Nations largest cities, HOPE VI seeks to give those areas with the best proposals an opportunity to begin this transformation process.

(SA-17) (emphasis added). In 1998 as in 1992, building housing according to a centralized building plan – as the Injunction entered in this case in 1969 requires – is “business as usual” in public housing.

The remedy provided by the Injunction with regard to site selection -- the imposition of a mandatory building program – is the District Court’s method of enforcing the Fourteenth Amendment. While the HOPE VI program may also be a “remedy” for past segregation and discrimination -- created by Congress in 1992 for the citizens of the United States including the individual members of the class -- it simply is not *the* remedy that the District Court awarded *this* class in *this* lawsuit in 1969. Therefore, unless the HOPE VI program is itself unconstitutional, the District Court should not be permitted to interfere with the program.

III. THE INJUNCTION, AS INTERPRETED BY THE FEBRUARY ORDER, RAISES SIGNIFICANT SEPARATION OF POWERS CONCERNS

The District Court, in justifying the imposition of the Injunction’s scattered site building program on to the CHA’s HOPE housing development plans, wrote as follows:

It is ironic that the CHA has chosen to argue that it must use the HOPE VI funds for urban renewal and to the exclusion of desegregation, for, as we observed earlier, in 1969 it attempted to characterize desegregation as a byproduct of urban renewal efforts. No matter: Congress and HUD, through HOPE VI, have afforded the CHA an opportunity both to revitalize distressed public housing neighborhoods and to desegregate public housing, and the CHA is duty-bound to vigorously pursue desegregation opportunities.

(A-15) Once again, the District Court absolutely misstated the CHA’s position. The CHA has never argued that it must use HOPE VI funds for urban renewal and to the exclusion of desegregation. There was no finding below, nor even a claim, that the CHA’s HOPE VI program is

being used to the exclusion of desegregation or is in anyway tainted with discrimination. The CHA did not ask the District Court to “clarify” that the CHA may segregate. Instead, the CHA merely asked the District Court to clarify that the CHA may use its HOPE VI funds in the manner intended by Congress, and without the supervision of the District Court, plaintiffs, and a court-appointed receiver.

What *is* ironic is that the District Court, believing that Congress and HUD have afforded the CHA with the opportunity to both revitalize and desegregate public housing through HOPE VI, nevertheless subjected the HOPE VI program to the Injunction’s mandatory building program (designed solely to desegregate) -- as well as to the continuing jurisdiction of a federal court, and a court-appointed receiver -- in the absence of any finding or even claim that HOPE VI either on its face or as applied, violates the United States Constitution, the federal Fair Housing Act, or any other federal law. The District Court’s actions in so doing are improper because they violate the principle of separation of powers and thus, those actions exceed the District Court’s delegated power under the United States Constitution.

A federal court exceeds the judicial power granted to the federal courts under the United States Constitution when it interferes with the federal legislative power by “rewriting rules that Congress has affirmatively and specifically enacted” – unless those rules are themselves unconstitutional. See, e.g., Mobil Oil Corp. v. Higginbotham, 436 U.S. 618, 625-26 (1978) (when court begins “rewriting rules that Congress has affirmatively and specifically enacted,” the court has gone beyond “interpreting” the law, to enacting the law). See also Alliance to End Repression v. City of Chicago, 742 F.2d 1007, 1019 (7th Cir. 1984) (Court refuses to read consent decree that, in essence, places district court judge in charge of FBI in

Chicago, out of “due regard for separation of powers.”). This is especially true when the federal court rewrites a congressional scheme to enforce the Fourteenth Amendment:

It is fundamental that in no organ of government, state or federal, does there repose a more comprehensive remedial power than in the Congress, expressly charged by the Constitution [through § 5 of the Fourteenth Amendment] with the competence and authority to enforce equal protection guarantees.

See, e.g., Fullilove, 448 U.S. at 476 (quoting Katzenbach v. Morgan, 384 U.S. 641, 651 (1966)).

While the Injunction and HOPE VI may share some of the same goals, the methods used by the Injunction and HOPE VI for reaching their similar goals are mirror opposites and directly conflict with one another. The Injunction’s method is centralized planning extraordinaire. Using a map of the City of Chicago overlaid by census tract data, the Injunction dictates where new public housing can and cannot be built and in what proportions, and describes the kind, size and density of any public housing to be built. SA-Tab A, 304 F. Supp. 736. HOPE VI contains no such dictates. HOPE VI does not specify where public housing units must be built, how many units must be built or in what ratio. In contrast to the Injunction, HOPE VI requires community collaboration, creation of mixed-income replacement housing, tenant participation, the exercise of tenant choice, and innovation in the use of federal housing programs and funds. In this way, HOPE VI is very much like other federal “block grant” programs where the use of federal funds is not dictated at the federal level, but instead is secured by and used at the community level in accordance with community participation and planning. HOPE VI is the antithesis of centralized planning.

By requiring the CHA to use its HOPE VI funds in accord with the Injunction’s mandatory locational requirements, the District Court has replaced Congress’ remedial scheme, which contains no mandatory provisions dictating where replacement housing must be built, and

has instead “appropriated” HOPE VI funds for use in its own housing development program.

HOPE VI does have some specific requirements, but these requirements and the entire remedial scheme are designed to maximize the housing choices to be made available to tenants of the public housing projects demolished with HOPE VI funds, not to limit the use of such funds to building specific types of housing in specific and pre-determined neighborhoods.

A. Congress Expressly Intended To Prevent the Funneling Of HOPE VI Funds To Litigants In Discrimination Cases.

Congress explicitly expressed its intention to prevent funneling of HOPE VI funds to settle discrimination litigation in 1996 in direct reaction to HUD’s decision to award the CHA HOPE VI funds for the purpose of providing a “set-aside” to plaintiffs under the Gautreaux-HUD Consent Decree. (Rsp. at 18) (“As a result of plaintiffs’ willingness to treat the 1996 award to CHA as ‘comparable relief’ under the consent decree with HUD, CHA was given an “absolute priority” to the 1996 funds.”). (See also CHA Mem. at 8) The 1996 HOPE VI funds for the Horner and ABLA redevelopment projects were “funneled” to the plaintiffs through the CHA. In direct response, Congress enacted an amendment to the HOPE VI statute providing that HOPE VI funds shall not be used “directly or indirectly by granting competitive advantage in awards to settle litigation or pay judgments unless expressly permitted herein.” (Exh. A, 9) In other words, HUD cannot simply funnel HOPE VI Funds into programs created by courts to remedy housing discrimination.

The legislative history also demonstrates a second purpose to the amendment:

Language is inserted to ensure that HOPE VI funds are used for the purpose of revitalizing severely distressed public housing facilities. HUD attempted to provide funds to predetermined housing authorities to settle litigation unconnected with the HOPE VI program. Furthermore, preferential scoring was given to housing projects that included proposals of an unauthorized program. HUD is directed to end such practices immediately.

142 Cong. Rec. H10733, *H10748 (emphasis added). Congress was concerned about the substantive effects of such practices on the HOPE VI program; the language of the amendment is intended to “ensure that HOPE VI funds are used for the purpose of revitalizing severely distressed public housing facilities.” If HUD is permitted to funnel HOPE VI funds into the hands of various litigants, Congress cannot be assured that the funds are being used for the directed purpose -- revitalizing severely distressed public housing facilities. For example, as in this case, HOPE VI funds awarded to the CHA might be used to fund the Injunction’s one-for-one building program – a program that does nothing to revitalize severely distressed public housing facilities.

In this case it is the District Court’s February Order that would funnel HOPE VI funds to a specific set of litigants with their own plans and purposes. The District Court’s “set-aside” raises the same problem as a HUD’s set-aside, now forbidden by Congress, because, unless the CHA obtains a waiver from the District Court, the CHA’s HOPE VI funds will not be used for the purpose of revitalizing severely distressed public housing projects. The February Order creates exactly the situation that Congress expressly stated its intention to avoid in 1996.

B. The Waiver Process Concretely Demonstrates The Separation of Powers Concerns Raised by the February Order.

Plaintiffs argued below that the CHA could obtain a waiver of the Injunction, thus allowing the CHA to use its HOPE VI funds in the manner intended by Congress. (Rsp. at 20) However, the waiver process does not save the Injunction from separation of powers problems. Instead, the waiver process only exacerbates the problem: First, by requiring the CHA to obtain a waiver of the Injunction from a federal court in order to comply with or participate in, a federal public housing program that has not been tainted with discrimination. Secondly, the waiver

process, by its nature, empowers the plaintiffs to seek the CHA's agreement to changes in the CHA's plans, well beyond the specific requirements of the Injunction, as a condition to the plaintiffs' consent to the waiver. This vastly expands the ability of the federal court to intrude in the governmental affairs of a local governmental entity. Accordingly, such interference exceeds the District Court's judicial powers.

In the past, plaintiffs and the CHA have negotiated agreed orders whereby the District Court waived the locational requirements of the Injunction to permit the CHA to build public housing with funds otherwise targeted for one-for-one building. (CHA Mem. 4-6) The District Court and plaintiffs justified the waiver by rationalizing that the Limited Area in question was a "Revitalizing Area." (*Id.*) The concept of "Revitalizing Areas" – defined as areas which have a substantial minority population and are undergoing sufficient redevelopment to justify the assumption that these areas will become more integrated in a relatively short period of time – was specifically introduced into the HUD litigation in conjunction with the HUD Consent Decree. 523 F. Supp. 665, 669. The Injunction does not provide for the building of public housing in Revitalizing Areas. *Id.* at 668-69. Instead, in order to build units of housing in Revitalizing Areas, the CHA must obtain a waiver of the Injunction from the District Court, after first negotiating the waiver with plaintiffs. (Transcript at 32) Of course, if the Injunction governs HOPE VI funds, the CHA would be forced to negotiate in good faith with the plaintiffs before proceeding to a motion for a waiver. This would expose all aspects of the HOPE VI plan and application to the plaintiffs' scrutiny in order to get the plaintiffs to agree to a waiver.

Plaintiffs admitted below that "[i]f in particular circumstances [the CHA] . . . desired to locate HOPE VI-funded new public housing otherwise than in conformity with the [Injunction's one-for-one building requirement] and a waiver were therefore sought, there would

be no incompatibility between HOPE VI which imposes no requirement as to the location of new public housing -- and a judgment order waiver.” (Rsp. at 20) (emphasis added). Exactly. In order to employ HOPE VI in the manner intended by Congress -- that is, without any specific constraints regarding the location of public housing -- the CHA must seek a waiver from a federal court. The requirement for such approval is not a part of the HOPE VI statute. There is no provision in HOPE VI that allows the federal court and/or plaintiffs to have the final veto power over a plan created by tenants, the local government, and a housing authority. There has been no showing of a need for the approval of the federal district court in Chicago of plans that comport with the requirements of HOPE VI. The February Order rewrites HOPE VI in Chicago.

But supervision and final veto power are not the only “extra” elements placed on the CHA’s HOPE VI program by the waiver process. In the past, the District Court has been willing to enter waivers of the Injunction if the CHA and plaintiffs could demonstrate that the neighborhood in which building would take place was a Revitalizing Area. Thus, neighborhoods in Chicago that do not qualify as revitalizing could not be the focus of a HOPE VI application if the CHA was required to obtain a waiver to apply for or use HOPE VI funds. The HOPE VI statute, seeking to revitalize “severely distressed” public housing, does not limit the HOPE VI program merely to only revitalizing neighborhoods. Cf. Cabrini-Green LAC, 1997 U.S. Dist. LEXIS at *47-48 (“HOPE VI does not allow a public housing authority to turn its back on ‘severely distressed projects,’ such as Cabrini-Green.”).

Plaintiffs hope to sweep aside the waiver process by saying, simply, that instead of seeking a waiver, the CHA “could simply choose to locate HOPE VI-funded new public housing in accordance with the [Injunction] (as modified by the “fifty-fifty” order of this Court . . .).” (Rsp. at 20) Plaintiffs’ suggestion, of course, assumes that the CHA could properly prepare

a competitive HOPE VI application that would meet both the programmatic requirements of the statute (revitalizing neighborhoods that contain the worst public housing projects in the country, tenant and local government approval, etc.) and the Injunction's one-for-one locational restrictions. In theory the CHA might choose to submit a HOPE VI application that meets the locational requirements of the Injunction, and in theory no waiver of the Injunction would be necessary. But HOPE VI does not require the CHA to make that choice, as does the Injunction. In addition, the likelihood of success of such an application is virtually nil. Plaintiffs do not seriously contend that a HOPE VI application that provides for building one-half of the replacement units in the General Area would be competitive and approved by HUD, or that it is feasible to build such units in the General Area. Indeed, when plaintiffs applied for HOPE VI funds in 1996, they did not submit such an application -- even though they were given an "absolute priority" for HOPE VI funds by HUD. (Rsp. at 18)

C. The District Court Need Not Have Raised Constitutional Concerns, Because Properly Interpreted, The Injunction Was Not Intended To Govern HOPE VI.

The District Court need not have raised the separation of powers and federalism constitutional concerns discussed above, thus rendering the February Order unenforceable, because the most reasonable interpretation of the Injunction is that it does not govern HOPE VI. Cf. Alliance to End Repression v. City of Chicago, 742 F.2d 1007, 1019 (7th Cir. 1984) (declining to interpret ambiguous decree in a manner that raises separation of power concerns).

IV. THE MAY ORDER, TRANSFERRING “ALL POWERS” OF THE CHA WITH REGARD TO HOPE VI TO A RECEIVER APPOINTED IN 1987 IS AN ABUSE OF DISCRETION, AND EXCEEDS AUTHORITY OF THE DISTRICT COURT.

The decision to impose a receivership over a defendant’s assets is reviewed for abuse of discretion. Illinois v. Hartigan, 871 F.2d 1336, 1344 (7th Cir. 1989). In addition, the standard of review of a district court’s interpretation of an injunction is plenary. Motorola, 739 F.2d at 1155.

The District Court, in the May Order, transferred the CHA’s authority over HOPE VI-funded housing development to a receiver, a private individual and a for-profit corporation in the business of housing development, appointed by the District Court in 1987 because the CHA had been unable to build public housing in the General Area. (See SA-Tab B) The HOPE VI receivership was imposed by the District Court based on an emergency motion by the receiver to which the CHA was not given an opportunity to respond. (A-9) The District Court conducted no inquiry into either the need for a receiver or the receiver’s qualifications with regard to HOPE VI, and made no findings of fact.

Instead, the District Court imposed the receivership based on its interpretation of one phrase from the definitional section of the 1987 Receivership Order -- the general “catchall” definition of the scattered site housing program. (A-18) The Receivership Order defines the “scattered site program” to include a number of public housing units already in the development “pipeline” in August of 1987, as well as “all CHA non-elderly public housing development programs which may in the future be authorized by HUD during the pendency of Civil Action No. 66 C 1459 [the case against the CHA].” (SA-9-10) In imposing the receivership onto the CHA’s HOPE VI program, the District Court, relying on the Receivership Order’s definition of

the “scattered site program,” reasoned as follows with regard to the Receiver’s authority with regard to HOPE VI:

[In the Receivership Order] [w]e gave the Receiver “all powers of CHA” with regard to the development and administration of the Gautreaux scattered site program, which [the Receivership Order defined as] “all CHA non-elderly public housing development programs which may in the future be authorized by HUD during the pendency” of the Gautreaux litigation. . . .HOPE VI is a “non-elderly public housing development program [] . . . authorized during the pendency” of the Gautreaux litigation, and it therefore fits entirely within the Receiver’s jurisdiction.

(A-18)²⁰

It is on the basis of this rote reading of a partial definition drafted in 1987, that is clearly directed to the “scattered site program” as it existed in 1987, that the District Court imposed the receivership on the CHA’s HOPE VI programs. The District Court ignored the fact that the original receivership was entered into by the agreement of the parties and was itself based on uncontroverted findings made in 1987 that had nothing to do with HOPE VI, which was not enacted until 1992. (SA-9-10) The District Court ignored the fact that the original receivership was imposed because the CHA had been unable to build public housing in the General Area, and that there was no basis to believe that the CHA would be unable to build replacement housing in accordance with its HOPE VI programs and applications. The District Court ignored the cost or the need for the cost of imposing a receivership over a massive federally funded public housing redevelopment program that would involve in Chicago in excess of \$100,000,000.00 (a 3% developer’s fee that is being paid to the receiver for building scattered site housing alone would be \$3 million). The District Court’s interpretation of the Receivership

²⁰ The Order also orders the CHA to “cooperate” with the receiver and “coordinate” its 1998 HOPE VI application with the receiver. Without further explication, those terms are too vague to be enforced. See NLRB v. Brooke Industries Inc., 867 F.2d 434, 435-36 (7th Cir. 1989) (phrase “harsh and vindictive . . . proposal” too vague to be enforced).

Order is completely devoid of any recognition of the context in which the definition of “scattered site housing program” was written and the context in which the receivership was imposed in the first instance.

The appointment of a receiver is an extraordinary remedy to be used only when a court’s usual remedies are inadequate. See Gautreaux v. CHA, 498 F. Supp. 1072, 1074 (N.D. Ill. 1980); United States v. City of Detroit, 476 F. Supp. 512, 520 (E.D. Mich. 1979) (The imposition of a receivership by a federal court onto the property of a state agency is even more extraordinary, and should be taken with “great care” so as not to “summarily deny . . . a local government the full exercise of its authority over its affairs.”). There was no finding of a harm, or even a claim of a harm, for which a remedy is required here, particularly an extraordinary remedy such as the imposition of a receivership. In short, the District Court summarily denied the CHA the ability to exercise full authority over its own affairs. Cf. Gautreaux, 498 F. Supp. at 1074 (denying request for entry of receivership order after conducting 48 hearings in front of magistrate, and one evidentiary hearing “held at plaintiffs’ request for the purpose of deciding if the extraordinary remedy of appointing a receiver was either necessary or appropriate to achieve compliance . . .”).²¹

²¹ Indeed, the CHA filed the Motion to Clarify (the subject of the February Order) before building any housing with HOPE VI funds for the very purpose of insuring that its proposed HOPE VI activities would not violate the Injunction. It was only after the District Court issued the February Order that the receiver asserted to the District Court that it had authority over HOPE VI. When the CHA refused to transfer its authority over a \$100,000,000.00 federal program to a private, for-profit housing developer based on an order that did not discuss the role of the receiver, the receiver filed its emergency motion in the District Court.

CONCLUSION

WHEREFORE, for the foregoing reasons, the CHA respectfully requests that this Court vacate the February Order and the May Order. In the event that this Court does not vacate the February Order, the CHA respectfully requests that this Court review and vacate the May Order.

Respectfully submitted,



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Exhibit A

~~tance by formula under such section 14
(this section).~~

~~"(2) Modifications.—The Secretary shall submit a report to Congress, within 2 years after the date of enactment of this Act [Nov. 28, 1990], recommending any changes to such section 14 that the Secretary determines are appropriate to take into account the relative needs of public housing agencies for assistance to carry out lead-based paint testing and abatement activities. The Secretary shall not adopt any changes to the formula for this purpose except by law."~~

Urban Revitalization Demonstration Program

Pub.L. 103-124, Title II, Oct. 28, 1993, 107 Stat. 1285, provided in part that: "For the urban revitalization demonstration program under the third paragraph under the head 'Homeownership and Opportunity for People Everywhere grants (HOPE grants)' in the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1993, Public Law 102-389, 106 Stat. 1571, 1579 [set out below in this note], \$778,240,000 [is appropriated], to remain available until expended: *Provided*, That notwithstanding the first proviso in such third paragraph [set out below in this note], the Secretary shall have discretion to approve funding for more than fifteen applicants: *Provided further*, That no part of the foregoing amount that is used for the urban revitalization demonstration program shall be made available for an application that was not submitted to the Secretary by May 26, 1993: *Provided further*, That of the foregoing \$778,240,000, the Secretary may use up to \$2,500,000 for technical assistance under such urban revitalization demonstration, to be made available directly, or indirectly under contracts or grants, as appropriate: *Provided further*, That nothing in this paragraph shall prohibit the Secretary from conforming the program's standards and criteria set forth herein, with subsequent authorization legislation that may be enacted into law: *Provided further*, That of the \$778,240,000 made available under this heading, \$20,000,000 shall be made to eligible grantees under the urban revitalization demonstration program, to implement programs authorized under subtitle D of title IV [section 12899 et seq. of this title], and of which, \$10,000,000 shall be made

for youth apprenticeship training activities for joint labor-management organizations pursuant to section 3(c)(2)(B) of the Housing and Urban Development Act of 1968, as amended [section 1701u(c)(2)(B) of Title 12, Banks and Banking]."

Pub.L. 102-389, Title II, Oct. 6, 1992, 106 Stat. 1579, provided in part that: "Furthermore, \$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 selected from either the 40 most populous United States cities or, from any city whose housing authority was considered to have been on the Department's troubled housing authorities list as of March 31, 1992: *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 projects: *Provided further*, That at least 80 per centum of the funding provided to each participating public housing agency shall be used for the capital costs of major reconstruction, rehabilitation and other physical improvements, for the capital costs of replacement units and for certificates under section 8(b) [section 1437f(b) of this title] used for replacement and for management improvements for the reconstructed project and for planning and technical assistance purposes and not more than 20 per centum shall be used for community service programs (as defined by the Commission on National and Community Service) and for supportive services, including, but not limited to, literacy training, job training, day care, youth activities, administrative expenses, and the permissive and mandatory services authorized under the Gateway Program established in the Family Support Centers demonstration program, provided for in 42 U.S.C. 11485e-f [probably means section 11485(e), (f) of this title]: *Provided further*, That each participating city shall make contributions for supportive services in an amount equal to 15 per centum of the funding provided for supportive services pursuant to the

immediately preceding proviso: *Provided further*, That all such contributions from participating jurisdictions for supportive services shall be derived from non-Federal sources: *Provided further*, That each participating community shall submit a plan for program implementation which is consistent with the local comprehensive housing affordability strategy prepared pursuant to section 105 of the Cranston-Gonzalez National Affordable Housing Act [section 12705 of this title] and which has the approval of the local governing body: *Provided further*, That each plan shall include a community services component, but no funds are to be disbursed pursuant to this paragraph until such community services program has been approved by the Commission on National and Community Service: *Provided further*, That funds made available pursuant to this paragraph may be used in conjunction with, but not in lieu of, funding provided under the head 'Modernization of Low-Income Housing Projects' for the modernization of existing public housing projects pursuant to section 14 of the Act (42 U.S.C. 1437f) [this section]; for construction or major reconstruction of obsolete public housing, other than for Indian families; for the replacement of public housing units pursuant to section 18 of the Act [section 1437p of this title]; and for the HOPE for Public and Indian Housing Homeownership program as authorized under title III of the Act [subchapter II-A of this chapter]: *Provided further*, That notwithstanding the provisions of section 18(b)(3) of the Act [section 1437p(b)(3) of this title], units demolished, disposed of or otherwise eliminated under this demonstration may be replaced as follows: one-third by certificates under section 8(b) [section 1437f(b) of this title] and the balance by any combination of conventional public housing and units acquired or otherwise provided for homeownership under section 5(h) of the Act [section 1437c(h) of this title], housing made available through housing opportunity programs of construction or substantial rehabilitation of homes meeting essentially the same eligibility requirements as those established pursuant to sections 603-607 of the Housing and Community Development Act of 1987 (Public Law 100-242) [set out as a note under section 1715f of Title 12, Banks and Banking], or under the HOPE II or III programs, as established under sec-

tions 421 and 441 of the Cranston-Gonzalez National Affordable Housing Act [sections 12871 and 12891 of this title]; persons displaced by the reconstruction activities provided for herein shall be eligible for these replacement units: *Provided further*, That, in order to be eligible for funding under this paragraph, applications for funding must be received within 180 days from the date the Notice of Funds Availability is published in the Federal Register: *Provided further*, That the Secretary of the Department of Housing and Urban Development shall issue a notice of funds availability within 90 days of enactment of this paragraph [probably means date of enactment of this paragraph, Oct. 6, 1992]: *Provided further*, That the Secretary shall determine which cities have been selected to participate in the program within 90 days of the timely receipt of the last eligible application: *Provided further*, That housing authorities, in submitting their application for funds under this paragraph, shall identify all severely distressed public housing developments, using the criteria set forth by the National Commission on Severely Distressed Public Housing: *Provided further*, That nothing in this paragraph shall prohibit the Secretary from conforming the program standards and criteria set forth herein, with subsequent authorization legislation that may be enacted into law: *Provided further*, That the authority in the immediately preceding proviso shall not apply to any legislation that excludes or otherwise limits self-sufficiency or community service activities set forth in this paragraph, or authorize reallocation of amounts available for obligation which are included in this paragraph: *Provided further*, That any troubled housing authority that applies for funds under this paragraph, shall not be eligible if the Secretary certifies to the Congress that they are not making substantial progress to eliminate their troubled status in accordance with section 6(j) of the Housing Act of 1937 [section 1437d(j) of this title], as amended: *Provided further*, That in the event that communities applying for funding under this paragraph also request funding under any other HOPE program authorized under title III or title IV of the Cranston-Gonzalez National Affordable Housing Act [Title III or Title IV of Pub.L. 101-625, Nov. 28, 1990, 104 Stat. 4129, 4148, for classifications of which see Ta-

bles], the Secretary shall process such applications concurrently and in an expeditious manner: *Provided further*, That, in the event that any application received from the cities initially selected to participate in this program is determined to be unacceptable, the Secretary shall select another city from the 40 most populous United States cities to receive funding

under this paragraph: *Provided further*, That, in the event that communities selected to receive funding do not proceed in a manner consistent with the plan approved for that community, the Secretary may withdraw any unobligated balances of funding made available pursuant to this paragraph and distribute such funds to other eligible communities."

CROSS REFERENCES

- Abatement, inspection and reporting requirements for assistance under this section for purposes of elimination of lead paint poisoning, see 42 USCA § 4822.
- Choice in Public Housing Management Act, financial assistance for grants available under this section, see 42 USCA § 1437w.
- Comprehensive improvement assistance under this section for purposes of—
 - Lower income housing projects, see 42 USCA § 1437c.
 - Public housing homeownership, see 42 USCA § 1437s.
 - Public housing resident management, see 42 USCA § 1437r.
- Home Investment Partnerships, funds not available to carry out activities authorized under this section, see 42 USCA § 12742.
- Local housing assistance plan, formula allocation not applicable to assistance approved under this section, see 42 USCA § 1439.
- Mutual Help Homeownership Opportunity Program for Indian families, assistance provided for comprehensive modernization under this section, see 42 USCA § 1437bb.
- Performance indicators for public agencies for purposes of evaluation of management operations, see 42 USCA § 1437d.
- Public and Indian Housing Program, modernization grants available under this section, see 42 USCA § 1701u.
- Rehabilitation of vacant public housing units in accordance with this section for purposes of replacement plan under homeownership program, see 42 USCA § 1437aaa-3.
- Severely distressed public housing defined for purposes of revitalization, see 42 USCA § 1437v.

LIBRARY REFERENCES

Administrative Law

Low-income housing programs, requirements, see 24 C.F.R. § 813.101 et seq.

American Digest System

Building health regulations, slum clearance and public housing, see Health and Environment ¶32.

Federal benefits for Native Americans, see Indians ¶7.

Federally controlled housing and home finance organizations, see United States ¶53(9).

Encyclopedias

Building health regulations, slum clearance and public housing, see C.J.S. Health and Environment § 28 et seq.

Federal benefits for Native Americans, see C.J.S. Indians § 46 et seq.

Federally controlled housing and home finance organizations, see C.J.S. United States § 70.

WESTLAW ELECTRONIC RESEARCH

Health and Environment cases: 199k[add key number].

Indians cases: 209k[add key number].

United States cases: 393k[add key number].

See, also, WESTLAW guide following the Explanation pages of this volume.

PURPOSE OF THE HOPE VI PROGRAM

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. The elements of public housing transformation that have proven key to HOPE VI include:

1. Changing the physical shape of public housing. This includes tearing down the eyesores that are often identified with obsolete public housing and replacing them with homes that complement the surrounding neighborhoods and are attractive and marketable to the people they are intended to serve, meeting contemporary standards of modest comfort and liveability. HOPE VI funds should be used to create institutional and physical structures that serve the needs of public housing residents over the long term in a cost-effective manner.
2. Establishing positive incentives for resident self-sufficiency and comprehensive services that empower residents. Programs should be outcome-based, directed at residents moving up and out of public housing.
3. Enforcing tough expectations through strict occupancy and eviction rules, such as the "One Strike and You're Out" policy supported by the Housing Opportunity Program Extension Act of 1996 (Pub. L. 104-120; approved March 28, 1996). The goal of these rules is to improve the quality of life for residents, create safer, family-friendly environments conducive to learning, and make areas around public housing more attractive to businesses that can create well-paying jobs.
4. Lessening concentrations of poverty by placing public housing in nonpoverty neighborhoods, or by promoting mixed-income communities where public housing once stood alone, thereby ending the social and economic isolation of public housing residents, increasing their access to quality municipal services such as schools, and increasing their access to job information and mentoring opportunities.
5. Forging partnerships with other agencies, local governments, nonprofit organizations, and private businesses to leverage support and resources, whether financial or in-kind.

PROGRAM AUTHORITY AND FUNDING HISTORY

FY 1993 and FY 1994

The HOPE VI Program was created by the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1993 (Pub.L. 102-389), approved on October 6, 1992 (the 1993 Appropriations Act). Congress has never passed an authorization bill for the program, and, therefore, HUD has not issued program regulations. Grants are governed by each Fiscal Year's Notice of Funding Availability (NOFA) and each recipient's Grant Agreement.

The FY 1993 Appropriations Act made \$300 million available for Planning and Implementation grants to PHAs in the 40 most populous cities in the U.S., or in any city whose PHA was on HUD's current troubled housing authority list. A NOFA was published in the Federal Register on January 4, 1993 and revised and restated on March 29, 1993. On May 4, 1993 the deadline was extended to May 26, 1993. 41 applications were received by HUD. In August 1993, 2 Planning and 6 Implementation applications received full funding and 7 Implementation applications received partial funding.

The FY 1994 Appropriations Act (Pub.L. 103-124, approved on October 28, 1993) allocated an additional \$778.24 for HOPE VI. Of that amount, \$2.5 million was allocated for technical assistance, and \$20 million was allocated for the Youthbuild program, leaving \$755.74 million available to fund additional HOPE VI applications submitted in FY 1993. In November 1993 the 7 partially-funded applications from FY 1993 were fully funded, and 2 new Planning and 5 new Implementation grants were fully funded from the FY 1994 appropriation. A total of 13 Implementation grants totalling \$543,836,418 and 2 Planning grants totalling \$1 million were awarded as FY 1993 grants. An additional 13 Implementation grants totalling \$507,838,089 and 6 Planning grants totalling \$2,725,472 were awarded as FY 1994 grants. The total amount awarded for FY 1993 and FY 1994 was \$1,055,399,979.

FY 1995

The FY 1995 Appropriations Act (Public Law 103-327, approved September 28, 1994) allocated \$500 million for HOPE VI. Of that amount, \$2.5 million was allocated for technical assistance, leaving \$497.5 available for HOPE VI Planning and Implementation grants.

A letter from HUD dated January 9, 1995 invited the 8 Planning grantees from FY 1993 and 1994 to apply for Implementation grants. Those Implementation grants, totalling \$349,999,018, were awarded on January 19, 1995.

A letter from HUD dated February 3, 1995 invited all eligible PHAs to apply for Planning and Implementation grants. Applications for Planning grants were due to HUD on February 28, 1995. \$10,726,609 was awarded on a non competitive basis to 27 PHAs for Planning grants of \$400,000 apiece.

Applications for Implementation grants were due to HUD on April 17, 1995. Six finalists were invited to submit revised submissions by August 30, 1995. On September 28, 1996, 5 PHAs were awarded Implementation grants totalling \$103,257,000.

FY 1996

The FY 1996 Appropriations Act (Pub.L. 104-134, approved April 26, 1996) allocated \$480 million for HOPE VI. Of that amount, \$3,216,000 was allocated for technical assistance, leaving \$476,784,000 available for Implementation grants. A NOFA was issued on July 22, 1996, and 138 applications were received on the September 10, 1996 due date. 20 grants totalling 403,313,070 were awarded for demolition and revitalization activities. 24 grants totalling 73,470,930 were awarded for demolition only. The total amount awarded in FY 1996 was \$476,784,000.

FY 1997

The Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1997 (The FY 1997 Appropriations Act) (Pub.L. 104-204, approved September 26, 1996) allocated \$550 million for HOPE VI under the heading "Revitalization of Severely Distressed Public Housing." Of that amount, \$2.5 million was allocated for technical assistance, \$70 million for Section 8 assistance, \$30 million for demolition grants, and \$447.5 million for demolition and revitalization grants. Separate NOFAs are expected to be published for the Section 8, Demolition only, and Demolition and Revitalization portions of the appropriation.

FY 1995 APPROPRIATION ACT

H.R. 4626, Public Law 103-327, Approved on 9-28-94

SEVERELY DISTRESSED PUBLIC HOUSING

For the HOPE VI/urban revitalization demonstration program under the third paragraph under the head "Homeownership and Opportunity for People Everywhere grants (HOPE grants)" in the Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1993, Public Law 102-389, 106 Stat. 1571, 1579, \$500,000,000, to remain available until expended:

Provided, That notwithstanding the first proviso of such third paragraph, the Secretary shall have discretion to approve funding for more than fifteen applicants:

Provided further, That notwithstanding the third proviso of such third paragraph, the Secretary may provide funds for more than 500 units for each participating city:

Provided further, That in selecting HOPE VI implementation grants recipients in fiscal year 1995, the Secretary must first award such grants to those cities or jurisdictions which have received HOPE VI planning grants in fiscal year 1993 or fiscal year 1994:

Provided further, That the requirement of the immediately proceeding proviso shall not limit the Secretary's discretion to limit funding to amounts he deems appropriate, nor shall it prevent the Secretary from guaranteeing that all implementation grant recipients conform with the requirements of the HOPE VI/ urban revitalization demonstration program:

Provided further, That of the foregoing \$500,000,000, the Secretary may use up to \$2,500,000 for technical assistance under such urban revitalization demonstration, to be made available directly, or indirectly, under contracts or grants, as appropriate:

Provided further, That nothing in this paragraph shall prohibit the Secretary from conforming the program standards and criteria set forth herein, with subsequent authorization legislation that may be enacted into law.

FY 1996 APPROPRIATION ACT

Public Law 104-134, Approved on 4-26-95

Omnibus Consolidated Rescissions and Appropriation Act of 1996

PUBLIC HOUSING DEMOLITION, SITE REVITALIZATION, AND REPLACEMENT HOUSING GRANTS

For grants to public housing agencies for the proposes of enabling the demolition of obsolete public housing projects or portions thereof, the revitalization (where appropriate) of sites (including remaining public housing units) on which such projects are located, replacement housing which will avoid or lessen concentration of very low-income families, and tenant-based assistance in accordance with section 8 of the United States Housing Act of 1937 for the purpose of providing replacement housing and assisting tenants to be displaced by the demolition, \$480,000,000, to remain available until expended;

Provided, That the Secretary of Housing and Urban Development shall award such funds to public housing agencies based upon, among other relevant criteria, the local and national impact of the proposed demolition and revitalization activities and the extent to which the public housing agency could undertake such activities without the additional assistance to be provided hereunder;

Provided further, That eligible expenditures hereunder shall be those expenditures eligible under section 9 and section 14 of the United States Housing Act of 1937 (42 U.S.C. 1437f and l);

Provided further, That the Secretary may impose such conditions and requirements as the Secretary deems appropriate to effectuate the proposes of this paragraph;

Provided further, That the Secretary may require and agency selected to receive funding to make arrangements satisfactory to the Secretary for use of an entity other than the agency to carry out this program where the Secretary determines that such action will help to effectuate the propose of this paragraph;

Provided further, That in the event an agency selected to receive funding does not proceed expeditiously as determined by the Secretary, the Secretary shall withdraw any funding made available pursuant to this paragraph that has not been obligated by the agency and distribute such funds to one or more other eligible agencies, or to other entities capable of proceeding expeditiously in the same locality with the original program;

Provided further, That of the foregoing \$480,0000, the Secretary may use up to .67 per centum for technical assistance, to be provided directly or indirectly by grants, contracts or cooperative agreements, including training and cost of necessary travel for participants in such training, by or to officials and employees of the Department and of public housing agencies and to residents;

Provided further, That any replacement housing provided with assistance under this head shall be subject to section 1809 of the United States Housing Act of 1937, as amended by section 201(b)(2) of this Act.

FY 1997 APPROPRIATION ACT

H.R. 3666, Public Law 104-204, Approved on 9-26-96

Department of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriation Act, 1997

REVITALIZATION OF SEVERELY DISTRESSED PUBLIC HOUSING

For grants to public housing agencies for assisting in the demolition of obsolete public housing projects or portions thereof, the revitalization (where appropriate) of sites (including remaining public housing units) on which such projects are located, replacement housing which will avoid or lessen concentrations of very low-income families, and tenant-based assistance in accordance with section 8 of the United States Housing Act of 1937; and for providing replacement housing and assisting tenants to be displaced by the demolition, \$550,000,000, to remain available until expended, of which the Secretary may use up to \$2,500,000 for technical assistance, to be provided directly or indirectly by grants, contracts or cooperative agreements, including training and cost of necessary travel for participants in such training, by or to officials and employees of the Department and of public housing agencies and to residents;

Provided, That no funds appropriated in this title shall be used for any purpose that is not provided for herein, in the Housing Act of 1937, in the Appropriations Acts for Veterans Affairs, Housing and Urban Development, and Independent Agencies for the fiscal years 1993, 1994, and 1995, and the Omnibus Consolidated Rescissions and Appropriations Act of 1996;

Provided further, That none of such funds shall be used directly or indirectly by granting competitive advantage in awards to settle litigation or pay judgments, unless expressly permitted herein;

Provided further, That, notwithstanding any other provision of law, the funds made available to the Housing Authority of New Orleans, under HOPE VI for purposes of Desire Homes, shall not be obligated or expended for on-site construction until and independent third party has determined whether the site is appropriate.

Exhibit B

CABRINI-GREEN LOCAL ADVISORY COUNCIL, Plaintiff, v. CHICAGO HOUSING AUTHORITY
and JOSEPH SHULDINER, Defendants.

No. 96 c 6949

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

1997 U.S. Dist. LEXIS 625

January 21, 1997, Decided

January 22, 1997, DOCKETED

DISPOSITION: [*1] Defendants' motion to dismiss plaintiff's complaint granted in part and denied in part. Counts 9, 10, 12, and 15 of plaintiff's complaint dismissed with prejudice.

COUNSEL: For CABRINI-GREEN LOCAL ADVISORY COUNCIL, plaintiff: Richard M. Wheelock, Legal Assistance Foundation of Chicago, Chicago, IL. Ira Rheingold, Legal Assistance Foundation of Chicago, Chicago, IL. John Warren Whitcomb, Legal Assistance Foundation of Chicago, Chicago, IL. Brenda L. Grauer, Legal Assistance Foundation of Chicago, Chicago, IL.

For CHICAGO HOUSING AUTHORITY, THE, CHA, an Illinois municipal corporation, JOSEPH SHULDINER, in his official capacity as executive director of the CHA, defendants: Thomas Edward Johnson, Anne Megan Davis, Leslie Ann Jones, Johnson, Jones, Snelling & Gilbert, Chicago, IL.

JUDGES: David H. Coar, U.S. District Judge

OPINIONBY: David H. Coar

OPINION: MEMORANDUM OPINION AND ORDER

Defendants Chicago Housing Authority and its Executive Director Joseph Shuldiner (collectively, "CHA" or "defendants") have moved to dismiss plaintiff Cabrini-Green Local Advisory Council's ("LAC" or "plaintiff") twenty-two-count complaint seeking declaratory and injunctive relief. For the following reasons, defendants' [*2] motion is granted in part and denied in part.

I. Allegations of the Complaint

A. Cabrini-Green Housing Development and the Parties

The Cabrini-Green public housing development in Chicago, Illinois ("Cabrini-Green"), is a family public housing development containing approximately 3606 dwelling units and housing some 6000 residents. Virtually all of the families residing in Cabrini-Green are "very low income," a term that is defined by the U.S. Department of Housing and Urban Development ("HUD") to mean 0% to 50% of the median area income. (Compl., PP 32-33). In addition, 94% of the heads of households at Cabrini-Green are African-American, 63% of the residents are female, and 56% of the residents are younger than nineteen years of age. (Id. P 34).

Plaintiff LAC is a tenant organization that represents the tenants of Cabrini-Green. Membership in LAC is composed of lessees and other authorized residents of Cabrini-Green. LAC has the power to act for and on behalf of the residents of Cabrini-Green and to take steps to effect changes in rules, regulations, practices, and policies on behalf of the residents. LAC also has the power to enter into contracts on behalf [*3] of the residents. (Compl., P 12).

Defendant Chicago Housing Authority is an Illinois municipal corporation that administers federally subsidized and assisted low-income housing. (Compl., P 17). Defendant Joseph Shuldiner is the Executive Director of the Chicago Housing Authority and is charged with establishing and administering the Authority's policies. (Id. P 18)

B. Initial HOPE VI Application and the LAC-CHA

Agreements

On May 5, 1993, CHA filed an application with HUD under the HOPE VI Urban Revitalization Demonstration Program ("HOPE VI") for \$ 50 million to revitalize Cabrini-Green. The application called for the demolition of three residential buildings with 660 dwelling units and the renovation of another. The plan also provided for one-to-one replacement of each dwelling unit to be demolished, either by constructing new units or by providing "Section 8" certificates to those displaced by the demolition. (Compl., PP 3, 36).

On May 28, 1993, CHA and LAC entered into a memorandum of agreement that provided, among other things, that "residents impacted by the rehabilitation and demolition . . . will be provided relocation opportunities within the general planning [*4] area [of the Cabrini-Green development]," (Compl., P 38(b)), and that CHA would meet with LAC "for the purpose of developing a 'master-plan'" for Cabrini-Green, (id. 38(d)). LAC alleges that this agreement remains in full force and effect and is a contract between LAC and CHA. (Id. P 38).

On November 19, 1993, HUD approved CHA's HOPE VI grant application. Disbursement of funds, however, was conditioned upon CHA's submission of an approvable demolition application and replacement housing plan. (Compl., P 40). On March 1, 1995, HUD approved CHA's request to demolish the building at 1117-1119 N. Cleveland, provided that the HOPE VI grant would fund 72 of the 262 replacement units. (Id. P 42). On March 13, 1995, CHA, through its Chairman, Vincent Lane, agreed in writing with LAC (1) that the residents of 1150-60 N. Sedgwick would not be relocated and that the building would not be demolished until replacement housing was built and (2) that 1158 N. Cleveland would be vacated for rehabilitation. (Id. P 43). On March 15, 1995, CHA submitted to HUD the "HOPE VI Revised Plan to Revitalize Cabrini-Green" ("Revised Plan"), which included a replacement housing plan. The Revised [*5] Plan provided for one-to-one replacement of dwelling units. (Id. P 44). In a letter dated May 15, 1995, HUD refused to either approve or deny the Revised Plan. (Id. P 45). On June 23, 1995, HUD approved CHA's demolition application for 1157-59 N. Cleveland and 1150-60 N. Sedgwick. HUD's approval for these demolitions was based in part on CHA's proposal to replace the units in those buildings on a one-for-one basis. (Id. P 48). Later in 1995, CHA demolished 1117-19 N. Cleveland and 1157-59 N. Cleveland. (Id. P 49).

In October 1995, CHA issued a "Request for Proposals -- Step Two and Developer's Packet For The Planning, Design & Development of Mixed

Income Housing For The Cabrini HOPE VI Urban Revitalization Demonstration Project" ("RFP"). The purpose of the RFP was to assist CHA in developing a replacement housing plan for the 660 units scheduled to be demolished. (Compl., P 51). In November 1995, the City of Chicago ("City") submitted to HUD its 1995 Consolidated Plan/Action Plan ("Consolidated Plan"). That plan presents the City's community development priorities and strategies. Local governments receiving HUD funds are required to submit or update such a plan annually. [*6] (Id. P 52). n1

n1 The City's Consolidated Plan provides that the City will:

(1) Serve the Full Range of Constituencies among Low- and Moderate-income Populations

Coordinate affordable housing activities with new CHA initiatives to improve public housing and the quality of life for low-income public housing residents by creating stable communities that not only provide decent shelter but also social and economic opportunities for residents. . . .

(2) Promote Community Revitalization and Stability through a Range of Development Activities.

Place primary emphasis on the preservation of affordable housing units and rehabilitation of existing housing stock. . . .

(3) Provide for Special Needs Populations.

Increase the supply and availability of resources to address the needs of Chicago's homeless population. . . .

(Compl., P 53).

C. Development of the CHA Plan

In January 1996, CHA created the HOPE VI Development Screening Committee, an advisory committee whose purpose [*7] it was to make recommendations to CHA regarding development proposals submitted pursuant to the RFP. Four Cabrini-Green residents were appointed by plaintiff to serve on this committee. (Compl., P 54). However, plaintiff alleges that between March 1996 and June 1996, CHA and the City held a series of closed-door meetings to create their own plan for the redevelopment of Cabrini-Green. Plaintiff was excluded from these meetings. (Id. P 56). The meetings between CHA and the City culminated in a joint press conference held on June 27, 1996, in which a new plan for the redevelopment of Cabrini-Green was announced ("CHA Plan" or "Plan"). Under the Plan, CHA will demolish eight buildings totaling 1324 units, rather than just the three buildings with 660 units called for under the original HOPE VI application. (Id. P 57). The CHA

Plan does not require one-for-one replacement of demolished units for very low-income residents. In fact, the Plan call for only 300-325 such units to be built, a net loss of approximately 1000 very low-income dwelling units. (Id. P 58).

Plaintiff alleges that the CHA Plan will have a disproportionate impact on African-Americans, women, and children [*8] due to the fact that all of the 675 families that have either been displaced or will be displaced from the eight buildings designated for demolition under the CHA Plan are considered "low income." (Compl., PP 60, 62, 89). In addition, LAC alleges that the building designated for renovation under the original HOPE VI application is now slated for demolition. In reliance on CHA's promise to renovate this building, the families residing in that building moved out. (Id. PP 63-64). Finally, plaintiff alleges that CHA has violated its promise to build replacement housing prior to vacating and demolishing 1150-60 N. Sedgwick. (Id. PP 68-69).

D. Injury to LAC and its Members

As a result of defendants' actions, LAC alleges that it has suffered injury because it has been denied participation in the planning process leading up to the CHA Plan. (Compl., P 73(a)). LAC also alleges that it has been forced to divert resources from its other organizational purposes in order to discover and discuss the CHA Plan, to advocate against the Plan, to monitor defendants' implementation of the Plan, to inform its members about the Plan, and to initiate this lawsuit. (Id. P 73(b)). Plaintiff [*9] also alleges that many of its members will suffer irreparable injury due to the destruction of their community. Particularly, plaintiff alleges that LAC members will be denied eligibility to reside in replacement housing at Cabrini-Green. (Id. P 74). Further, LAC members have been injured because the CHA Plan was developed without the consultation and participation of LAC members, as required by HOPE VI, Section 18 of the U.S. Housing Act of 1937 (codified at 42 U.S.C. § 1437p), and the May 28, 1993 agreement between the parties. (Compl., P 75).

E. LAC's Complaint

LAC filed a twenty-two count complaint for declaratory and injunctive relief. Counts 1-4 are brought under Title VIII of the Civil Rights Act of 1968, also known as the Fair Housing Act. In those counts, plaintiff alleges that the CHA Plan will have a disproportionate impact upon African-Americans, women, and children. (Compl., PP 80-83). Count 5 is brought under Title VI of the Civil Rights Act of 1964 and alleges that the CHA Plan will have a disproportionately adverse im-

pact upon African-Americans. (Id. P 84). Counts 6-10 are brought under 42 U.S.C. § 1983 and HOPE VI, 42 U.S.C. § 1437l, note. [*10] Count 6 seeks to enforce the "revitalization" provisions of HOPE VI. (Compl., P 85). Counts 7 and 8 seek to enforce the requirement in the HOPE VI statute that all plans developed under HOPE VI be consistent with the City's Consolidated Plan. (Id. PP 86-87). Counts 9 and 10 seek to enforce statutory provisions that, when read together, "require that persons displaced by HOPE VI reconstruction activities shall be eligible for replacement units of their choice, to the maximum extent practicable. (See id. P 88). Counts 11 and 12 are brought under 42 U.S.C. § 1983 and Section 18 of the U.S. Housing Act of 1937, 42 U.S.C. § 1437p. In Count 11, plaintiff alleges that the defendants have failed to "meaningfully consult" with plaintiff in developing the CHA Plan, in violation of Section 18 and the HOPE VI grant requirements. (Compl., P 90). Count 12 alleges that one of the buildings scheduled for demolition is not obsolete and that a reasonable program of modifications is feasible to return it to "useful life." Plaintiff thus alleges that the building's demolition violates Section 18, which governs the demolition of public housing. (Id. P 91). Count 13 alleges that the CHA Plan violates [*11] Section 24 of the U.S. Housing Act of 1937, 42 U.S.C. § 1437v(e)(2), because the Plan creates a local preference whereby 300-325 replacement public housing units will be available for families making 50-80% of median area income without first holding one or more public hearings to obtain the views of low-income tenants. Plaintiff alleges in Count 14 that defendants have violated the Uniform Relocation Act, 42 U.S.C. § 4625(c), and regulations promulgated thereunder. In particular, plaintiff alleges that defendants have (1) failed to adequately assess the needs and preferences of displaced families; (2) failed to give displaced families reasonable opportunities to relocate to decent, safe, and sanitary replacement dwellings that are not located in areas of African-American concentration; and (3) failed to provide displaced families comparable replacement housing. (Compl., P 93).

Plaintiff has also brought eight state law claims. Count 15 alleges that the CHA Plan exceeds the powers conferred upon CHA by the Illinois Housing Authorities Act, 310 ILCS 10/2. (Compl., P 94). Counts 16-21 allege various breaches of the agreements between CHA and LAC. (Id. P 95-100). Finally, Count [*12] 22 alleges that the families living at 1158 N. Cleveland detrimentally relied on CHA's promise to rehabilitate that structure when they moved out. Plaintiff therefore claims that defendants are estopped from demolishing 1158 N. Cleveland. (Id. P 101).

Defendants have moved to dismiss all of the counts

in plaintiff's complaint that challenge the legality of the CHA Plan because those counts are not ripe for adjudication. In addition, defendants have moved to dismiss other counts because plaintiff has sued on its own behalf and lacks standing to assert the claims of its individual members. Defendants also argue that plaintiff's state law claims must be dismissed because the court lacks jurisdiction to enter relief against a local government agency based on state law claims. Furthermore, defendants contend that plaintiff has failed to state a cause of action for many of the federal and state counts. n2

n2 Plaintiff also filed a motion for a preliminary injunction on November 8, 1996, asking the court to enjoin: (1) the demolition of 1158 N. Cleveland, including an order upon CHA to withdraw the demolition application that CHA recently submitted to HUD; (2) the demolition of 1150-60 N. Sedgwick prior to the construction of replacement housing; and (3) the unlawful relocation of the residents from 1150-60 N. Sedgwick. On December 19, 1996, the court held a hearing on that motion. The only issue considered by the court at that time was the request to enjoin the relocation of the residents from 1150-60 N. Sedgwick. On December 20, 1996, the court declined to issue an injunction prohibiting that relocation.

[*13]

II. Standards

A motion to dismiss pursuant to Rule 12(b)(6) does not test whether the plaintiff will prevail on the merits but instead whether the claimant has properly stated a claim. See *Scheuer v. Rhodes*, 416 U.S. 232, 236, 94 S. Ct. 1683, 1686, 40 L. Ed. 2d 90 (1974). The court may dismiss a complaint for failure to state a claim under Rule 12(b)(6) only if "it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." *Hishon v. King & Spalding*, 467 U.S. 69, 73, 104 S. Ct. 2229, 2232, 81 L. Ed. 2d 59 (1984); see also *Conley v. Gibson*, 355 U.S. 41, 45-46, 78 S. Ct. 99, 102, 2 L. Ed. 2d 80 (1957). The court must accept as true all well-pleaded allegations and draw all reasonable inferences in favor of the plaintiff. *Antonelli v. Sheahan*, 81 F.3d 1422, 1427 (7th Cir. 1996). However, the court need not strain to find favorable inferences which are not apparent on the face of the complaint. *Coates v. Illinois St. Bd. of Educ.*, 559 F.2d 445, 447 (7th Cir. 1977). Similarly, the court is not required to accept legal conclusions either alleged or inferred from pleaded [*14] facts. *Northern Trust Co. v. Peters*, 69 F.3d 123, 129 (7th Cir. 1995)

(citing *Nelson v. Monroe Reg'l Med. Ctr.*, 925 F.2d 1555, 1559 (7th Cir.), cert. denied, 502 U.S. 903, 112 S. Ct. 285, 116 L. Ed. 2d 236 (1991)). Finally, the complaint need not specify the correct legal theory nor point to the right statute to survive a Rule 12(b) motion to dismiss, provided that "relief is possible under any set of facts that could be established consistent with the allegations." *Bartholet v. Reishauer A.G.*, 953 F.2d 1073, 1078 (7th Cir. 1992). The complaint must, however, state either direct or inferential allegations concerning all material elements necessary for recovery under the chosen legal theory. See *Glatt v. Chicago Park Dist.*, 847 F. Supp. 101, 103 (N.D. Ill. 1994).

III. Discussion

CHA has moved to dismiss LAC's claims on a number of grounds. The court will consider each of these arguments in turn.

A. Ripeness of Claims

CHA first contention in its motion to dismiss is that there is "no concrete, fully developed and final CHA Plan . . . which has ever been submitted to HUD for approval, a necessary precondition for CHA expenditure [*15] of HOPE VI funds." (Def. Mem., at 12). Rather, CHA argues that there has simply been a press conference announcing a "skeletal outline" of a potential plan and that the court should therefore not prematurely adjudicate the legality of a plan that is only a possibility. CHA has therefore moved to dismiss plaintiff's claims in Counts 1-13, 15-17, and 20 that challenge the CHA Plan on the ground that the court lacks subject matter jurisdiction because the claims are not yet ripe.

The ripeness doctrine has both a constitutional component based on Article III "case or controversy" concepts and a prudential component based on the discretionary power of the court to refuse review for policy reasons. In its most elemental form, the doctrine of ripeness is invoked to determine whether a particular dispute has developed to a point that merits decision. "The central concern [of the ripeness doctrine] is whether the case involves uncertain or contingent future events that may not occur as anticipated, or indeed may not occur at all." 13A Wright, Miller & Cooper, *Federal Practice & Procedure: Civil* 2d § 3532, at 112 (1984). The Supreme Court has noted that ripeness turns upon "the [*16] fitness of the issues for judicial decision" and "the hardship to the parties of withholding court consideration." *Pacific Gas & Elec. Co. v. State Energy Resources Conservation & Dev. Comm'n*, 461 U.S. 190, 201, 103 S. Ct. 1713, 1720-21, 75 L. Ed. 2d 752 (1983).

There is some merit to CHA's contention that the CHA Plan is not "final" and thus not ripe for review. No

HOPE VI funds will be dispersed until the plan is submitted and approved by HUD. Nor may CHA actually raze any buildings without HUD approval. However, "the label an agency attaches to its action is not determinative." *Continental Air Lines v. CAB*, 173 U.S. App. D.C. 1, 522 F.2d 107, 124 (D.C. Cir. 1974) (en banc). The fact that there are uncertain contingencies, such as what the plan ultimately submitted to and approved by HUD will look like, does not mean that there is no case or controversy before the court or that the plaintiff and the individuals that it represents will not be irreparably injured during the time that it takes those contingencies to become certain. Rather, the court must accept as true all well-pleaded allegations in the plaintiff's complaint. *Antonelli*, 81 F.3d at 1427. [*17]

Plaintiff alleges that, in developing and implementing the Plan, defendants have failed to consult with the residents of Cabrini-Green. (Compl., PP 56, 73(a)). This injury has already occurred and is not dependent upon HUD approval of a HOPE VI application. The complaint also alleges that defendant has adopted a plan that details steps to be taken in regard to the Cabrini-Green development. (See id. PP 57-61). Plaintiff alleges that defendants have begun implementing this meticulous plan by, for example, taking concrete steps to demolish a building that had been scheduled for rehabilitation under the previous plan. (Id. PP 63-66). While HUD has not yet approved this demolition, CHA's taking of steps in compliance with some new design when residents of that building have already moved out in reliance on CHA's promise to renovate the building makes the inevitability of demolition appear that much more likely to this court. Other courts have recognized the notion of "de facto demolition" of housing developments, see, e.g., *Henry Horner Mothers Guild v. Chicago Hous. Auth.*, 824 F. Supp. 808, 817 (N.D. Ill. 1993) ("By their inaction defendants have . . . accomplished [*18] the constructive or de facto demolition of the Horner developments."); *Gomez v. Housing Auth. of City of El Paso*, 805 F. Supp. 1363, 1374-75 (W.D. Tex. 1992) (recognizing plaintiffs' right to sue for de facto demolition), and this court finds that the facts of the instant case support recognition of that notion here. Withholding court consideration of this case could cause significant hardship to plaintiff's members if housing becomes uninhabitable and unavailable through CHA's creation of vacant buildings coupled with its inaction in maintaining and securing those buildings. Beyond the notion that CHA may be implementing a de facto demolition is the fact that plaintiff has simply alleged that its members have already been injured by moving out of buildings in reliance on CHA's promise to provide replacement housing.

Defendants' effort to apply *Pacific Gas* to the facts of this case is not persuasive. *Pacific Gas* dealt with a legal challenge to two sections of a California statute that regulated nuclear power plants. The first section established an absolute moratorium on the construction of nuclear power plants. The Court found ripeness in [*19] regard to that section because it threatened impending injury. See *Pacific Gas*, 461 U.S. at 201, 103 S. Ct. at 1720-21 (stating that "one does not have to await the consummation of threatened injury to obtain preventive relief. If the injury is certainly impending that is enough." (citations omitted)). The second section of the statute concerned a provision that required a state agency to decide on a case-by-case basis whether adequate storage existed for spent nuclear fuel before a nuclear power plant could be built. The Court found that the challenge to this section of the statute was not ripe because further administrative events were required to demonstrate whether there was a factual basis for the challenge. *Id.* at 203, 103 S. Ct. at 1721-22.

Despite CHA's efforts to demonstrate otherwise, plaintiff's arguments in this case are not "identical" to the rejected claim in *Pacific Gas*. Plaintiff's complaint fairly contains allegations that "administrative events" have already taken place that are in furtherance of the CHA Plan. The fact that the CHA Plan has not been submitted to or approved by HUD does not mean that the injury alleged is not imminent [*20] or has not already occurred. Furthermore, in other cases regarding public housing, courts have held that HUD approval is not a prerequisite to the determination of ripeness. For example, in *Jackson v. Okaloosa County, Fla.*, 21 F.3d 1531 (11th Cir. 1994), the court found that a Fair Housing Act ("FHA") claim was ripe, even though HUD had not yet given final approval for site selection. The court noted that the plaintiffs had alleged that the process of site selection itself was flawed, because all of the sites ranked and submitted for approval were in racially impacted areas. The court found that if these allegations were true, the site selection process would have a segregative result -- in violation of the law -- regardless of HUD's decision. *Jackson*, 21 F.3d at 1541 & n.15. So too in this case. For example, plaintiff's complaint alleges that CHA's process for developing CHA has already violated consultative provisions in the law, and that the CHA Plan threatens imminent injury to federal or state rights or violates federal or state law. Thus, plaintiff need not wait for the Plan to be submitted to HUD for approval in order to bring this suit. See [*21] *Jackson*, 21 F.3d at 1541 n.15 ("HUD decisions need not be final where an injury is imminent."); accord *Sierra Club v. Morton*, 169 U.S. App. D.C. 20, 514 F.2d 856, 868-69 n.20, 880-82 (D.C. Cir. 1975) (holding

that claims that plans for development of coal resources had proceeded far enough to require environmental impact statement were ripe despite lack of formal, "final" agency action), reversed on other grounds, 427 U.S. 390, 96 S. Ct. 2718, 49 L. Ed. 2d 576 (1976) (not questioning ripeness determination of lower court).

Plaintiff has alleged that as a result of a series of secret meetings, CHA has agreed with the City on a "plan." Whether that plan is merely in outline or final form is not the crucial issue. Plaintiff has alleged that the necessary outcome of the process culminating in the "plan" is to deny it an opportunity to participate and will result, inevitably, in the violations alleged in the complaint. The allegations in plaintiff's complaint, if true, raise a justiciable case or controversy and entitle plaintiff to relief; therefore, defendants' motion to dismiss plaintiff's complaint on grounds of ripeness is denied.

B. Plaintiff's Standing [*22] to Sue

CHA's next contention is that the court lacks jurisdiction over Counts 1-5, 9, 10, 14, and 22 because LAC does not have standing to sue to bring the claims. In Counts 1-5, plaintiff alleges that the CHA Plan discriminates against African-Americans, women, and families with children. (Compl., PP 80-84). In Counts 9, 10, 14, and 22, plaintiff alleges that certain families did not receive their choice of replacement housing and have not received adequate assessments, reasonable opportunities for decent housing, or comparable replacement housing, or that those individuals detrimentally relied on CHA actions. (Compl., PP 88, 89, 93, 101). CHA argues that, because plaintiff has not identified any one of its members with independent standing to bring all of these claims, and because the determination of the validity of these claims requires a case-by-case factual inquiry of the particularities of each family, LAC lacks standing to bring the claims.

To support its argument, CHA cites to the Supreme Court's holdings in *Hunt v. Washington State Apple Advertising Commission*, 432 U.S. 333, 343, 97 S. Ct. 2434, 2441, 53 L. Ed. 2d 383 (1977) and *United Food & Commercial Workers v. Brown Group, Inc.*,

U.S. , 134 L. Ed. 2d 758, 116 S. Ct. 1529 (1996), in which the Court identified a three-prong test to determine an association's standing to sue based on injury to its members. The elements of that test are as follows: (1) the association's members would otherwise have standing to sue in their own right; (2) the interests the association seeks to protect are germane to the organization's purpose; and (3) neither the claim asserted nor the relief requested require participation in the lawsuit by individual members of the association. See *Hunt*,

432 U.S. at 343, 97 S. Ct. at 2441. By limiting representational standing in this way, the Court has ensured that both the constitutional and prudential restrictions on standing are applied to organizations as well as to individuals. The first prong of the test ensures that there has been some injury in fact to the party who appears in court. The second requirement establishes that the representative appearing is entitled to represent the injured party on a particular issue. The final requirement assures the court that allowing the parties to proceed in a representational capacity [*24] will not harm the individual interests allegedly protected by the representative. *MPIRG v. Selective Serv. Sys.*, 557 F. Supp. 925, 931 (D. Minn. 1983) (Alsop, J.).

CHA argues that the first prong of this test has not been satisfied in regard to Counts 1-5, 9, 10, 14, and 22 because LAC has sued only on behalf of itself and not as a representative acting on behalf of its members and has not identified even one member with standing to assert the claims. For example, CHA notes that, in Counts 1-5, plaintiff alleges that some LAC members will not receive some of the HOPE VI replacement units they desire but has not identified any LAC member who desires to receive a replacement unit and who will not be able to do so under the alleged plan. CHA also contends that LAC's claims also fail under the third prong of the Hunt test, because the court will have to make particularized determinations as to whether any individual family that is displaced by HOPE VI activities wants to return to Cabrini-Green and will be unable to do so under the CHA Plan; whether any individual family received its choice of replacement housing and received the full panoply of relocation benefits; [*25] or whether any individual family detrimentally relied on CHA actions when that family moved. The court will now apply CHA's two arguments to plaintiff's claims brought under the Fair Housing Act (Counts 1-4) and to its claims brought under other statutory provisions and under the theory of promissory estoppel (Counts 5, 9, 10, 14, and 22).

1. Counts 1-4

In determining whether LAC has standing to sue under Counts 1-4 of its complaint, the Supreme Court's decision in *United Food & Commercial Workers v. Brown Group*, U.S. , 116 S. Ct. 1529, 134 L. Ed. 2d 758, 64 U.S.L.W. 4330 (1996), is significant. In *Brown Group*, the Court noted that the third prong of the test set out in *Hunt* is a prudential impediment that Congress may abrogate. In *Brown Group*, this meant that a union could sue on behalf of its members for their monetary damages, since such action was authorized by the WARN Act. *Brown Group*, U.S. , 116 S. Ct. at 1532-

33. In an earlier case, the Supreme Court held that, in suits brought under the Fair Housing Act, courts lacked the authority to create prudential barriers to standing. *Havens Realty Corp. v. Coleman*, 455 [*26] U.S. 363, 372-74, 102 S. Ct. 1114, 1120-21, 71 L. Ed. 2d 214 (1982). Therefore, under Counts 1-4, brought pursuant to the Fair Housing Act, no prudential limits, such as determining the need for individual participation of LAC members, can be used to determine plaintiff's standing. The relevant issue is therefore whether plaintiff has alleged "distinct and palpable injuries" that can be traced to defendants' actions. *Id.* at 376, 102 S. Ct. at 1122.

Plaintiff alleges that it has been denied participation in the planning process that produced the CHA Plan and that it has been forced to divert its limited resources from other organizational purposes and goals and to direct these resources to discover and discuss with defendants the CHA Plan, to advocate against the CHA Plan, and to monitor implementation of the CHA Plan. (Compl., P 73). In *Havens Realty*, the Supreme Court held that the injury the organization alleged, namely, that the defendant's steering practices had frustrated the organization in its efforts to assist equal access to housing and had caused it to devote significant resources to identify and counteract the discrimination, was a sufficient allegation [*27] of injury for standing purposes. The Court found that these effects established a concrete and demonstrable injury that was "far more than simply a setback to the organization's abstract social interests." *Havens Realty*, 455 U.S. at 379 & n.20, 102 S. Ct. at 1124 & n.20; see also 13 Wright, Miller & Cooper, Federal Practice & Procedure: Jurisdiction & Related Matters 2d § 3531.9, at 604 (1984) ("An organization can assert standing to protect against injury to its own organizational interests."). In this case, plaintiff alleges the same type of injury as that alleged by the organization in *Havens Realty*: "[it] has been forced to divert its limited resources from its other organizational purposes." (Compl., P 73(b)). The court finds that plaintiff has properly alleged an organizational injury, which is causally related to defendants' alleged activities. Because the court can redress this injury through the requested relief, plaintiff has standing to sue under Counts 1-4.

2. Counts 5, 9, 10, 14, and 22

The next question is whether plaintiff can satisfy the standing requirements under Counts 5, 9, 10, 14, and 22, which are not brought under the Fair [*28] Housing Act and thus require plaintiff to meet both the constitutional and the prudential requirements for standing. An association meets the prudential requirements for standing if (1) it has standing in its own right because it

alleges injury to itself or (2) it alleges that its members have been injured. *Warth v. Seldin*, 422 U.S. 490, 510-11, 95 S. Ct. 2197, 2211, 45 L. Ed. 2d 343 (1975). As noted supra, plaintiff has properly alleged an organizational injury: it has been forced to divert its limited resources from its other organizational purposes and goals. Plaintiff thus meets the prudential requirements for standing in regard to Counts 5, 9, 10, 14, and 22. n3

n3 In addition to its allegations that it has suffered organizational injury, LAC has alleged harm to its members. (See Compl., PP 74-75). Hunt suggested that individual participation of an organization's members is not normally necessary (and thus the third prong of the Hunt test would be satisfied) when an association seeks only prospective or injunctive relief, as opposed to monetary damages. *Hunt*, 432 U.S. at 343, 97 S. Ct. at 2441; see also *United Steelworkers of Am. v. University of Alabama*, 599 F.2d 56, 59 (5th Cir. 1979) (holding that union had standing to seek declaratory and injunctive relief for benefit of itself and its individual members); cf. *Warth*, 422 U.S. at 515, 95 S. Ct. at 2213 ("If in a proper case the association seeks a declaration, injunction, or some other form of prospective relief, it can reasonably be supposed that the remedy, if granted, will inure to the benefit of those members of the association actually injured."). In this case, plaintiff is merely seeking declaratory and injunctive relief, suggesting that participation in the case by LAC members is not required.

[*29]

3. Must LAC Identify Individuals with Independent Standing?

CHA nevertheless contends that plaintiff's allegations of organizational injury are not enough to give it standing under Counts 1-5, 9, 10, 14, and 22 to assert the claims of its members. Even if it has standing to sue on behalf of itself, CHA suggests that LAC must still identify individuals having independent standing to assert the claims. CHA has cited cases in which courts found organizations to have standing, but in which individual members of those organizations were also identified and had independent standing. This court finds, however, those cases do not impose a requirement to identify individuals with independent standing to sue. Furthermore, CHA's efforts to distinguish the cases cited by plaintiff in its response to the motion to dismiss are not convincing. For example, *Chicano Police Officer's Association v. Stover*, 526 F.2d 431 (10th Cir. 1976), does not

stand for the proposition that an association must allege a specific type of injury in order to have standing. The fact that the association in that case gained standing because it demonstrated that, "in challenging barriers against employment[,] [*30] it might well enhance its membership and resources to attain its goals," *id.* at 431, does not mean that LAC can only have standing to assert the claims of its members if it alleges that its challenge to the CHA Plan will enhance its membership or resources. Rather, Chicano Police Officer's stands for the proposition that an association must simply allege some injury to itself and/or its members.

Nor does the Seventh Circuit's holding in *Minority Police Officers Association of South Bend v. City of South Bend*, 721 F.2d 197 (1983), contradict the holding of Chicano Police Officer's. In *Minority Police Officers*, the court found that individual police officers and the association that represented them did not have standing to challenge a city police force's hiring practices. However, the court based its decision regarding lack of standing on the fact that all of the individuals named as plaintiffs in the suit, as well as all of the members of the association, had already been hired. In the instant case, however, LAC is challenging a plan that allegedly discriminates against its members and that will deny its members replacement housing. [*31] Unlike the situation in *Minority Police Officers*, in which there was no possibility that the plaintiffs would be harmed by the defendant's actions, this case presents a situation in which LAC and its members are facing imminent injury.

Finally, the court notes that LAC has standing to assert the rights of its members. Courts have consistently held that, if the same activity injures both the interests of the organization as well as the interests of its members, the organization can assert the rights of its members. For example, in *Warth v. Seldin*, 422 U.S. 490, 511, 95 S. Ct. 2197, 2211, 45 L. Ed. 2d 343 (1975), the Court observed that "in attempting to secure relief from injury to itself the association may assert the rights of its members, at least so long as the challenged infractions adversely affect its members' associational ties." In this case, LAC is the recognized, duly elected tenant council for the residents of Cabrini-Green. (Compl., P 13). Neither HUD nor CHA may recognize a competing resident council once such a duly elected council has been established. See 24 C.F.R. § 964.18(a)(7) and (b)(iv). Plaintiff's purposes and powers are defined [*32] by federal law and its own charter. (See Compl., P 12; 24 C.F.R. § 964.100). In a very real sense, therefore, LAC represents the residents of Cabrini-Green and provides them with the voice through which they "express their collective views and protect their collective interests." *Hunt*, 432 U.S. at 345, 97 S. Ct. at 2442. Furthermore,

because plaintiff's membership is drawn from those who reside at Cabrini-Green, any change in the makeup of Cabrini-Green public housing necessarily affects LAC members' associational ties to that organization.

The allegations in plaintiff's complaint, if true, demonstrate that plaintiff has standing to challenge defendants' actions in developing the CHA Plan: plaintiff has alleged injury to itself and its members, it has met the constitutional and, where necessary, prudential requirements for standing, and it has standing to assert the rights of its members. Therefore, defendants' motion to dismiss plaintiff's complaint on grounds of standing is denied. n4

n4 The court reiterates that it may only dismiss this suit based on lack of standing if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations. *Hishon*, 467 U.S. at 73, 104 S. Ct. at 2232. The court's decision, therefore, is based on reasonable inferences that the plaintiff must prove at trial. The standing inquiry can be revisited at trial if it appears that facts necessary for standing are not supported by the evidence adduced at trial. See *Jackson*, 21 F.3d at 1536 n.5 (citing *Gladstone, Realtors v. Village of Bellwood*, 441 U.S. 91, 116 n.31, 99 S. Ct. 1601, 1616 n.31, 60 L. Ed. 2d 66 (1979)).

[*33]

C. Jurisdiction over State Law Claims

CHA's next contention is that plaintiff's state law claims in Counts 15-22 must be dismissed because the court lacks jurisdiction to enter relief against the defendants on them, citing *Evans v. City of Chicago*, 10 F.3d 474, 481 (7th Cir.1993) (en banc), cert. denied, 128 L. Ed. 2d 460, 114 S. Ct. 1831 (1994). In *Evans*, the Seventh Circuit refused to enter an injunction against the City of Chicago for violating a consent decree in which the City of Chicago had agreed to abide by state law concerning the prompt payment of tort claims against municipal governments. *Id.* at 480. The plurality of the court in *Evans* indicated that the consent decree had to be set aside because a district court may not require a unit of state or local government to abide by a consent decree that does not serve any federal interest. The plurality opinion explained:

The [district] court must ensure that there is a substantial federal claim, not only when the decree is entered but also when it is enforced, and that the obligations imposed by the decree rest on this rule of federal law

rather than the bare consent [*34] of the officeholder.

* * *

Entry and continued enforcement of a consent decree regulating the operation of a governmental body depend on the existence of a substantial claim under federal law. Unless there is such a claim, the consent decree is no more than a contract, whose enforcement cannot be supported by the diversity jurisdiction and that has in court no more force than it would have outside of court.

Id. at 479-80. The court further stated that "litigants aggrieved by Chicago's failure to adhere to state law must take their claims to state court. The Constitution does not authorize federal judges to superintend state and local governments' compliance with their own laws." *Id.* at 481 (citations omitted).

It is not clear to this court that the Evans holding applies to the facts of the instant case. This case does not deal with the enforcement of a consent decree. Evans would not appear to apply to situations in which a court is simply asked to issue an injunction against a state or city governmental agency directing it to comply with state law or to comply with the terms of agreements it has made with other parties, especially [*35] when there are "substantial federal claims." Because there are such claims in this case, plaintiff argues that the court may exercise supplemental jurisdiction over Counts 15-22. The supplemental jurisdiction statute provides that, in any civil action in which the federal district court has original jurisdiction, court also has supplemental jurisdiction over all related claims that form part of the same case or controversy. See 28 U.S.C. § 1367(a); *United Mine Workers v. Gibbs*, 383 U.S. 715, 725, 86 S. Ct. 1130, 1138, 16 L. Ed. 2d 218 (1966). In this case, plaintiff's complaint contains several claims that are based solely upon federal law. (See Compl., Counts 1-14). The court has found that it has jurisdiction over those federal claims. (See *supra* Parts III.A and III.B). The court also finds that plaintiff's state law claims arise out of the same case or controversy as do its federal claims (i.e., events related to the development and implementation of the CHA Plan). In the past, courts have also found that supplemental jurisdiction may be exercised over state law claims against governmental defendants. See *Board of Educ. of Community High Sch. Dist. No. 218 v. Illinois State Bd. of Educ.*, [*36] 940 F. Supp. 1321, 1327 (N.D. Ill. 1996) (noting that court had supplemental jurisdiction of state law claim against Illinois Department of Mental Health and Development Disabilities deriving from the same nucleus of operative fact as federal IDEA claim); *Contreras v. City of Chicago*, 920 F. Supp. 1370 (N.D. Ill. 1996) (not-

ing that court had discretion to exercise supplemental jurisdiction over claims that requested declaratory and injunctive relief and that only raised questions of state and municipal law); see also *Myers v. County of Lake, Ind.*, 30 F.3d 847 (7th Cir. 1994) (upholding district court's exercise of supplemental jurisdiction over plaintiff's state law negligence claim against county). This court therefore adopts the reasoning of those cases and concludes that it has discretion to exercise supplemental jurisdiction over plaintiff's state law claims.

D. Plaintiff's Claims Under Fair Housing Act and Title VI of Civil Rights Act of 1964

CHA contends that Counts 1-4 of plaintiff's complaint fail to state a claim under § 3604(a) of the Fair Housing Act ("FHA") because those counts [*37] fail to allege that CHA has either (1) denied black residents replacement housing in a racially integrated neighborhood (Count 4), or (2) otherwise discriminated against them in the provision of housing because of their race, sex, or familial status (Counts 1-4). n5 CHA also contends that Count 5, brought under Title VI of the Civil Rights Act of 1964, should be dismissed for lack of standing.

n5 Section 3604(a) of the FHA states that it is unlawful to refuse to sell or rent . . . or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny a dwelling to any person because of race, color, religion, sex, familial status, or national origin.

42 U.S.C. § 3604(a).

1. Denying Black Residents Replacement Housing

LAC's complaint alleges that the CHA Plan provides for the demolition of several structures containing over 1300 units public housing units and that this will displace 675 very low-income Cabrini-Green families. Plaintiff also alleges that the CHA Plan for Cabrini-Green [*38] only provides for 300-325 very low-income replacement units. (Compl., PP 60, 62, 89). Thus, the face of plaintiff's complaint contains allegations that over 300 Cabrini-Green families will be denied replacement housing, the majority of whom are African-American. The complaint can also fairly be read to allege that, because the Cabrini residents will be denied housing in their newly revitalized neighborhood and because those residents have very low incomes, they will be forced to live in a non-racially integrated area. While plaintiff may not ultimately be able to prove that current LAC members will be moved into segregated neighborhoods

against their will, this court cannot say that plaintiff has not at this point adequately alleged a violation of the FHA in Count 5.

2. Sufficiency of Allegations of Discrimination

The court now turns to CHA's second argument as to why plaintiff's FHA counts fail to state a claim. CHA argues that plaintiff's allegations of disparate impact, unaccompanied by allegations that CHA acted with intent to discriminate, are insufficient to state a per se claim under the FHA. CHA bases this argument on the court's decision in *Metropolitan Housing [Development Corp. v. Village of Arlington Heights]*, 558 F.2d 1283 (7th Cir. 1977), in which the Seventh Circuit stated that there are four critical factors to be examined in determining whether conduct that produces discriminatory impact violates § 3604(a). Those factors are: (1) how strong the showing of discriminatory effect is; (2) whether there is some evidence of discriminatory intent; (3) what the defendant's interest is in taking the action complained of; and (4) whether the plaintiff seeks affirmative relief that would compel the defendant to provide housing for minority groups. *Id.* at 1290. CHA contends that LAC has failed to satisfy at least three of the four factors because (1) there is no allegation that defendants are acting with intent to discriminate; (2) defendants' interest is to improve Cabrini-Green housing and open it to a wider range of residents; and (3) plaintiff seeks to require defendants to take affirmative action to build or rehabilitate housing in Cabrini-Green, which represents a collateral attack on *Gautreaux v. Chicago Housing Authority*, 304 F. Supp. 736 (N.D. Ill. 1969).

The court initially notes that the four-factor test set [*40] out in *Arlington Heights* for determining whether conduct producing discriminatory impact but taken without discriminatory intent violates the FHA is more properly applied to a motion for summary judgment or by the factfinder at trial. Cf. *Arlington Heights*, 558 F.2d at 1290-93 (applying four factors to a record developed after trial); *Gomez v. Chody*, 867 F.2d 395 (7th Cir. 1989) (determining whether a genuine issue of triable fact existed in order to defeat motion for summary judgment). At the motion-to-dismiss stage of the proceedings, the more appropriate question is whether plaintiff's allegations of disparate impact are sufficient to establish a prima facie case under the FHA.

In any event, defendants are incorrect in their assertion that *Arlington Heights* and its progeny make clear that "some showing of discriminatory intent is required" to establish a Fair Housing Act violation. (See Def. Mem., at 22). Defendants' reliance on cases such as *Burrell v. City of Kankakee*, 815 F.2d 1127 (7th Cir. 1987) and *Gomez v. Chody*, 867 F.2d 395 (7th Cir. 1989), is

not persuasive. For example, the court in *Burrell* [*41] specifically stated that "a showing of discriminatory intent is not required under § 3604(a)." 815 F.2d at 1131. Likewise, *Gomez* is explicit that "discriminatory effect, without discriminatory intent, may constitute a violation of the [Fair Housing Act]." 867 F.2d at 402 (emphasis omitted). Thus, despite defendants' contention, plaintiff need not allege that defendants were acting with intent to discriminate to state a claim under § 3604(a). Cf. *Arlington Heights*, 558 F.2d at 1290 ("A strict focus on intent permits racial discrimination to go unpunished in the absence of evidence of overt bigotry. As overtly bigoted behavior has become more unfashionable, evidence of intent has become harder to find."). The court finds that plaintiff's allegations of discriminatory effects are enough to state a claim for relief under the FHA. n6

n6 CHA also argues that its interest in adopting the CHA Plan is to improve Cabrini-Green housing and open it to a wider range of residents, therefore suggesting that LAC has failed to state a claim for relief under the FHA. (See, e.g., Def. Reply, at 11-12). However, as stated previously, an argument based on one of the *Arlington Heights* factors is more properly considered at summary judgment or at trial. At this stage of the proceedings, such an argument cannot defeat the allegations in a well-pleaded complaint that properly state a claim for relief under the FHA.

Furthermore, the court rejects CHA's argument that allowing plaintiff to go forward with its FHA claims based in part on its allegations of discriminatory effect will necessarily mean "any housing strategy CHA proposes [for Cabrini-Green] will violate the FHA." (Def. Reply, at 11). This is not the case. At this stage of the proceedings, the issue is simply whether plaintiff has properly stated a claim. Plaintiff still has the burden to prove the alleged violations of the FHA.

[*42]

3. Standing to Sue Under Count 5

Defendants also argue that plaintiff does not have standing to sue under Count 5 of its complaint. In that count, plaintiff alleges that the CHA Plan will result in the net loss of 1000 public housing units, the impact of which will fall disproportionately on African-Americans, in violation of Title VI of the Civil Rights Act of 1964. n7 Defendants assert that plaintiff does not have standing to assert a claim under Title VI because it has failed to allege that it is injured by a reduction in dwelling units. In addition, defendants argue that plain-

tiff has failed to state a claim under Title VI because it has failed to allege that defendants are proposing the CHA Plan "on the ground of" race. Furthermore, defendants argue that while plaintiff may have an interest in this case as a representative of the residents of Cabrini-Green, the black residents of Cabrini-Green are "already well-represented by their class counsel in Gautreaux [v. Chicago Housing Authority]." See 304 F. Supp. 736 (N.D. Ill. 1969). Defendants have therefore requested that the court transfer this count to the judge of this court that is overseeing Gautreaux [*43]. The court will treat each of these arguments in turn.

n7 Title VI provides that:

No person in the United States shall, on the ground of race, color or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

42 U.S.C. § 2000d.

First of all, the court notes that it has already addressed defendants' standing arguments in Part III.B, supra. Second, the court finds that plaintiff's complaint is sufficient to establish a prima facie case of discrimination under Title VI because it has alleged disparate impact. In *Guardians Association v. Civil Service Commission*, 463 U.S. 582, 584 n.2, 103 S. Ct. 3221, 3223, 77 L. Ed. 2d 866 (1983), the Supreme Court held that a plaintiff may use a theory of disparate impact to vindicate rights secured by agency regulations promulgated pursuant to Title VI and which incorporate an "effects" standard. See also [*44] *Gomez v. Illinois St. Bd. of Educ.*, 811 F.2d 1030, 1044-45 (7th Cir. 1987) (noting that disparate impact claim could be maintained under regulations promulgated pursuant to Title VI). Because HUD has promulgated such regulations, see 24 C.F.R. § 1.4(b)(2)(i) (barring recipients of HUD funds "from utilizing criteria or methods of administration which have the effect of subjecting persons to discrimination because of their race, color or national origin" (emphasis added)), plaintiff has stated a claim under Title VI by alleging disparate impact.

Finally, the court finds that plaintiff's allegations in Count 5 cannot necessarily be read as a collateral attack on *Gautreaux v. Chicago Housing Authority*, 304 F. Supp. 736 (N.D. Ill. 1969). Gautreaux prohibits CHA from building housing in racially segregated communities without court approval. CHA notes that one element of the relief requested by LAC is the construction of replacement housing and argues that this claim for relief brings the case "squarely within the scope of

Gautreaux." (Def. Reply, at 15). The court disagrees. It is not clear that granting plaintiff's requested relief [*45] -- i.e., ordering CHA to specifically perform on its contractual agreements with LAC and its members -- will necessarily bring this case within the scope of Gautreaux. This conclusion is based on the fact that the agreement that plaintiff seeks to have enforced specifically states that the agreement is "subject to . . . Federal Court guidelines under Gautreaux." (Compl., P 38). Any relief that this court directs must necessarily take this provision into account.

E. Do Plaintiff's Claims Rely upon Statutes that Create Enforceable Rights?

Defendants also argue that Count 6-12 of plaintiff's complaint do not rely upon statutes that create enforceable rights with the meaning of 42 U.S.C. § 1983, and that plaintiff has therefore failed to state a claim for each of those counts. In particular, defendants argue that the wording relied upon by the plaintiffs in those statutes is "too amorphous" to be judicially enforceable.

In *Suter v. Artist M.*, 503 U.S. 347, 357, 112 S. Ct. 1360, 1367, 118 L. Ed. 2d 1 (1992), the Supreme Court stated that, when determining whether enforceable rights are created by language in a statute, the court must perform a [*46] critical analysis of the statute and must particularly examine that which is required by the statute. The statute at issue in *Artist M.* provided that the State make "reasonable efforts" to reunite foster children with their biological families, but merely required that a plan detailing such reasonable efforts be submitted to and approved by the federal government. The Court found that, without further statutory or regulatory definition of "reasonable efforts," the plaintiffs could not bring an action under 42 U.S.C. § 1983 to enforce the provision. *Id.* at 363, 112 S. Ct. at 1370. The court will examine Counts 6-12 in turn to determine whether the statutory language upon which each of those counts relies provides an objective benchmark for the court to apply.

1. Count 6

Count 6 alleges that under the CHA Plan, 1000 units of very low-income public housing will be permanently lost and 50% of the displaced families will be ineligible for the newly constructed replacement housing. Plaintiff alleges that this violates HOPE VI, 42 U.S.C. § 1437l, note, and the Revitalization of Severely Distressed Public Housing Program, 42 U.S.C. § 1437v(d)(2), which provide [*47] for grants for the "revitalization" of public housing communities, because the Plan would result in the dismantling and relocation, rather than the revitalization, of Cabrini-Green. (Compl., P 85). CHA

argues that neither Congress nor HUD have defined "revitalization," and that Congress has given no indication that it intended to create a private remedy for parties such as LAC.

HOPE VI provides for \$ 300 million to be used to "carry out an urban revitalization demonstration program involving major reconstruction of severely distressed or obsolete public housing projects." 42 U.S.C. § 1437l, note. Other provisions of HOPE VI state a desire to assist "troubled housing authorities" and "severely distressed projects." HOPE VI further provides that funded activities should include "capital costs of major reconstruction, rehabilitation and other physical improvements" and "capital costs of replacement units." It seems apparent, therefore, that while HOPE VI may not define "revitalization" as such, the language of the statute indicates what results Congress would not consider to be "revitalization." For example, HOPE VI funds could not be used for a project that simply [*48] obliterated a public housing development. In addition, some HOPE VI funds must be used to improve existing public housing structures. Furthermore, HOPE VI does not allow a public housing authority to turn its back on "severely distressed projects," such as Cabrini-Green. The court finds, therefore, that the language of HOPE VI gives the court sufficient guidance in determining whether the CHA Plan complies with that statute's "revitalization" requirements. n8

n8 CHA has also argued that Count 6 should be dismissed because the CHA Plan is not required to comply with 42 U.S.C. § 1437v(d)(2), as alleged by plaintiff. The court declines to decide whether a "revitalization" requirement exists in § 1437v(d)(2), because it finds that Count 6 states a claim based solely on a violation of HOPE VI.

2. Counts 7 and 8

Counts 7 and 8 allege that the net loss of 1000 public housing units (Count 7) and the fact that 50% of the newly constructed replacement housing will be unavailable to very low-income public housing residents [*49] (Count 8) are inconsistent with the City of Chicago's Consolidated Plan, see *supra* note 1, to preserve affordable public housing units and to improve the quality of life for very low-income public housing residents. As such, plaintiff alleges that the CHA Plan violates HOPE VI, 42 U.S.C. § 1437l, note, which requires that plans developed under HOPE VI be consistent with the Consolidated Plan. (Compl., PP 86-87). CHA argues that there is "no objective benchmark from which this

court could create its own scale to determine if the CHA Plan is inconsistent with the City's Consolidated Plan." (Def. Mem., at 31). CHA further argues that the City's Consolidated Plan cannot be used to create federal rights for the plaintiff and that HOPE VI's requirement of consistency with the Consolidated Plan is solely for the benefit of cities.

The court finds that the Consolidated Plan is even more explicit than the HOPE VI statute in defining what is required regarding the "revitalization" and "rehabilitation" of public housing. The Consolidated Plan is directly addressed to the needs of low- and moderate-income residents. It speaks of "creating stable communities." It explicitly associates [*50] "revitalization" with "preservation of affordable housing units and rehabilitation of existing housing stock." Thus, the court finds that the Consolidated Plan provides an appropriate benchmark by which to assess any HOPE VI-funded projects. The court further finds that HOPE VI's requirement of consistency with the Consolidated Plan does create enforceable rights on the part of LAC and its members. As plaintiff points out, Congress created HOPE VI

for the empowerment of residents of severely distressed and obsolete public housing. . . . For too long, these areas have been the victim of either gross neglect by government or the victim of large bureaucracies that have wasted limited resources in an attempt to impose top down strategies to do good to the residents of these areas. Neither approach has worked. . . . [HOPE VI] is a program that calls upon both the residents and political leaders of America's large cities to join together to develop strategies that will transform these distressed areas into productive residential and commercial centers.

S. Rep. No. 102-356, 102d Cong., 2d Sess. p.40 (1992). It would be inconsistent with the purposes of HOPE VI to allow a [*51] Consolidated Plan to be developed (with input from public housing residents), but then to allow a public housing authority to simply ignore that plan. Giving the residents of public housing projects enforceable rights against CHA to comply with the Consolidated Plan will further the purposes of HOPE VI.

3. Counts 9 and 10

In Counts 9 and 10, plaintiff alleges that the CHA Plan violates HOPE VI, 42 U.S.C. § 1437l, note, and 42 U.S.C. § 1437p(b)(2) which, when read together, require that persons displaced by HOPE VI reconstruction activities shall be eligible for replacement units of their choice, to the "maximum extent practicable." (Compl., PP 88-89). The court agrees with defendants that this

language is "too amorphous and vague" to be enforced by the court. Exactly what the "maximum extent" is would vary from case to case and would depend on what was "practicable" in a particular instance. It seems unlikely that Congress would leave this determination to courts without giving them greater guidance. Unlike the language that it used to flesh out the term "revitalization," Congress has done little to give courts direction as to how many replacement units should be built to replace [*52] those that will be demolished or exactly how much deference is to be given to resident "choice." For these reasons, the court finds that plaintiff does not have a cause of action to enforce the "maximum extent practicable" provisions of HOPE VI and § 1437p(b)(2). Counts 9 and 10 are dismissed.

4. Count 11

Count 11 of plaintiff's complaint alleges that 42 U.S.C. § 1437p(b)(1), providing that housing authorities must "meaningfully consult" with local advisory councils, and the language of the Notice of Fund Availability, providing that "residents be fully briefed and meaningfully involved," create federally enforceable rights. (See Compl., PP 90, 26).

As noted in *Concerned Tenants Association of Father Panik Village v. Pierce*, 685 F. Supp. 316, 320 (D. Conn. 1988), the creation of a right to consultation under § 1437p is clear. The court in that case discussed *Edwards v. District of Columbia*, 261 U.S. App. D.C. 163, 821 F.2d 651 (D.C. Cir.1987), in which § 1437p was found not to have created an enforceable right that might be violated by a de facto demolition. Congress promptly amended § 1437p by adding § 1437p(d), which now reads:

A public [*53] housing agency shall not take any action to demolish or dispose of a public housing project or a portion of a public housing project without obtaining the approval of the Secretary and satisfying the conditions [regarding tenant consultation] specified in subsection[b]. . . .

42 U.S.C.A. § 1437p(d) (pocket part). When adding this provision, Congress stated:

This provision is intended to correct an erroneous interpretation of the existing statute by the United States Court of Appeals for the D.C. Circuit in *Edwards v. District of Columbia* and shall be fully enforceable by tenants of and applicants for the housing that is threatened.

H.R. Conf. Rep. No. 426, 100th Cong., 1st Sess.

172 (1987), reprinted in, U.S. Code Cong. & Admin. News pp.3317, 3458. The Congressional disagreement with the Edwards court, and the reference to enforceability, manifest intent to create a private right of action. Furthermore, the obvious purpose of the statute is to benefit low-income tenants; therefore, permitting a private right to enforce it is consistent with the purpose of the statute. See *Wright v. Roanoke Redev. & Hous. Auth.* [*54], 479 U.S. 418, 430, 107 S. Ct. 766, 773, 93 L. Ed. 2d 781 (1987); see also, *Cannon v. University of Chicago*, 441 U.S. 677, 703, 99 S. Ct. 1946, 1961, 60 L. Ed. 2d 560 (1979).

Because § 1437p provides a federal right enforceable by tenants, plaintiff may enforce its provisions under 42 U.S.C. § 1983. See *Maine v. Thiboutot*, 448 U.S. 1, 4, 100 S. Ct. 2502, 2504, 65 L. Ed. 2d 555 (1980) (Section 1983 encompasses claims based purely on federal statutory law); *Henry Horner Mothers Guild v. Chicago Hous. Auth.*, 780 F. Supp. 511, 513-15 (N.D. Ill. 1991); *Concerned Tenants*, 685 F. Supp. at 318-21. n9

n9 CHA contends that there is no requirement that plans for disbursement of HOPE VI funds comply with the tenant consultation provisions found in 42 U.S.C. § 1437p. The court rejects this argument. HOPE VI cannot be read in a vacuum. Section 1437p specifically deals with the demolition of public housing. It is clear to the court that if HOPE VI funds are to be used to demolish public housing, then the plan submitted pursuant to HOPE VI must also comply with the tenant consultation provisions of § 1437p.

[*55]

5. Count 12

Plaintiff alleges in Count 12 that CHA's plan to demolish 1158 N. Cleveland violates 42 U.S.C. § 1437p(a)(1), which governs the demolition of public housing and states a desire to preserve housing with a "useful life." Plaintiff alleges that the building is neither obsolete nor is its demolition necessary to assure the useful life of the remaining portion of Cabrini-Green. (Compl., P 91). As with the "maximum extent practicable" language in Counts 9 and 10, the court finds that Congress has given little direction as to what factors should be considered in determining a public housing project's "useful life." However, even beyond the difficulties in applying this standard to the facts of the instant case, the court notes that § 1437p(a)(1) merely states a "desire" that housing with a useful life be preserved and does not create a requirement that such housing be preserved. For these reasons, the court finds that Count 12 should be dis-

missed.

F. Implied Cause of Action for Violation of Illinois Housing Authorities Act

Defendant also moves to dismiss plaintiff's claim under the Illinois Housing Authorities Act, 310 ILCS 10/2 (Count 15). In that count, plaintiff [*56] alleges that the CHA Plan will result in the net loss of 1000 public housing units and thus exceeds the powers conferred upon the CHA by the Act "to relieve the shortage of decent, safe, affordable, and sanitary dwellings." 310 ILCS 10/2. Defendant contends that this count should be dismissed because there is no implied cause of action under Illinois law for violations of such "vague and ambiguous statutory language." (Def. Mem., at 38).

The Illinois Housing Authorities Act contains no express provision conferring upon individuals a cause of action to enforce the provisions of the statute. And while it is true that Illinois courts routinely find implied private rights of action in statutes, such private rights of action are commonly found in statutes that also provide for specific criminal or administrative penalties. See, e.g., *Rodgers v. St. Mary's Hosp. of Decatur*, 149 Ill. 2d 302, 309, 597 N.E.2d 616, 619-20, 173 Ill. Dec. 642 (1992); *Corgan v. Muehling*, 143 Ill. 2d 296, 315, 574 N.E.2d 602, 610, 158 Ill. Dec. 489 (1991); *Sawyer Realty Group, Inc. v. Jarvis Corp.*, 89 Ill. 2d 379, 391, 432 N.E.2d 849, 854-55, 59 Ill. Dec. 905 (1982); *Kelsay [*57] v. Motorola, Inc.*, 74 Ill. 2d 172, 185, 384 N.E.2d 353, 358-59, 23 Ill. Dec. 559 (1978). Though the Illinois Housing Authorities Act is not such a statute, finding an implied private right of action is not foreclosed.

In *Sawyer*, 89 Ill. 2d at 391, 432 N.E.2d at 854-55, the court set out the elements of a test that has subsequently been used by Illinois courts to determine whether there is an implied right of action under a statute. Such an implied right of action has been found when the following circumstances exist:

1. The plaintiff is a member of the class of persons for whose benefit the statute was enacted;
2. The plaintiff's injury is one which the statute was designed to prevent;
3. A private right of action is consistent with the underlying purpose of the statute; and
4. A private right of action is necessary to effectuate the purposes of the act.

See id.

First of all, the court notes that no Illinois court has found an implied private right of action under the Act. While this is not dispositive of the issue of whether such a right of action does indeed exist, consideration of the third and fourth factors set out [*58] in *Sawyer* counsels against finding a private right of action. In regard to the third factor, the court finds that the Illinois Housing Authorities Act was not enacted in order to regulate housing authorities, but to create them and to vest them with powers to address housing problems. The court finds that a private right of action would be inconsistent with this underlying purpose. In addition, the general mandate of the Illinois Housing Authorities Act does not provide the court with enough guidance as to how the Act's provisions should be enforced. For similar reasons, the court finds that the fourth element of the *Sawyer* test is not satisfied. The Illinois General Assembly, by enacting the Act, has taken on the responsibility of monitoring housing authorities in the execution of their general powers; thus, a private right of action is not necessary to effectuate the purposes of the act. Count 15 of plaintiff's complaint is dismissed.

G. Contract Claims

CHA also moves to dismiss Counts 16-21. CHA argues that LAC is not a party to the March 13, 1995 agreement that is the basis of Counts 16, 17, 19, and 20 and therefore has no right to enforce [*59] the document. Furthermore, CHA contends that LAC has failed to allege facts that show that either the March 13, 1995 agreement or the May 28, 1993 agreement are enforceable for the following reasons: (1) conditions precedent to both alleged agreements did not occur (i.e., HUD failed to approve the original CHA Plan) and the agreements therefore were impossible to perform; (2) Vincent Lane lacked authority to bind CHA; and (3) the March 13, 1995 agreement is not a contract because its terms are unascertainable.

LAC's complaint, however, contains allegations sufficient to state a claim for breach of contract. First, LAC has alleged that it is a party to both the May 28, 1993 and the March 13, 1995 agreements and that those agreements are enforceable. (See Compl., PP 38, 43 (stating that "CHA and plaintiff entered into a Memorandum of Agreement" and that "CHA, through its Chairman, Vincent Lane, agreed in writing with the plaintiff")). Second, the pleadings in this case do not establish that the agreements were impossible to perform because of conditions precedent that did not occur. Finally, the court finds that the terms of the March 13, 1995 agreement are not unascertainable. [*60] Evidence may be

produced during discovery or trial that fleshes out any ambiguity in that document.

H. Promissory Estoppel Claim

In Count 22, plaintiff alleges that some families moved out of 1158 N. Cleveland in detrimental reliance on CHA's promise to rehabilitate that building. (Compl., P 101). Defendants argue that this promissory estoppel claim must be dismissed because it fails to establish an unambiguous promise to families that they could return to 1158 N. Cleveland after it was rehabilitated. The court finds, however, that plaintiff's has adequately pled such a promise. Plaintiff relies on the fact that the original HOPE VI application provided for the rehabilitation of 1158 N. Cleveland. Furthermore, plaintiff's allege that the March 15, 1995 agreement between LAC and CHA called for such rehabilitation. Moreover, at

this stage of the proceedings, the court cannot say that CHA's promise was not directed to the individual tenant families. For these reasons, the court finds that plaintiff has properly stated a promissory estoppel claim.

IV. Conclusion

WHEREFORE, for the foregoing reasons, defendants' motion to dismiss plaintiff's complaint is granted in part [*61] and denied in part. Counts 9, 10, 12, and 15 of plaintiff's complaint are dismissed with prejudice.

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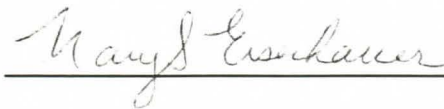
David H. Coar

U.S. District Judge

Dated: January 21, 1997

CERTIFICATE

Pursuant to Circuit Rule 30(c), I certify that Defendants-Appellants
Appendix and Supplemental Appendix contain the materials required by Circuit Rule
30(a) and (b).



Nancy S. Eisenhauer

**APPENDIX TO BRIEF OF DEFENDANTS-APPELLANTS
CHICAGO HOUSING AUTHORITY AND JOSEPH SHULDINER**

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<u>TAB</u>	<u>PAGE Nos.</u>	<u>DOCUMENT</u>
A.	A-1 to A-11	Docket for <u>Gautreaux, et al. v. Chicago Housing Authority</u> , Case No. 66 C 1459, (N.D. Ill.)
B.	A-12 to A-16	Memorandum Opinion and Order dated February 23, 1998.
C.	A-17 to A-18	Order dated May 19, 1998.

1:66cv1459 Gautreaux, et al v. Chgo Housing Auth, et al

9/26/97 -- MOTION by plaintiffs for award of attorney's fees against defendant Chicago Housing Authority ; Notice of motion and Notice of filing (tj) [Entry date 09/30/97] [Edit date 09/30/97] [1:66cv1459]

9/26/97 -- MEMORANDUM by plaintiffs in support of motion for award of attorney's fees against defendant Chicago Housing Authority [0-1] (Exhibits). (tj) [Entry date 09/30/97] [1:66cv1459]

9/26/97 -- JOINT STATEMENT by defendant CHA regarding plaintiffs' motion for award of attorney's fees against defendant Chicago Housing Authority [0-1] (tj) [Entry date 09/30/97] [1:66cv1459]

9/30/97 -- MINUTE ORDER of 9/30/97 by Hon. Marvin E. Aspen : Answer brief to plaintiffs' motion for award of attorney's fees against defendant Chicago Housing Authority [0-1] due 10/15/97. Reply to answer brief due 10/24/97. Ruling on plaintiffs' motion for award of attorneys' fees against defendant by mail. Mailed notice (tj) [1:66cv1459]

9/30/97 -- EMERGENCY MOTION by defendant CHA to clarify injunction ; Notice of motion (tj) [Entry date 10/03/97] [1:66cv1459]

9/30/97 -- MEMORANDUM by defendant CHA in support of motion to clarify injunction [0-1] (Attachments); Notice of filing (tj) [Entry date 10/03/97] [1:66cv1459]

9/30/97 -- MOTION by defendant CHA for leave to file instanter memorandum in excess of 15 pages ; Notice of motion (tj) [Entry date 10/06/97] [1:66cv1459]

10/3/97 -- MINUTE ORDER of 10/3/97 by Hon. Marvin E. Aspen : Answer brief to defendant CHA's emergency motion to clarify injunction [0-1] due 10/20/97. Reply to answer brief due 10/27/97. Mailed notice (tj) [1:66cv1459]

10/3/97 -- MINUTE ORDER of 10/3/97 by Hon. Marvin E. Aspen : Defendant CHA's motion for leave to file instanter memorandum in excess of 15 pages is granted [0-1]. No notice (tj) [Entry date 10/06/97] [1:66cv1459]

10/14/97 -- MOTION by plaintiffs for agreed revised briefing schedule ; Notice of motion (mc) [Entry date 10/23/97] [1:66cv1459]

10/15/97 -- RESPONSE by defendant CHA to plaintiff's motion for award of attorney's fees against defendant Chicago Housing Authority [0-1] (Exhibits); Notice of filing (tj) [Entry date 10/17/97] [1:66cv1459]

10/17/97 -- MINUTE ORDER of 10/17/97 by Hon. Marvin E. Aspen : Plaintiffs' motion for agreed revised briefing schedule is granted [0-1]. Materials in opposition to defendants' motion to clarify injunction [0-1] shall be filed on or before 11/18/97. Defendant's reply shall be filed by 12/4/97. Mailed notice (mc) [Entry date 10/22/97] [1:66cv1459]

10/17/97 -- AGREED ORDER (mc) [Entry date 10/28/97] [1:66cv1459]

10/20/97 -- RESPONSE of cross-defendant The United States Department of Housing and Urban Development to Chicago Housing Authority's emergency motion to clarify injunction [0-1] (Exhibit). (tj) [Entry date 10/21/97] [1:66cv1459]

10/24/97 -- REPLY by plaintiffs in support of plaintiffs' motion for award of attorney's fees against defendant Chicago Housing Authority [0-1] (Exhibit); Notice of filing (tj) [Entry date 10/27/97] [1:66cv1459]

11/5/97 -- JOINT MOTION by plaintiffs and Defendant CHA for an order designating a near north revitalizing area and authorizing the acquisition of public housing units therein. (tlm) [Entry date 11/07/97] [1:66cv1459]

11/5/97 -- MEMORANDUM by plaintiffs and Defendant CHA in support of joint motion for an order designating a near north revitalizing area [0-1] and authorizing the acquisition of public housing units therein [0-2] (Exhibits). (tlm) [Entry date 11/07/97] [Edit date 11/07/97] [1:66cv1459]

11/6/97 1 AGREED ORDER regarding joint motion for an order designating a near north revitalizing area [0-1] and authorizing the of public housing units therein [0-2] (tlm) [Entry date 11/07/97] [1:66cv1459]

11/6/97 -- MINUTE ORDER of 11/6/97 by Hon. Marvin E. Aspen : Joint motion for an order designating a near north revitalizing area [0-1] and authorizing the acquisition of public housing units therein granted. [0-2] Enter Agreed Order. Mailed notice (tlm) [Entry date 11/07/97] [1:66cv1459]

11/14/97 -- MOTION by plaintiffs for an agreed revised briefing schedule ; Notice of motion. (tlm) [Entry date 11/19/97] [1:66cv1459]

11/18/97 -- AGREED ORDER regarding motion for an agreed revised briefing schedule [0-1] (tlm) [Entry date 11/19/97] [1:66cv1459]

11/18/97 -- MINUTE ORDER of 11/18/97 by Hon. Marvin E. Aspen : Plaintiffs' motion for an agreed revised briefing schedule granted. [0-1], [0-1] Enter Order: amaterials in opposition to defendant's said motion to clarify injunction shall be filed on or before 12/03/97. Defendant's [0-1] reply shall be filed on or before 12/18/97. Mailed notice (tlm) [Entry date 11/19/97] [1:66cv1459]

12/19/97 -- RECEIVER'S STATEMENT regardint the Chicago Housing Authority's emergency motion to clarify injunction (Exhibits); Notice of filing. (tlm) [Entry date 12/23/97] [1:66cv1459]

12/19/97 -- MOTION by plaintiffs for leave to file instanter memorandum in excess of 15 pages ; Notice of filing and motions (tj) [Entry date 12/24/97] [1:66cv1459]

12/19/97 -- MOTION by plaintiffs to schedule oral argument (tj) [Entry date 12/24/97] [1:66cv1459]

12/19/97 -- RESPONSE by plaintiff to CHA emergency motion to clarify injunction [0-1] (tj) [Entry date 12/24/97] [1:66cv1459]

12/19/97 -- EXHIBITS to plaintiffs' response to CHA emergency motion to clarify injunction. (tj) [Entry date 12/24/97] [1:66cv1459]

12/23/97 -- MINUTE ORDER of 12/23/97 by Hon. Marvin E. Aspen : Plaintiffs' motion for leave to file instanter memorandum in excess of 15 pages [0-1] and plaintiffs' motion to schedule oral argument is granted [0-1]. Telephoned notice (tj) [Entry date 12/24/97] [1:66cv1459]

1/7/98 -- MOTION by CHA to extend time to file its reply to plaintiffs' response to CHA's emergency motion to clarify injunction; Notice of motion (ar) [Entry date 01/09/98] [1:66cv1459]

1/7/98 -- MINUTE ORDER of 1/7/98 by Hon. Marvin E. Aspen : Defendant CHA's motion to extend time to 01/16/98 to file reply to plaintiffs' response to CHA's motion to clarify injunction is granted [0-1]. Mailed notice (ar) [Entry date 01/09/98] [1:66cv1459]

1/16/98 -- MOTION by defendant CHA for leave to file instanter memorandum in excess of 15 pages ; Notice of motion (Temporarily unavailable for docketing.) (tj) [Entry date 01/26/98] [1:66cv1459]

1/23/98 -- MINUTE ORDER of 1/23/98 by Hon. Marvin E. Aspen : Defendant CHA's motion for leave to file instanter memorandum in excess of 15 pages is granted [0-1]. Telephoned notice (tj) [Entry date 01/26/98] [1:66cv1459]

1/23/98 -- REPLY memorandum by defendant CHA in support of CHA's emergency motion to clarify injunction [0-1] and response to receiver's statement; Notice of filing (tj) [Entry date 01/26/98] [1:66cv1459]

1/23/98 -- RESPONSE by defendant CHA to receiver's statement and reply memorandum in support of CHA's emergency motion to clarify injunction; Notice of filing (tj) [Entry date 01/26/98] [1:66cv1459]

1/28/98 -- MINUTE ORDER of 1/28/98 by Hon. Marvin E. Aspen : Oral arguments on defendant's motion to clarify injunction [0-1] is set for 10:30 2/10/98. Mailed notice (mk) [Entry date 01/29/98] [1:66cv1459]

1/29/98 -- TRANSCRIPT of proceedings for the following date(s): 08/12/97 before Honorable Marvin E. Aspen (dk) [Entry date 01/30/98] [1:66cv1459]

2/10/98 -- SCHEDULE set on 2/10/98 by Hon. Marvin E. Aspen : Oral arguments held on defendant's motion to clarify injunction. No notice (gl) [Entry date 02/11/98] [1:66cv1459]

2/23/98 -- MEMORANDUM, OPINION, AND ORDER (tlm) [Entry date 02/25/98] [1:66cv1459]

2/23/98 -- MINUTE ORDER of 2/23/98 by Hon. Marvin E. Aspen : Enter Memorandum Opinion and Order: We hold that the judgment order governs the CHA's use of HOPE VI funds. Accordingly, any construction of public housing in Cook County must conform to the judgment order's locational requirements. Defendant's motion to clarify is denied. [0-1] Mailed notice (tlm) [Entry date 02/25/98] [1:66cv1459]

3/18/98 -- MOTION by plaintiff for further relief ; Notice of motion. (tlm) [Entry date 03/24/98] [1:66cv1459]

3/18/98 -- MEMORANDUM by plaintiffs in support of their motion for further relief (Exhibits). [0-1] (tlm) [Entry date 03/24/98] [1:66cv1459]

3/20/98 -- MOTION by CHA to stay order pending appeal (Exhibit); Notice of motion. (tlm) [Entry date 03/24/98] [1:66cv1459]

3/23/98 -- RESPONSE by CHA to plaintiffs' motion for further relief ; Notice of filing. [0-1] (tlm) [Entry date 03/24/98] [1:66cv1459]

3/24/98 -- MINUTE ORDER of 3/24/98 by Hon. Marvin E. Aspen : Answer brief to Plaintiffs' motion for further relief [0-1] due 03/31/98. Reply to answer brief due 4/2/98. Mailed notice (tlm) [1:66cv1459]

3/24/98 -- MINUTE ORDER of 3/24/98 by Hon. Marvin E. Aspen : Answer brief to defendant's motion to stay order pending appeal due 03/31/98. [0-1] Reply to answer brief due 4/2/98. Mailed notice (tlm) [1:66cv1459]

3/26/98 -- SUGGESTION on the record of class representatives' death by plaintiffs; Notice of filing. (tlm) [Entry date 03/30/98] [1:66cv1459]

3/26/98 -- NOTICE OF APPEAL by defendants CHA and Joseph Shuldiner from motion minute order [0-1], from order [0-1] (\$105.00 Paid) (cmf) [Entry date 03/31/98] [Edit date 03/31/98] [1:66cv1459]

3/26/98 -- MOTION by plaintiff to name additional representatives (Exhibit) ; Notice of motion. (tlm) [Entry date 04/02/98] [1:66cv1459]

3/30/98 -- RESPONSE by CHA to Plaintiffs' motion to name additional class representatives, and motion (Exhibit). (tlm) [Entry date 03/31/98] [1:66cv1459]

3/30/98 -- MOTION by CHA for hearing and discovery on issue of adequacy of representation of counsel and proposed new class representatives and response (Attachments); Notice of motion; Notice of filing. [0-1] (tlm) [Entry date 03/31/98] [1:66cv1459]

3/31/98 -- MAILED LETTER regarding docketing statement unacknowledged by defendants CHA and Joseph Shuldiner. (cmf) [1:66cv1459]

3/31/98 -- TRANSMITTED to the 7th Circuit the short record on appeal . Mailed notice to all counsel. (cmf) [1:66cv1459]

3/31/98 -- AFFIDAVIT of Valerie B. Jarrett (Exhibits). (tlm) [Entry date 04/01/98] [1:66cv1459]

3/31/98 -- AFFIDAVIT of Daniel E. Levin (Exhibits). (tlm) [Entry date 04/01/98] [Edit date 04/01/98] [1:66cv1459]

3/31/98 -- AFFIDAVIT of Phillip A. Hickman (Exhibits). (tlm) [Entry date 04/01/98] [1:66cv1459]

3/31/98 -- AFFIDAVIT of Barry A. Miller (Exhibits). (tlm) [Entry date 04/01/98] [1:66cv1459]

3/31/98 -- RECEIVER'S STATEMENT ncerning the (1) motion of the Gautreaux Plaintiff Class for further relief, and (2) the CHA's motion for stay of this court's February 23 Order pending appeal. (tlm) [Entry date 04/01/98] [1:66cv1459]

3/31/98 1 NOTICE OF FILING regarding affidavit of Daniel E. Levin [0-1], affidavit Valerie B. Jarrett [0-1], affidavit of Philip Hickman [0-1], affidavit of Barry A. Miller [0-1], regarding Receiver's statement [0-1] (tlm) [Entry date 04/01/98] [Edit date 04/01/98] [1:66cv1459]

3/31/98 -- MINUTE ORDER of 3/31/98 by Hon. Marvin E. Aspen : Plaintiff's to reply to defendant's response to plaintiff's motion to name additional class representatives [0-1] and to defendant's motion for a hearing [0-1] and discovery on issue of adequacy of representation of counsel and proposed new class representatives [0-2] by 04/08/98. Mailed notice (tlm) [Entry date 04/02/98] [1:66cv1459]

3/31/98 -- MOTION by plaintiff for leave to file a response memorandum in excess of fifteen pages ; Notice of filing. (tlm) [Entry date 04/03/98] [1:66cv1459]

3/31/98 -- RESPONSE by plaintiffs to CHA'S motion to stay (Exhibits); Notice of motion. [0-1] (tlm) [Entry date 04/03/98]

3/31/98 1 AMENDED NOTICE OF MOTION by Chgo, Cty of regarding motion to name additional representatives [0-1] and motion for a hearing and discovery on issue of adequacy of representation of counsel and proposed new class representatives [0-2] (tlm) [Entry date 04/21/98] [1:66cv1459]

4/1/98 -- EMERGENCY MOTION by CHA to extend time to reply to response to motion to stay ; Notice of emergency motion. (tlm) [Entry date 04/03/98] [1:66cv1459]

4/1/98 -- AFFIDAVIT of Philip A. Hickman. (tlm) [Entry date 04/30/98] [1:66cv1459]

4/2/98 -- MINUTE ORDER of 4/2/98 by Hon. Marvin E. Aspen : Plaintiffs' motion for leave to file a response memorandum in excess of pages is granted. [0-1] Mailed notice (tlm) [Entry date 04/03/98] [1:66cv1459]

4/2/98 -- MINUTE ORDER of 4/2/98 by Hon. Marvin E. Aspen : Motion is granted for CHA to reply to plaintiffs' response to CHA's motion to stay. [0-1] Plaintiff are givne an extension of time to 04/06/98 [0-1] to reply to defendant's response to plaintiffs' motion for further relief. Mailed notice (tlm) [Entry date 04/03/98] [1:66cv1459]

4/6/98 -- REPLY by Chgo, Cty of to plaintiffs' response to CHA's motion to stay (Exhibit); Notice of filing. [0-1] (tlm) [Entry date 04/15/98] [1:66cv1459]

4/6/98 -- REPLY by plaintiffs to CHA's response to plaintiffs' motion for further relief; Notice of filing. [0-1] (tlm) [Entry date 04/15/98] [1:66cv1459]

4/6/98 -- MOTION by Chgo, Cty of to strike receiver's response to CHA's motion to stay, to strike exhibits to plaintiffs' response or, in the alternative, to substitute instanter the attached reply for the reply submitted by the CHA (Exhibits); Amended notice of motion. (tlm) [Entry date 04/21/98] [1:66cv1459]

4/7/98 -- ACKNOWLEDGEMENT of receipt of short record on appeal USCA 98-1807 (Attachment). (tlm) [Entry date 04/09/98] [1:66cv1459]

4/8/98 -- SEVENTH CIRCUIT transcript information sheet by CHA; Notice of filing letter. (tlm) [Entry date 04/09/98] [1:66cv1459]

4/8/98 -- DISCRIPTIVE list of items to be included in Record on Appeal No. 98-1807 by Defendant CHA (Exhibits) (tlm) [Entry date 04/09/98] [1:66cv1459 1:66cv1460]

4/8/98 -- REPLY by plaintiff to CHA's response and motion [0-1] proposed additional class representatives [0-2]. (tlm) [Entry date 04/15/98] [1:66cv1459]

4/8/98 -- AFFIDAVIT of Alexander Polikoff; Notice of filing. (tlm) [Entry date 04/15/98] [1:66cv1459]

4/9/98 -- RESPONSE by Daniel E. Levin and The Habitat Company as receivers, to CHA's motion to strike; Notice of filing. (tlm) [Entry date 04/10/98] [1:66cv1459]

4/9/98 -- AMENDED NOTICE of motion by Chgo, Cty of regarding motion to strike receiver's response to CHA's motion to stay [0-1], to strike exhibits to plaintiffs' response [0-2], or to substitute instant the attached reply for the reply submitted by the CHA [0-3] (tlm) [Entry date 04/21/98] [1:66cv1459]

4/13/98 -- TRANSMITTED to the 7th Circuit the long record on appeal no. 98-1807 consisting three volumes of pleadings, eight volumes of exhibits , one volume of loose pleadings, six volumes of transcripts and certificate re.appeal.Mailed notice to all counsel. (da) [1:66cv1459]

4/13/98 -- MOTION by Chgo, Cty of for leave to file instanter CHA's reply to plaintiffs' reply to CHA's response and motion respecting proposed additional class representatives (Exhibits); Notice of motion. (tlm) [Entry date 04/21/98] [1:66cv1459]

4/13/98 -- MOTION by Chgo, Cty of for leave to file instanter Chicago Housing Authority's Authority's reply to receiver's response to CHA's motion to strike and plaintiff's response to CHA motion to strike exhibits (Attachments); Notice of motion. (tlm) [Entry date 04/22/98] [1:66cv1459]

4/15/98 -- MOTION by Receivers Daniel E Levin & Habitat Co for leave to file additional information to correct the record ; Notice of motion. (tlm) [Entry date 04/22/98] [1:66cv1459]

4/15/98 -- AFFIDAVIT of Michael L. Shakman regarding motion for leave to file additional information to correct the record (Exhibit). [0-1] (tlm) [Entry date 04/22/98] [1:66cv1459]

4/15/98 -- MOTION by plaintiffs for leave to file sur-reply instanter ; Notice of motion. (tlm) [Entry date 04/22/98] [1:66cv1459]

4/16/98 -- MOTION by CHA to strike matter from the rconrd on appeal (Exhibits). (tlm) [Entry date 04/17/98] [1:66cv1459]

4/16/98 -- NOTICE OF MOTION by Chgo, Cty of its motion to strike matter from the record on appeal. [0-1] (tlm) [Entry date 04/22/98] [1:66cv1459]

4/17/98 -- MINUTE ORDER of 4/17/98 by Hon. Marvin E. Aspen : Motion for leave to file instanter CHA's reply to plaintiffs' to CHA's response and motion respecting proposed additional class representatives granted [0-1] . Mailed notice (tlm) [Entry date 04/21/98] [1:66cv1459]

4/17/98 -- MINUTE ORDER of 4/17/98 by Hon. Marvin E. Aspen : Defendant's motion to strike is denied [0-1] . Defendant's motion to substitute instanter the attached reply for the reply submitted is granted. [0-3] Receivers' motion for leave to file additional information to correct the record is granted. [0-1] Defendant CHA's motion for leave to filee instanter a reply to the plaintiffs' last brief on the plaintiffs' motion concernint additional representatives is granted. [0-1] Telephoned notice (tlm) [Entry date 04/22/98] [1:66cv1459]

4/17/98 -- MINUTE ORDER of 4/17/98 by Hon. Marvin E. Aspen : Motion for leave to file instanter Chicago Housing Authority's Authority's reply to receiver's response to CHA's motion to strike and plaintiff's response to CHA motion to strike exhibits is granted. [0-1] No notice (tlm) [Entry date 04/22/98] [1:66cv1459]

4/17/98 -- MINUTE ORDER of 4/17/98 by Hon. Marvin E. Aspen : Plaintiffs' motion for leave to file sur-reply is granted . [0-1] No notice (tlm) [Entry date 04/22/98] [1:66cv1459]

4/17/98 -- MOTION by plaintiff for leave to file plsintiffs' response to CHA's motion to strike exhibits (Exhibits); Notice of motion. (tlm) [Entry date 04/22/98] [1:66cv1459]

4/17/98 -- MINUTE ORDER of 4/17/98 by Hon. Marvin E. Aspen : Plaintiffs' motion for leave to file plaintiffs' response to CHA's motion to strike exhibits is granted. [0-1] Mailed notice (tlm) [Entry date 04/22/98] [1:66cv1459]

4/21/98 -- MINUTE ORDER of 4/21/98 by Hon. Marvin E. Aspen : Defendant's motion to strike matter from the record on appeal (243) is granted. [0-1] The Clerk of the Court is directed to correct the record on appeal by striking all the items currently included in the record on appeal, with the exception of those items set forth in Exhiibt 1. Mailed notice (tlm) [Entry date 04/22/98] [1:66cv1459]

4/21/98 -- CERTIFIED copy of Order from the 7th Circuit. It is ordered that defendants-appellants file, on or before 04/27/98, a response to the "Appellees' motin to dismiss appeal". Briefing in this appeal is suspended pending further order. (98-1807) (tlm) [Entry date 04/22/98] [1:66cv1459]

4/30/98 -- TRANSMITTED to the 7th Circuit the long record on appeal no. 98-1807 consisting of corrected record per Judge Aspen's minute order of 4/21/98. Mailed notice to all counsel. (ps) [Entry date 05/01/98] [Edit date 05/01/98] [1:66cv1459]

4/30/98 -- MINUTE ORDER of 4/30/98 by Hon. Marvin E. Aspen : Plaintiffs' motion to name additional class representatives is granted. Mailed notice (mk) [Entry date 05/06/98] [1:66cv1459]

5/11/98 -- MOTION by defendants for reconsideration of plaintiffs' motion to add plaintiffs and Sub Silento denial of defendants' motion for discovery and hearing ; Notice of motion. (tlm) [Entry date 05/20/98] [1:66cv1459]

5/12/98 -- MINUTE ORDER of 5/12/98 by Hon. Marvin E. Aspen : CHA's motion to stay enforcement pending appeal of our order of 02/25/98, is denied. [0-1] (See reverse of minute order.) Mailed notice (tlm) [Entry date 05/14/98] [1:66cv1459]

5/18/98 -- MOTION by Receivers Daniel E Levin & Habitat Co for entry of order implementing CHA's duty of Cooperation (Exhibits); Notice of emergency motion. (tlm) [Entry date 05/20/98] [1:66cv1459]

5/19/98 -- MINUTE ORDER of 5/19/98 by Hon. Marvin E. Aspen : Defendants' motion for reconsideration of plaintiffs' motion to add plaintiffs and Sub Silento denial of defendants' motion for discovery and hearing is denied. [0-1] Mailed notice (tlm) [Entry date 05/20/98] [1:66cv1459]

5/19/98 -- MINUTE ORDER of 5/19/98 by Hon. Marvin E. Aspen : Receiver's motion for entry of order implementing CHA's duty of Cooperation is granted. [0-1] Telephoned notice (tlm) [Entry date 05/20/98] [1:66cv1459]

5/19/98 -- MINUTE ORDER of 5/19/98 by Hon. Marvin E. Aspen : Receiver's oral motion for permission to participate in pending or future appeals concerning the relationship between the Hope VI Program and this court's orders is granted. Mailed notice (tlm) [Entry date 05/22/98] [1:66cv1459]

5/20/98 -- MINUTE ORDER of 5/20/98 by Hon. Marvin E. Aspen :
Plaintiff's oral motion that the court order the defendant,
CHA to produce documents is granted. The defendant, CHA, is
ordered to allow Mr. Alexander Polikoff and Barry Miller to
inspect Hope VI Applications forthwith. Defendant's oral
motion to stay this order is denied. Mailed notice (tlm)
[Entry date 05/22/98] [1:66cv1459]

5/20/98 -- EMERGENCY MOTION by CHA to stay order of 05/19/98 pending
appeal (Exhibits); Notice of filing. (tlm)
[Entry date 05/22/98] [1:66cv1459]

5/20/98 -- MINUTE ORDER of 5/20/98 by Hon. Marvin E. Aspen :
Plaintiff to respond to defendants' motion to stay order of
05/19/98 pending appeal by the end of business day,
05/21/98. CHA and Shuldiner [0-1] to reply by 10:00 a.m. on
Friday, 05/22/98. No notice (tlm) [Entry date 05/22/98]
[1:66cv1459]

5/20/98 -- NOTICE OF APPEAL by defendant CHA from motion minute order
[0-1] (\$105.00 Paid) (cmf) [Entry date 05/27/98]
[1:66cv1459]

5/20/98 -- LETTER regarding docketing statement acknowledged by
defendant CHA . (cmf) [Entry date 05/27/98] [1:66cv1459]

5/21/98 -- RESPONSE by plaintiff to CHA's emergency motion to stay
order of 05/19/98 pending appeal (Exhibits); Notice of
filing. (tlm) [Entry date 05/22/98] [1:66cv1459]

5/21/98 -- RESPONSE by receiver Daniel E Levin & Habitat Co to
defendants' emergency motion to stay order of 05/19/98,
pending appeal (Exhibits). (tlm) [Entry date 05/22/98]
[1:66cv1459]

5/21/98 -- MINUTE ORDER of 5/21/98 by Hon. Marvin E. Aspen :
Plaintiffs' motion for further relief is denied [0-1] as
moot. Mailed notice (tlm) [Entry date 05/22/98]
[1:66cv1459]

5/22/98 -- REPLY by defendants CHA and Joseph Shuldiner to plaintiffs'
and the receiver's responses to CHA's emergency motion to
stay order of 05/19/98 pending appeal [0-1] (Exhibit);
Notice of filing (mc) [Entry date 05/26/98] [1:66cv1459]

5/22/98 -- MINUTE ORDER of 5/22/98 by Hon. Marvin E. Aspen: CHA's
emergency motion to stay order of 05/19/98 pending appeal
is denied [0-1]. (See reverse of minute order) Telephoned
notice (vj) [Entry date 05/28/98] [1:66cv1459]

5/27/98 -- TRANSMITTED to the 7th Circuit the short record on appeal .
Mailed notice to all counsel. (cmf) [1:66cv1459]

6/9/98 -- TRANSMITTED to the 7th Circuit the long record on appeal no. consisting of four volumes of pleadings with six volumes of transcripts of proceedings and nine loose pleadings sent up under separate certificate. Mailed notice to all counsel. (pp) [1:66cv1459]

6/10/98 -- AGREED ORDER (Attachment). (tlm) [1:66cv1459]

6/10/98 -- MINUTE ORDER of 6/10/98 by Hon. Marvin E. Aspen : Enter Agreed Order: It is hereby ordered that the record on appeal to be forwarded tthe 7th Circuit with regard to the CHA's appeal of this Court's 05/19/98 shall include only: (a) Motion by receivers Daniel E. Levin & Habitat Co. for entry of order; (b) Minute Order of 05/19/98 by Judge Aspen: Receiver's motion for entry of order implementing CHA's duty of cooperation is granted; and (c) Transcript of hearing of 05/19 98 (attached), and the parties reserve the right to file later motion(s) to supplement the record on appeal. Telephoned notice (tlm) [1:66cv1459]

6/10/98 -- TRANSMITTED to the 7th Circuit supplement to appeal no. 98-1807 consisting of order of 06/10/98 and Agreed Order with attached transcript of hearing of 05/19/98 (Attached). Mailed notice to all counsel. (tlm) [1:66cv1459]

6/19/98 -- JOINT MOTION by Defendant CHA and the receiver and the plaintiffs for an order designating Abila Revitalizing Area and authorizing development of public housing units therein . (tlm) [Entry date 06/26/98] [1:66cv1459]

6/19/98 -- ORDER regarding motion for an order designating Abila Revitalizing Area and authorizing development of public housing units therein [0-1] (tlm) [Entry date 06/26/98] [1:66cv1459]

6/19/98 -- MINUTE ORDER of 6/19/98 by Hon. Marvin E. Aspen : Joint motion of defendant CHA, The Receiver, and the plaintiffs for an order designating Abila Revitalizing Area and authorizing development of public housing units therein is granted. Enter Order. [0-1] Mailed notice (tlm) [Entry date 06/26/98] [1:66cv1459]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DOROTHY GAUTREAUX, et al.	)	
	)	
Plaintiffs,	)	
	)	
v.	)	No. 66 C 1459
	)	
CHICAGO HOUSING AUTHORITY,	)	
	)	
Defendant.	)	

MEMORANDUM OPINION AND ORDER

MARVIN E. ASPEN, Chief Judge:

Nearly thirty years ago, United States District Judge Richard B. Austin entered a judgment order against the Chicago Housing Authority (the CHA) with the hopes of correcting the effects of that agency's unconstitutional public housing site selection and tenant assignment procedures. *Gautreaux v. CHA*, 304 F. Supp. 736 (N.D. Ill. 1969). Blacks then made up 90% of the CHA's tenant base, but the CHA had deliberately restricted the number of blacks who could live in the four housing projects which were located in predominantly white areas, to the point where 93% to 99% of the tenants in those units were white. *Gautreaux v. CHA*, 296 F. Supp. 907, 909 (N.D. Ill. 1969). The other CHA units – the 99 1/2 % which were located in predominantly black areas – housed the rest of the CHA's tenants, 99% of whom were black. *See id.* at 910. This arrangement, ruled Judge Austin, violated the Fourteenth Amendment. *See id.* at 914. And in a comment worth recalling here for its relevance today, he wrote:

It is . . . undeniable that sites for the projects which have been constructed were chosen primarily to further the praiseworthy and urgent goals of low cost housing and *urban renewal*. Nevertheless, a deliberate policy to separate the races cannot be justified by the good intentions with which other laudable goals are pursued.

Id. (citing *Brown v. Board of Educ.*, 347 U.S. 483 (1954)) (emphasis added).

The building block of Judge Austin's remedial judgment order was the Dwelling Unit, "an apartment or single family residence which is to be initially made available to and occupied by a low-income, non-elderly family, subsequent to the date hereof, directly or indirectly by or through CHA." *Gautreaux*, 304 F. Supp. at 737. He barred the CHA from "authoriz[ing], approv[ing], or implement[ing] any plan for Dwelling Units" or from "seek[ing] any approval or request or accept[ing] any assistance from any government agency with respect thereto" unless the plan's Dwelling Units were located in conformity with the order's requirements. *Id.* at 738. The order mandated that the CHA erect three Dwelling Units in a General Area (i.e. areas in Cook County with a white population of 70% or more) for every one Dwelling Unit it erected in a Limited Area (i.e. areas with a minority population of 30% or more), *id.* at 738-39, though it did not *require* any new construction. This ratio was later changed from 3-to-1 to 1-to-1.

In 1993, the CHA applied for and received \$50 million from the Department of Housing and Urban Development (HUD) under the auspices of the HOPE VI program (an acronym for Homeownership and Opportunity for People Everywhere). Congress created the HOPE VI program in 1992 with the goal of "empower[ing the] residents of severely distressed and obsolete public housing." S. REP. 102-356, at 70 (1992). It intended to accomplish this via a three-part plan: (1) eliminating and (in some form) replacing dilapidated public housing structures, (2) providing residents of those structures with the skills necessary to achieve self-sufficiency, and (3) instilling a sense of community activism in residents of the blighted areas. *See id.* at 71.

It is the first part which is now at issue, as the CHA believes that it must spend its HOPE VI construction funds exclusively in the "3 separately defined areas containing the community's most severely distressed projects," to which the 1992 HOPE VI appropriation refers. *See* Pub. L. No. 102-389, 106 Stat. 1579 (codified as a Note to 42 U.S.C. § 1473). This would mean, of

course, that any construction of new public housing units¹ would take place in the distressed areas, which, by unfortunate circumstance, are also Limited Areas as defined by the judgment order. Recognizing that the judgment order requires equal construction in the General and Limited Areas, the CHA has asked that we "clarify" the judgment order and read it as not governing any use of HOPE VI funds.

The plaintiffs take issue with this request. They have previously pointed out to this Court that the construction of new public housing units is no longer in vogue, *see Gautreaux v. CHA*, 981 F. Supp. 1091, 1093 (N.D. Ill. 1997), and the HOPE VI money may be one of the few remaining funding sources for the construction of desegregated housing. Of course, if construction funds permanently dry up (and if the plaintiffs do not succeed in convincing us to modify the judgment order, *see, e.g., id.* at 1093-94), then this particular effort to desegregate public housing in Chicago will come to an end. We need not contemplate this possibility today, however, for the dilemma posed by the CHA – that the HOPE VI program compels spending only in Limited Areas while the judgment order compels equal spending in General Areas – rests on an illusion.

The 1992 HOPE VI authorization contemplates an "urban revitalization demonstration program involving major reconstruction of severely distressed or obsolete public housing projects," which is to be focused on "up to 3 separately defined areas containing the community's most severely distressed projects." Pub. L. No. 102-389. This does not, however, amount to a

¹ The CHA attempts to draw a distinction between replacement construction – construction which does not add to the agency's aggregate housing stock – and wholly new construction; the CHA argues that the injunction only governs the latter. This distinction may, as the CHA claims, have great significance to other housing decisions, but the judgment order does not differentiate between reconstruction and new construction: it speaks simply of Dwelling Units "initially make available to and occupied by a low-income, non-elderly family, subsequent to the date hereof." *Gautreaux*, 304 F. Supp. at 737. Housing units constructed with HOPE VI funds obviously qualify, and the use of such funds for the ends of desegregation is in keeping with the sweeping nature of the judgment order, the terms of which are as broad as the violation which it was designed to correct.

requirement that all HOPE VI money must be spent physically within those distressed areas. One way to revitalize a distressed public housing neighborhood is to tear down some of the units there and rebuild them elsewhere, thereby lessening the concentration of public housing on the old site. See Pub. L. No. 104-134, 110 Stat. 1321 (the 1996 HOPE VI appropriation, providing funds for "replacement housing which will avoid or lessen concentration of very low-income families"); Pub. L. No. 104-204, 110 Stat. 2874 (the 1997 HOPE VI appropriation, providing for the same). HUD's HOPE VI Guidebook contemplates just such an approach, discussing "[p]ublic housing development (including on-site reconstruction *as well as construction of off-site housing*) funded by HOPE VI," Pls.' Br. Ex. D (Guidebook p. 1.D.1) (emphasis added), and the legislative history is in agreement, see S. REP. 102-356, at 73 ("The balance of the [demolished] units could be replaced through . . . traditional replacement means, including major reconstruction and *scattered-site development* [emphasis added]. . . ."). In a similar vein, the HOPE VI program also requires that some demolished public housing be replaced by Section 8 housing vouchers, see Pub. L. 103-124, which may be used without regard to the boundaries of the General or Limited Areas. See 42 U.S.C. § 1473f(r). We see no incompatibility between the HOPE VI program and the judgment order.

It is ironic that the CHA has chosen to argue that it must use the HOPE VI funds for urban renewal and to the exclusion of desegregation, for, as we observed earlier, in 1969 it attempted to characterize desegregation as a byproduct of urban renewal efforts. No matter: Congress and HUD, through HOPE VI, have afforded the CHA an opportunity both to revitalize distressed public housing neighborhoods and to desegregate public housing, and the CHA is duty-bound to vigorously pursue desegregation opportunities. See *Gautreaux*, 304 F. Supp. at 741 (judgment order Article VIII); see also *Gautreaux v. Landrieu*, 498 F. Supp. 1072, 1075 (N.D. Ill. 1980) ("Difficulty in attaining racially integrated public housing shall not be further condoned. . . . The CHA must have only one concern, housing in compliance with the repeated orders of this Court.").

We hold that the judgment order governs the CHA's use of HOPE VI funds. Accordingly, any construction of public housing in Cook County must conform to the judgment order's locational requirements. It is so ordered.


MARVIN E. ASPEN
United States District Judge

Dated

2/23/58

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Marvin Aspen	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	66 C 1459	DATE	5/19/1998
CASE TITLE	Gautreaux,etal vs. CHA		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

MOTION:

Receiver's emergency motion for entry of order implementing CHA's duty of cooperation.

DOCKET ENTRY:

- (1) ☐ Filed motion of [use listing in "Motion" box above.]
- (2) ☐ Brief in support of motion due _____.
- (3) ☐ Answer brief to motion due _____. Reply to answer brief due _____.
- (4) ☐ Ruling/Hearing on _____ set for _____ at _____.
- (5) ☐ Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
- (6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
- (7) ☐ Trial[set for/re-set for] on _____ at _____.
- (8) ☐ [Bench/fury trial] [Hearing] held/continued to _____ at _____.
- (9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
☐ FRCP4(m) ☐ General Rule 21 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).
- (10) ☒ [Other docket entry] Motion is granted.

(11) ☒ [For further detail see order on the reverse side of the original minute order.]

☐ No notices required, advised in open court. ☐ No notices required. ☐ Notices mailed by judge's staff. ☒ Notified counsel by telephone. ☐ Docketing to mail notices. ☐ Mail AO 450 form. ☐ Copy to judge/magistrate judge.	GL courtroom deputy's initials	number of notices date docketed docketing deputy initials date mailed notice mailing deputy initials	Document Number
		Date/time received in central Clerk's Office	

ORDER

Now before us is the "Receiver's Emergency Motion for Entry of Order Implementing CHA's Duty of Cooperation." In it the Receiver asks that we order the CHA to cooperate with the Receiver and other parties in preparing and filing a 1998 HOPE VI application with HUD and to provide the Receiver with the information it needs to proceed with this project.

This motion is the outgrowth of three of our earlier decisions. In the first, issued August 14, 1987, we appointed the Receiver on the joint motion of the plaintiffs and the CHA. We gave the Receiver "all powers of CHA" with regard to the development and administration of the *Gautreaux* scattered site program, which included "all CHA non-elderly public housing development programs which may in the future be authorized by HUD during the pendency" of the *Gautreaux* litigation. In the second, issued February 23, 1998, we held that the *Gautreaux* "judgment order governs the CHA's use of HOPE VI funds" distributed by HUD. Our conclusion was compelled by the clear language of the judgment order and our view that there was no conflict between its requirements (as later amended) and those of the HOPE VI program. The CHA appealed this order. In the third, issued May 12, 1998, we denied the CHA's motion to stay our February 23 order pending appeal. The CHA filed today a motion to stay with the Seventh Circuit.

The CHA, in open court this morning, made clear that the basis for its objection to the Receiver's motion is its view that our February 23 order did not directly address the Receiver's status with regard to the HOPE VI program and that the Receiver's status is not obvious from our prior orders in this case. We disagree. HOPE VI is a "non-elderly public housing development program[] . . . authorized during the pendency" of the *Gautreaux* litigation, and it therefore fits entirely within the Receiver's jurisdiction. On February 23 we held that there was no reason to treat HOPE VI funds differently than any other funds for purposes of the *Gautreaux* judgment order, and we similarly see no reason to treat those funds differently for purposes of the order appointing the Receiver. Moreover, the Receiver has indicated its willingness to work with CHA to ensure that the 1998 HOPE VI proposal meets the requirements of both the HOPE VI program and the *Gautreaux* judgment order, as well as to assist in making that proposal as competitive as possible. The Receiver even indicated its interest in the CHA's thoughts on decisions which are ultimately the Receiver's responsibility. We hope that this open-minded and enthusiastic offer of cooperation sets an example for everyone involved in this case.

We denied the CHA's motion for stay pending appeal, and unless and until the Seventh Circuit issues its own stay or reverses our underlying order, the parties must comply with our orders. Our order of August 14, 1987, appointing the Receiver, obligates the CHA to cooperate with the Receiver and to provide the Receiver with the information it needs. It is now clear, if it was not before, that this means that the CHA is to coordinate its 1998 HOPE VI application with the Receiver and to provide the Receiver with the information it has requested.

It is so ordered.

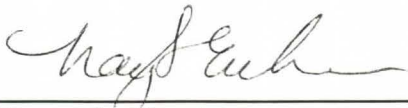


CERTIFICATE OF SERVICE

I, Nancy Eisenhower, an attorney, hereby certify that on June 29, 1998, I caused a copy of the foregoing BRIEF OF DEFENDANTS-APPELLANTS CHICAGO HOUSING AUTHORITY AND JOSEPH SHULDINER to be served by 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

Michael L. Shakman, Esq.
MILLER, SHAKMAN, HAMILTON,
KURTZON & SCHLIFKE
208 South LaSalle Street, Suite 1100
Chicago, Illinois 60604



Nancy S. Eisenhower

**IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT**

No. 98-1807, 98-2311

DOROTHY GAUTREAUX, et al.,	)	
	)	
Plaintiffs,	)	Appeal from the United
	)	States District Court for the
v.	)	Northern District of Illinois,
	)	Eastern Division
CHICAGO HOUSING AUTHORITY,	)	
a corporation, and JOSEPH SHULDINER,	)	No. 66 C 1459
Executive Director, in his official capacity,	)	
	)	Chief Judge Marvin E. Aspen
Defendants.	)	

**SUPPLEMENTAL APPENDIX ACCOMPANYING BRIEF
OF DEFENDANTS-APPELLANTS CHICAGO HOUSING
AUTHORITY AND JOSEPH SHULDINER**

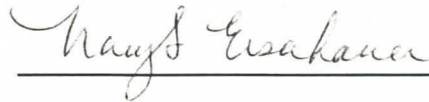
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CHICAGO HOUSING AUTHORITY and
JOSEPH SHULDINER

Jerome M. Butler
General Counsel
CHICAGO HOUSING AUTHORITY

Dated: June 29, 1998

CERTIFICATE

Pursuant to Circuit Rule 30(c), I certify that Defendants-Appellants
Appendix and Supplemental Appendix contain the materials required by Circuit Rule
30(a) and (b).

A handwritten signature in cursive script, reading "Nancy S. Eisenhower", is written over a horizontal line.

Nancy S. Eisenhower

**SUPPLEMENTAL APPENDIX TO
BRIEF OF DEFENDANTS-APPELLANTS
CHICAGO HOUSING AUTHORITY AND JOSEPH SHULDINER**

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<u>TAB</u>	<u>PAGE Nos.</u>	<u>DOCUMENT</u>
A.	SA-1 to SA-8	<u>Gautreaux et al., v. Chicago Housing Authority,</u> 304 F. Supp. 736 (N.D. Ill. 1969).
B.	SA-9 to SA-16	Order dated August 14, 1987.
C.	SA-17 to SA-19	Excerpt of S. Rep. 102-356.
D.	SA-20	142 Cong. Rec. H 10733, 10748.

phone Company, was and is covered by the injunction issued in the Atlas Van-Lines, Inc. suit, if it in any way knowingly acts in concert with the defendant to violate the terms of that injunction. Rule 65(d) of the Federal Rules of Civil Procedure provides in pertinent part:

"Every order granting an injunction * * * is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, *and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.*" (emphasis added.)

As soon as South Central Bell was apprised of the fact that its subscriber, Constant, was, by use of South Central Bell's equipment, violating the injunction imposed by this Court, it had a duty not to act in any way in concert with Constant to effectuate or perpetuate the violation. South Central Bell had the means to prevent its equipment from being used to violate the injunction, and its failure to do so would, at the very least, have amounted to a passive participation in the violation. That Constant was, by answering his phone with the word "Atlas," violating the injunction, cannot be denied. Certainly South Central Bell cannot now be ordered by another Court to do the very thing that this Court has ordered Constant and all others acting in concert with him not to do. That is exactly what the State Court judgment has done. Thus, in order to protect, enforce, and effectuate the injunction issued by this Court on November 20, 1968, in the suit entitled Atlas Van-Lines, Inc. v. Dan J. Constant, d/b/a Atlas Moving & Storage Co., bearing Number 68-115 on the docket of this Court, a preliminary injunction as prayed for by South Central Bell Telephone Company will issue, and defendants' motion for summary judgment will be denied. Counsel for plaintiff shall prepare and present a proposed form of injunction to be entered herein.

Dorothy GAUTREAUX, Odell Jones, Doreatha R. Crenchaw, Eva Rodgers, James Rodgers, Robert M. Fairfax and Jimmie Jones, Plaintiffs,

v.

The CHICAGO HOUSING AUTHORITY, a corporation, and C. E. Humphrey, Executive Director, Defendants.

Civ. A. No. 66 C 1459.

United States District Court
N. D. Illinois, E. D.

July 1, 1969.

Negro tenants in or applicants for public housing brought suits alleging that city housing authority and its executive director had violated their rights under Fourteenth Amendment. The District Court, Austin, J., 296 F.Supp. 907, denied defendants' motions for summary judgment, granted plaintiffs summary judgment as to count one and denied plaintiffs' summary judgment motion on count two. In supplemental judgment order, the District Court held that Chicago Housing Authority would not be permitted to cause construction of public housing in part of county, which lay within census tracts having 30% or more nonwhite population, or within distance of one mile from outer perimeter of such tracts, unless within three months following commencement of construction at least 75% of total units caused to be commenced by authority were outside of that part of county.

Order accordingly.

Civil Rights ⇐3

Chicago housing authority would not be permitted to cause construction of public housing in part of county, which lay within census tracts having 30% or more nonwhite population or within distance of one mile from outer perimeter of such tracts, unless, within three months following commencement of construction at least 75% of total units

SHAWNELL, ARPS, SLATE, MEAGHER & FLOM
Chicago, Illinois

caused to be commenced by authority were outside of that part of county.

Alexander Polikoff, Charles R. Markels and Bernard Weisberg, Chicago, Ill., for plaintiffs.

Kathryn M. Kula, John W. Hunt, and James T. Otis, Chicago, Ill., for defendants.

JUDGMENT ORDER

AUSTIN, District Judge.

This matter coming on to be heard pursuant to this Court's Memorandum Opinion of February 10, 1969, D.C., 296 F.Supp. 907, and Orders entered on such date denying defendants' motions for summary judgment, denying plaintiffs' motion for summary judgment as to Count II of the Complaint, and granting plaintiffs' motion for summary judgment as to Count I of the Complaint, and

The Court having conferred with counsel for the parties and having determined that the several provisions of this judgment order are necessary to prohibit the future use and to remedy the past effects of the defendant Chicago Housing Authority's unconstitutional site selection and tenant assignment procedures, to the end that plaintiffs and the class of persons represented by them, Negro tenants of and applicants for public housing in Chicago, shall have the full equitable relief to which they are entitled,

It is hereby ordered:

- I. For purposes of this judgment order,
 - A. "CHA" shall mean the defendant, Chicago Housing Authority.
 - B. "Dwelling Unit" shall mean an apartment or single family residence which is to be initially made available to and occupied by a low-income, non-elderly family, subsequent to the date hereof, directly or indirectly by or through CHA, whether in a structure owned in whole or in part by CHA (whether or not newly constructed)

or to be otherwise made available for occupancy by or through CHA to such a family. "Dwelling Units" include "Leased Dwelling Units" as hereinafter defined.

C. "Leased Dwelling Unit" shall mean a Dwelling Unit in a structure leased or partially leased by CHA from any person, firm or corporation.

D. "Limited Public Housing Area" shall mean that part of the County of Cook in the State of Illinois which lies either within census tracts of the United States Bureau of the Census having 30% or more non-white population, or within a distance of one mile from any point on the outer perimeter of any such census tract. "General Public Housing Area" shall mean the remaining part of the County of Cook in the State of Illinois. The terms "non-white" and "white" shall have the meaning given to such terms by the United States Bureau of the Census.

For purposes of this subsection D, results of the 1970 and each subsequent census taken by the United States Bureau of the Census shall presumptively determine the non-white population of census tracts until results of a subsequent such census are officially published; provided, that any party may, on motion, offer evidence as to the non-white population of any census tract for the purpose of rebutting such presumption; and provided further, that Dwelling Units located or proposed to be located in any census tract subsequent to official publication of the results of the last previous such census shall be taken into account in determining the population of such census tract, and for such purpose it shall be assumed that such Dwelling Units will be occupied by non-whites at the rate of two persons per bedroom.

For the period from the date hereof until the official publication of such 1970 census results, the census tracts in the City of Chicago listed on Ex-

hibit A, attached hereto, shall be presumed to have 30% or more non-white population; and, subject to evidence offered on motion by either party, the non-white population of census tracts in the County of Cook outside of the City of Chicago shall be presumed to be as stated in the 1960 census of the United States Bureau of the Census.

E. "Public Housing Project" shall mean any thirteen or more Dwelling Units which are located (1) in the same structure, (2) on the same lot or parcel of real estate, or (3) on two or more lots or parcels of real estate which are contiguous to one another, or are separated only by streets, alleys, bodies of water, railroad tracks or the like.

II. Following the date of this judgment order CHA shall not authorize, approve or implement any plan for Dwelling Units, nor shall CHA seek any approval or request or accept any assistance from any government agency with respect thereto (including without limitation approval of the acquisition of any interest in real estate), unless such plan affirmatively requires that,

A. All Dwelling Units provided for in such plan shall be located in conformity with the provisions of Article III hereof, and

B. The activities to be performed in order to render such Dwelling Units available for occupancy (whether construction, purchase, rehabilitation, leasing or otherwise) shall take place at such times as will result in the location of such Dwelling Units in conformity with the provisions of Article III hereof.

III. Following the date of this judgment order CHA shall provide Dwelling Units as follows, and not otherwise:

A. The following Dwelling Units may be made available for occupancy without restriction imposed by this order:

(1) The 1458 Dwelling Units provided for by pending CHA projects Ill. 2-27, 2-28 (exclusive of

Dwelling Units proposed to be located at 70th and Harper streets in the City of Chicago), 2-32, 2-33, 2-51, 2-64, 2-69 and 2-74.

(2) Leased Dwelling Units (but not more than two per structure) which have been occupied for at least six months prior to CHA's leasing the same by tenants who continue in occupancy following CHA's leasing thereof.

B. CHA shall not commence or cause to be commenced the construction of any Dwelling Units, other than said 1458 Dwelling Units referred to in Subsection A of this Article III, until CHA shall have commenced or caused to be commenced, and shall be continuing or shall have completed, the construction of not less than 700 Dwelling Units located in the General Public Housing Area of the City of Chicago.

C. Subject to the provisions of Subsection A, CHA shall not commence or cause to be commenced the construction of any Dwelling Units in any Limited Public Housing Area, other than said 1458 Dwelling Units referred to in Subsection A of this Article III, unless within three months following such commencement of construction at least 75% of the Dwelling Units on which CHA shall have commenced or caused to have commenced construction, and shall have continued or completed construction, since the commencement of construction of the last of the 700 Dwelling Units referred to in subsection B of this Article III shall have been located (at the time of commencement of construction thereof) in the General Public Housing Area of the City of Chicago.

D. Subject to the provisions of subsection E of this Article III, no Leased Dwelling Unit shall be made available for occupancy in the Limited Public Housing Area of the City of Chicago (in addition to Leased Dwelling Units in such Area which are already occupied) unless, immediately following such occupancy, at least 75% of the Leased Dwelling Units then oc-

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Chicago, Illinois

occupied are located in the General Public Housing Area of the City of Chicago; provided, that such number of Leased Dwelling Units located in the General Public Housing Area of the City of Chicago may be less than such 75% to the extent Dwelling Units other than Leased Dwelling Units have been occupied, or are under construction which is continuing, in the General Public Housing Area of the City of Chicago in excess of the 75% minimum requirement of subsection C of Article III hereof.

E. Not more than 33 $\frac{1}{3}$ % of the Dwelling Units required by subsection C of this Article III to be located in the General Public Housing Area of the City of Chicago, and not more than 33 $\frac{1}{3}$ % of the Leased Dwelling Units required by subsection D of this Article III to be located in the General Public Housing Area of the City of Chicago, may at the option of CHA, be planned for and located in the General Public Housing Area of the County of Cook in the State of Illinois, outside of the City of Chicago, provided that (whether or not constructed by CHA) the same are made available for occupancy by CHA to, and are occupied by, residents of the City of Chicago who have applied for housing to CHA, and provided further that all such Dwelling Units comply with the provisions of Article IV of this order.

IV. Following the date of this judgment order CHA shall not concentrate large numbers of Dwelling Units in or near a single location. Without limiting the foregoing, unless part of a development specifically designed to assist in achieving the purposes hereof as to which the Court by order shall have given its approval,

A. No Public Housing Project shall contain Dwelling Units designed for occupancy by more than 120 persons, except that if it is impossible for CHA to provide within such limitation Dwelling Units which it is otherwise capable of providing, and if it will

assist in achieving the purposes of this judgment order, a Public Housing Project may contain Dwelling Units designed for occupancy by not more than 240 persons.

B. No Dwelling Units shall be located in any census tract if, following such location, the aggregate number of apartments and single family residences theretofore made available to low-income, non-elderly families, directly or indirectly by or through CHA, in such census tract would constitute more than 15% of the total number of apartments and single family residences in such census tract; and

C. No Dwelling Units shall be provided above the third story in any structure except for families without children and except Leased Dwelling Units in a structure in which the number of Dwelling Units aggregates no more than 20% of the total number of apartments in such structure.

V. Within 30 days following the date of this judgment order CHA shall file with the Court and serve upon counsel for the plaintiffs evidence that CHA has modified its tenant assignment policy, adopted by CHA Board Resolution No. 68-CHA-232, a copy of which is attached hereto as Exhibit B, and its practices thereunder, to include all Leased Dwelling Units as a single "location" for the purposes thereof. Such policy and practices, as so modified, shall be applicable until the further order of this Court.

VI. Within 60 days following the date of this judgment order CHA shall file with the Court and serve upon counsel for the plaintiffs a tenant assignment plan. Such plan shall include, but need not be limited to, provisions having the following purpose and effect:

A. Such modifications, if any, shall be made in CHA's tenant assignment policy and practices as will assist in achieving the purposes of this judgment order.

B. New registrations on CHA's list of persons desiring housing (the "waiting list") shall be temporarily ended; a determination shall be made promptly as to which registrants remain eligible for and still desire public housing; intensive publicity shall then be employed in such manner as effectively to inform low-income families throughout the City of Chicago, including present CHA tenants, that substantial numbers of Dwelling Units will be made available in the General Public Housing Area of the City of Chicago pursuant to the provisions of this judgment order; and thereafter the "waiting list" shall be reopened to new registrants, including present CHA tenants who wish to apply for Dwelling Units in the General Public Housing Area.

C. Not more than 50% of the Dwelling Units in all Public Housing Projects shall be made available to eligible neighborhood residents, the remaining Dwelling Units to be made available for occupancy in accordance with subsection A of this Article VI.

D. Vacancies in CHA's Trumbull, Lathrop, Lawndale, and Bridgeport projects shall be filled in accordance with subsection A of this Article VI, except that such tenant assignment plan may contain provisions designed to assure that such projects do not become racially segregated.

E. Suitably detailed information shall be regularly filed with the Court and served upon counsel for the plaintiffs showing CHA's compliance with the provisions of this Article VI and such tenant assignment plan.

Following the filing and service of such tenant assignment plan the Court will enter such further order as it deems appropriate.

VII. Following the date of this judgment order CHA shall file with the Court and serve upon counsel for the plaintiffs, the Civil Rights Division of the United

States Department of Justice, and the Regional Administrator of the Department of Housing and Urban Development, the following:

A. A statement of the following information respecting each location for one or more Dwelling Units, such statement to be filed and served not more than 10 days after any such location is approved by the Board of Commissioners of CHA (or by the appropriate CHA officer or employee with respect to any location not required to be approved by the Board of Commissioners) and prior to the formal submission thereof to any other government agency or official for consideration or action:

- (1) a map showing boundaries, placement in relation to adjacent streets and, where available street address;
- (2) the area location (whether within the Limited or General Public Housing Area);
- (3) the census tract number;
- (4) the white and non-white population of such census tract;
- (5) the aggregate number of apartments and single family residences theretofore made available to low-income, non-elderly families, directly or indirectly by or through CHA in such census tract;
- (6) the aggregate number of apartments and single family residences in such census tract as reflected by the most recent census taken by the United States Bureau of the Census, supplemented by such information with respect thereto as is available to CHA from any other government agency or official (but the statement need not include such number if the number supplied with respect to the preceding paragraph (5) is zero);
- (7) the total number of Dwelling Units proposed to be provided at such location;

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(8) the number of structures, and the number of Dwelling Units in each, in which such Dwelling Units are proposed to be provided; and (9) such additional data as will show that such proposed Dwelling Units will be made available for occupancy in conformity with the provisions of Articles III and IV hereof, including without limitation, in the event such proposed Dwelling Units would result in a Public Housing Project designed for occupancy by more than 120 persons, information showing that the provisions of subsection A of Article IV hereof have been met with respect to such Public Housing Project.

B. Statements setting forth any change in the information included under paragraphs (1), (2), (3), (5), (7), (8) or (9) in a statement filed and served pursuant to subsection A of this Article VII, and covering the period up to initial occupancy of all Dwelling Units at any location, such statements to be filed and served not more than 10 days after any such change occurs.

C. Statements covering the periods from the date hereof until December 31, 1969, and from the date hereof until the end of each calendar semi-annual period thereafter, containing such data as will show that (1) all plans for Dwelling Units during the period covered by such statements have been in conformity with the provisions of Article II hereof, and (2) all Dwelling Units provided during the period covered by such statements have been in conformity with the provisions of Article III and IV hereof, such statements to be filed and served not more than twenty days after the end of each calendar semi-annual period beginning with such period ended December 31, 1969.

VIII. CHA shall affirmatively administer its public housing system in every respect (whether or not covered by

specific provision of this judgment order) to the end of disestablishing the segregated public housing system which has resulted from CHA's unconstitutional site selection and tenant assignment procedures. Without limiting the foregoing,

A. CHA shall use its best efforts to increase the supply of Dwelling Units as rapidly as possible in conformity with the provisions of this judgment order and shall take all steps necessary to that end, including making applications for allocations of federal funds and carrying out all necessary planning and development; and

B. CHA is hereby permanently enjoined from invidious discrimination on the basis of race in the conduct or operation of its public housing system, including without limitation the "pre-clearance procedure" described in the Court's Memorandum Opinion of February 10, 1969.

IX. This order shall be binding upon CHA, its officers, agents, servants, employees, attorneys, and their successors, and upon those persons, including the members of the City Council of the City of Chicago, in active concert or participation with them who receive actual notice of this order by personal service or otherwise.

X. This Court retains jurisdiction of this matter for all purposes, including enforcement and the issuance, upon proper notice and motion, of orders modifying or supplementing the terms of this order upon the presentation of relevant information with respect to proposed developments designed by CHA alone or in combination with other private or public agencies to achieve results consistent with this order, material changes in conditions existing at the time of this order or any other matter.

XI. The costs of this action shall be taxed against CHA, subject to the further order of this Court.

EXHIBIT A.

CENSUS TRACT NUMBERS

114 through 116	460 through 467	664
120 through 137	468	666 through 667
280 through 282	469-Z	675 through 678
340 through 347	470	681-Z through 683-Z
348-Z	487	685 through 686
349-Z	519-Z	687-Z
350 through 352	520 through 521	688
353-Z	524	690 through 691
354 through 355	527-Z	695
357 through 362	532-Z	697
363-Z	534-Z	711
364 through 373	539-Z	717-Z
375-Z through 378-Z	541 through 553	719-Z
379 through 383	554-Z	720-Z
384-Z	556 through 562	723
389-Z	564-Z	803 through 805
390-Z	567-Z	852
391 through 392	569-Z	855
395	574 through 610	858 through 859
399-Z	613-Z	861 through 862
401-Z	614 through 619	867-Z
403	620-Z	868 through 895
410-Z	621-Z	897-Z
412 through 420	623 through 641	898 through 900
428 through 429	642-A	903
431-Z	642-B	905 through 911
432	643 through 650	912-A through 912-D
434-Z	652	922
440 through 441	653-Z	923-A
442-Z	655	923-B
444 through 449	656-Z	924 through 927
450-A	657	932
450-B	658-Z	934 through 935
451 through 457	659 through 662	

EXHIBIT B.

TENANT SELECTION AND ASSIGNMENT PLAN

Each applicant shall be assigned his appropriate place on a community wide basis in sequence based upon date and time his application is received, suitable type or size of unit, and factors affecting preference or priority established by the Local Authority's regulations. At a given time, the applicant first on the waiting list shall be offered a dwelling unit in accordance with the following plan:

1. If at the time the applicant comes to the top of the waiting list there are suitable vacancies in three or more locations, the applicant shall be offered the unit at the location that contains the

largest number of vacancies. If the applicant rejects the first vacancy offered he shall be offered a suitable unit at the location containing the next highest number of vacancies. If the applicant rejects the second vacancy offered he shall be offered a suitable unit at the location containing the next highest number of vacancies. If the applicant rejects the third vacancy offered he shall be moved to last place on the eligible applicant list. When an offer of a suitable vacancy is made to an applicant, there must be a rejection of such offer before the applicant will be offered another location. Thus, the offering of a unit at the location with the second largest number of suitable vacancies will not be made until the applicant has first rejected the unit offered at the location with the largest number of vacancies. The offering of a unit at the location with the third largest number of suitable vacancies will not be made until the applicant has rejected the unit offered at the location with the second largest number of suitable vacancies.

2. If at the time the applicant comes to the top of the waiting list there are suitable vacancies in only two locations, the applicant shall be offered the unit at the location that contains the largest number of vacancies. If the applicant rejects the first vacancy offered he shall be offered a suitable unit at the second location. If the applicant rejects the second vacancy offered he shall be moved to last place on the eligible applicant list. When offers of suitable vacancies are made to applicants, there must be a rejection of the first offer before the applicant will be offered the second suitable vacancy.
3. If at the time the applicant comes to the top of the waiting list there is only one location at which a suitable vacancy exists, the applicant will be offered a unit at that location. If the applicant rejects the unit offered, he shall remain at the top of the waiting list until a second offer of a suitable vacancy can be made. Should the applicant reject the second offer of a suitable vacancy he shall be moved to last place on the eligible applicant list.

In carrying out the above plan, should the applicant be willing to accept the unit offered but be unable to move at the time of the offer and presents clear evidence of his inability to move to the Local Authority's satisfaction, refusal of the offer shall not count as one of the number of allowable refusals permitted the applicant before placing his name at the bottom of the eligible applicant list.

In carrying out the above plan, should the applicant present to the satisfaction of the Local Authority clear evidence that acceptance of a given offer of a suitable vacancy will result in undue hardship or handicap not related to considerations of race, color, or national origin, such as inaccessibility to source of employment, children's day care and the like, refusal of such an offer shall not be counted as one of the number of allowable refusals permitted an applicant before placing his name at the bottom of the eligible list.

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

DOROTHY GAUTREAUX, et al.,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	Civil Action No. 66C1453
	)	66C1460
SAMUEL R. PIERCE, JR., Secretary	)	(Consolidated)
of the Department of Housing and	)	
Urban Development, and CHICAGO	)	
HOUSING AUTHORITY, et al.,	)	
	)	
Defendants.	)	

O R D E R

This matter coming on to be heard pursuant to plaintiffs' motion dated May 8, 1987 for the appointment of a receiver for the scattered site program (defined below), due notice having been given and the Court having heard the presentations of the parties, the Court makes the following findings of fact and conclusions of law:

(A) The Chicago Housing Authority (the "CHA") has joined in plaintiffs' Motion for the appointment of a receiver for the reasons which CHA has heretofore stated in this cause.

(B) This Court has concluded that it has no reasonable alternative but to exercise its inherent power to effectuate its own orders and to so appoint said receiver for the scattered site program in accordance with the provisions of this order. It is the expectation of this Court that the appointment of a receiver will facilitate cooperation between the United States

Department of Housing and Urban Development ("HUD"), CHA and the receiver respecting the scattered site program.

(C) For purposes of this Order the "scattered site program" shall mean (i) the buildings and vacant sites listed in Exhibit A attached hereto (collectively, the "Uncompleted Units") and (ii) CHA Development Programs numbered Il 2-096, Il 2-098, Il 2-103 through Il 2-109, and Il 2-113 (excluding any completed buildings in such programs) and all CHA non-elderly public housing development programs which may in the future be authorized by HUD during the pendency of Civil Action No. 66 C 1459.

WHEREFORE, IT IS HEREBY ORDERED:

1. The Court hereby appoints Daniel E. Levin and The Habitat Company jointly as receiver ("Receiver") to develop and administer the scattered site program as effectively and expeditiously as possible in compliance with the orders of this Court, such appointment to be effective as of the Effective Date (defined below). Until the Effective Date, CHA shall continue to be responsible for implementing the scattered site program in compliance with the prior orders of this Court. On the Effective Date CHA shall turn over to the Receiver possession and control of the Uncompleted Units, it being understood, however, that title to the Uncompleted Units shall remain in the name of CHA.

2. The Receiver shall have and exercise all powers of CHA respecting the scattered site program necessary and incident to the development and administration of such program, including:

(a) Making all determinations governing the scattered site program in compliance with prior and future orders of this Court, including without limitation (i) submission to HUD of applications for funding, development programs and other documents, (ii) site selection and acquisition (including policies respecting the location of sites and buildings to be acquired), (iii) the relocation of occupants, when necessary and (iv) construction and rehabilitation of dwelling units and the design and specifications therefor in compliance with applicable laws and ordinances; and

(b) Carrying out the determinations so made, including without limitation (i) negotiating and executing any contracts or other documents necessary or appropriate to implement the scattered site program, (ii) employing, transferring and discharging staff for the scattered site program, (iii) purchasing insurance insuring the Receiver, and the interest of CHA if feasible and available at no additional cost, against liability for such risks and in such amounts as the Receiver and HUD shall from time to time agree upon, (iv) managing and administering buildings included within the scattered site program prior to the turnover thereof to the CHA in accordance with Paragraph 5 below, and (v) doing such other acts and things, including site selection and acquisition in the name of CHA, construction and rehabilitation of dwelling units and retaining the services of such personnel, consultants, attorneys, accountants and other professionals, as are determined by the Receiver to be necessary and appropriate to implement the scattered site

program and to enable the Receiver to discharge its duties pursuant to the provisions hereof.

3. The Receiver shall have the right at any time, upon due notice to the parties hereto, to make application to the Court requesting that the Receiver be excused from complying with some or all of the provisions set forth in the Annual Contributions Contracts heretofore entered into between HUD and CHA (collectively, the "ACC"), the HUD Procurement Handbook for Public Housing Agencies No. 7460.8, the HUD Public Housing Development Handbook No. 7417.1, or other applicable rules and regulations, or applicable laws or ordinances, or that as to the Receiver, the requirements of such agreements, provisions, laws, ordinances, rules and regulations be modified, if the Receiver determines that compliance therewith would be costly, inefficient or otherwise impede or restrict its ability to carry out this Court's orders. Nothing contained herein shall be deemed to constitute a determination by the Court, or the consent or an acknowledgement by HUD or CHA, that the Court has the jurisdiction or authority to grant any of the foregoing relief.

4. The Receiver shall have no obligation to make any expenditure except from funds provided by HUD in accordance with procedures to be agreed upon between HUD and the Receiver. The Receiver shall keep separate accounts for costs incurred in connection with the scattered site program from and after the Effective Date. The Receiver shall not be responsible for (i) payment of any costs or performance of any obligations incurred

by CHA prior to the Effective Date, except obligations incurred pursuant to the ACC unless the Receiver is excused from complying with the terms thereof pursuant to Paragraph 3 above, or (ii) payment of any costs or performance of any obligations incurred by CHA thereafter, except as may be specifically authorized by the Receiver in writing. Notwithstanding the foregoing, the Receiver shall not be responsible for (iii) compliance with the provisions of any ACC with respect to buildings and sites previously acquired or completed by CHA except those described in Exhibit A, or (iv) any act or omission of CHA either before or after the Effective Date.

5. The Receiver shall promptly turn over to CHA, and CHA shall accept, any building within the scattered site program upon completion of construction or rehabilitation of each such building. For purposes hereof, subject to the reasonable approval of HUD, construction or rehabilitation of a building shall be deemed to be completed when the Receiver's project architect determines that such building is ready for occupancy, and, if required by applicable law or ordinance, a certificate of occupancy has been issued for such building.

6. The Receiver shall prepare reports respecting the status and implementation of the scattered site program as of the end of each month in the year 1987, commencing with the month of September, 1987, and thereafter quarterly as of March 31, June 30, September 30 and December 31 of each year. Copies of the same shall be filed with the Court and served on

the parties within 20 days following the end of the period covered by each such report.

7. CHA, its agents, servants and employees shall provide full cooperation and assistance to, and shall not interfere with, the Receiver in the performance of the Receiver's responsibilities hereunder, including without limitation providing full access to all information, records, documents, files relating to the scattered site program.

8. There shall be paid to the Receiver from funds provided by HUD pursuant to the ACC or Annual Contributions Contracts entered into between the Receiver and HUD, or by CHA if appropriate, (i) all direct costs and expenses reasonably incurred by the Receiver in connection with the performance by the Receiver of its duties pursuant hereto, (ii) to the extent not included in clause (i), a pro-rata share of all salary, compensation and other direct costs of those employees of The Habitat Company (other than Daniel E. Levin, James P. McHugh and Douglas R. Woodworth), James McHugh Construction Co. (other than James P. McHugh) or other entities which are affiliates of or controlled either directly or indirectly by the Receiver, who at the direction of the Receiver perform services on behalf of the scattered site program, for the actual time devoted by said employees to the performance of services for the scattered site program, and (iii) a fee in the amount of three percent (3%) of the aggregate development costs (excluding the costs described in clause (ii) above and any costs previously incurred by CHA)

for each building in the scattered site program (except buildings developed pursuant to a turnkey development) as reflected on the original development budget(s) therefor submitted by the Receiver and approved by HUD, the fee for such building being payable upon the completion thereof as determined in accordance with Paragraph 5 hereof. The Court will set a reasonable fee with respect to turnkey developments. The Court hereby determines that included in the category of expenditures for which the Receiver shall be entitled to reimbursement are all costs, expenses and liabilities (including reasonable attorneys' fees and court costs) reasonably incurred or sustained by the Receiver by reason of the performance by the Receiver of its duties pursuant to the provisions hereof to the extent said costs, expenses and liabilities are not covered by the insurance described in Paragraph 2(b)(iii) above.

9. Nothing in this Order shall (i) preclude or restrict the Receiver or any party hereto from asserting any claims against the Receiver or any other party hereto for any matter in connection with the scattered site program or otherwise; provided, however that the foregoing shall not constitute a waiver by the Receiver or any other party of any defense which it may have to such claim, including, but not limited to, a defense by the Receiver that it enjoys immunity from such claim, (ii) obligate HUD to furnish funds to the Receiver in addition to any funds which HUD would otherwise be obligated to provide

to CHA by virtue of any previous order of this Court or otherwise, or (iii) constitute a determination of the amount of funds which HUD is obligated to furnish by virtue of such previous orders or otherwise.

10. The Receiver is hereby excused from complying with Rule 9(b) of the Civil Rules of the United States District Court for the Northern District of Illinois.

11. The effective date of this Order (the "Effective Date") shall be the date upon which the Receiver has filed with this Court and served upon the parties hereto a notice signifying that the Receiver is satisfied that there is in force the insurance coverage referred to in Paragraph 2(b)(iii) above.

12. Except as and to the extent specifically provided in this Order, this Court's judgment orders previously entered herein, as previously modified, remain in full force and effect. The Court retains jurisdiction of this matter for all purposes, including enforcement and issuance, upon proper notice and motion, of orders modifying or supplementing the terms of this order upon the presentation of relevant information or material changes in conditions existing at the time of this order or any other matter.

ENTER:


United States District Judge

August 14, 1987

~~request and the House proposed funding the voucher portion of the program in the "Annual Contributions for Assisted Housing" account.~~

HOPE VI: HOPE for the empowerment of residents of severely distressed and obsolete public housing. Finally, the Committee has included \$500,000,000 for a new initiative, designated as HOPE VI, HOPE for the empowerment of residents of severely distressed and obsolete public housing. HOPE VI is an attempt by the Committee to invest Federal resources directly in communities to create the conditions to bring about citizen self-responsibility and resident self-sufficiency in the most distressed areas of urban America. For too long, these areas have been the victim of either gross neglect by government or the victim of large bureaucracies that have wasted limited resources in an attempt to impose top down strategies to do good to the residents of these areas. Neither approach has worked.

As a result, the Committee, in HOPE VI, has adopted an empowerment strategy, built on the twin anchors of self-sufficiency and self-responsibility. It is a program that calls upon both the residents and political leaders of Americas large cities to join together to develop strategies that will transform these distressed areas into productive residential and commercial centers.

The goal of HOPE VI is three-fold: (1) Shelter to eliminate dilapidated, and in many instances, dangerous structures that serve as homes for hundreds of thousands of Americans; (2) self-sufficiency to provide residents in these areas with the opportunity to learn and acquire the skills needed to achieve self-sufficiency; and (3) community sweat equity to instill in these Americans the belief that with economic self-sufficiency comes an obligation to self-responsibility and giving back something to ones community.

The Committee recognizes that these goals are, in fact, ambitious ones, that will not be realized through the enactment of HOPE VI alone. Nor will they be achieved with a large grant program that simply guarantees all urban centers, and their residents, with funds to conduct business as usual. But by making the program competitive among the Nations largest cities, HOPE VI seeks to give those areas with the best proposals an opportunity to begin this transformation process.

The major components of HOPE VI are as follows:

First, eligibility. Funds would be made available for up to 15 cities in amounts up to \$50,000,000 per recipient. Eligible applicants would include any of the Nations 40 most populous cities, or a city whose housing authority is included on the Departments troubled housing authority list as of March 31, 1992. In providing eligibility for these troubled authorities, the Committee has included authority for the Secretary to deny eligibility to any housing authority on the troubled list that is not making, in the judgment of the Secretary, substantial progress on matters that would eliminate their troubled status. Cities would be selected on a competitive basis upon the submission of an application that complies with the goals of HOPE VI as enumerated above.

Second, empowerment strategy. Awards would be selected by the Department, in conjunction with the Commission on National and Community Service, on the basis of which applicants most effectively propose a strategy that meet the three goals set forth for HOPE VI: shelter, self-sufficiency, and community sweat equity. Proposals would have to be consistent with the comprehensive affordable

housing strategy (CHAS) required under the 1990 Housing Act. In addition, each authority that submits an application will have to have had active public housing resident participation in the preparation of the application and demonstrate how that representation effected the proposals final form. Finally, each application must have the support of the local governing body.

Third, shelter. Each city would have to target its revitalization effort in no more than three distinctly identifiable severely distressed areas, which include severely distressed public housing, including family high-rise projects. Not less than 80 percent of the funds requested by the given authority would have to go for shelter. The maximum number of public housing units involved could be up to 500. In eliminating these severely distressed and obsolete projects, the housing authority would have to provide one-third of the replacement units through the use of section 8 certificates. The balance of the units could be replaced through either traditional replacement means, including major reconstruction and scattered-site development, or through Nehemiah-like homeownership opportunities.

Fourth, self-sufficiency and community sweat equity. The Committee believes that providing individuals and families with adequate shelter or a home to own is, by itself, not enough to transform these distressed areas. Instead, the citizens in these areas must be given the chance to acquire skills that will make them economically self-sufficient. And once self-sufficient, they must understand that reinvesting in ones own neighborhood and community is a cornerstone of good citizenship. As a result, up to 20 percent of the funds provided to each city can be targeted to self-sufficiency and community sweat equity or community service activities. All applications must contain some request for both categories, with a commitment to provide a non-Federal match of 15 percent for funds used for these two purposes. No application can be funded until and unless they have been approved by the Commission on National and Community Service.

(a) Self-sufficiency. Public housing residency, for many reasons within the last two decades, has all too often become a way of life, instead of a bridge to a better way of life. As a result, each housing authority must use a portion of the funds they receive for self-sufficiency support services and training for residents. Eligible activities include those authorized through the Gateway Program provided in the family support center legislation. They include, but are not limited to, literacy training, job training, day care, youth activities (including Boys Clubs and Girls Clubs), appropriate health services, personal management skills, community policing or security activities, and drug treatment. Particular attention should be given to program applicants to offering literacy and job training skills, since they address what are frequently considered the largest impediments to full employment.

By providing funds directly to the authority through HUD, the Committee has provided an administrative one-stop shop that seeks to avoid the current administrative maze and expense that plagues many efforts to bring supportive services to distressed urban areas. Housing authorities can utilize existing service programs in a particular State or municipal jurisdiction so as to avoid duplication of effort. If tenants are relocated out of the designated area as part of a citys replacement unit strategy, the Committee wishes to make clear that these individuals remain eligible for the services provided by the housing authority under Hope VI.

(b) Community sweat equity. Participating cities would have to establish a community sweat equity and service program for residents in the effected areas as part of the application. Self-sufficiency requires self-responsibility from individuals. And self-responsibility entails also reinvesting something of the benefits one has received back into the community where one lives. As a means of ensuring that residents of these severely distressed areas do become stakeholders in their communities, each authority would have to establish a community service program as a condition to receive any funds under the program.

While the program would not be mandatory for all residents in the effected housing developments, the Commission on National and Community Service, in reviewing applications seeking funds, would be expected to carefully review the level of resident participation that would be integrated into these service programs. Special attention will be given to the comprehensive nature of the projects approach, as well as to quality and innovation. This community service component could include any number of models: youth conservation corps, school-based service programs like literacy training, sweat equity initiatives like habitat for humanity, or other community service type activities. These activities should build upon existing community service programs, but it is essential that residents of distressed housing be the substantial participants in the components that will be funded through HOPE VI. In the preparation of the notice of fund availability, HUD shall rely heavily upon the Commission for preparing the section on community sweat equity.

The Committee strongly believes that the community service component of the program, coupled with the gateway type services, administered through a single source, offers a distinct and credible alternative from programs offered for distressed areas in the past. It is the Committees belief that the ethic of service should be instilled as a core value of those citizens who will directly benefit from the resources provided under Hope VI. It is service to others in ones own community that helps broaden individuals and families stake in ones neighborhood, ones city, and ones country.

The Committee has included a provision that requires the Department to issue the NOFA for Hope VI within 90 days of the enactment of the Appropriations Act, with applications due from potential recipients no later than 180 days from the issuance of the NOFA. The Committee has also given the Department the authority to withdraw unobligated balances of funds made available to a recipient community who does not proceed in a manner consistent with the plan approved for that community.

Mutual housing. The Committee has also included bill language earmarking not less than \$10,000,000 of HOPE II funds for mutual housing associations and other organizations in the Neighborhood Reinvestment Corporations neighborworks network. This is consistent with the 1992 program approved by the Congress.

The Committee has also included language that would require the Department to reduce, if necessary, HOPE I, II, and III on a pro rated basis to meet the first \$100,000,000 shortfall in section 8 contract renewals in fiscal year 1993. annual contributions for assisted housing (including rescission and transfer of funds)

Appropriations, 1992 \$8,070,201,000

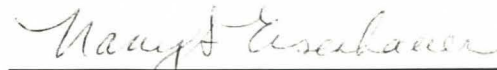
Language is inserted to ensure that HOPE VI funds are used for the purpose of revitalizing severely distressed public housing facilities. HUD attempted to provide funds to predetermined housing authorities to settle litigation unconnected with the HOPE VI program. Furthermore, preferential scoring was given to housing projects that included proposals for an unauthorized program. HUD is directed to end such practices immediately. Finally, in assessing public housing demolition/disposition applications, the conferees urge HUD to review closely the local housing needs of a community, including shortages of affordable housing for low-income families, the size of the waiting list for the public housing, as well as the size of the local homeless population.

CERTIFICATE OF SERVICE

I, Nancy Eisenhower, an attorney, hereby certify that on June 29, 1998, I caused a copy of the foregoing SUPPLEMENTAL APPENDIX ACCOMPANYING BRIEF OF DEFENDANTS-APPELLANTS CHICAGO HOUSING AUTHORITY AND JOSEPH SHULDINER to be served by hand delivery on counsel listed below:

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