

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

Nos. 98-1807, 98-2311, 98-3145

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

**DEFENDANTS-APPELLANTS'
PETITION FOR REHEARING EN BANC**

Susan Getzendanner
Nancy S. Eisenhower
Skadden, Arps, Slate, Meagher & Flom (Illinois)
333 W. Wacker Drive, Suite 2100
Chicago, Illinois 60606
(312) 407-0700
Counsel for Defendants-Appellants
CHICAGO HOUSING AUTHORITY and
EXECUTIVE DIRECTOR

Jerome M. Butler
General Counsel
CHICAGO HOUSING AUTHORITY

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Defendants-Appellants, the Chicago Housing Authority and its Executive Director (collectively, the “CHA”), respectfully petition this Court to rehear, *en banc*, the May 28, 1999, decision in this consolidated appeal. The decision by the two-judge Panel, dismissing the appeal for lack of appellate jurisdiction, is in direct conflict with a long line of decisions of this Court, including *Bogard v. Wright*, 159 F.3d 1060 (7th Cir. 1998); *Association of Community Organizations for Reform Now (ACORN) v. Illinois State Board of Elections*, 75 F.3d 304 (7th Cir. 1996); *Motorola, Inc. v. Computer Displays Int’l, Inc.*, 739 F.2d 1149 (7th Cir. 1984); and, most recently, *People Who Care, et al. v. Rockford Bd. of Educ.*, 171 F.3d 1083 (7th Cir. 1999). A copy of the Panel’s decision, *Gautreaux v. CHA*, Nos. 98-1807, 98-2311, 98-3145 (7th Cir. May 28, 1999) (“Slip Op.”), is attached hereto at Tab 1.

I. THE PANEL DISMISSED THE APPEAL OF THE FEBRUARY ORDER BY CREATING A NEW “RULE” OF APPELLATE JURISDICTION

The Panel dismissed the appeal by applying a “rule” of appellate jurisdiction announced for the first time in this case — the “*Bogard* rule.”¹ Slip Op. at 11-12. *Bogard* and *Motorola* are implicated when a party, such as the CHA, argues on appeal that a district court’s

¹ The CHA appealed three orders of the district court: an order entered February 25, 1998 (attached at Tab 2), in which the district court held that the locational restrictions from the 1969 injunction (the “Injunction”) apply to the CHA’s HOPE VI funds; an order entered May 19, 1998 (attached at Tab 3), requiring the CHA to “cooperate” and “coordinate” with the court-appointed receiver (the “Receiver”) in creating the 1998 HOPE VI application; and an order entered on August 12, 1998 (attached at Tab 4), enjoining the CHA and plaintiffs in a separate case before a different judge (the “*Cabrini* Court”) from presenting a proposed settlement agreement to that court, on the ground that only the Receiver has the authority to negotiate a HOPE VI plan. The Panel applied the “*Bogard* rule” to the first and third orders (the “February Order” and the “August Order,” respectively). The Panel dismissed the May Order on the ground that, because the Panel did not have jurisdiction over the other two orders, it had no pendent appellate jurisdiction over the May Order.

purported “interpretation” of an injunction is really an improper (and appealable) modification of an injunction. The question whether the district court’s order is a modification, as opposed to an interpretation, determines whether the order is appealable pursuant to 28 U.S.C. § 1292(a)(1) (“Section 1292(a)(1)”), because while Section 1292(a)(1) permits a party to appeal an order that has the effect of “modifying” an injunction, it does not permit a party to appeal an order that merely “interprets” an injunction.²

In this case, the Panel began its discussion of jurisdiction under Section 1292(a)(1), appropriately, with the observation that “[t]his court has repeatedly held that it will look beyond labels such as ‘clarification’ or ‘modification’ to consider the actual effect of the order.” Slip Op. at 10 (citing *Motorola*, 739 F.2d at 1155). The Panel erred, however, when it held that only a “glancing look” beyond such labels is permitted, and that “it must be *apparent or obvious* that an order has [the effect of modifying an injunction] before § 1292(a)(1) jurisdiction will be proper.” (Slip Op. at 11 (emphasis added).)

Moreover, according to the Panel, the *Bogard* rule *prohibits* an appellate court from making “an all-out inquiry” or “delv[ing] deeply” into the merits of a case to determine

² As this Court explained in *Motorola*, 739 F.2d at 1155,

The rationale for this approach is clear: an order labeled as an interpretation may substantially alter the legal relationship [set forth in an injunction]. An erroneous interpretation can have the same effect and be just as devastating to a party, as an order explicitly modifying or refusing to modify an injunction. A true interpretation, on the other hand, does not change the parties’ original relationship, but merely restates the relationship in the same terms. When the district court alters the legal relationship between the parties, whether by “modification” or “interpretation,” we have jurisdiction to review that change.

whether it has jurisdiction. Slip Op. at 10. Instead, the jurisdictional inquiry must be limited to a “preliminary jurisdictional inquiry” because, according to the Panel, appellate jurisdiction under Section 1292(a)(1) is triggered only where an “obvious” or “blatant” misinterpretation, rather than a “subtle” modification has occurred. *Id.* at 12.³

A. The Panel’s “Bogard Rule” of Appellate Jurisdiction Conflicts With This Court’s Prior Decisions.

The Panel’s “Bogard rule” in fact conflicts with *Bogard* and numerous other prior decisions of this Court. In *Motorola*, this Court expressly recognized that in some cases, “the true effect of the modifying order *will not be obvious, thus necessitating a careful review of the merits* to determine the order’s effect” and thus the appellate court’s jurisdiction. *Motorola*, 739 F.2d at 1155 (emphasis added). The contrast with the Panel’s statement that a modification “*must be apparent or obvious . . . before § 1292(a)(1) jurisdiction will be proper,*” so that the court need not “delve deeply into the merits,” could hardly be more stark. *See* Slip Op. at 10.

In *Motorola*, this Court recognized the “aspects of circuitry” in the process of considering the merits of a case to determine the court’s jurisdiction. *Id.* at 1155-56, n.9. Nevertheless, in order to enforce Section 1292(a)(1) as enacted, the *Motorola* Court held that unless a cursory examination of the order on appeal reveals that the “appellant’s allegation of a modification is frivolous,” dismissal on the basis of a cursory examination is improper. *Id.* at 1155.⁴

³ Section 1292(a)(1) makes no distinction between “appealable” and “unappealable modifications” or “blatant and obvious” versus “subtle modifications.”

⁴ The Court also stated that it would dismiss summarily if the “alleged modification is
(continued...)

B. Contrary to this Court's Prior Decisions, the Panel Did Not Determine the Effect of the Orders Being Appealed.

In *Motorola*, this Court held that an appellate court faced with the jurisdictional question at issue here must make *some* definitive determination as to the effect of the district court's decision in order to determine its own jurisdiction under Section 1292(a)(1). *See Motorola*, 739 F.2d at 1155 ("To determine our jurisdiction we must look . . . to the actual effect of [the] order."). Indeed, in *Bogard*, this Court examined the language of the consent decree at issue and made a determination as to the effect of the order being appealed. *See Bogard*, 159 F.3d at 1064 (order extending term of monitor not a modification). In this case, however, the Panel concedes that it made no such determination: "[T]here is no obvious misinterpretation . . . [i]n fact, there *may be* no misinterpretation at all." Slip Op. at 12 (emphasis added).⁵

The Panel concluded that there was "no obvious misinterpretation" in this case without even considering the CHA's proposed interpretation. The CHA argued that the Injunction could not be interpreted without considering the context in which the Injunction was entered. Yet the Panel refused to take even a "glancing look" at an interpretation based on the context of the Injunction because, it asserted, "such an analysis would aim to uncover subtle rather than blatant misinterpretations." *Id.* at 12.

However, an analysis of an injunction's context is not a search for a "subtle" interpretation. The meaning of an injunction comes, in part, from the context in which it was

⁴ (...continued)
merely an attempt to relitigate the issuance of the original injunction." *Id.*

⁵ Under the *Bogard* rule, parties are protected only from "rogue" district court judges who are "wreaking havoc with an injunction or consent decree." Slip Op. at 11.

entered. *See, e.g., Youakim v. McDonald*, 71 F.3d 1274, 1283 (7th Cir. 1995) (an injunction, “like any other disputed writing,” must be construed in the proper context). The interpretation that a court gleans from the injunction’s context is not itself “subtle” or “blatant” — it is simply a description of the parties’ legal relationship.

This Court has held that it has appellate jurisdiction “[w]hen the district court alters the legal relationship between the parties, whether by ‘modification’ or ‘interpretation.’” *Motorola*, 739 F.2d at 1155 (emphasis added). It has never before held that its jurisdiction depends solely on the ease with which it can *detect* such an alteration. The Panel does not suggest that, if the CHA’s “subtle” argument is correct, the district court’s decision left the parties’ relationship unaltered. The Panel merely holds that it need not consider any “subtle” arguments, *regardless of their impact on the parties’ legal relationship*. This holding is in direct conflict with *Motorola* and *Bogard*, as well as the other cases cited above.⁶

C. The “Bogard Rule” Leaves The CHA With No Way To Appeal A Post-Judgement Order That Has Irrevocable Consequences.

As in *People Who Care*, 171 F.3d at 1086, “there is no way” that plaintiffs or the Receiver “can be made to repay millions of dollars to the taxpayers” of the United States (or reverse a massive building and revitalization program) if it turns out “several years from now when this litigation is finally wound up,” that the CHA had the right, under the Injunction, to

⁶ With regard to the CHA’s reliance on ACORN for the proposition that this Court has jurisdiction under Section 1291, the Panel asserts that “ACORN does not stand for the proposition that an order outlining the steps to comply with a prior injunction always qualifies as a new final judgment.” Slip Op. at 9. The CHA did not argue for such an interpretation of ACORN. Instead, the CHA argued that an order such as *this* order, that subjects a \$100 million federal program to the dictates of a thirty year old injunction, qualifies as a new final judgment.

conduct its HOPE VI activities without interference. According to the Panel, however, the CHA can appeal any allegedly “subtle” modification of the Injunction by moving in the district court to modify or terminate the improperly-modified Injunction. Slip Op. at 11. “Whether the district court grants or denies the requested modification or termination, the resulting order is clearly appealable under § 1292(a)(1).” *Id.* At that point, the CHA would end up in this Court, but now able to appeal the issues pending here.

The Panel’s proposed solution for the CHA demonstrates precisely why this Court will conduct a “careful review of the merits to determine the order’s effect.” *Motorola*, 739 F.2d at 1155. In institutional reform cases, a party cannot seek to modify or terminate an injunction on the ground that the district court entered an order that improperly modified the parties’ legal relationship. The movant bears a significant burden to establish that a change in circumstances warrants revision or termination of decree. *See, e.g., Rufo v. Inmates of the Suffolk Cty. Jail*, 502 U.S. 367, 382 (1992) (movant must demonstrate changed circumstances to justify modification); *David B. v. McDonald*, 116 F.3d 1146 (7th Cir. 1997) (change in law justifies vacatur of decree pursuant to Rule 60(b)(5)). Thus, the “*Bogard* rule” permits defendants to seek appellate review of their obligations under an injunction, but only if they are first willing to expend their own resources to request from the district court what, in fact, may be plaintiffs’ original relief. *Cf. Matter of Hendrix*, 986 F.2d 195, 200 (7th Cir. 1993) (a party whose conduct is governed by the terms of an injunction has the right to seek clarification of the injunction).

In this case there is no need for a complex hearing on the requisite factors that must be established to modify or vacate the decree. The district court based its findings on its interpretation of the Injunction. The issues raised below are fully presented in this appeal and

should be decided by this Court as a matter of law. Substantial governmental resources have been expended in bringing these issues before this Court and those resources should not be wasted. The CHA is entitled to a conclusive determination of its responsibilities under the Injunction.

The Panel asserts that its suggested “solution” for the CHA comes directly from *Bogard*. In *Bogard*, this Court observed that the procedure outlined by the Panel would be the appropriate appellate remedy for the parties in *Bogard*. *Bogard*, 159 F.3d at 1064. But that observation was made *after* the Court determined conclusively that the order on appeal had not modified the Injunction. *Id.* The *Bogard* court does not suggest that the parties engage in the procedure outlined above in order to confirm the meaning of the injunction in the first instance.

II. THE DISTRICT COURT’S ORDERS HAVE SUBSTANTIALLY ALTERED THE PARTIES’ LEGAL RELATIONSHIP.⁷

The February Order improperly modified the Injunction by granting plaintiffs control over CHA funds not subject to the Injunction’s strictures. (Feb. Order, Tab 2, at PR-19.) The CHA briefly highlights, immediately below, the context required to reach a proper interpretation of the Injunction and the effect of the district court’s orders on the parties’ legal relationship. The CHA’s prior briefs discuss the merits of the three consolidated appeals in more detail and present further arguments not presented here.

⁷ The orders on appeal are attached at Tabs 2, 3, and 4, respectively. The original Injunction is attached at Tab 5. The original Receivership Order is attached at Tab 6.

A. The Context Necessary To Determine That The February Order Modified the 1969 Injunction and Is Appealable.

(1) The Injunction. The mandatory injunction entered in this case in 1969 created the “scattered-site building program” in Chicago. Slip Op. at 3. The Injunction forbade the CHA from building any unit of public housing in the “Limited Area” (Cook County census tracts with a “floor” of 30% “non-white” residents) unless the CHA first built three units (later reduced to one unit) of public housing in the “General Area” (everything outside the Limited Area) in accordance with detailed requirements as to location, size, and density of the scattered site public housing project. *Id.* The goal of the Injunction was to use new public housing to create integrated neighborhoods throughout the City, thus providing CHA tenants with the opportunity to live in such neighborhoods. (In 1969, 99% of the tenants of public housing were African-American, as were 90% of the individuals on the waiting list.) *Id.* at 2.

The Injunction does not govern the CHA’s activities with regard to public housing that existed at the time of the entry of the Injunction, “whatever,” as plaintiffs say, those activities might be. (Pl. App., Ex. E at 3.)⁸ None of the provisions of the Injunction purports to bring all of the CHA’s operations under the control of the district court. None of the provisions refers to the maintenance or operation of, or requires the destruction, demolition, or retirement over time of, the housing stock that existed in the Limited Area at the time of the entry of the

⁸ “Pl. App” refers to the appendix attached to Appellees’ Motion to Dismiss Appeal, filed on April 12, 1998. “Def. App.” refers to the appendix accompanying the CHA’s response to the Appellees’ Motion, filed on April 27, 1998. A consolidated table of contents is attached at Tab 9. These two appendices contain, among other things, all of the briefs filed in the district court by plaintiffs and defendants in connection with the February Order, as well as the transcript of the argument.

Injunction. Neither does the Injunction require the CHA to alter any of the housing stock in the Limited Area to conform to the Injunction's "de-concentration" proscriptions. The Injunction "merely" requires the CHA to place half (now one-third) of its new housing stock in the General Area. In this way, the Injunction provides non-white tenants with an indirect choice over time, because it creates public housing in neighborhoods in the General Area in which these tenants might choose to live.

(2) HOPE VI, 42 U.S.C. § 1437I (attached hereto as Exhibit A). HOPE VI is a competitive-grant, public housing demonstration program created by Congress in 1992 to end "top down strategies" and "business as usual" public housing programs (such as that created by the Injunction), instead requiring public housing agencies to compete for HOPE VI funds by submitting plans, created through collaboration with local units of government and public housing tenants, to revitalize inner city neighborhoods that have become socially, racially and economically isolated due to the existence of large, distressed high-rise public housing developments. *See* 142 Cong. Rec. H 10733, 10748; S. Rep. 102-356 (attached at Tab 7). In Chicago, all of these neighborhoods are in the Limited Area and all contain high-rise public housing projects that were in existence at the entry of the Injunction.

HOPE VI is appended to Section 14 of the Low-Income Housing Act, which provides funds to be used to maintain the viability of a housing authority's existing aggregate housing stock, i.e., rehabilitation. *See* 42 U.S.C. § 1437I. Funds provided pursuant to Section 14 cannot be used by a housing authority to add to the authority's aggregate housing stock. *See* 42 U.S.C. § 1437I(a). Plaintiffs concede that, if the CHA chose to use its HOPE VI funds for traditional rehabilitation, the Injunction would not govern the CHA or in anyway restrict its

conduct. *See* Pl. App., Ex. D at 8. However, HOPE VI can also be used to create “replacement housing” when other units are demolished. Slip Op. at 4. The construction of replacement housing is a form of rehabilitation used when the costs of traditional rehabilitation exceed the costs of demolishing and replacing a unit. *See* Pl. App., Ex. D at 7-8.

(3) The Relevant Context Ignored by the Panel. In sum, the context that should have been considered by the district court in interpreting the Injunction, and that can be considered by this Court, includes, among other things, the fact that (i) the HOPE VI program did not exist at the time that the Injunction was entered, (ii) the concept of “replacement housing” (the housing at issue in HOPE VI) did not exist at the time that the Injunction was entered, (iii) the housing affected by the program, i.e., housing in the Limited Area, has never before been supervised by or been the concern of the Injunction (*unless* the Injunction has been expressly waived to allow for such supervision), (iv) the CHA has always used funds made available under Section 1437I of the Federal Housing Act (HOPE VI is appended to that Section of the Act) without the court’s supervision (again *unless* the Injunction has been expressly waived to allow for such supervision); and (v) the funneling of HOPE VI funds into a rote, mandatory building program (such as, for example, the Injunction’s scattered site program) violates the terms of HOPE VI.

B. The District Court’s Orders, Granting the Receiver Authority Over the HOPE VI Funds, Had the Effect of Altering the Parties’ Legal Relationship.

In the February Order, the district court held that “the [Injunction]” governs the CHA’s use of HOPE VI funds . . . [a]ccordingly, any construction of public housing in Cook County must conform to the [Injunction’s] locational requirements.” *See* Feb. Ord, Tab 2 at PR-

19. But HOPE VI funds, pursuant to the HOPE VI statute, cannot be funneled into a mandatory, scattered site building program. *See, e.g.*, 142 Cong. Rec. H 10733, 10748; S. Rep. 102-356, Tab 7. Moreover, the CHA's HOPE VI plans call for all replacement units to be built in the public housing neighborhoods to be revitalized, all of which are in the Limited Area. Def. App., Tab 3 at 4. And, neither the plaintiffs nor the Receiver have made any effort to have HOPE VI replacement units built in the General Area. Def. App., Tab 3 at 8. In other words, the use of the CHA's HOPE VI funds in rote "conform[ance] with the Injunction's [mandatory] locational restrictions" is neither permissible nor possible. And, while the Injunction requires the CHA to seek federal funds, it does not require *Congress* to fund the Injunction's scattered site building program. *See* Inj., Tab 5 at PR-27, § VIII(A).

As modified, the question whether the Injunction's locational restrictions will be enforced depends upon the source of the CHA's funds and the Receiver's preferences. Where available funds can be used to fund the scattered site program, they will be used for the program. *See* Feb. Order, Tab 2 at PR-19. Where locational restrictions are inappropriate (i.e., in the context of HOPE VI), those restrictions, in effect, evaporate. In those instances, the CHA is *required* to seek a "waiver" or modification of the Injunction — even if it does not desire such a waiver — that meets with the approval of the Receiver. *See* Aug. Order, Tab 4 at PR-23. The Receiver negotiates the entire HOPE VI plan with tenants and the City — not just the portion regarding the number and location of the housing units to be built. *Id.* There is nothing in the Injunction that indicates the standard by which the request for the waiver will be judged. In the end, if plaintiffs' relief (the Injunction's building program) is either not possible or undesirable to

the Receiver, the CHA is *required* to “agree” to provide plaintiffs with some different form of relief.⁹

Of course, if the CHA does not wish to agree to having a new or different remedy imposed upon it, it simply can “choose” not to use its HOPE VI funds, despite the fact that it qualifies for such funds under federal law.

III. THE PANEL APPLIED THE “BOGARD RULE” OF APPELLATE JURISDICTION TO DISMISS THE APPEAL OF A NEW INJUNCTION.

The Panel also applied its *Bogard* rule to dismiss the appeal of an order — the August Order — that all of the parties believe to be a new and appealable injunction, i.e., one that altered their legal relationship. Slip Op. at 12. The district court judge who entered the order also called it an injunction. Aug. Order, Tab 4 at PR-23. *Cf. People Who Care*, 171 F.3d at 1086 (observing that “equitable decrees that impose a continuing supervisory function on the court commonly . . . contemplate the subsequent issuance of specific implementing injunctions”).

The August Order, among other things, enjoined the CHA from (i) submitting a proposed consent decree to the *Cabrini* court in the *Cabrini* case and (ii) seeking a waiver of the Injunction for any HOPE VI plan without first obtaining the approval of the Receiver. In

⁹ A recent order entered by the district court further demonstrates that the August Order altered the parties’ legal relationship. The Lakefront Community Organization has attempted to intervene in *Gautreaux* to enforce a contract with the CHA, regarding demolition and the building of replacement housing, that pre-dates the August Order. The district court, *citing the August Order*, has denied the request on the ground that the contract is unenforceable. According to the district court, the CHA had no authority to enter into the Agreement. The Receiver did, but because the Receiver did not sign the contract, it cannot be bound by the contract either. The LCO’s case is currently on appeal to this Court. Although these events occurred after the appeal was submitted, the CHA asks this court to take judicial notice of the proceedings below.

contrast, prior to the August Order, the *Cabrini* case was controlled by and presided over by the *Cabrini* court. See *Cabrini-Green Local Advisory Council*, No. 96 C 6949, 1997 U.S. Dist. LEXIS 625 at *42-45 (N.D. Ill. January 21, 1997) (holding that the *Cabrini* case was not necessarily a collateral attack on *Gautreaux*) (attached hereto as Exhibit B.) And, prior to the August Order, the CHA was permitted to seek a waiver of the Injunction without the Receiver's approval. See Def. App., Tab 3 at 5.

Moreover, the August Order places additional obligations on the CHA that have never before been placed on the agency. For example, the Receiver interprets the August Order as vesting him with the responsibility to "weigh and implement the desegregation remedy," i.e., maximize desegregation opportunities. See, e.g., Receiver's Brief, filed in connection with this appeal on October 2, 1998, at 38. The Injunction does not order the CHA to maximize desegregation opportunities. At most, the Injunction orders the CHA to "affirmatively administer its public housing system in every respect . . . to the end of disestablishing the segregated public housing system." Inj., Tab 5 at PR-27, § VIII. But in 1991, the district court held that the "affirmatively administer clause" was too vague to be enforced against the CHA. See Def. App., Tab 3 at 14.

Nevertheless, the Panel, on the basis of a *Bogard* "glancing look," found that the August Order did not appear to "substantially and obviously alter the parties' pre-existing relationship." Slip Op. at 13. As a result, the Panel dismissed the appeal of the August Order on the ground that it "is only an unappealable interpretation or clarification of prior orders, not an appealable new injunction." *Id.* If the expansion of the Receiver's duties — from initially acquiring plots of land and building individual units of public housing — to now negotiating

HOPE VI plans with the City and the residents and determining how to maximize desegregation opportunities — does not survive the *Bogard* test, it is difficult to imagine an order that might.

Compare Rec. Order, Tab 6 with Aug. Order, Tab 4.¹⁰

IV. THE CHA'S HOPE VI ACTIVITIES HAVE NOT BEEN FOUND TO BE IN VIOLATION OF THE INJUNCTION OR ANY FEDERAL LAW.

In concluding its opinion, the Panel wrote that “[i]f the CHA is displeased with the 1969 injunction, the receivership order, or the recent district court orders flowing from them, then it should seek to modify or terminate any or all of them.” Slip Op. at 14. This case is not about the CHA’s “displeasure” with the Injunction. Neither is it a case about the CHA’s alleged refusal to follow the district court’s orders.¹¹ The CHA believes that the Injunction does not govern HOPE VI projects and that the Receiver has not been appointed to act with respect to

¹⁰ The Receiver’s duties were expanded to include the execution and approval of all CHA HOPE VI projects, without any determination that the CHA was not able to fully comply with all HOPE VI requirements, which the CHA had in fact been doing for several years before the district court’s order, or that the Receiver was qualified to undertake the negotiation of HOPE VI plans with the City of Chicago and CHA residents. *Cf. Gautreaux v. CHA*, 498 F. Supp. 1072, 1074 (N.D. Ill. 1980) (denying request for receivership after 48 hearings in front of magistrate and one evidentiary hearing); *United States v. City of Detroit*, 476 F. Supp. 512, 520 (E.D. Mich. 1979) (The imposition of a receivership by a federal court onto the property of a state agency is . . . extraordinary, and should be taken with “great care” so as not to “summarily deny . . . a local government the full exercise of its authority over its affairs.”).

¹¹ The Panel appears to assume that the CHA has failed to comply with the district court’s orders. *See, e.g.*, Slip Op. at 13. The briefs filed in connection with this appeal by the appellees are replete with recitations of “facts” that have not been found and that are disputed. Yet, no hearing has been conducted on any of these assertions despite the CHA’s persistent request for such a hearing. The CHA disputes the appellees’ (and now the Panel’s) characterization of its prior conduct with regard to HOPE VI, and has done so throughout the proceedings below. *See, e.g.*, Slip Op. at 5. The district court made no such findings of fact.

HOPE VI projects. Its action have been based on that belief. The CHA has properly appealed the district court's orders. It was the CHA that raised the issue of whether the Injunction applied to HOPE VI to insure that it would not violate the Injunction. If the CHA's belief about the Injunction is correct, there is no reason to modify or terminate the Injunction.

Presently, as plaintiffs have acknowledged, there are no federal funds available to build new public housing other than HOPE VI funds.¹² Should such funds become available, the Injunction's scattered-site program will continue. There is no allegation that any of the CHA's HOPE VI activities violate the federal statute that created HOPE VI or, indeed, any federal law. Instead, the CHA seeks to use HOPE VI funds in the manner intended by Congress, and it believes that the Injunction, properly interpreted, does not require it to seek the approval of the Receiver to do so.

WHEREFORE, for the foregoing reasons, the CHA respectfully requests that this Court grant its petition and rehear this case *en banc*.

Respectfully submitted,



Susan Getzendanner
Nancy Eisenhauer
Skadden, Arps, Slate,
Meagher & Flom (Illinois)
333 W. Wacker Drive, Suite 2100
Chicago, Illinois 60606
(312) 407-0700
Counsel for Defendants-Appellants

Jerome M. Butler
General Counsel
Chicago Housing Authority

¹² See *Gautreaux v. CHA*, 981 F. Supp. 1091, 1093 (N.D. Ill. 1997) (noting plaintiffs' admission of the scarcity of funds for the building of public housing).

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

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

Urban Revitalization Demonstration Program

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

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

Pub.L. 102-389, Title II, Oct. 6, 1992, 106 Stat. 1579, provided in part that: "Furthermore, \$300,000,000 shall be for grants to carry out an urban revitalization demonstration program involving major reconstruction of severely distressed or obsolete public housing projects, to be administered by local public housing agencies: *Provided*, That such funding shall be made available to up to 15 cities selected from either the 40 most populous United States cities or, from any city whose housing authority was considered to have been on the Department's troubled housing authorities list as of March 31, 1992: *Provided further*, That no more than \$50,000,000 shall be provided to each participating municipality: *Provided further*, That no more than 500 units shall be funded for each participating city and such units shall be located in up to 3 separately defined areas containing the community's most severely distressed projects, including family high-rise projects: *Provided further*, That at least 80 per centum of the funding provided to each participating public housing agency shall be used for the capital costs of major reconstruction, rehabilitation and other physical improvements, for the capital costs of replacement units and for certificates under section 8(b) [section 1437f(b) of this title] used for replacement and for management improvements for the reconstructed project and for planning and technical assistance purposes and not more than 20 per centum shall be used for community service programs (as defined by the Commission on National and Community Service) and for supportive services, including, but not limited to, literacy training, job training, day care, youth activities, administrative expenses, and the permissive and mandatory services authorized under the Gateway Program established in the Family Support Centers demonstration program, provided for in 42 U.S.C. 11485e-f [probably means section 11485(e), (f) of this title]: *Provided further*, That each participating city shall make contributions for supportive services in an amount equal to 15 per centum of the funding provided for supportive services pursuant to the

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

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

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

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

CROSS REFERENCES

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

LIBRARY REFERENCES

Administrative Law

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

American Digest System

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

Federal benefits for Native Americans, see Indians ¶7.

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

Encyclopedias

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

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

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

WESTLAW ELECTRONIC RESEARCH

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

Indians cases: 209k[add key number].

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

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

PURPOSE OF THE HOPE VI PROGRAM

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

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

PROGRAM AUTHORITY AND FUNDING HISTORY

FY 1993 and FY 1994

The HOPE VI Program was created by the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1993 (Pub.L. 102-389), approved on October 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 proceeding proviso shall not limit the Secretary's discretion to limit funding to amounts he deems appropriate, nor shall it prevent the Secretary from guaranteeing that all implementation grant recipients conform with the requirements of the HOPE VI/ urban revitalization demonstration program:

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

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

FY 1996 APPROPRIATION ACT

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

Omnibus Consolidated Rescissions and Appropriation Act of 1996

PUBLIC HOUSING DEMOLITION, SITE REVITALIZATION, AND REPLACEMENT HOUSING GRANTS

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

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

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

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

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

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

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

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

FY 1997 APPROPRIATION ACT

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

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

REVITALIZATION OF SEVERELY DISTRESSED PUBLIC HOUSING

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

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

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

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

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

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

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

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

[*33]

C. Jurisdiction over State Law Claims

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

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

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

* * *

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

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

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

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

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

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

n5 Section 3604(a) of the FHA states that it is unlawful

to refuse to sell or rent . . . or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny a dwelling to any person because of race, color, religion, sex, familial status, or national origin.

42 U.S.C. § 3604(a).

1. Denying Black Residents Replacement Housing

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

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

2. Sufficiency of Allegations of Discrimination

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

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

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

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

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

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

[*42]

3. Standing to Sue Under Count 5

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

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

n7 Title VI provides that:

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

42 U.S.C. § 2000d.

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

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

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

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

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

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

1. Count 6

Count 6 alleges that under the CHA Plan, 1000 units of very low-income public housing will be permanently lost and 50% of the displaced families will be ineligible for the newly constructed replacement housing. Plaintiff alleges that this violates HOPE VI, 42 U.S.C. § 1437l, note, and the Revitalization of Severely Distressed Public Housing Program, 42 U.S.C. § 1437(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

APPENDIX TO PETITION FOR REHEARING

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1.	PR-1 to PR-14	<u>Gautreaux et al. v. Chicago Housing Authority</u> , Nos. 98-1807, 98-2311, 98-3145, (7th Cir. May 28, 1999).
2.	PR-15 to PR-19	Memorandum Opinion and Order dated February 23, 1998.
3.	PR-20 to PR-21	Order dated May 19, 1998.
4.	PR-22 to PR-23	Order dated August 12, 1998.
5.	PR-24 to PR-29	<u>Gautreaux et al. v. Chicago Housing Authority</u> , 304 F. Supp. 736 (N.D. Ill. 1969) (the "Injunction").
6.	PR-30 to PR-37	Order dated August 14, 1987.
7.	PR-38 to PR-41	Excerpts of 142 Cong. Rec. H 10733, 10748; S. Rep. 102-356.
8.	PR-42 to PR-43	Order dated May 6, 1999.
9.	PR-44 to PR-45	Consolidated Table of Contents for Documents Referenced in CHA's Memorandum in Support of Motion to Stay Order Pending Appeal.

In the
United States Court of Appeals
For the Seventh Circuit

Nos. 98-1807, 98-2311 & 98-3145

DOROTHY GAUTREAUX, *et al.*,

Plaintiffs-Appellees,

v.

CHICAGO HOUSING AUTHORITY, a corporation,
and JOSEPH SHULDINER, Executive Director,
in his official capacity,

Defendants-Appellants.

Appeal from the United States District Court
for the Northern District of Illinois, Eastern Division.
No. 66 C 1459—**Marvin E. Aspen**, *Chief Judge*.

ARGUED OCTOBER 30, 1998—DECIDED MAY 28, 1999

Before CUMMINGS,* KANNE, and DIANE P. WOOD, *Circuit Judges*.

DIANE P. WOOD, *Circuit Judge*. When the time comes to write the story of public housing in the United States, the thirty-plus year saga of this litigation and the experience of the City of Chicago will surely feature prominently. The case began in 1966, when Dorothy Gautreaux

* Judge Cummings participated in the consideration of this case but died before the decision was rendered.

and others filed a class action claiming that the Chicago Housing Authority ("CHA") had intentionally perpetuated racial segregation both in its tenant assignment practices and in its siting policies. In 1969, the district court found for the plaintiff class, *Gautreaux v. Chicago Housing Auth.*, 296 F. Supp. 907 (N.D. Ill. 1969) (*Gautreaux I*), and entered a remedial decree designed to address the constitutional violations, *Gautreaux v. Chicago Housing Auth.*, 304 F. Supp. 736 (N.D. Ill. 1969) (*Gautreaux II*). That decree has continued in force ever since. The CHA has now appealed to this court from three orders the district court entered in 1998 in the course of supervising the decree. We conclude that these orders are essentially interlocutory in nature, that we lack jurisdiction over the appeal, and that it therefore must be dismissed.

I

In order to understand why we lack jurisdiction over this appeal, it is necessary to summarize briefly the history of this litigation. Prior to the entry of the 1969 decree, the *Gautreaux* class showed that the CHA had effectively designated four housing projects, built in majority-white Chicago neighborhoods, as "white," and that it had reserved the remainder of its facilities for non-whites. Using a discriminatory pre-clearance procedure and quotas, the CHA restricted the number of African-American families it assigned to the four "white" family housing projects. As a result, despite the fact that 90% of the families on the CHA's waiting list were African-American, African-Americans comprised less than 10% of the families in those four projects. The picture was the opposite in the other projects: there, the tenants were (as of 1969) 99% African-American, and 99.5% of the units were located in neighborhoods that were majority African-American.

A. The 1969 Injunction and the 1987 Receivership Order

The *Gautreaux II* injunction divided Cook County into "Limited Areas," in which 30% or more of the population was African-American, and the "General Area," which was the rest of the county. Initially, it required the CHA to build three dwelling units in the General Area for every one unit it constructed in the Limited Areas; later, that ratio was changed to one-to-one. The injunction defined a dwelling unit as a residential unit "which is to be initially made available to and occupied by a low-income, non-elderly family, subsequent to the date [of the injunction], directly or indirectly by or through CHA" *Gautreaux II*, 304 F. Supp. at 737. More generally, the injunction required that the CHA "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." *Id.* at 741. The idea was to bring about a gradual cure of the CHA's constitutional violations over time, as the CHA made new units available to public housing residents. The injunction is still in place, and, of critical importance to our decision, the CHA has requested neither its modification nor its termination.

For the next 18 years, the district court patiently waited in vain for the CHA to develop what has become known as "scattered site housing." In 1987, it finally appointed a receiver (Daniel E. Levin and The Habitat Company), to whom it assigned the responsibility for developing scattered site housing on the CHA's behalf. *Gautreaux v. Pierce*, Order of Aug. 14, 1987. The receivership order applies both to housing projects that were underway at the time and to "all CHA non-elderly public housing development programs which may in the future be authorized by HUD during the pendency of [the case against the CHA]." *Id.* at 2. The receiver is authorized to exercise

all powers of CHA respecting the scattered site program necessary and incident to the development and administration of such program, including: (a) Making all determinations governing the scattered site program in compliance with prior and future orders of this Court, including without limitation (1) submission to HUD of applications for funding, development programs and other documents

Id. at 2-3. The receivership order also directs the CHA to give the receiver its full cooperation. As with the injunction, the CHA has not asked that the receivership order be modified or terminated, and it remains in effect.

B. The Current Controversy

In 1992, Congress passed a new public housing funding program called HOPE VI, an acronym for "Homeownership and Opportunity for People Everywhere." 42 U.S.C. § 1437l (note). The program seeks to revitalize severely distressed or obsolete public housing developments by funding a mixture of local public housing authority activities on a competitive grant basis. Local public housing authorities may use HOPE VI grant monies for a variety of purposes, including, among other things, planning revitalization projects, demolition, renovation, providing Section 8 rent vouchers, social services, and (of greatest interest here) building replacement dwellings. To the extent that obsolete public housing is eliminated through HOPE VI, replacement units can be made available through a combination of Section 8 vouchers, new construction, renovation, and other acquisitions. Under HOPE VI, any *demolished* housing units must "be located in up to 3 separately defined areas containing the community's most severely distressed projects." *Id.* It does not similarly restrict the locations in which *replacement* units may be built. *Id.*

In 1993, the CHA prepared the first of several funding proposals it has submitted to HUD under the HOPE VI

program. It took this step unilaterally—that is to say, without any input from the receiver. In the application, however, it represented to HUD that the location of any replacement units would comply with the locational requirements of the *Gautreaux* injunction. The proposal was successful: HUD awarded it \$50,000,000 for the Cabrini-Green Redevelopment Project. When the receiver learned of the existence of the application, it approached the CHA and asked to become involved in the HOPE VI projects, insofar as they would implicate the receiver's authority over the construction of replacement housing. The discussions that followed did not resolve this question definitively. Instead, the CHA was inconsistent in later grant applications. In 1996, it received one grant for the rehabilitation of its ABLA and Henry Horner developments on the basis of a proposal prepared in concert with the receiver, but in the same year it received another grant for the Robert Taylor Homes on the basis of a proposal it prepared independently (after erroneously advising the receiver that no replacement units would be involved).

This spotty cooperation between the CHA and the receiver turned to outright hostility sometime in late 1996. In September 1997, the CHA filed an emergency motion with the district court, asking it for an order clarifying that the 1969 injunction did not extend to any aspect of the HOPE VI program. In February 1998 (the "February order"), the district court instead held that the portion of HOPE VI funds dedicated to the construction of dwelling units fell squarely within the plain language of the injunction, and that any replacement units were therefore subject to the injunction's locational requirements.

Despite this order, the CHA continued to refuse to cooperate with the receiver or to release the information necessary to allow the receiver to play a role in the HOPE VI grant application due June 29, 1998. In May 1998, the receiver accordingly asked the court to compel the CHA's cooperation. The court granted this motion (the "May order"), explaining that since "HOPE VI is a 'non-elderly

public housing development program[] . . . authorized during the pendency of the *Gautreaux* litigation, . . . it therefore fits entirely within the Receiver's jurisdiction."

Finally, in August 1998, the receiver filed a second emergency motion to compel the CHA's cooperation with the 1987 receivership order and the district court's February and May orders. It took this action after it learned through a news report that the CHA had unilaterally negotiated a settlement with Cabrini-Green residents who had brought a lawsuit against the CHA, see *Cabrini-Green Local Advisory Council v. Chicago Housing Auth.*, 1997 WL 31002 (N.D. Ill. Jan. 22, 1997), and that this settlement would involve the construction of dwelling units. In its "August order," the district court held that the CHA was "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 [from the injunction] for the contemplated development." That order also instructed the CHA to "return to the drawing board" and renegotiate with Cabrini-Green LAC and the receiver. It therefore effectively prevents the CHA from presenting the deal it had already sealed without the receiver's participation to the judge presiding in the *Cabrini-Green* case.

The CHA appeals from each of these three 1998 orders. A motions panel of this court denied the CHA's motion to stay the February and May orders on May 29, 1998, and reserved for the consideration of the merits panel the motion of the *Gautreaux* plaintiffs to dismiss the appeals for lack of appellate jurisdiction.

II

The CHA argues that this court has appellate jurisdiction over the February order both because (1) it sets forth

the steps the CHA must take to comply with the injunction and is, according to the CHA, therefore a final judgment within the meaning of 28 U.S.C. § 1291; and (2) it is a modification of an injunction, making it an appealable interlocutory order under 28 U.S.C. § 1292(a)(1). The May order, it claims, is within our pendent appellate jurisdiction. Finally, it argues that the August order is a new injunction, appealable independently under § 1292(a)(1).

Though they dispute our independent jurisdiction over the February and May orders, the Gautreaux class and the receiver¹ now take the position—agreeing with the CHA—that we have jurisdiction over the August order. As they explained at oral argument, they too regard the August order as a fresh injunction, because it keeps the CHA from presenting the *Cabrini-Green* settlement to another judge of the district court (the Hon. David Coar) for approval. To allow us to reach the merits of this appeal, they next contend that the August order is “inextricably intertwined” with the February and May orders, thereby bringing those two earlier orders within our pendent appellate jurisdiction. The agreement of the parties with respect to our jurisdiction does not, of course, resolve the matter. *E.g.*, *United States v. County of Cook*, 167 F.3d 381, 387 (7th Cir. 1999). We therefore proceed to consider the jurisdictional basis for each of the three orders involved in this appeal.

A. The February Order

1. Section 1291 Jurisdiction

The February order does not dispose of all claims as to all parties. Normally, that fact alone would demonstrate

¹ Although the CHA disputes the receiver’s right to participate in the appeal, the district court granted the receiver permission to appeal on May 20, 1998. This safeguards the receiver’s status before this court. See *Holland v. Sterling Enters., Inc.*, 777 F.2d 1288, 1291 (7th Cir. 1985).

that it does not qualify as a final judgment for purposes of 28 U.S.C. § 1291. *E.g.*, *United States v. Davenport*, 106 F.3d 1333, 1335 (7th Cir. 1997). Recognizing its problem, the CHA seeks to rely on this court's decision in *Association of Community Organizations for Reform Now (ACORN) v. Illinois State Board of Elections*, 75 F.3d 304 (7th Cir. 1996), which discussed the application of § 1291 in post-judgment proceedings.

The issue in *ACORN* was how the State of Illinois would comply with an injunction ordering it to implement the motor-voter law, which it had ignored based on its belief that the law was unconstitutional. The district court held that the state had to comply with the law, and Illinois then proposed some implementing regulations. The district court entered a post-injunction order holding Illinois' proposed regulations invalid and asking the parties to brief some remaining issues. Illinois then appealed this post-injunction order, which raised the question of appellate jurisdiction. In discussing the finality requirement of § 1291, Chief Judge Posner explained:

[We] treat the postjudgment proceeding as a free-standing litigation, in effect treating the final judgment as the first rather than the last order in the case. Our decision last June [rejecting Illinois' constitutional challenge to the motor-voter law] kicked off a postjudgment proceeding that will end, unless the parties reach an agreement, with a judicial order setting forth the steps that Illinois must take to comply with the injunction that it obey the motor-voter law. That order will be appealable as a final decision under section 1291; interim orders will be appealable only if they meet the criteria for the appealability of interlocutory orders.

Id. at 306.

By analogy to *ACORN*, the CHA claims the February order is final because it sets forth the steps the CHA must

take to comply with the injunction. But as the above passage illustrates, *ACORN* does not stand for the proposition that an order outlining the steps to comply with a prior injunction always qualifies as a new final judgment. Instead, it held only that the post-judgment order there was final because it conclusively resolved the parties' claims in the context of that case. This point was underscored in *Bogard v. Wright*, 159 F.3d 1060 (7th Cir. 1998), which explained that a court facing an appeal from a post-judgment order must try to treat the post-judgment proceeding as a free-standing lawsuit, to identify the final decision in the proceeding, and to confine a § 1291 appeal to that decision. *Id.* at 1062. Especially with injunctions and consent decrees, it is not always possible to pick out a plausible counterpart to the conventional final judgment. *Id.*; see also *United States v. Accra Pac, Inc.*, 1999 WL 222944, at *1 (7th Cir. Apr. 16, 1999) ("One of many orders interpreting or implementing a consent decree cannot readily be called 'final', and we have held accordingly that housekeeping orders in long-running cases are not appealable."). Nor does it help to speak of "pragmatic finality," which is too vague to serve as an analogy to the conventional Rule 58 final judgment. *Bogard*, 159 F.3d at 1063. Instead, *Bogard* holds, parties who need to bring a post-judgment order with irrevocable consequences before the appellate court—at least in cases involving decrees entered by consent or after full litigation—must normally either use mandamus or seek an order granting, modifying, denying, or otherwise affecting the injunction itself, which would be appealable under 28 U.S.C. § 1292(a)(1). *Id.*

Any direction the February order gave the CHA about how to comply with the 1969 injunction did not serve to bring finality to this litigation. Under *ACORN* and *Bogard*, therefore, § 1291 does not confer jurisdiction over this appeal.

2. Section 1292(a)(1) Jurisdiction

The CHA has not requested a writ of mandamus, nor did the district court certify this case for an immediate appeal under 28 U.S.C. § 1292(b). The only possible alternative ground for jurisdiction is thus 28 U.S.C. § 1292(a)(1), which permits appeals from orders “granting, continuing, modifying, refusing or dissolving injunctions, or refusing to dissolve or modify injunctions” The next question is whether the February order does any of those things to an injunction, or if, on the other hand, it is a mere clarification or reiteration of a standing injunction that does not fall within the scope of § 1292(a)(1). See *ACORN*, 75 F.3d at 306. The CHA concedes that the only thing it asked the district court to do was to clarify the injunction, and it acknowledges that this is what the district court said it was doing. It argues, however, that the court’s purported clarification resulted in such a blatant misinterpretation of the injunction that it is tantamount to an appealable modification.

This court has repeatedly held that it will look beyond labels such as “clarification” or “modification” to consider the actual effect of the order. *E.g.*, *Motorola, Inc. v. Computer Displays Int’l, Inc.*, 739 F.2d 1149, 1155 (7th Cir. 1984); *Buckhanon v. Percy*, 708 F.2d 1209, 1212 (7th Cir. 1983). This means the court must take at least a glancing look at the merits of the CHA’s arguments in order to decide how to characterize the order. Naturally, we need more than the CHA’s own assertion that this particular alleged misinterpretation amounts to a modification. See *Motorola*, 739 F.2d at 1155. Otherwise, appellate courts would be deluged with interlocutory appeals from every litigant dissatisfied with a district court’s interpretation of its injunctions. As the Supreme Court has noted, § 1292(a)(1) must be approached “somewhat gingerly lest a floodgate be opened” *Switzerland Cheese Ass’n, Inc. v. E. Horne’s Market, Inc.*, 385 U.S. 23, 24 (1966); see also *Carson v. American Brands, Inc.*, 450 U.S. 79, 84 (1981) (holding that the interlocutory jurisdiction provided by

§ 1292(a)(1) is only a narrow exception to the finality rule of § 1291).

Two requirements for appeals under § 1292(a)(1) dealing with post-judgment rulings relating to injunctive decrees emerge from our decisions. First, *Motorola* established that a modification (however labeled) occurs only when a court substantially alters the pre-existing legal relationship of the parties. 739 F.2d at 1155. Second, in *Bogard* we held that it must be apparent or obvious that an order has such an effect before § 1292(a)(1) jurisdiction will be proper. 159 F.3d at 1064. Otherwise, we would have to delve deeply into the merits before we could decide whether we had jurisdiction to reach them. The *Bogard* rule, although it prohibits an all-out inquiry into the merits, does not leave the parties at the mercy of a possible rogue district judge who is wreaking havoc with an injunction or consent decree, because any party who believes that an order has subtly modified an injunction need only move formally for a modification or termination order. See *id.* at 1064-65. Whether the district court grants or denies the requested modification or termination, the resulting order is clearly appealable under § 1292(a)(1). The *Bogard* rule thus redirects litigants to the plain language of the statute. It blocks the statute's "modification" provision from serving as a back door to appellate review of every administrative clarification the district court makes, while it simultaneously retains this court's authority to look behind labels when those labels obviously mischaracterize the order.

Applying these standards to the February order, we conclude that it is not an appealable modification of an injunction. The district court did not, for example, rule that CHA programs other than the administration and construction of dwelling units (like the provision of Section 8 rent vouchers, the management of CHA properties preexisting the injunction, or the conditions under which social services are to be supplied) fell within the sweep of the 1969 injunction. Such extreme actions would be modi-

fications even if the district court labeled them mere clarifications. *Cf. United States v. Board of Sch. Comm'rs*, 128 F.3d 507, 509 (7th Cir. 1997) (finding the addition of a class of students formerly outside scope of the injunction to a mandatory busing order to constitute a clear modification of the underlying order). To the contrary, here there is no such obvious misinterpretation that might trigger appellate jurisdiction under § 1292(a)(1). In fact, there may be no misinterpretation at all. The CHA concedes, as it must, that the 1969 injunction's literal definition of dwelling unit (*i.e.*, a residential unit "which is to be initially made available to and occupied by a low-income, non-elderly family, subsequent to the date [of the injunction], directly or indirectly by or through CHA" *Gautreaux II*, 304 F. Supp. at 737) encompasses new construction made possible by HOPE VI. Appellants' Br. at 15. The CHA urges the court to consider that the context in which the injunction was drafted somehow belies its wording, but such an analysis would aim to uncover subtle rather than blatant misinterpretations and is therefore too searching for a preliminary jurisdictional inquiry. Under *Motorola* and *Bogard*, we therefore lack appellate jurisdiction under § 1292(a)(1).

B. The August Order

The only theory under which the parties have urged us to recognize appellate jurisdiction over the August order is as a fresh injunction, appealable under 28 U.S.C. § 1292(a)(1). As before, however, this court must look beyond the "injunction" label of the order to see if jurisdiction is proper. See, *e.g.*, *Gulfstream Aerospace Corp. v. Mayacamas Corp.*, 485 U.S. 271, 279 (1988) ("An order by a federal court that relates only to the conduct or progress of litigation before that court ordinarily is not considered an injunction and therefore is not appealable under § 1292(a)(1)."); *Carson*, 450 U.S. at 83; *Hetreed v. Allstate Ins. Co.*, 135 F.3d 1155, 1156 (7th Cir. 1998). The combined *Motorola* and *Bogard* tests once again govern our

characterization of the order for jurisdictional purposes: unless it substantially and obviously alters the parties' pre-existing legal relationship, the August order is only an unappealable interpretation or clarification of prior orders, not an appealable new injunction.

The August order does nothing more than reassert the court's prior orders: it tells the CHA that it must continue to comply with the 1969 injunction and February order specifically with respect to the HOPE VI revitalization project at Cabrini-Green, and that it must involve the receiver in any negotiations. Because the proposed settlement with the Cabrini-Green Local Advisory Council addressed, in part, the construction of replacement housing, the receiver was the only party with authority to negotiate the provisions and was therefore indispensable to the negotiations. That the August order also directs the CHA to renegotiate rather than place an illegitimate agreement before another court changes nothing, because that simply ensures that the CHA does not profit from its non-compliance with existing court orders. *Cf. People Who Care v. Rockford Bd. of Educ.*, 171 F.3d 1083, 1086-87 (7th Cir. 1999) (finding a budget order creating new payment obligations appealable as a separate injunction). Thus, the August order is not a fresh injunction. It instead merely reiterates and applies the court's prior orders without creating new obligations for the CHA. As such, this court has no jurisdiction to review it.

C. The May Order

Both parties have argued that the otherwise unappealable May order is so inextricably intertwined with the August order as to trigger our pendent appellate jurisdiction. In addition, the Gautreaux plaintiffs offer pendent appellate jurisdiction as a theory that would support the appeal of the February order. Because we have found no appellate jurisdiction over either the August or the February orders, however, pendent appellate jurisdiction

cannot be marshaled to bring the May order (or the February order on plaintiffs' theory) before the court. See, e.g., *People ex rel. Hartigan v. Peters*, 861 F.2d 164, 166 (7th Cir. 1988).

III

If the CHA is displeased with the 1969 injunction, the receivership order, or the recent district court orders flowing from them, then it should seek to modify or terminate any or all of them. Until it does so—or until the district court obviously departs from the path of its own precedent—this court will not have appellate jurisdiction.

We therefore DISMISS these appeals for lack of jurisdiction.

A true Copy:

Teste:

*Clerk of the United States Court of
Appeals for the Seventh Circuit*

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DOROTHY GAUTREAUX, et al.)
)
 Plaintiffs,)
)
 v.)
)
CHICAGO HOUSING AUTHORITY,)
)
 Defendant.)

No. 66 C 1459

MEMORANDUM OPINION AND ORDER

MARVIN E. ASPEN, Chief Judge:

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

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

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

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

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

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

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

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

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

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

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

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

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


MARVIN E. ASPEN
United States District Judge

Dated

2/23/58

United States District Court, Northern District of Illinois

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

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

MOTION:

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

DOCKET ENTRY:

- (1) ☐ Filed motion of [use listing in "Motion" box above.]
- (2) ☐ Brief in support of motion due _____.
- (3) ☐ Answer brief to motion due _____. Reply to answer brief due _____.
- (4) ☐ Ruling/Hearing on _____ set for _____ at _____.
- (5) ☐ Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
- (6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
- (7) ☐ Trial[set for/re-set for] on _____ at _____.
- (8) ☐ [Bench/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] Motion is granted.

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

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

ORDER

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

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

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

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

It is so ordered.



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

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.

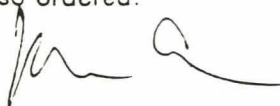
The present dispute arose when the local media reported that the CHA had reached an agreement with representatives of residents of the Cabrini-Green housing development with regard to future development on the Cabrini-Green site. This agreement, if approved, would settle a case brought by the residents 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.



304 F. Supp. 736 printed in FULL format.

Dorothy GAUTREAUX, Odell Jones, Doreatha R. Crenshaw, Eva Rodgers, James Rodgers, Robert M. Fairfax and Jimmie Jones, Plaintiffs, v. The CHICAGO HOUSING AUTHORITY, a corporation, and C. E. Humphrey, Executive Director, Defendants

Civ. A. No. 66 C 1459

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

304 F. Supp. 736; 1969 U.S. Dist. LEXIS 10211

July 1, 1969

CORE TERMS: vacancy, suitable, census, occupancy, tenant, census tract, non-white, occupied, public housing, waiting list, conformity, apartment, eligible, largest, single family, aggregate, street, tracts, top, summary judgment, government agency, dwelling unit, commencement, non-elderly, indirectly, low-income, achieving, carrying, housing, leasing

COUNSEL: [**1]

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

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

JUDGES: Austin, District Judge.

OPINIONBY: AUSTIN

OPINION: [*737] JUDGMENT ORDER

AUSTIN, District Judge.

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

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

It is hereby ordered:

I. [**2] For purposes of this judgment order,

A. "CHA" shall mean the defendant, Chicago Housing Authority.

B. "Dwelling Unit" shall mean an apartment or single family residence which is to be initially made available to and occupied by a low-income, non-elderly family, subsequent to the date hereof, directly or indirectly by or through CHA, whether in a structure owned in whole or in part by CHA (whether or not newly constructed) or to be otherwise made available for occupancy by or through CHA to such a family. "Dwelling Units" include "Leased Dwelling Units" as hereinafter defined.

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

D. "Limited Public Housing Area" shall mean that part of the County of Cook in the State of Illinois which lies either within census tracts of the United States Bureau of the Census having 30% or more non-white population, or within a distance of one mile from any point on the outer perimeter of any such census tract. "General Public Housing Area" shall mean the remaining part of the County of Cook in the State of Illinois. The terms "non-white" and "white" [**3] shall have the meaning given to such terms by the United States Bureau of the Census.

For purposes of this subsection D, results of the 1970 and each subsequent census taken by the United States Bureau of the Census shall presumptively determine the non-white population of census tracts until results of a subsequent such census are officially published; pro-

vided, that any party may, on motion, offer evidence as to the non-white population of any census tract for the purpose of rebutting such presumption; and provided further, that Dwelling Units located or proposed to be located in any census tract subsequent to official publication of the results of the last previous such census shall be taken into account in determining the population of such census tract, and for such purpose it shall be assumed that such Dwelling Units will be occupied by non-whites at the rate of two persons per bedroom.

For the period from the date hereof until the official publication of such 1970 census results, the census tracts in the City of Chicago listed on Exhibit [*738] A, attached hereto, shall be presumed to have 30% or more non-white population; and, subject to evidence offered on motion by [**4] either party, the non-white population of census tracts in the County of Cook outside of the City of Chicago shall be presumed to be as stated in the 1960 census of the United States Bureau of the Census.

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

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

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

B. The activities to be performed in order to render such Dwelling Units available for occupancy (whether construction, purchase, [**5] rehabilitation, leasing or otherwise) shall take place at such times as will result in the location of such Dwelling Units in conformity with the provisions of Article III hereof.

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

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

(1) The 1458 Dwelling Units provided for by pending CHA projects III. 2-27, 2-28 (exclusive of Dwelling Units proposed to be located at 70th and Harper streets in the City of Chicago), 2-32, 2-33, 2-51, 2-64, 2-69 and 2-74.

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

B. CHA shall not commence or cause to be commenced the construction of any Dwelling Units, other than said 1458 Dwelling Units referred to in Subsection A of this Article III, until CHA shall have commenced or caused to be commenced, and shall be continuing or shall have completed, the construction of not less than 700 [**6] Dwelling Units located in the General Public Housing Area of the City of Chicago.

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

D. Subject to the provisions of subsection E of this Article III, no Leased Dwelling Unit shall be made available for occupancy in the Limited Public Housing Area of the City of Chicago (in addition to Leased Dwelling Units in such Area which are already occupied) unless, immediately following such occupancy, at least 75% of the Leased Dwelling Units then occupied [*739] [**7] are located in the General Public Housing Area of the City of Chicago; provided, that such number of Leased Dwelling Units located in the General Public Housing Area of the City of Chicago may be less than such 75% to the extent Dwelling Units other than Leased Dwelling Units have been occupied, or are under construction which is continuing, in the General Public Housing Area of the City of Chicago in excess of the 75% minimum requirement of subsection C of Article III hereof.

E. Not more than 33 1/3% of the Dwelling Units required by subsection C of this Article III to be located in

the General Public Housing Area of the City of Chicago, and not more than 33 1/3 % of the Leased Dwelling Units required by subsection D of this Article III to be located in the General Public Housing Area of the City of Chicago, may at the option of CHA, be planned for and located in the General Public Housing Area of the County of Cook in the State of Illinois, outside of the City of Chicago, provided that (whether or not constructed by CHA) the same are made available for occupancy by CHA to, and are occupied by, residents of the City of Chicago who have applied for housing to CHA, and provided [**8] further that all such Dwelling Units comply with the provisions of Article IV of this order.

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

A. No Public Housing Project shall contain Dwelling Units designed for occupancy by more than 120 persons, except that if it is impossible for CHA to provide within such limitation Dwelling Units which it is otherwise capable of providing, and if it will assist in achieving the purposes of this judgment order, a Public Housing Project may contain Dwelling Units designed for occupancy by not more than 240 persons.

B. No Dwelling Units shall be located in any census tract if, following such location, the aggregate number of apartments and single family residences theretofore made available to low-income, non-elderly families, directly or indirectly by or through CHA, in such census tract would constitute more than 15% of the total number of apartments [**9] and single family residences in such census tract; and

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

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

tices, as so modified, shall be applicable until the further order of this Court.

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

A. Such modifications, if any, shall be made in CHA's tenant [**10] assignment policy and practices as will assist in achieving the purposes of this judgment order.

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

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

D. Vacancies in CHA's Trumbull, Lathrop, Lawndale, and Bridgeport projects shall be [**11] filled in accordance with subsection A of this Article VI, except that such tenant assignment plan may contain provisions designed to assure that such projects do not become racially segregated.

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

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

VII. Following the date of this judgment order CHA shall file with the Court and serve upon counsel for the plaintiffs, the Civil Rights Division of the United States Department of Justice, and the Regional Administrator of the Department of Housing and Urban Development, the following:

A. A statement of the following information respecting each location for one or more Dwelling Units, such statement to be filed and served not more than 10 days after any such location is approved by the Board of Commissioners of CHA (or by the appropriate CHA officer or employee with respect to any location not required to be approved by the Board of [**12] Commissioners) and prior to the formal submission thereof to any other government agency or official for consideration or action:

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

(7) the total number of Dwelling Units proposed to be provided at such location;

[*741] (8) the number of structures, and the number of Dwelling [**13] Units in each, in which such Dwelling Units are proposed to be provided; and

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

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

C. Statements covering the periods from the date hereof until December 31, 1969, and from the date hereof until the end of each calendar semiannual period thereafter, containing such data as will show that (1) all plans for Dwelling Units during the period covered [**14] by such statements have been in conformity with the provisions of Article II hereof, and (2) all Dwelling Units provided during the period covered by such statements have been in conformity with the provisions of Article III and IV hereof, such statements to be filed and served not more than twenty days after the end of each calendar semi-annual period beginning with such period ended December 31, 1969.

VIII. CHA shall affirmatively administer its public housing system in every respect (whether or not covered by specific provision of this judgment order) to the end of disestablishing the segregated public housing system which has resulted from CHA's unconstitutional site selection and tenant assignment procedures. Without limiting the foregoing,

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

B. CHA is hereby permanently enjoined from invidious discrimination on the basis of race in [**15] the conduct or operation of its public housing system, including without limitation the "preclearance procedure" described in the Court's Memorandum Opinion of February 10, 1969.

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

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

XI. The costs of this action shall be taxed against CHA, subject to the further order of this Court. [*742]

EXHIBIT A.

CENSUS TRACT NUMBERS

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

[**16]

EXHIBIT B.

TENANT SELECTION AND ASSIGNMENT PLAN

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

time, the applicant first on the waiting list shall be offered a dwelling unit in accordance with the following plan:

1. If at the time the applicant comes to the top of the waiting list there are suitable vacancies in three or more locations, the applicant shall be offered the unit at the location that contains the [*743] largest number of vacancies. If the applicant rejects the first vacancy offered he shall be offered a suitable unit at the location con-

taining the next highest number of vacancies. If the applicant rejects the second vacancy offered he shall be offered a suitable unit at the location containing the next highest number of vacancies. If the applicant rejects the third vacancy offered he shall be moved to last place on the eligible applicant list. When an offer of a suitable vacancy is made to an applicant, there [**17] must be a rejection of such offer before the applicant will be offered another location. Thus, the offering of a unit at the location with the second largest number of suitable vacancies will not be made until the applicant has first rejected the unit offered at the location with the largest number of vacancies. The offering of a unit at the location with the third largest number of suitable vacancies will not be made until the applicant has rejected the unit offered at the location with the second largest number of suitable vacancies.

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

3. If at the time the [**18] applicant comes to the top of the waiting list there is only one location at which a suitable vacancy exists, the applicant will be offered a unit at that location. If the applicant rejects the unit offered, he shall remain at the top of the waiting list until a second offer of a suitable vacancy can be made. Should the applicant reject the second offer of a suitable vacancy he shall be moved to last place on the eligible applicant list.

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

In carrying out the above plan, should the applicant present to the satisfaction of the Local Authority clear evidence that acceptance of a given offer of a suitable vacancy will result in undue hardship or handicap not related to considerations of race, color, or national origin, such as inaccessibility to source of employment, children's [**19] day care and the like, refusal of such an offer shall not be counted as one of the number of allowable refusals permitted an applicant before placing his name at the bottom of the eligible list.

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

DOROTHY GAUTREAUX, et al.,

Plaintiffs,

vs.

SAMUEL R. PIERCE, JR., Secretary
of the Department of Housing and
Urban Development, and CHICAGO
HOUSING AUTHORITY, et al.,

Defendants.

Civil Action No. 66C1459
66C1460
(Consolidated)

O R D E R

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

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

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

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

(C) For purposes of this Order the "scattered site program" shall mean (i) the buildings and vacant sites listed in Exhibit A attached hereto (collectively, the "Uncompleted Units") and (ii) CHA Development Programs numbered IL 2-096, IL 2-098, IL 2-103 through IL 2-109, and IL 2-113 (excluding any completed buildings in such programs) and all CHA non-elderly public housing development programs which may in the future be authorized by HUD during the pendency of Civil Action No. 65 C 1459.

WHEREFORE, IT IS HEREBY ORDERED:

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

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

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

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

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

3. The Receiver shall have the right at any time, upon due notice to the parties hereto, to make application to the Court requesting that the Receiver be excused from complying with some or all of the provisions set forth in the Annual Contributions Contracts heretofore entered into between HUD and CHA (collectively, the "ACC"), the HUD Procurement Handbook for Public Housing Agencies No. 7460.3, the HUD Public Housing Development Handbook No. 7417.1, or other applicable rules and regulations, or applicable laws or ordinances, or that as to the Receiver, the requirements of such agreements, provisions, laws, ordinances, rules and regulations be modified, if the Receiver determines that compliance therewith would be costly, inefficient or otherwise impede or restrict its ability to carry out this Court's orders. Nothing contained herein shall be deemed to constitute a determination by the Court, or the consent or an acknowledgement by HUD or CHA, that the Court has the jurisdiction or authority to grant any of the foregoing relief.

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

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

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

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

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

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

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

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

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

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

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

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

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

ENTER:


United States District Judge

August 14, 1987

~~request and the House proposed funding the voucher portion of the program in the
federal contributions for assisted housing account.~~

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

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

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

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

The major components of HOPE VI are as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Marvin Aspen	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	66 C 1459	DATE	5/6/1999
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] Lakefront Community Organization's motion for clarification is granted.
- (11) ☒ [For further detail see order on the reverse side of the original minute order.]

☐	No notices required, advised in open court.			Document Number	
☐	No notices required.		number of notices		
☒	Notices mailed by judge's staff.		date docketed		
☐	Notified counsel by telephone.		docketing deputy initials		
☐	Docketing to mail notices.		5/6/1999		
☐	Mail AO 450 form.		date mailed notice		
☐	Copy to judge/magistrate judge.		GL		
GL		courtroom deputy's initials	Date/time received in central Clerk's Office	mailing deputy initials	

ORDER

Lakefront Community Organization (LCO) has asked that we explain our earlier ruling denying its Second Motion to Intervene, as our first minute order stated only that the motion "is denied." This order sets forth the requested clarification.

We denied LCO's motion to intervene because to grant it would have been futile. LCO's Intervenor Complaint asks that we order the CHA and the *Gautreaux* Receiver to secure funding from HUD, obtain control of land, and build housing, all within 10 months and all pursuant to the terms of a 1995 contract between LCO and CHA. The problem is that the requested relief must come from the Receiver, and the Receiver was not a signatory to the deal. Or, to put it differently, because of the Receivership Order the CHA did not have the authority to enter into a contract concerning the development of non-elderly public housing — the Receiver's domain — and it did not have the authority to contract on the Receiver's behalf. (This principle is set out in greater detail in an order dated August 12, 1998.) Those parts of the contract concerning the development of non-elderly public housing are unenforceable, so to allow LCO to intervene to attempt to enforce them would have been a waste of time.

The motion for clarification is granted. It is so ordered.

A handwritten signature in black ink, appearing to be "M R" followed by a long horizontal stroke.

CONSOLIDATED TABLE OF CONTENTS
FOR DOCUMENTS REFERENCED IN CHA'S MEMORANDUM
IN SUPPORT OF MOTION TO STAY ORDER PENDING APPEAL

***EXHIBITS TO MEMORANDUM IN SUPPORT OF
APPELLEES' MOTION TO DISMISS APPEAL (Pl Mem. MTD)
(FILED IN SEVENTH CIRCUIT ON APRIL 13, 1998)***

<u>EXHIBIT</u>	<u>DOCUMENT</u>
A	Memorandum Opinion and Order (dated February 23, 1998, docketed February 25, 1998)
B	Chicago Housing Authority's Emergency Motion To Clarify Injunction, filed September 30, 1998
C	Reply Memorandum In Support Of CHA's Emergency Motion To Clarify Injunction, filed January 16, 1998
D	Transcript of Proceedings - Status Before The Hon. Marvin E. Aspen (February 10, 1998)
E	Plaintiffs' Response To CHA Emergency Motion To Clarify Injunction, filed December 19, 1997
F	Motion For Further Relief and Memorandum In Support of Plaintiffs' Motion For Further Relief (without exhibits), filed March 18, 1998

***APPENDIX ACCOMPANYING DEFENDANTS-APPELLANTS'
RESPONSE TO APPELLEES' MOTION TO DISMISS APPEAL (MTD App.)
(FILED IN SEVENTH CIRCUIT ON APRIL 27, 1998)***

<u>TAB</u>	<u>DOCUMENT</u>
1	Appellants' Docketing Statement, filed April 2, 1998
2	Appellees' Docketing Statement, filed April 13, 1998
3	Memorandum In Support Of The Chicago Housing Authority's Emer- gency Motion To Clarify Injunction, filed September 30, 1997
4	Excerpt of S. Rep. 102-356

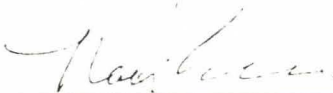
Response Of The United States Department Of Housing And Urban
Development To Chicago Housing Authority's Emergency Motion To
Clarify Injunction, filed October 20, 1997

CERTIFICATE OF SERVICE

I, Nancy Eisenhower, an attorney, hereby certify that on Friday, June 11, 1999, I caused a copy of DEFENDANTS-APPELLANTS' PETITION FOR REHEARING to be served via hand delivery on counsel listed below:

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

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



Nancy Eisenhower