

No. 98-3145

V.

Defendants.

Chief Judge Marvin E. Aspen

Dated: September 15, 1998

CERTIFICATE OF INTEREST

Cause No: 98-3145

Short Title: 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:

(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 front of the table of contents of the party's main brief.

Attorney's Signature: 

Attorney's Printed Name: Nancy S. Eisenhower

Date: August 25, 1998

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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.

The appellate court has jurisdiction over this appeal pursuant to 28 U.S.C. § 1292(a)(1), because the order being appealed is an injunction. The order was entered by the district court on August 12, 1998. The notice of appeal of the order was filed on August 24, 1998.

STATEMENT OF THE CASE

This appeal is from an injunction and order entered against the Chicago Housing Authority and its Executive Director, Joseph Shuldiner (collectively the “CHA”) on August 12, 1998, granting the receiver’s second emergency motion (the “August Order”). (AP-6)¹ The second emergency motion asked the district court to enter an order directing the CHA, in connection with the Cabrini-Green HOPE VI revitalization project, to comply with the Receivership Order and the district court’s February and May Orders. (SSA-19 to SSA-20)

The August Order granted the relief sought and held that the CHA has no power or authority to negotiate or execute an agreement in the form of a consent decree with the City of Chicago and the Cabrini-Green Local Advisory Council (“LAC”) that would resolve the Cabrini litigation pending before Judge David Coar.² (AP-6) The consent decree is, in essence, the

¹ References to the appendix attached to this brief appear as “AP-__” and to the supplemental appendix accompanying this brief as “SSA-__”.

² See, e.g., Cabrini-Green LAC v. CHA, No. 96 C 6949, 1997 U.S. Dist. LEXIS 625 (N.D. Ill. 1997) (attached hereto as Exhibit B). For references to the HOPE VI statute, see Exhibit A.

HOPE VI revitalization plan for the Cabrini-Green redevelopment project that, under federal law, must be negotiated by the CHA with the Cabrini LAC and the City of Chicago. (For Consent Decree, see SSA-243 to SSA-273) (For references to federal law, see Exhibit A at Exh.A.2 and Exhibit B at Exh.B.13)

The consent decree deals with aspects of the HOPE VI plan, such as demolition and relocation of displaced residents, that are well beyond the responsibility of the receiver under the HOPE VI orders. (See, e.g., SSA-161) Nevertheless, the *Gautreaux* court held that because the agreement in part related to the development of new housing development, that aspect of the consent decree must be negotiated and agreed to by the Receiver. (AP-6) The consent decree expressly was conditioned on the approval of Judge Coar and the consent of the *Gautreaux* court to a waiver of the locational restrictions of the Injunction. (SSA-264) Nevertheless, the *Gautreaux* court held that it was not sufficient that the consent decree be so conditioned; the CHA had not yet obtained a waiver and that was necessary before the receiver's role would be eliminated. (AP-6) The district court held that the CHA first had to negotiate the entire Cabrini-Green plan with the participation of the Receiver before the CHA presented the agreement to the *Gautreaux* court for a waiver of the Injunction. (Id.) The district court further held that should the CHA present the Cabrini-Green plan to the court for a waiver of the Injunction, the court would require the advice and recommendations of the receiver on the merits of the proposed plan. (Id.) The district court sent the parties to the Cabrini litigation back to the drawing board to renegotiate an agreement with the full participation of the receiver. (Id.)

The precise holdings in the August Order are as follows:

The CHA is hereby enjoined from developing or negotiating or otherwise pursuing any agreement with any person or entity regarding the development of dwelling units (a term defined in the original injunction in this case) without the full participation

of the Receiver unless, of course, it has already secured a waiver for the contemplated development. By full participation we mean that the Receiver must have timely and unfettered access to “all information, records, documents, [and] files” relating to the contemplated development and that the Receiver must be given advance notice of all meetings (whether conducted in person or by any other means of communication) related to such development and allowed to attend and give his input. The Receiver, of course, possesses all of the CHA’s development authority, so the CHA may not come to any agreement regarding development without his written consent.

(Id.)

With respect to the Cabrini-Green project, the district court stated:

As for the CHA’s agreement with the Cabrini-Green representatives, the parties must now return to the drawing board and renegotiate their agreement with the full participation of the Receiver since the CHA has not yet secured a waiver of the injunction.

(Id.)

Finally, the district court, knowing that the CHA intended to seek a waiver of the 1969 Injunction, stated:

If the CHA chooses instead to seek a waiver, it should know that we will consult the Receiver on the merits of the proposed waiver (and we will require the CHA to provide “all information, records, documents, [and] files” concerning the Cabrini-Green development and proposed waiver to the Receiver so that he may offer us intelligent and informed comments on the proposed waiver). So, the more prudent, effective, and efficient course will be to negotiate with the Receiver prior to seeking our involvement.

(Id.)

The August Order is the third in a string of what is being referred to as the HOPE VI orders, all of which have been appealed to this Court. Many of the issues raised by the August Order are the subject of the briefs previously filed by the parties in this case. The first order appealed was entered February 23, 1998 (the “February Order”).³ It held that the injunction entered in this case in 1969 (the “Injunction”) applies to and governs the development

³ The order was entered on the district court’s docket sheet on February 25, 1998.

of public housing funded under the 1992 HOPE VI statute. (SSA-34) The February Order made clear that the locational requirements of the Injunction apply in a HOPE VI funded project. (Id.)

The second order that was appealed was entered May 19, 1998 (the “May 19 Order”).⁴ It held that the 1987 Receivership Order transferred to the receiver “all powers” of the CHA regarding any new housing which, by virtue of the 1987 Receivership Order’s definition of “scattered site program,” included housing constructed with HOPE VI funds. (SSA-66) The May 19 Order made clear that the CHA owed a duty of cooperation and coordination to the receiver in connection with the preparation of the CHA’s 1998 HOPE VI application. (Id.)

The receiver’s second emergency motion, the one that resulted in the August Order (the subject of the current appeal), was based in part on allegations that the CHA is not in compliance with clear orders of the district court. (See CHA’s First Reply Brief, filed with this Court on August 17, 1998 (“CHA Reply I”) at 24-25, citing Receiver’s First Response Brief, filed with this Court on July 29, 1998 (“Rec. Br. I”) at 29, 30, 37) The district court, however, did not make any ruling on these allegations. (See SSA-66) The CHA’s demand for an evidentiary hearing was not granted, no hearing on the receiver’s allegations has ever been held, and the allegations remain disputed by the CHA. (Compare SSA-66 with CHA Reply I at 24-25) The receiver continues to rely on its allegations, which are based entirely on the receiver’s self-serving affidavits and reports in newspapers, as proven facts. (See, e.g., Rec. Br. I at 10-22) The CHA will continue to treat those allegations as unproven and not relevant to the issues of law that have been raised in this appeal. (See CHA Reply I at 4-5, 24-25)

⁴ The order was entered on the district court’s docket sheet on May 20, 1998. (A-9)

THE ISSUES PRESENTED

The issues raised by the August Order were briefed by the parties below but the district court did not discuss most of the issues. (AP-6) For example, the CHA opposed the Receiver's emergency motion on numerous grounds,⁵ but the district court addressed only one: "The CHA's only meaningful objection to this request is that it has intended all along to seek a waiver of the primary injunction in this case, which, if we consented, would mean that the Receiver would have no role in development at Cabrini-Green." (AP-6) The district court rejected the CHA's position because no waiver has been sought or granted for the Cabrini-Green HOPE VI project. (*Id.*)

The August Order is of no consequence if the CHA prevails in its appeal of either the February Order or the May 19 Order. Only in the event the CHA does not prevail in its appeal of the May 19 Order, would the merits of the appeal of the August Order have to be

⁵ The other issues raised by the CHA included:

1. The receiver lacks standing to seek an injunction. (SSA-129)
2. The CHA is entitled to an evidentiary hearing. (SAA-131)
3. The CHA's "duty of cooperation" is unclear and not judicially enforceable. (SSA-136)
4. There are no clear orders defining the receiver's authority regarding HOPE VI programs that inform the CHA of its obligations. (SSA-139)
5. The receivership order in part conflicts with HOPE VI. (SSA-141)
6. The district court's orders of May 19, 21 and 22 did not clarify the receiver's duties. (SSA-143)
7. The receiver cannot enforce the CHA's duty to pursue desegregation. (SSA-145)
8. The duty to pursue desegregation is too vague a command in connection with HOPE VI programs and is not enforceable pursuant to the power of contempt. (SSA-147)
9. The CHA's powers and authority to negotiate and execute the Cabrini-Green consent decree, to defend litigation, and to seek a waiver of the 1969 Injunction, have not been transferred to the receiver. (SSA- 148)
10. The receiver has no authority to negotiate a plan for which a waiver will be sought. (SSA-151)

considered by this Court. Accordingly, the issues presented on this appeal include all of the issues previously briefed by the CHA in the consolidated appeal, such as the violation of the principles of federalism and separation of powers, but these issues will not be re-briefed. The CHA has identified and briefed only those issues that would have to be decided should the Court reach the merits of this appeal.

Those issues are as follows:

- (1) whether the Injunction or the HOPE VI Orders inform the CHA of its obligations to the Receiver in the context of a HOPE VI project;
- (2) whether the Receivership Order properly transfers to the receiver any or all of the CHA's powers and authority to negotiate and execute the consent decree concerning the Cabrini-Green HOPE VI revitalization project because it relates in part to the development of public housing funded under HOPE VI;
- (3) whether the district court erred in holding that the CHA does not have the right to apply for a waiver of the Injunction after the plan has been prepared by the CHA and negotiated, as required under HOPE VI, with the City of Chicago and the applicable Local Advisory Council;
- (4) whether the district court erred in holding that it would not consider the CHA's motion for a waiver of the Injunction for an on-going HOPE VI project without the consultation and advice of the receiver on the merits of the plan;
- (5) whether the district court properly expanded the duties of the receiver to evaluate and advise the court on the merits of any motion for waiver filed by CHA, particularly when there are no articulated standards that the receiver would apply in reviewing the HOPE VI plan;
- (6) whether the district court properly expanded the duties of the receiver without notice to the parties, without a hearing on the need for a receiver to enforce the court's orders and without consideration of the receiver's qualifications to perform the expanded duties;
- (7) whether the receiver has been and should be appointed to enforce the CHA's "duty to vigorously pursue desegregation" under Article VII of the 1969 Injunction;
- (8) whether the 1969 Injunction and the HOPE VI orders inform the CHA of what is required of it to fulfill the duty vigorously to pursue desegregation;

- (9) whether the duty vigorously to pursue desegregation is vague and unenforceable by the court; and
- (10) whether the CHA's duty to cooperate with the receiver, beyond furnishing the receiver the information the receiver needs to fulfill its responsibilities, in the context of a HOPE VI revitalization plan, is vague and unenforceable by the court.

SUMMARY OF ARGUMENT

The August Order is an extraordinary intrusion of the federal judiciary into the governmental affairs of a local unit of government. As a result of the series of HOPE VI orders entered by the district court, the CHA may not prepare a HOPE VI plan or negotiate the plan with the City of Chicago or its tenants, as the CHA is required to do under federal law, without the full participation of the Receiver.

Further, the nature and extent of the Receiver's participation in a HOPE VI project is defined by the duties and responsibilities specified in the 1987 Receivership Order, without any analysis of whether those duties conflict with the federal requirements of HOPE VI. Under the August Order, the Receiver has full authority to negotiate and execute any aspect of an agreement that concerns housing development at the Cabrini-Green HOPE VI revitalization project, based solely on the fact the 1987 Receivership Order grants the Receiver authority to "negotiate and execute any contracts or other documents necessary or appropriate to implement the scattered site program," without regard for the fact that a HOPE VI plan is much broader and far more complex than the scattered site program originally instituted under the Injunction.

Perhaps most importantly, the August Order deprives the CHA of the right to resolve, through entry of a consent decree, litigation concerning the Cabrini revitalization project that is pending before another district court judge. In this, and in many other ways, the August Order goes well beyond the language of the district court's prior orders, on which it purported to

rely in entering the August Order. Accordingly, and as set forth below, the CHA respectfully requests that this Court vacate the August Order.

STANDARD OF REVIEW

The decision to impose a receivership over a defendant's assets is reviewed for an abuse of discretion. Illinois v. Hartigan, 871 F.2d 1336, 1344 (7th Cir. 1989). Under this standard, questions of law are reviewed de novo, and will be corrected on appeal regardless of the role of the judge in drafting the injunction. In re VMS Securities Litigation, 103 F.3d 1317, 1323 (7th Cir. 1996).

ARGUMENT

I. THE CHA'S POWERS AND AUTHORITY TO NEGOTIATE AND EXECUTE THE CONSENT DECREE AND TO DEFEND ITSELF IN LITIGATION HAVE NOT BEEN, AND CANNOT BE, TRANSFERRED TO THE RECEIVER

A. Power to Defend Litigation Has Not Been Transferred

The Cabrini-Green litigation involves the design and implementation of the Near North Redevelopment Initiative ("NNRI") as well as the HOPE VI revitalization plans for Cabrini-Green. (SSA-243) The plaintiff is the Cabrini-Green Local Advisory Council ("LAC"), the duly elected representatives of residents of the Cabrini-Green public housing project. (SSA-243 to SSA-244) The LAC alleged that the NNRI, including the CHA's HOPE VI plan, displaced Cabrini-Green residents and reduced the supply of affordable housing units at Cabrini, thereby resulting in a discriminatory impact upon African Americans, women and children. (Id.) The LAC asserted that the CHA had violated the Fair Housing Act, Title VI of the Civil Rights Act, the HOPE VI statute, the City's consolidated Plan required under the HOPE VI statute, and the Memorandum of Agreement between the CHA and the LAC. (Id.) Thus, the Cabrini

plaintiffs claimed that they should be permitted to remain at the Cabrini site (in a Limited Area).

(Id.)

The parties to the Cabrini-Green litigation have treated the litigation as separate and distinct from *Gautreaux*, and Judge Coar has considered the litigation unrelated to *Gautreaux*, but always on the understanding that any final order entered in the case would be subject to the approval of the *Gautreaux* Court. (Exhibit B at Exh.B.11) From the outset of the litigation, it was understood that the claims and goals of the Cabrini LAC conflicted with the *Gautreaux* scattered-site desegregation remedy, because the Cabrini-Green public housing residents were demanding their right to remain in their neighborhood. The goal of the litigation was to have sufficient replacement housing for displaced residents constructed in the Cabrini Planning Area.

The consent decree balances the CHA's obligation to demolish public housing and provide replacement housing (on site, off site, Section 8 certificates or existing scattered housing) and the right of the displaced residents to remain in their community.⁶ (SSA-246 to SSA-273) Demolition, the location and number of replacement housing units, and the criteria for the selection of residents to live in the replacement units, were entwined in the dispute that was the subject of the litigation. One issue could not be negotiated without the others. (Id.) All had to be resolved through the same solution.

Given the broad claims alleged against the CHA, the scope of the consent decree (it would resolve the CHA's liability under the NRRI and its Memorandum of Agreement with

⁶ Plaintiffs have maintained that the displaced Cabrini residents have no right to remain in the Cabrini neighborhood. (Pl. First Response Brief, filed with this Court on July 29, 1998 at ____) The CHA addressed those arguments in its reply brief. (CHA Reply I at ____)

the LAC), the integrated issues being negotiated, and the Receiver's limited authority to negotiate contracts regarding new public housing (and not demolition or tenant eligibility), the CHA had full power and authority to settle the litigation. If that were not the case, then the CHA's exposure under the LAC's claims would be controlled by the receiver.

Moreover, if the receiver was empowered to negotiate the number and location of replacement housing, the receiver indirectly would be dictating the demolition policies and other activities that are covered by the consent decree, but clearly outside the receiver's jurisdiction. There is no order transferring to the receiver the CHA's power and authority regarding demolition and tenant selection to resolve litigation such as the Cabrini-Green case. There is no order, and should be no order, transferring to the receiver the CHA's power and authority to defend itself in litigation.

B. The Receiver Has No Right To Negotiate And Execute The Consent Decree

The consent decree is not a contract which the receiver has exclusive authority to negotiate and execute. The consent decree deals with matters over which the receiver has no authority, specifically demolition of high-rise projects and the criteria for residents who will reside in replacement housing. There has been no transfer of the CHA's power and authority to negotiate and execute contracts that necessarily deal with subjects in which both the CHA and the receiver have varied responsibilities. The receiver has no power and authority to negotiate and execute a contract that involves the CHA's exercise of its power and authority, regardless of the fact that the contract is incident to the development of public housing. That is a subject that must be addressed in the order appointing the receiver.

The receiver's authority to negotiate and execute contracts incident to the development of public housing made sense when the receiver had all of the CHA's powers and

responsibilities for the development of public housing. The Receivership Order did not contemplate the situation where the CHA has substantial power and authority over an entire development project except for the one component of that project that involves new public housing. There was no consideration in the order appointing the receiver regarding the respective rights and obligations of the CHA and the receiver in the HOPE VI context.

II. THE CHA HAS THE POWER AND AUTHORITY TO SEEK A WAIVER OF THE INJUNCTION AND THE RECEIVER HAS NOT BEEN AND SHOULD NOT BE APPOINTED TO REVIEW THE MERITS OF A HOPE VI PLAN

A. The CHA Has The Right To Seek A Waiver Of The Injunction

The waiver process has been discussed in theoretical terms in the consolidated appeal. (CHA First Opening Brief, filed with this Court on June 29, 1998, at 31-34; Pl. First Response Brief, filed with this Court on July 29, 1998, at 46-7; CHA Reply I at 9-11) The August Order puts the waiver process front and center. The Cabrini HOPE VI plan described in the consent decree does not provide for any replacement units to be built in the General Area. (SSA 243 to SSA-273) The locational requirements of the Injunction must be waived if, in fact, the Injunction applied to HOPE VI housing development. The CHA prepared the HOPE VI revitalization plan, and was entitled to decide that the Cabrini litigation should be resolved by agreeing to a plan that provided for no units to be built in the General Area, and to seek a waiver of the locational requirements of the Injunction.⁷ The district court agrees that if a waiver of the Injunction is granted, then the Receiver has no responsibilities. (AP-6) The August Order gives

⁷ That would not be permitted under the HOPE VI Orders. The *Gautreaux* court held in the May 19 Order that the 1998 HOPE VI application has to be prepared with the participation of the Receiver. The August Order holds that the plan must be negotiated with the full participation of the Receiver. Thus the plan for which a waiver inevitably will be sought must be a plan that the Receiver was prepared to endorse in the district court.

the Receiver substantial duties regarding the development of the plan for which a waiver must be sought. (*Id.*) The CHA can not even prepare a HOPE VI plan or negotiate it with the City and the LAC without having first obtained a waiver of the Injunction or prepared and negotiated the plan with the full participation of the Receiver. (*Id.*) To eliminate the Receiver's participation, the CHA must first develop and negotiate a plan that the Receiver is prepared to endorse when a waiver is sought. (*Id.*)

The CHA is bound by the Injunction and other court orders, but like any litigant it is entitled to seek a waiver of the requirements of the Injunction. The CHA decided to settle the Cabrini litigation by agreeing to a plan that would not be effective unless and until the *Gautreaux* court waived the requirements of the Injunction. That was the decision made by the CHA—to seek a waiver of the Injunction and to make receipt of that waiver a condition subsequent to the consent decree.

The LAC's constitutional and federal claims against the CHA are based on the claim that the Cabrini-Green residents are entitled to remain in their community in replacement housing. These claims and the LAC's goal directly conflict with the locational requirements of the *Gautreaux* Injunction. The CHA should not be required to negotiate an agreement that achieves the maximum number of units that would be built in the General Area, or that maximizes the benefits to the *Gautreaux* class of plaintiffs, or that vigorously pursued desegregation according to the Injunction's "standards," as a condition to applying for a waiver of the Injunction.

B. The Receiver Has No Authority To Negotiate A Plan for which a Waiver Will Be Sought

The receiver's authority is to build new public housing in compliance with the locational requirements of the Injunction. The *Gautreaux* court has never entered an order addressing the issue of the responsibilities of the receiver (or the plaintiffs) when a waiver of the requirements of the Injunction is sought by the CHA, or what the receiver's or the plaintiffs' role is in the waiver process. Clearly, the receiver was not appointed to make recommendations to the *Gautreaux* court in the event the CHA seeks a waiver. The receiver has not been appointed to examine, approve or evaluate a public housing plan for which a waiver of the Injunction will be sought. The receiver has not been appointed to negotiate the terms of a waiver of the locational requirements of the Injunction.

If the receiver had the responsibility for negotiating the consent decree, the receiver would not begin, as the CHA began, on the premise that the CHA would seek a waiver of the requirements of the Injunction. The receiver, by the nature of its appointment, would seek to enforce the locational requirements of the Injunction, and, when that proved impossible, to maximize the number of units that will be built in the General Area, and, when that proved impossible, to negotiate a plan that meets the receiver's concept of an acceptable substitute for building in the General Area. The receiver necessarily would be exercising its judgment, without any defining standards, as to what compromise "maximizes the desegregation goal" of the Injunction. (Receiver's Motion at ¶¶ 45, 46, 58, at SSA-17 and SSA-20) The receiver has not been appointed to exercise such judgment or to negotiate a plan that compromises the requirements of the Injunction.

The receiver wants to fully participate in the negotiation of the Cabrini HOPE VI plan for which the waiver will be sought. The *Gautreaux* plaintiffs want to approve the plan before it is finally agreed to by all of the parties whose agreement is necessary (the LAC and the City of Chicago) and well before it is presented to the Court for a waiver. (See, e.g., SSA-117, lines 9-20; SSA-118, lines 12-24) There is no order of the Court that holds that the CHA must propose a waiver of the Injunction before preparing the plan for which the waiver will be sought. The CHA is entitled to first develop the plan and obtain the necessary agreement of the LAC and the City for the plan for which the waiver will be sought.⁸ Any intrusion of the receiver or the plaintiffs in the preparation of the plan for which a waiver will be sought is unwarranted; no need for such intrusion has been shown; and, such intrusion violates principles of federalism and separation of powers.

III. THERE ARE NO CLEAR ORDERS DEFINING THE RECEIVER'S AUTHORITY REGARDING HOPE VI PROGRAMS THAT INFORM THE CHA OF ITS OBLIGATIONS

A. The February Order.

In the February Order, the district court ruled as follows: "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." (SSA-34) In reaching this conclusion, the district court conducted an analysis of whether there were locational requirements in HOPE VI that were in conflict with the locational requirements of the Injunction. (SSA-32 to SSA-33) The Court concluded: "We see no incompatibility between the HOPE VI program and the judgment order." (SSA-33) The Court's focus was on

⁸ In the past, waivers have been negotiated with the plaintiffs before the plan for which a waiver is sought is presented to the Court. However, there is no court order binding the CHA to this process.

the locational requirements of the Injunction. (Id.) Thus, in enforcing the 1969 Injunction, as interpreted by the February Order, the receiver is to enforce the locational requirements of the Injunction. No other requirements have been described.

The August Order was entered knowing that the Cabrini HOPE VI plan would not comply with the locational requirements of the Injunction and that a waiver would be sought by the CHA. (AP-6) The district court will consider a waiver only after receiving the advice and recommendation of the Receiver on the merits of the plan. (Id.) There are no defined standards under which the Receiver would review the plan. It is clear that the district court and the Receiver intend to review the plan for which a waiver is sought to determine whether the desegregation goals of the Injunction have been satisfied or maximized. (AP-6; SSA-17 and SSA-20) Nothing in the HOPE VI Orders informs the CHA of what is required to satisfy the desegregation goals of the Injunction beyond the scattered site program as originally instituted in the Injunction. If the locational requirements of the Injunction cannot be met, there is nothing that informs the CHA of any other standard that must be met.

B. The Receivership Order

The Receivership Order provides that 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 the following:

1. submit to HUD applications for funding, development programs and other documents;
2. select the sites and acquire the sites for the scattered site program, including setting policies respecting the location of sites and buildings to be acquired;
3. relocate occupants, when necessary;
4. construct and rehabilitate dwelling units;

5. design and provide specifications for the construction and rehabilitation of dwelling units; and
6. negotiate and execute any contracts or other documents necessary or appropriate to implement the scattered site program.

(SSA-9 TO SSA-14)

These duties were straightforward when dealing with the scattered site program that was in existence at the time of the Receivership Order. The receiver could identify a site in the General Area on which it could build the maximum number of units permitted under the Injunction. It could design and provide specifications for the construction of those units. It could relocate occupants of buildings it acquired. It could seek and obtain funding from HUD that was available to develop new public housing, a formidable task made easier by virtue of the HUD consent decree that obligated HUD to provide funds for 7100 units of housing. It is plain that none of the receiver's duties set forth in the Receivership Order has anything to do with a plan for which a waiver will be sought.

Further, the Receiver was not required to make overarching policies regarding site location and buildings to be acquired. The policies had already been clearly set out in the 1969 Injunction. The Receiver has not been appointed to make policy decisions for the CHA.

C. The Receivership Order Conflicts With HOPE VI.

The district court has never analyzed or considered the question whether the duties assigned to the receiver in the Receivership Order conflict with the statutory requirements of HOPE VI. When the receiver's duties set forth in the Receivership Order are examined in light of the requirements of the HOPE VI statute, they are much less clear. Again, that is because the amount, location, and design of new housing is only part of a complex revitalization plan that must be negotiated with the City and the Local Advisory Council. It is not determina-

ble from the Receivership Order whether and how the stated duties apply to a HOPE VI program.

Most importantly, under the statutory provisions of HOPE VI, the developer for any HOPE VI project must be determined through a competitive Request For Proposals. (See, e.g., CHA Reply I at 20 and citations therein) The CHA is not the developer of the project that will design, provide specifications for and construct new public housing built with HOPE VI funds. The receiver's powers cannot be greater than the CHA's powers. Since the CHA is not the developer, the receiver cannot be the developer. The district court cannot order that the receiver function as the developer at Cabrini-Green because that would directly conflict with federal law.

Other duties of the receiver under the Receivership Order are ambiguous on their face when applied to HOPE VI plans. For example, the receiver is obligated to relocate occupants, "when necessary." (SSA-224) In the context of HOPE VI, the literal language of the Receivership Order, as interpreted by the district court, would allow the receiver to relocate public housing residents who are displaced due to the demolition of high-rise housing projects. However, it is highly doubtful that the 1987 Receivership Order can authorize the receiver to take over the CHA's powers and responsibilities to relocate the hundreds of public housing families who have been or will be displaced by the demolition activities of the CHA. The receiver, a private for-profit housing developer, has no apparent qualifications or experience to undertake such a massive task. It would appear, but is not certain given the ambiguous language of the Receivership Order in this context, that this duty of the receiver is not applicable to a HOPE VI project.

D. Orders of May 19, 21 and 22 Did Not Clarify Receiver's Duties.

In the Court's order of May 19, 1998, the Court stated:

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 see no reason to treat HOPE VI funds differently for purposes of the order appointing the Receiver. . . 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.

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.

The Court also stated that:

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. . . .

(SSA-66)

The Court did not identify the requirements of the *Gautreaux* Injunction according to which the receiver should measure the CHA's HOPE VI proposal. The only requirement specifically referred to by the Court was in the February Order, which held that the locational requirements of the Injunction must be met. (SSA-34) Nowhere did the Court state what decisions or activities in a HOPE VI plan are ultimately the Receiver's responsibility. (See SSA-66) These orders only muddled the waters further.

The Court did state in the May 19 Order that "if the CHA is permitted to submit a HOPE VI application without the Receiver's input, that application may violate the *Gautreaux* requirements and cause further unnecessary delay in the desegregation of Chicago public housing." (SSA-66) This indicates that the *Gautreaux* court believes that the receiver has some

duty to make sure that the HOPE VI application does not violate *Gautreaux* requirements.

However, those requirements other than the locational requirements, are not identified.

Certainly, there is no order appointing the receiver to assure that the HOPE VI application, or a HOPE VI revitalization plan, in whole or in part complies with any other purported *Gautreaux* requirement.

E. Responsibility For A HOPE VI Project Cannot Be Shared.

Prior to the HOPE VI orders, there was no division of responsibility between the CHA and the receiver. Under the HOPE VI order, there is now a sharing of responsibility. The orders did not clarify what is required of the CHA when the CHA and the receiver share responsibility for various aspects of a HOPE VI project. The May orders did not clarify which, if any, of the responsibilities specifically identified in the Receivership Order remained the responsibilities of the receiver in a HOPE VI project in which the receiver is not the developer. The orders did not clarify the receiver's responsibilities with regard to existing HOPE VI projects such as Cabrini-Green.

The consent decree reveals the complexity of a Hope VI plan. (See SSA-243 to SSA-273) The basic tension created in a HOPE VI plan is between demolition and replacement housing (such as, the number and location and eligibility for occupancy). The consent decree resolves the tension first by the residents' agreement to a phased demolition program that would begin with the immediate demolition of specific buildings. (SSA-246 to SSA-249) In return the CHA agrees to such things as the specific number of replacement units to be built within the HOPE VI Planning Area (the Cabrini neighborhood), and the eligibility requirements for such units. The City of Chicago also agreed to provide the CHA with housing for displaced Cabrini-

Green families who meet certain eligibility requirements. Beyond this the consent decree reflects the negotiation of other elements of the plan.

Due to the entwined issues, it is unrealistic to allow the Receiver carte blanche authority over some aspects of replacement housing (and even those aspects are not clear and will be the subject of further dispute). The CHA must be able to give-and-take in the negotiation process.

IV. THE CHA'S DUTY TO VIGOROUSLY PURSUE DESEGREGATION IS VAGUE, UNENFORCEABLE, AND NOT PART OF THE RECEIVER'S RESPONSIBILITIES; ANY SUCH DUTY WOULD BE FULFILLED BY IMPLEMENTATION OF HOPE VI PLANS IN ACCORDANCE WITH FEDERAL LAWS

A. The Receiver Is Relying On CHA's Duty to Pursue Desegregation.

The receiver must be relying on, and seeking to enforce, the CHA's duty to pursue desegregation under Article VIII of the 1969 Injunction, which provides as follows:

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.

The Court relied on Article VIII of the Injunction to support the Court's statement in its February 25, 1998, order that "the CHA is duty-bound to vigorously pursue desegregation opportunities." (SSA-33) The receiver asserts that it will: (1) make sure that "any agreement negotiated by the CHA" gives "adequate weight to the CHA's desegregation obligations under this Court's Order," and makes no "compromises that limit desegregation opportunities that would otherwise be available;" (2) "implement the Court's important desegregation remedies;" and (3) assure that Cabrini-Green is developed "in a manner that effectuates the desegregation

remedy in this case.”⁹ (Receiver’s Motion, ¶¶ 45, 46, and 48, respectively, at SSA-17 and SSA-20) The receiver clearly believes it is entitled to assure that the totality of the plan, which goes far beyond building new public housing units, meets with its approval.

The Receivership Order cannot properly be read as appointing the Receiver to enforce this duty. The receiver’s reliance on Article VIII expands its duties well beyond those to which it was appointed. This is clear from the letter dated July 23, 1998, from Michael Shakman to Carole Wilson, Associate General Counsel of HUD (SSA-162), in which it was asserted that the receiver has a substantial role in numerous aspects of a proposed Memorandum of Agreement Among The Illinois State Historic Preservation Officer, U.S. Department of Housing and Urban Development, the City of Chicago, and the Advisory Council on Historic Preservation for The ABLA Redevelopment Project (the “Agreement”). The receiver asserted as a justification for providing it with a role in the Agreement that the “selection criteria for the proposal ultimately will have to include maximizing the potential for remedial benefits to the plaintiff class in the *Gautreaux* litigation,” that the CHA is obligated in its rehabilitation activities “to be sensitive to and to further the desegregation goals of the *Gautreaux* orders;” and that the Receiver is entitled to be consulted by the CHA regarding decisions related to rehabilitation of any historic property in the Project Area so that the Receiver may evaluate the impact of

⁹ The receiver clearly is not focusing on the specific desegregation remedy in this case, which is the requirement that the CHA build one unit of public housing in the General Area for each unit of public housing that it builds in the Limited Area. It has been known from the beginning of the Cabrini-Green planning that compliance with the locational requirements of the Injunction was impossible. The Cabrini-Green lawsuit alone demonstrates this fact.

rehabilitation (its location, timing, type of housing resulting, etc.) on the overall realization of desegregation objectives in implementation of the Project.¹⁰ (*Id.*) (Emphasis added).

The receiver has no responsibility under any order entered in this case to exercise authority over any activity of the CHA based on the receiver's interpretation of whether the activity furthers the desegregation objectives of *Gautreaux*. The receiver has not been appointed by the Court to enforce the CHA's compliance with such a duty or to judge whether HOPE VI funded projects, which are governed by federal statute and regulation, violate a duty to vigorously pursue desegregation as unilaterally defined by the receiver.

B. The Duty To Pursue Desegregation Is Fulfilled By The CHA's Implementation Of Its HOPE VI Projects

The CHA agrees that it is duty-bound to pursue desegregation. The CHA believes that it fulfills this duty and that its activities in implementing HOPE VI programs is consistent with that duty. So long as the CHA complies with the statutory requirements of HOPE VI, there can be no doubt that the CHA is complying with the Fair Housing Act and the Civil Rights Act. As this Court recognized in its February 23, 1998, order, "Congress and HUD, through HOPE VI, have afforded the CHA an opportunity both to revitalize distressed public housing neighborhoods and to desegregate public housing..." (SSA-33) HOPE VI is subject to the Fair Housing Act's requirement that HUD affirmatively administer its grant programs to assist in ending discrimination and segregation. NAACP v. Secretary of HUD, 817 F.2d 149,

¹⁰ The receiver has no duties regarding the CHA's rehabilitation activities. Moreover, there is nothing in the Receivership Order defining the receiver's duties that indicates that the receiver was appointed or has a duty to maximize remedial benefits to the *Gautreaux* class of plaintiffs, to assure that the CHA's rehabilitation activities comply with its obligations to further the desegregation goals of the Injunction, or to evaluate the impact on the overall realization of desegregation objectives, of the CHA's rehabilitation activities, or any other activity, in implementing a HOPE VI project.

155 (1st Cir. 1987) (Breyer, C.J.). Under these circumstances, it would be totally unnecessary and improper to appoint a receiver to judge whether the CHA's HOPE VI activities fulfill its duty to seek desegregation.

C. The Duty To Pursue Desegregation Is Vague And Not Judicially Enforceable

The duty to vigorously pursue desegregation--as set forth in the 1969 Injunction - is not judicially enforceable. Article VIII is vague and does not sufficiently inform the CHA of what actions are enjoined or required to be performed in order to comply with the duty to pursue desegregation. Instead, the remainder of the Injunction mandates that the CHA accomplish this goal in a specific manner, i.e., by building housing through the scattered site building program.

Further, Article VIII is a particularly vague command in connection with HOPE VI programs. Desegregation is only one of HOPE VI's congressional goals. Other goals include the restoration of neighborhoods that contain some of the worst public housing in the country, ending the social and economic isolation of such neighborhoods, creation of mixed-income replacement housing, and a true partnership between the public housing authority, its residents and the local government in trying to achieve these goals. The receiver's opinion that a HOPE VI plan does not adequately pursue desegregation may, and likely would, be different from the CHA's, Cabrini tenants', and the City's view of whether desegregation, one among many goals that the plan seeks to accomplish, has been adequately pursued.

There has been no claim in the *Gautreaux* case by the *Gautreaux* plaintiffs or the receiver that the CHA's HOPE VI programs are in anyway unconstitutional or violative of the Fair Housing Act, and Article VIII provides no standards for determining whether in a HOPE VI project the CHA is satisfying its duty to desegregate under the 1969 Injunction. Moreover, there

has been no claim by the *Gautreaux* plaintiffs that the Cabrini Consent Decree, as created by the CHA, the Cabrini tenants, and the City is unconstitutional or violative of the Fair Housing Act.

V. THE CHA'S DUTY OF COOPERATION IS VAGUE AND UNENFORCEABLE

A. The Duty of Cooperation Is Unclear.

The duty to cooperate is derived from the 1987 Receivership Order and the May 19 Order that granted the Receiver's Emergency Motion for Entry of Order Implementing CHA's Duty of Cooperation. (SSA-66) Paragraph 7 of the Receivership Order provides as follows:

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 and files relating to the scattered site program.

(SSA-27)

The receiver's first emergency motion, the one that culminated in the May 19 Order, sought an order from the Court that the CHA 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. (*Id.*) The May 19 Order granting the motion held that (a) the receiver has "all powers of CHA" with regard to the HOPE VI public housing development programs necessary and incident to the development and administration of such programs and (b) the CHA is obligated to cooperate with the receiver and to provide the receiver with the information it needs. (*Id.*) In that regard, the May 19 Order reads as follows:

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.

(Id.) However, neither the Receivership Order nor the May 19 Order define the CHA's "duty of cooperation" beyond stating that it includes providing the Receiver with certain kinds of information. (See SSA-22 to SSA-29 and SSA-66)

In later orders, the district court further explained the May 19 Order. On May 21, 1998, the district court entered an order that stated as follows:

We do not wish to be misunderstood; our [May 19] order neither gave sole authority over HOPE VI in Chicago to the Receiver nor gave the Receiver sole authority to prepare Chicago's 1998 HOPE VI application, as a motion filed earlier today by the CHA states.

(SSA-160) In an order of May 22, 1998, the district court explained that the May 19 Order "merely stated that the Receiver would have to be involved (i.e. that the Receiver and the CHA would have to cooperate) in preparing" the 1998 HOPE VI application. (SSA-161) The nature and extent of the receiver's and the CHA's involvement was not described. There has been no other articulation. There are vast differences in the parties' perceptions of what the duty of cooperation requires of the CHA, notwithstanding the Court's May 19, May 21 and May 22 orders. Consequently, disputes have arisen between the CHA and the receiver. The correspondence between counsel for the CHA and the receiver shows the extent and source of the disagreements. (See, e.g., SSA-71 to SSA-75; SSA-76 to SSA-82)

Prior to entry of the HOPE VI orders, the duty to cooperate needed less definition. However, when the housing development under the control of the receiver is a part of a HOPE VI plan, both the receiver and the CHA have duties, because the development of new housing is just one of many elements of the HOPE VI plan. It is not possible to isolate any element of a HOPE VI plan and give authority for the single element to a third party. Every-

thing has to be negotiated with the City of Chicago and the Local Advisory Councils. Two people with different views representing the CHA cannot effectively negotiate a HOPE VI plan or the consent decree in the Cabrini case.

B. The CHA's Duty of Cooperation Is Not Judicially Enforceable.

The often stated applicable legal principle is set forth in Clark v. Coye, 60 F.3d 600, 604 (9th Cir. 1995):

When the Department is expected to conform its behavior to the injunction or face a contempt sanction, that injunction must be clear enough on its face to give the Department notice that the behavior is forbidden. The class plaintiffs, in seeking to enforce the injunction, must show that the injunction clearly forbids a certain type of conduct. That is why Federal Rule of Civil Procedure 65(d) "requires the language of injunctions to be reasonably clear so that ordinary persons will know *precisely what action is proscribed*," and why "all ambiguities are resolved in favor of the person subject to the injunction."

(Emphasis in original; citations omitted)

What constitutes "cooperation" depends on the eye of the beholder. The duty to cooperate is capable of many different interpretations and different people will have different ideas as to what conduct is adequate to satisfy such a duty. Without standards that define for the CHA what is required or prohibited, the duty of cooperation is not enforceable through the Court's power of contempt. Original Great American Chocolate Chip Cookie Co. v. River Valley Cookies, Ltd., 970 F.2d 273, 276 (7th Cir. 1992).

CONCLUSION

WHEREFORE, for all of the forgoing reasons, the CHA respectfully requests that this Court vacate the August Order.

Respectfully submitted,

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~~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 12 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 8, 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 preceding 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 I);

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 purposed 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.

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. § 1437i, 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 [*39] 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. § 1437f, 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.

ENTER:

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
IN CONNECTION WITH THE ISSUES PRESENTED BY APPEAL NUMBER 98-3145**

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<u>TAB</u>	<u>PAGE NOS.</u>	<u>DOCUMENT</u>
A	AP-1 to AP-4	Docket for <u>Gautreaux, et al. v. Chicago Housing Authority</u> , Case No. 66 C 1459, (N.D. Ill.) (dated June 26, 1998).
B	AP-5 to AP-6	Order dated August 12, 1998.

Proceedings include all events.

TERMED

APPEAL

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

CONV

~~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 Abla 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 Abla 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 Abla 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]

6/26/98 -- SEVENTH CIRCUIT transcript information sheet (tlm) [Entry date 06/29/98] [Edit date 06/29/98] [1:66cv1459]

7/7/98 -- TRANSCRIPTS of proceedings for the following date(s): 02/10/98, 05/19/98, 05/20/98 Before Honorable Marvin E. Aspen (3 vols. I - III). (tlm) [Entry date 07/08/98] [1:66cv1459]

7/16/98 -- MOTION by plaintiff to supplement record on appeal ; Notice of motion. (tlm) [Entry date 07/22/98] [1:66cv1459]

Proceedings include all events.

TERMED

APPEAL

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

CONV

7/21/98 -- ORDER Supplementing Record on Appeal .[0-1] (tlm)
[Entry date 07/22/98] [1:66cv1459]

7/21/98 -- MINUTE ORDER of 7/21/98 by Hon. Marvin E. Aspen :
Plaintiffs' motion to supplement record on appeal is
granted. [0-1] The Clerk of the Court is directed to
supplement the record on appeal orders of this court dated
11/21/83, 01/13/84, 07/08/87, and 06/19/98; Transcript of
hearings before this court of 05/22/87, 07/27/87 and
08/03/87; and motion of CHA, plaintiffs and the receiver
dated 06/19/98. Mailed notice (tlm) [Entry date 07/22/98]
[1:66cv1459]

7/22/98 -- MOTION by Concorde Mfr Inc for leave to sue receiver
(Attachment) (Exhibits); Notice of motion. (tlm)
[Entry date 08/13/98] [1:66cv1459]

7/30/98 -- EMERGENCY MOTION by receivers for entry of order directing
CHA to comply with 1987 Receivership Order and 1988 Hope VI
Orders (Exhibits). (tlm) [Entry date 08/03/98]
[1:66cv1459]

7/30/98 -- MINUTE ORDER of 7/30/98 by Hon. Marvin E. Aspen :
Receiver's emergency motion for entry of order directing
CHA to comply with 1987 Receivership Order and 1988 Hope VI
Orders [0-1] is taken under advisement. Defenants and those
aleigned with the defendants' position shall file a response
response to the motion by the close of business 08/06/98.
The Receiver and the parties aligned with the position
shall file a reply by the close of business 08/10/98. Joint
submissions will be welcomed. We also enjoin the defendants
from presenting any proposed consent decree to Judge Coar
until we haved ruled on the Receiver's emergency motion.
[0-1] Telephoned notice (tlm) [Entry date 08/03/98]
[1:66cv1459]

7/30/98 -- MINUTE ORDER of 7/30/98 by Hon. Marvin E. Aspen : Plaintiff
Concorde Manufacturing, Inc.'s motion for leave to sue
receiver is granted. [0-1] Mailead notice (tlm)
[Entry date 08/13/98] [Edit date 08/13/98] [1:66cv1459]

8/4/98 -- RE-NOTICE of motion for leave to sue reciever by Concorde
Manufacturing, Inc. (tlm) [Entry date 08/13/98]
[Edit date 08/13/98] [1:66cv1459]

8/6/98 -- MEMORANDUM on behalf of Cabrini-Green Local advisory Council
in civil action 96 C 6949, submitted by leave of court
(Exhibits); Notice of filing. (tlm) [Entry date 08/10/98]
[1:66cv1459]

8/6/98 -- MEMORANDUM by defendants in opposition toreceiver's
emergency motion (Exhibits). [0-1] (tlm)
[Entry date 08/10/98] [1:66cv1459]

Proceedings include all events.

TERMED

APPEAL

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

CONV

8/6/98 -- AFFIDAVIT of Brenda L. Grauer ; Notice of filing. (tlm)
[Entry date 08/10/98] [1:66cv1459]

8/6/98 -- AFFIDAVIT of Richard M. Wheelock; Notice of filing. (tlm)
[Entry date 08/10/98] [1:66cv1459]

8/6/98 -- MOTION by Chgo, Cty of for leave to file instanter
memorandum in excess of 15 pages ; Notice of motion;
Notice of filing. (tlm) [Entry date 08/12/98]
[1:66cv1459]

8/7/98 -- MEMORANDUM on behalf of plaintiff Cabrini-Green Local
Advisory Council in civil action no. 96 C 6949, submitted
by leave of court (Exhibits); Notice of filing. (tlm)
[Entry date 08/11/98] [1:66cv1459]

8/10/98 -- STATEMENT of Position by Chgo, Cty of with respect to
Receiver's 07/30/98 Emergency Motion; Notice of filing. (tlm)
[Entry date 08/12/98] [1:66cv1459]

8/10/98 -- REPLY by plaintiffs in support of receiver's emergency
motion for entry of order directing CHA to comply with 1987
Receivership Order and 1988 Hope VI Orders [0-1] (tlm)
[Entry date 08/12/98] [1:66cv1459]

8/10/98 -- AFFIDAVIT of Alexander Polikoff regarding CHA's motion reply
(Exhibits); Notice of filing. [0-1] (tlm)
[Entry date 08/12/98] [1:66cv1459]

8/10/98 -- MOTION by receiver (A) to file a reply memorandum in
excess of 15 pages and , (B) for leave to file separate
reply to Cabrini LAC's memorandum (Attachment) (Exhibits);
Notice of motion. (tlm) [Entry date 08/14/98]
[1:66cv1459]

8/11/98 -- MINUTE ORDER of 8/11/98 by Hon. Marvin E. Aspen :
Defendant's motion for leave to file instanter memorandum
in excess of 15 granted is granted. [0-1] Telephoned
notice (tlm) [Entry date 08/12/98] [1:66cv1459]

8/12/98 -- MINUTE ORDER of 8/12/98 by Hon. Marvin E. Aspen :
Receiver's motion for entry of order directing CHA to
comply with 1987 Receivership Order and 1988 Hope VI Orders
is granted. [0-1] (See reverse of minute order.) Mailed
notice (tlm) [Entry date 08/13/98] [1:66cv1459]

8/13/98 -- AGREED ORDER (tlm) [Entry date 08/19/98] [1:66cv1459]

8/13/98 -- MINUTE ORDER of 8/13/98 by Hon. Marvin E. Aspen : Enter
Agreed Order: The proposed modification of the Amended
Consent Decree is acceptable subject to the limited
involvement of the Receiver as a consultant on the design
and other aspects of the Proposed Housing. Mailed notice
(tlm) [Entry date 08/19/98] [1:66cv1459]

Proceedings include all events.

TERMED

APPEAL

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

CONV

8/14/98 -- MINUTE ORDER of 8/14/98 by Hon. Marvin E. Aspen : Receiver's motion (A) to file a reply memorandum in excess of 15 pages [0-1] and (B) for leave to file separate reply to Cabrini LAC's memorandum granted. [0-2] Mailed notice (tlm) [1:66cv1459]

8/14/98 -- REPLY by receiver to CHA'S memorandum in opposition to receiver's emergency motion (Exhibits). (tlm) [Entry date 08/17/98] [1:66cv1459]

8/14/98 -- RESPONSE by receiver to the Cabrini LAC's memorandum concerning the receiver's emergency motion. (tlm) [Entry date 08/17/98] [1:66cv1459]

8/24/98 -- NOTICE OF APPEAL by CHA and Joseph Shuldiner from motion minute order [0-1]; Notice of filing (\$105.00 PAID) (pp) [Entry date 08/25/98] [Edit date 08/25/98] [1:66cv1459]

8/24/98 -- DOCKETING STATEMENT by CHA and Joseph Schuldiner regarding appeal [0-1] . (pp) [Entry date 08/25/98] [1:66cv1459]

8/25/98 -- TRANSMITTED to the 7th Circuit the short record on appeal . Mailed notice to all counsel. (pp) [1:66cv1459]

8/25/98 -- MINUTE ORDER of 8/25/98 by Hon. Marvin E. Aspen : The Clerk of the Court is directed to terminate CHA's motion to clarify injunction (filed on 09/30/97) as denied to this court's order entered on 02/23/98. [0-1] No notice (tlm) [Entry date 08/31/98] [1:66cv1459]

8/28/98 -- ACKNOWLEDGEMENT of receipt of short record on appeal USCA 98-3145 (Attachment). (tlm) [Entry date 09/01/98] [1:66cv1459]

9/9/98 -- TRANSMITTED to the 7th Circuit supplement to appeal no. 98-1807 consisting of transcripts of proceedings before Judge Aspen on 02/10/98 and 05/19/98 (2 vols). Mailed notice

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	8/12/1998
CASE TITLE	Gautreaux 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:

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/Jury 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] Receiver's motion for the entry of an order directing the CHA to comply with the 1987 receivership order and our 1988 HOPE VI orders is granted.

- (11) ☒ [For further detail see order attached to the original minute order.]

☐ No notices required, advised in open court.		number of notices	Document Number		
☐ 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.	date docketed	docketing deputy initials	8/12/1998		
GL				courtroom deputy's initials	date mailed notice
		mailing deputy initials			

ORDER

The Receiver has moved for the entry of an order directing the CHA to comply with the 1987 receivership order and our 1998 HOPE VI orders. The plaintiffs and the City of Chicago support this motion. The CHA contests it.

The receivership order in this case gives the Receiver "all powers of CHA respecting the scattered site program necessary and incident to the development and administration of such program." It specifies that these powers include, *inter alia*, "negotiating any contracts or other documents necessary or appropriate to implement the scattered site program." It also provides that the CHA must provide the receiver with "full access to all information, records, documents, [and] files relating to the scattered site program." As we have instructed the CHA previously, compliance with our orders is not optional and we will take every necessary step to ensure the compliance of all parties.

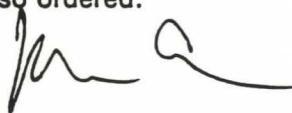
The present dispute arose when the local media reported that the CHA had reached an agreement with representatives of residents of the Cabrini-Green housing development with regard to future development on the Cabrini-Green site. This agreement, if approved, would settle a case brought by the residents against the CHA which is now pending before Judge Coar. The Receiver complains that it was not allowed to participate in the discussions which led to this agreement, and it asks that we enjoin the CHA from further unilateral non-elderly housing development activities and from implementing the Cabrini (and any other similar) deal, and that we compel the CHA to turn over control of such development to the Receiver and to disclose all information about CHA's non-elderly development activities to the Receiver.

The CHA's only meaningful objection to this request is that it has intended all along to seek a waiver of the primary injunction in this case, which, if we consented, would mean that the Receiver would have no role in development at Cabrini-Green. The problem is that *no waiver has been sought*. Without a waiver the CHA lacks the authority to unilaterally negotiate *any* contract or agreement respecting the construction of housing, for the receivership order provides that the scattered site program includes *all* non-elderly housing.

The CHA is hereby enjoined from developing or negotiating or otherwise pursuing any agreement with any person or entity regarding the development of dwelling units (a term defined in the original injunction in this case) without the full participation of the Receiver unless, of course, it has already secured a waiver for the contemplated development. By full participation we mean that the Receiver must have timely and unfettered access to "all information, records, documents, [and] files" relating to the contemplated development and that the Receiver must be given advance notice of all meetings (whether conducted in person or by any other means of communication) related to such development and allowed to attend and give his input. The Receiver, of course, possesses *all* of the CHA's development authority, so the CHA may not come to any agreement regarding development without his written consent.

As for the CHA's agreement with the Cabrini-Green representatives, the parties must now return to the drawing board and renegotiate their agreement with the full participation of the Receiver since the CHA has not yet secured a waiver of the injunction. If the CHA chooses instead to seek a waiver, it should know that we will consult the Receiver on the merits of the proposed waiver (and we will require the CHA to provide "all information, records, documents, [and] files" concerning the Cabrini-Green development and proposed waiver to the Receiver so that he may offer us intelligent and informed comments on the proposed waiver). So, the more prudent, effective, and efficient course will be to negotiate with the Receiver prior to seeking our involvement.

The Receiver's motion is granted. It is so ordered.



CERTIFICATE OF SERVICE

I, Nancy Eisenhower, an attorney, hereby certify that on Tuesday, September 15, 1998, I caused a copy of the foregoing BRIEF OF DEFENDANTS- APPELLANTS CHICAGO HOUSING AUTHORITY AND JOSEPH SHULDINER IN CONNECTION WITH THE ISSUES PRESENTED BY APPEAL NUMBER 98-3145 to be served via facsimile (brief only without exhibits) and hand delivery on counsel listed below:

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