10-1975

Hills v. Gautreaux

Lewis F. Powell, Jr.

Amicus filed by Housing Authority
Adds nothing substantial

SG Memo reiterates previous position & says case isn't premature

Reserve on Milliken or Grant

CA 7, misconstruing our decision in Milliken (Detroit), DISCUSS had ordered the DC to come up with a metropolitan public housing system - even tho there is no ev. of discriminatory housing policies by HUD or other public authorities, except within Chicago.

Preliminary Memo

Conf. of April 11, 1975
List 3, Sheet 3

No. 74-1047

HILLS, Sec'y of HUD V. GAUTREAUX	Cert. to CA 7 (Clark, A.J.; Cummings; Tone, dissenting) Federal/Civil	Timely (with extensions)

1. Petr seeks review of CA 7's decision that the district court (E.D. Ill. Austin) should adopt a "metropolitan-wide plan" for desegregation of the "public housing system operated by the City of Chicago. The CA decision was premised on prior findings that the Chicago Housing Authority (CHA) and HUD had engaged in unconstitutional site selection and tenant assignment procedures,

await Discussion

I share Jacobs' concern with the inability problem and the difficulty of ascertaining what the contemplated. Otherwise, and quite possibly in spite of this, it's a grant

DB

thereby creating a segregated system. The SG contends that the order is inconsistent with Milliken v. Bradley.

2. FACTS: In 1966 separate actions, subsequently consolidated, were brought against CHA and HUD, alleging the operation of a segregated public housing system. Judgments on liability were obtained in 1969, against CHA, and in 1971, against HUD.[1/] Subsequent litigation has dealt with the problem of remedy, and apparently has been characterized by considerable stalling and non-cooperation on the part of CHA (no public housing has been built in Chicago since 1969). I gather that CHA is subject to an injunction requiring a number of units to be built in predominantly white areas (one-third of which could be in areas outside the city of Chicago, pursuant to CHA's statutory authority to contract with the Cook County Housing Authority), and to choose a specified number of sites by a date certain.

With regard to an appropriate remedy against HUD, respondents sought to have CHA and HUD directed to use their best efforts to provide public housing units in the surrounding suburban counties. The request relied heavily on CA 6's Bradley v. Milliken decision,

1/Summary judgment against HUD was entered upon direction of CA 7, after the district court had dismissed the action against it; CA 7's decision was based on HUD's "knowing acquiescence" in CHA's practices, although it acknowledged that HUD had made consistent efforts to alter CHA's site-selection practices, and that HUD was faced with the dilemma of either funding segregated housing or none at all. The propriety of the judgment against HUD is not at issue in this petition.

which at that time had not been reversed by this Court. The district court denied such relief, however, concluding that it went "far beyond the issues of this case." While the court made a confusing observation that, "unlike education, the right to adequate housing is not constitutionally guaranteed and is a matter for the legislature," it recognized that programs which were enacted must be administered non-discriminatorily. However, here the wrongs had been committed solely within Chicago. Moreover, "it has never been alleged that CHA and HUD discriminated or fostered racial discrimination in the suburbs and, given the limits of CHA's jurisdiction, such claims could never be proved against the principal offender herein." The court plainly was unwilling to further complicate and delay such relief as had already been ordered by attempting a metropolitan plan for "relief against political entities which have previously had nothing to do with this lawsuit." It therefore entered an order that HUD use its best efforts to cooperate with CHA in efforts to increase the supply of public housing in conformity with its previous injunction against CHA.

CA 7 rendered its decision after Milliken was decided in this Court. It distinguished the case on the theory that Milliken dealt not with substantive constitutional law, but rather with principles of equitable relief. CA 7 focused on Milliken's discussion of the administrative difficulties with effectively

consolidating a metropolitan area's school systems, and of the "deeply-rooted" traditions of local control of schools. Thus Milliken was viewed as part of the line of precedent, extending back to Brown I, which recognized that remedial complexities could affect the implementation of substantive rights.

The court then concluded that in the public housing area the equitable considerations were not such as to preclude area-wide remedies. There was no deeply-rooted tradition of local control of public housing; rather, the federal government had been heavily involved from the beginning. Practical problems were thought to be insignificant compared to school consolidation, since "CHA and HUD can build housing much like any other landowner." Moreover, there was some evidence of suburban discrimination in the fact that of 12 suburban public housing projects, 10 were located in or adjacent to black areas. Finally, metropolitan relief had long been considered, and was recognized by all parties as the only effective remedy to the problem of meeting the housing needs of the urban poor, and of doing so in a manner which could be considered desegregated; especially was this true in light of "white flight" to the suburbs. On this basis, CA 7 remanded for the district court to consider and fashion a metropolitan public housing plan.

Judge Tone dissented, on the grounds that Milliken required that a remedy be commensurate with the constitutional violation

found. While he agreed that a metropolitan plan was needed to reduce overall segregation, he concluded that the absence of suburban violations precluded such relief here.

A petition for rehearing was denied, over a short opinion apparently premised on the proposition that Milliken was applicable. The court opined that there was a showing of "significant segregative effect" in suburban jurisdictions caused by constitutional violations in Chicago, and that interdistrict remedies were thus appropriate under Milliken. It found this effect in the possibility that CHA's discriminatory practices had fostered the racial paranoia which created white flight, and which was making it increasingly difficult to produce an integrated housing system within Chicago proper. Judge Tone adhered to his earlier dissent.

3. CONTENTIONS: The SG reads Milliken as a substantive principle of constitutional law precluding relief that extends beyond the parameters of the constitutional violation which is pleaded and proved. Here, the evidence that suburban housing projects are located in black communities is insufficient to prove suburban violations, for 3 are in white census tracts, 5 are in municipalities lacking white census tracts, 2 were completed in 1953 and the racial balance at that time is not in the record, 1 is in a tract which became black after completion of the project, and 1 is in a tract which was predominantely black

at the time of completion. Moreover, assuming that an interdistrict effect is sufficient to warrant an interdistrict remedy, no such effect has been shown; CA 7's reliance on the possibility that CHA's policies have produced racial paranoia, and therefore segregated suburbs, is pure speculation.

Even if Milliken is nothing more than an equitable limitation on the remedies which may be invoked to cure constitutional violations, the situation here qualifies. While HUD provides the bulk of financing, the initiative for public housing rests with local authorities, and it is the local authorities which must agree to provide the necessary schools, sewers, waterlines, streets, transportation and similar services. Implementation of an interdistrict remedy would likewise involve complex administrative problems, requiring the participation of the 100 or so political units in the Chicago suburban area. The interdistrict remedy would thus be far more administratively difficult than a Chicago-only remedy, and the latter itself has proven very difficult to implement.

Resps contend that as to HUD, the remedy is not an interdistrict remedy, since HUD has for years viewed the problem in area-wide terms, and for administrative and planning purposes considers the city's boundaries to be thoroughly artificial. Moreover, there is evidence of suburban discrimination, in that suburban public housing is largely in black census tracts and

populated by black tenants. Nor are the practical problems which were present in Milliken of serious concern here. HUD can do a great deal without local cooperation, at least under several new programs which permit direct contracting for construction or rehabilitation of low-income housing. 42 U.S.C. § 1437f(b). And no massive restructuring of state laws would be required -- merely setting aside the requirement of local approval of CHA's suburban project plans would be sufficient.

Resps also contend that review would be premature, because the judgment is not final, the relief which will be ordered is not known, and this Court does not have the history of dealing with litigation of this sort which would enable it to reach an informed decision without a complete record. Perhaps in anticipation of this argument, the SG contends that prompt resolution is required because the uncertainty that has been created discourages suburban jurisdictions from participating at all in public housing programs -- fearing that the housing will be used for persons on CHA's waiting lists, they see no point in producing the housing which their own residents admittedly need. Resps' counter with the arguments that § 1437f(b) programs do not require local participation, that the 1974 Amendments plainly encourage dispersal of low-income housing into suburban areas, and that political jurisdictions are supposed to consider not merely the needs of their existing residents, but also of

those who may be "expected to reside" in the community. 42 U.S.C. § 5304(a)(4)(A).

4. DISCUSSION: In order to avoid the impact of Milliken, CA 7 has not only interpreted it quite narrowly, but has also engaged in considerable "speculation" as to the presence of suburban violations and as to the suburban effect of CHA's practices. I read the decision as being basically bottomed on the judgment that because of white flight, a remedy within Chicago is inadequate to create the racial balances necessary to free "our minorities [from] the jobless slums of the ghettoes." A suburban remedy was thus thought necessary, and was obtained by fashioning such distinctions of Milliken as were required.

I would have no doubt that review was in order if I knew exactly what is encompassed in CA 7's judgment. If the court's concept of a metropolitan remedy is nothing more than one in which CHA and HUD are required to use their best efforts and existing powers to build such suburban housing as they can, then the remedy is by no means extragavant; I doubt however that much would be accomplished, given that the suburban jurisdictions retain control of such matters as zoning, building permits, water and sewage hook-ups, streets, etc. On the other hand, if CA 7 is understood to mandate suburban construction over the protests of the suburban jurisdictions, then there is a strong possibility of conflict with Milliken. I suspect that the latter is what CA 7

contemplated, since it gave no indication that the remedy should be limited to such measures as elicited suburban cooperation; moreover, while resps contend that HUD can do much on its own initiative, they also suggest that it might be appropriate to eliminate the state statutory requirement that CHA obtain local approval of its suburban projects. In this regard, several suburban housing authorities have been joined in this suit on remand to the district court.

For obvious reasons, CHA is not a party to the petition.

There is a response.

3/31/75 Jacobs Opns in pet. appx.

Conference 4-11-75

Court CA - 7 ..... *Voted on* ....., 19...

Argued ....., 19... *Assigned* ....., 19... No. 74-104

Submitted ....., 19... *Announced* ....., 19...

Hills

JAMES L. ~~MITCHELL~~, ACTING SECRETARY OF HOUSING AND URBAN DEVELOPMENT, Petitioner

DISCUSS

vs.

DOROTHY GAUTREAUX, ET AL.

2/20/75 Cert. filed.

Relist

for C.J.

	HOLD FOR	CERT.		JURISDICTIONAL STATEMENT				MERITS		MOTION		ABSENT	NOT VOTING	
		G	D	N	POST	DIS	AFF	REV	AFF	G	D			
Rehnquist, J.		✓												
Powell, J.		✓												
Blackmun, J.					Join 3									
Marshall, J.			✓											
White, J.			✓											
Stewart, J.			✓											
Brennan, J.			✓											
Douglas, J.														
Burger, Ch. J.														

Conference 4-18-75

Court .....
Argued ....., 19...
Submitted ....., 19...

Voted on ....., 19...
Assigned ....., 19...
Announced ....., 19...

No. 74-1047

HILLS

vs.

GAUTREAUX

RELIST

DISCUSS

Relist
for
C. J.

	HOLD FOR	CERT.		JURISDICTIONAL STATEMENT				MERITS		MOTION		ABSENT	NOT VOTING	
		G	D	N	POST	DIS	AFF	REV	AFF	G	D			
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Rehnquist, J.														
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White, J.														
Stewart, J.														
Brennan, J.														
Douglas, J.														
Burger, Ch. J.														

Conference 4-25-75

Court .....
Argued ....., 19...
Submitted ....., 19...

Voted on ....., 19...
Assigned ....., 19...
Announced ....., 19...

No. 74-104

HILLS

DISCUSS

vs.

GAUTREAUX

RELIST

Relist
for C. J.

	HOLD FOR	CERT.		JURISDICTIONAL STATEMENT				MERITS		MOTION		ABSENT	NOT VOTING	
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Brennan, J.														
Douglas, J.														
Burger, Ch. J.														

Conference 5-9-75

Court .....
Argued ....., 19...
Submitted ....., 19...

Voted on ....., 19...
Assigned ....., 19...
Announced ....., 19...

No. 74-10

HILLS

vs.

GAUTREAUX

RELIST

Granted
Relist
for
C.J.

	HOLD FOR	CERT.		JURISDICTIONAL STATEMENT				MERITS		MOTION		ABSENT	NOT VOTING	
		G	D	N	POST	DIS	AFF	REV	AFF	G	D			
.....		✓												
Rehnquist, J.		✓												
Powell, J.		✓												
Blackmun, J.		✓												
Marshall, J.			✓											
White, J.			✓											
Stewart, J.			✓											
Brennan, J.			✓											
Douglas, J.														
Burger, Ch. J.		✓												

CRS/gg 1-19-76

BOBTAIL MEMORANDUM

TO: Mr. Justice Powell

FROM: Carl R. Schenker DATE: January 19, 1976

No. 74-1047 Hills v. Gautreaux

Basically, I would affirm. But I would significantly modify the CA's order.

In Milliken, the interdistrict nature of the relief had two significances. (A) Relief was ordered there against presumably innocent government entities that had had no opportunity to participate in the proceedings. (B) The sweeping away of local government lines poses significant practical questions. I believe that Milliken turned primarily No on factor (A). The basic thrust of the opinion is that government boundary lines can be swept away in the face of constitutional violations, but that should not be done casually. Rather, it should be done only when the governments sought to be affected by the remedial decree are guilty of constitutional violations. Because factor (A) precluded relief, factor (B) was not really pursued in the case.

Thus, I think the SG is correct in urging that Milliken is not limited to the special practical difficulties that might be associated with interdistrict relief in a school case (factor B).

Rather, I read Milliken as announcing a general rule of equitable relief dealing with interdistrict situations (stemming from factor A). Primary focus on factor (A) in interdistrict cases is justified. The practical difficulties in according relief in such situations would vary with the particular government function in question, but there are theoretical constants arguing against relief in any interdistrict case unless the Milliken requirements are met. In particular, there is the notion that local government boundaries do have a functional and historical legitimacy that cannot be disregarded. Consequently, if this case involved an order that the Chicago suburbs or their housing authorities take remedial action, I would recommend reversal because of factor (A). I am not persuaded by the arguments advanced in Parts II and III of respondents brief to the effect that if Milliken applies, there should still be area-wide relief.

But this is not an interdistrict case, as respondents argue persuasively in Part I of their brief. HUD is the only party which has sought cert from the order below.* I therefore think that the argument of the respondents in Part I controls the case: (1) HUD has been found to have perpetrated an independent constitutional violation, (2) by HUD's own definition the relevant "district" for its operations is the entire Chicago area housing market, and (3) extra-Chicago relief can practicably be ordered against HUD. Components (1),(2),

* ~~But~~ Were suburban communities parties below?

and (3) combine to significantly distinguish this case from Milliken.

Component (1) of the respondents' argument completely distinguishes this case from factor (A) of Milliken. Here HUD's constitutional violations and obligations are the only ones at stake. HUD is a unitary operation, and it has been found guilty of a constitutional violation. Thus, if HUD is ordered to take area-wide remedial steps, the concerns involved in factor (A) of Milliken do not arise. No innocent Government body is being ordered to give relief, and there are no "due process" related problems from failure to hear the cases of other government entities involved.

From the foregoing I conclude that area wide-relief against HUD is permissible despite Milliken. Here I part company with the Court of Appeals, however, for the Court of Appeals appears to have taken the further step of ruling that area-wide relief was required. I think in doing that the CA ignored factor (B). Although factor (B) did not influence the outcome of Milliken, it is important and deserves greater weight than CA 7 recognized.

Factor (B) is the simple reality that in drawing equitable decrees a court must take account of practicalities. Particular difficulties in equitable relief were perceived to exist in the interdistrict school situation (although factor (A) in any event prevented interdistrict relief). The

particular difficulties associated with interdistrict relief do not exist here because HUD is a unitary entity. But since HUD must operate across local government lines, some difficulties might arise that are related to those in an interdistrict case. These should be given more consideration than CA 7 seemed to give them.

That is not to say that any such difficulties preclude area-wide relief here against HUD. In fact, I think that respondents show persuasively that the difficulties here are rather slight in components (2) and (3) of their argument.

In component (2) they point out that HUD itself defines the relevant area in its function not as the "district" of Chicago but as the area-wide housing market. Thus, as a matter of practicalities HUD is willing to operate across "district" lines. In component (3) they also point out persuasively that HUD is able to operate across "district" lines. First, since 1974 HUD has significant capabilities to operate independently of local housing authorities by contracting directly with private parties. Second, even in dealing with local housing authorities, practicable relief could be ordered against HUD. For example, HUD could be ordered to prefer housing applications from suburban housing authorities and to make arrangements with them for the housing of members of the plaintiff

class.

Thus, factor (B) does not preclude area-wide relief against HUD. But, as with all equitable relief, practicalities should be taken into account. Here all of the relevant practicalities may not have been aired. I therefore would modify the CA opinion to the extent that it appears to order area-wide relief. The District Court should be directed instead to include area-wide relief within the range of remedies that it may impose.

I don't think there is any satisfactory answer to the foregoing analysis, and I urge you to adopt it. But I do see a means by which the Court could decide that area-wide relief is precluded. Milliken put stress on the fact that equitable decrees are to remedy the unconstitutional condition. The only unconstitutional condition that has been shown here is discrimination in Chicago housing. I don't think that HUD would have violated the constitution by following non-discriminatory practices in Chicago itself even if there were no housing projects located in the suburbs. Thus, it can be argued that the relief should be limited to Chicago, absent proof of (1) discriminatory practices by HUD in the suburbs or (2) an effect in the suburbs from the Chicago practices. (Neither of which has been proved.)

The primary shortcoming of this argument is the Keyes

case, where discrimination in one part of a school district was presumed to have effects in other parts. HUD itself defines the relevant housing "district" for its purposes as the area-wide market, so it must be presumed that the discriminatory practices by HUD in one part of the market have impacts throughout it. But Keyes was a one-district situation. Although HUD is also a single entity, if one combines the reasoning in the previous paragraph with Milliken's focus on boundaries, Keyes can be distinguished. That is, it could be argued that since HUD would not have violated the Constitution as long as it followed nondiscriminatory practices within Chicago, it cannot be ordered to remedy the discrimination on an area-wide basis.

I find this distinction hollow in the context of a discrimination by HUD. When HUD as a single entity creates discriminatory dislocations in any part of its own system, a District Court should be able to enter an area-wide decree if it finds such a decree necessary. Milliken's focus on boundaries makes sense only where they have functional and historical significance. Local governmental boundaries don't have that significance for HUD's operations.

Carl

74-1047 HILLS v. GAUTREAUX

Argued 1/20/76

Bork (SG) { If I write, I should read arguments which go beyond Brief

Accepts decision of CA7 in earlier case that HUD ~~was~~ violated law re desegregation when it made grants to Chicago Housing Authority (CHA).

Eleven local housing authorities have been ~~to~~ joined by an amended complaint. None of these has been in case previously; none has been found guilty of any fault.

DC was directed to exceed proper scope

No proof of interdistrict violation. Scope of remedy is determined by scope of Const. violation.

Book

New point - not in brief —
Not is fully dispositive of case:

CA 7 assigned as reason that
intra-Chicago remedy had become
infeasible because of demographic
shifts of population. But this
was not governmental action. It
was democratic action of people
free to move.

Point

Remedy is therefore directed
to de facto factors - not any
Govt action

Chasing "demographic shifts"
is not ~~a Court~~ required by
Constitution.

Remedy would compel HUD
to violate limitations in Fed Act.

DC is bound to direct a
metropolitan remedy.

Bork (cont)

Local communities will be compelled to accept housing they don't need or want — & such communities would then be responsible for police, fire & other services.

HUD is being made into a conduit to extend Fed power into counties & cities that have violated no law.

In 1974 Act, Congress required HUD to cooperate with local authority.

Read what Bork says about map.

Bork attacks the map attached to Respondent's Brief — says it is grossly misleading. Questions whether Map is properly in record.

Milliken v Bradley & Swann govern this case.

x x x

Resp. won't Remand — see Polikoff's argument.

Remand would be improper in this case. DC would be bound to decree some area remedy. It is naive to speak of impact of order being on HUD only. The effect would be severe on other governmental levels.

Polikoff (for Rehf)

Polikoff now backs away from area remedy & urges Remand. But her Brief indifferent - 68

Differs from SG as to what CA7 has decreed

HUD has never exercised power of E/Domain.

Zoning power is not at issue. (why not)

Subsidized Housing must comply with local zoning.

Don't know whether the CA7 order would affect local housing authority - ~~If a local housing agency~~

Decree might impose two conditions:

1. That housing be in white neighborhood

2. That this ~~housing~~ housing be made available to these Reifs & member of class.

Brennan asked if case in ripe for decision - as no order has yet been entered. Brennan cites recent Del. case.

(over)

To: LFP

From: CRS

Re: Hills V. Gautreaux, No. 74-1047

The pertinent information about HUD's use of ~~KK~~ the housing-market concept is set out in Respondents Brief at 19-26, especially the first few pages. As you can see, it's reliance on this concept is codified in C.F.R.

Carl

74-1047 Hills v. Gautreaux Conf. 1/23/76

No. _____, _____

Affirm at 6-0; possibly 8-0 if Wallace narrowly.

The Chief Justice Reverse

CA7 relied in part on school cases but then misread Milliken

Agree with Tones dissent.

Remedy must be structured in relation to the Const. violation.

CA7's op., & especially its direction to DC, incomprehensible.

Douglas, J. Stevens, J.

Out

Brennan, J. Affirm

Case in in "hell'a shape". Can't tell what CA7 intended. But violations in Chicago were clear, & metropolitan remedies vs. HUD are OK.

Case was remanded & then is OK.

Stewart, J. ~~Affirm but Remand~~ + disavow much of language.

CA7's op. can't be depended on ~~[illegible]~~ its entirety.

But HUD has authority over Metropolitan area + HUD was guilty of invalid conduct in the area (Chicago). Then an injunction vs ~~the~~ HUD ~~to~~ ordering ~~[illegible]~~ it to act in accordance with Const. (what does that mean)

Milliken has little relevance.

Disagrees with much of

White, J.

Affirm

Only party here is HUD & there is nothing wrong with telling it to stop violating Const. in Chicago area.

Marshall, J.

Affirm

Blackmun, J. Affirm

Only a Q of remedy since HUD has been found guilty of violations

Powell, J. If Op is written sufficiently narrowly, I could affirm

Resp. emphasizes that only relief sought is against HUD, but this does not answer my concerns.

HUD already has been ordered to conform its practices to the Const. - but only in Chicago (in the earlier case).

Not a Milliken case - certainly on this record.

But I see no basis for affirmative relief w/respect to jurisdictions not before the Court.

Rehnquist, J. Agree with my reservations *

CA 7's Op is impossible to understand.

CA 7 ordered a great deal more than merely ordering HUD to obey the Court.

* Could affirm remanding if narrowly written & clarified.

March 18, 1976

No. 74-1047 Hills v. Gautreaux

Dear Potter:

Please join me.

Sincerely,

Mr. Justice Stewart

lfp/ss

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

March 19, 1976

Re: No. 74-1047 - Hills v. Gautreaux

Dear Potter:

Please join me.

Sincerely,

Mr. Justice Stewart

Copies to the Conference

As marked to show changes desired by Justice Brennan, 3/25/76

WJB's changes are OK except as indicated → L.F.P

11
13
14
16

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74–1047

Carla A. Hills, Secretary of Housing and Urban Development, Petitioner, *v.* Dorothy Gautreaux et al.

On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

[March —, 1976]

MR. JUSTICE STEWART delivered the opinion of the Court.

The United States Department of Housing and Urban Development (HUD) has been judicially found to have violated the Fifth Amendment and the Civil Rights Act of 1964 in connection with the selection of sites for public housing in the city of Chicago. The issue before us is whether the remedial order of the federal trial court may extend beyond Chicago's territorial boundaries.

I

This extended litigation began in 1966 when the respondents, six Negro tenants in or applicants for public housing in Chicago, brought separate actions on behalf of themselves and all other Negro tenants and applicants similarly situated against the Chicago Housing Authority (CHA) and HUD.[1] The complaint filed against CHA in the United States District Court for the Northern Dis-

[1] The original complaint named the Housing Assistance Administration, then a corporate agency of HUD, as the defendant. Although the petitioner in this case is the current Secretary of HUD, this opinion uses the terms "petitioner" and "HUD" interchangeably.

trict of Illinois alleged that between 1950 and 1966 substantially all of the sites for family public housing selected by CHA and approved by the Chicago City Council were "at the time of selection, and are now," located "within the areas known as the Negro Ghetto." The respondents further alleged that CHA deliberately selected the sites to "avoid the placement of Negro families in white neighborhoods" in violation of federal statutes and the Fourteenth Amendment. In a companion suit against HUD the respondents claimed that it had "assisted in the carrying on and continues to assist in the carrying on of a racially discriminatory public housing system within the City of Chicago" by providing financial assistance and other support for CHA's discriminatory housing projects.

The District Court stayed the action against HUD pending resolution of the CHA suit.[3] In February of 1969, the court entered summary judgment against CHA on the ground that it had violated the respondents' constitutional rights by selecting public housing sites and assigning tenants on the basis of race.[4] *Gautreaux* v.

[2] The complaint sought to enjoin HUD from providing funds for 17 projects that had been proposed by CHA in 1965 and 1966 and from making available to CHA any other financial assistance to be used in connection with the racially discriminatory aspects of the Chicago public housing system. In addition, the respondents requested that they be granted "such other and further relief as the Court may deem just and equitable."

[3] Before the stay of the action against HUD, the District Court had certified the plaintiff class in the CHA action and had rejected CHA's motion to dismiss or for summary judgment on the counts of the complaint alleging that CHA had intentionally selected public housing sites to avoid desegregating housing patterns. 265 F. Supp. 582.

[4] CHA admitted that it had followed a policy of informally clearing proposed family public housing sites with the alderman in whose ward the proposed site was located and of eliminating each site

CHA, 296 F. Supp. 907. Uncontradicted evidence submitted to the District Court established that the public housing system operated by CHA was racially segregated, with 99½% of the family units located in Negro neighborhoods and 99% of those units occupied by Negro tenants. *Id.*, at 910.[5] In order to prohibit future violations and to remedy the effects of past unconstitutional practices, the court directed CHA to build its next 700 family units in predominantly white areas of Chicago and thereafter to locate at least 75% of its new family public housing in predominantly white areas inside Chicago or in Cook County. *Gautreaux* v. *CHA*, 304 F. Supp. 736, 738–739.[6] In addition, CHA was ordered to

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opposed by the alderman. 296 F. Supp. 907, 910, 913. This procedure had resulted in the rejection of 99½% of the units proposed for sites in white areas which had been initially selected as suitable for public housing by CHA. *Id.*, at 912

With regard to tenant assignments, the court found that CHA had established a racial quota to restrict the number of Negro families residing in the four CHA family public housing projects located in white areas in Chicago. The projects, all built prior to 1944, had Negro tenant populations of 7%, 6%, 4%, and 1% despite the fact that Negroes comprised about 90% of the tenants of CHA family housing units and a similar percentage of the waiting list. A CHA official testified that from 1950 through 1968 the four projects located in white areas were listed on the authority's tenant selection form as suitable for white families only. *Id.*, at 909.

[5] In July of 1968, CHA had in operation or development 54 family housing projects with a total of 30,848 units. Statistics submitted to the District Court established that, aside from the four overwhelmingly white projects discussed in n. 4, *supra*, 92% of all of CHA's housing units were located in neighborhoods that were at least 75% Negro and that two-thirds of the units were situated in areas with more than 95% Negro residents. 296 F. Supp., at 910.

[6] The District Court's remedial decree divided Cook County into a "General Public Housing Area" and a "Limited Public Housing Area." The "Limited Public Housing Area" consisted of the area within census tracts having a 30% or more non-white population or within one mile of the boundary of any such census tract. The

modify its tenant assignment and site selection procedures and to use its best efforts to increase the supply of dwelling units as rapidly as possible in conformity with the judgment. *Id.*, at 739–741.

The District Court then turned to the action against HUD. In September of 1970, it granted HUD's motion to dismiss the complaint for lack of jurisdiction and failure to state a claim on which relief could be granted. The United States Court of Appeals for the Seventh Circuit reversed and ordered the District Court to enter summary judgment for the respondents, holding that HUD had violated both the Fifth Amendment and § 601 of the Civil Rights Act of 1964, 42 U. S. C. § 2000d (1970), by knowingly sanctioning and assisting CHA's racially discriminatory public housing program. 448 F. 2d 731, 739–740.[3]

On remand, the trial court addressed the difficult problem of providing an effective remedy for the racially segregated public housing system that had been created

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remainder of Cook County was included in the "General Public Housing Area." Following the commencement of construction of at least 700 family units in the General Public Housing Area of the City of Chicago, CHA was permitted by the terms of the order to locate up to one-third of its General Public Housing Area units in portions of Cook County outside of Chicago. See 304 F. Supp., at 738–739.

[3] The Court of Appeals found that "HUD retained a large amount of discretion to approve or reject both site selection and tenant assignment procedures of the local housing authority" and that the Secretary had exercised those powers "in a manner which perpetuated a racially discriminatory housing system in Chicago." 448 F. 2d, at 739. Although the appellate court stated that it was "fully sympathetic" with the "very real 'dilemma'" presented by the need for public housing in Chicago, it ruled that the demand for housing did not justify "the Secretary's past actions [which] constituted racially discriminatory conduct in their own right." *Ibid.*

by the unconstitutional conduct of CHA and HUD.[8] The court granted the respondents' motion to consolidate the CHA and HUD cases and ordered the parties to formulate "a comprehensive plan to remedy the past

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[8] The court's July 1969 order directing CHA to use its best efforts to increase public housing opportunities in white areas as rapidly as possible had not resulted in the submission of a single housing site to the Chicago City Council. A subsequent order directing the submission of sites for 1500 units by September 20, 1970, had eventually prompted CHA to submit proposed sites in the spring of 1971, but inaction by the City Council had held up the approval of the sites required for their development. See *Gautreaux* v. *Romney*, 332 F. Supp. 366.

The District Court subsequently took additional measures in an attempt to implement the remedial orders entered against CHA. In May 1971, the city of Chicago and HUD agreed to a letter of intent that provided that the city would process sites suitable for use by CHA to permit the authority to commence acquisition of sites for 1,700 units in accordance with a specified timetable. HUD then released certain Model Cities funds on the condition that the City Council and CHA continue to show progress toward meeting the goals set forth in the May letter. After the city fell far behind schedule, the District Court granted the respondents' request for an injunction directing HUD to withhold $26 million in Model Cities funds until the city remedied its existing deficit under the timetable. See 332 F. Supp. 366. The Court of Appeals reversed the injunction, holding that the District Court had abused its discretion in ordering funding cutoff. *Gautreaux* v. *Romney*, 457 F. 2d 124.

Between July 1971 and April 1972, the City Council failed to conduct any hearings with respect to acquisition of property for housing sites and did not approve land acquisition for any sites. Following the filing of a supplemental complaint naming the mayor and the members of the City Council as defendants, the District Court found that their inaction had prevented CHA from providing relief in conformity with the court's prior orders. In a further effort to effectuate relief, the court ruled that the provision of Illinois law requiring City Council approval of land acquisition by CHA "shall not be applicable to CHA's actions . . . taken for the purpose of providing Dwelling Units." 342 F. Supp. 827, 830. The Court of Appeals upheld this decision. 480 F. 2d 210.

effects of unconstitutional site selection procedures." The order directed the parties to "provide the Court with as broad a range of alternatives as seem . . . feasible' including 'alternatives which are not confined in their scope to the geographic boundary of the City of Chicago.' After consideration of the plans submitted by the parties and the evidence adduced in their support, the court denied the respondents' motion to consider metropolitan relief and adopted the petitioner's proposed order requiring HUD to use its best efforts to assist CHA in increasing the supply of dwelling units and enjoining HUD from funding family public housing programs in Chicago that were inconsistent with the previous judgment entered against CHA. The court found that metropolitan relief was unwarranted because "the wrongs were committed within the limits of Chicago and solely against residents of the City" and there were no allegations that "CHA and HUD discriminated or fostered racial discrimination in the suburbs."

On appeal, the Court of Appeals for the Seventh Circuit, with one judge dissenting, reversed and remanded the case for "the adoption of a comprehensive metropolitan area plan that will not only disestablish the segregated public housing system in the City of Chicago . . . but will increase the supply of dwelling units as rapidly as possible." 503 F. 2d 930, 939. Shortly before the Court of Appeals announced its decision, this Court in *Milliken* v. *Bradley*, 418 U. S. 717, had reversed a judgment of the Court of Appeals for the Sixth Circuit that had approved a plan requiring the consolidation of 54 school districts in the Detroit metropolitan area to remedy racial discrimination in the operation of the Detroit public schools. Understanding *Milliken* "to hold that the relief sought there would be an impractical and unreasonable over-

response to a violation limited to one school district," the Court of Appeals concluded that the *Milliken* decision did not bar a remedy extending beyond the limits of Chicago in the present case because of the equitable and administrative distinctions between a metropolitan public housing plan and the consolidation of numerous local school districts. 503 F. 2d, at 935–936. In addition, the appellate court found that, in contrast to *Milliken*, there was evidence of suburban discrimination and of the likelihood that there had been an "extra-city impact" of the petitioner's "intra-city discrimination." *Id.*, at 936–937, 939–940. The appellate court's determination that a remedy extending beyond the city limits was both "necessary and equitable" rested in part on the agreement of the parties and the expert witnesses that "the metropolitan area is a single relevant locality for low rent housing purposes and that a city-only remedy will not work." *Id.*, at 936, 937. HUD subsequently sought review in this Court of the permissibility in light of *Milliken* of "inter-district relief for discrimination in public housing in the absence of a finding of an inter-district violation."[*] We granted certiorari to consider this important question. 421 U. S. 962.

II

In *Milliken* v. *Bradley*, *supra*, this Court considered the proper scope of a federal court's equity decree in the context of a school desegregation case. The respondents in that case had brought an action alleging that the Detroit Public School System was segregated on the basis of race as the result of official conduct and sought an order establishing "a unitary, nonracial school system." 418 U. S., at 722–723. After finding that con-

[*] Although CHA participated in the proceeding before the Court of Appeals, it did not seek review of that court's decision and has not participated in the proceedings in this Court.

stitutional violations committed by the Detroit School Board and state officials had contributed to racial segregation in the Detroit schools, the trial court had proceeded to the formulation of a remedy. Although there had been neither proof of unconstitutional actions on the part of neighboring school districts nor a demonstration that the Detroit violations had produced significant segregative effects in those districts, the court established a desegregation panel and ordered it to prepare a remedial plan consolidating the Detroit school system and 53 independent suburban school districts. *Id.*, at 733–734.[10] The Court of Appeals for the Sixth Circuit affirmed the desegregation order on the ground that, in view of the racial composition of the Detroit school system, the only feasible remedy required "the crossing of the boundary lines between the Detroit School District and adjacent or nearby school districts." *Bradley* v. *Milliken*, 484 F. 2d 215, 249. This Court reversed the Court of Appeals, holding that the multidistrict remedy contemplated by the desegregation order was an erroneous exercise of the equitable authority of the federal courts.

Although the *Milliken* opinion discussed the many practical problems that would be encountered in the consolidation of numerous school districts by judicial decree, the Court's decision rejecting the metropolitan area desegregation order was actually based on fundamental

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[10] Although the trial court's desegregation order in *Milliken* did not direct the adoption of a specific metropolitan plan, it did contain detailed guidelines for the panel appointed to draft the desegregation plan. 345 F. Supp. 914 (ED Mich.). The framework for the plan called for the division of the designated 54-school district desegregation area into 15 clusters, each containing a part of the Detroit school system and two or more suburban districts. *Id.*, at 928–929. Within this framework, the court charged the panel with the responsibility for devising a plan that would produce the maximum actual desegregation. *Id.* at 918. See 418 U. S., at 733–734.

limitations on the remedial powers of the federal courts to restructure the operation of local and state governmental entities. That power is not plenary. It "may be exercised 'only on the basis of a constitutional violation.'" 418 U. S., at 738, quoting *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U. S. 1, 16. See *Rizzo* v. *Goode*, — U. S. —, —. Once a constitutional violation is found, a federal court is required to tailor "the scope of the remedy" to fit "the nature and extent of the violation." 418 U. S., at 738; *Swann*, *supra*, at 16. In *Milliken*, there was no finding of unconstitutional action on the part of the suburban school officials and no demonstration that the violations committed in the operation of the Detroit school system had had any significant segregative effects in the suburbs. See 418 U. S., at 745, 748. The desegregation order in *Milliken* requiring the consolidation of local school districts in the Detroit metropolitan area thus constituted direct federal judicial interference with the autonomy of governmental entities without the necessary predicate of a constitutional violation by those entities or the identification within them of any significant segregative effects resulting from the Detroit school officials' unconstitutional conduct. Under these circumstances, the Court held that the interdistrict decree was impermissible because it was not commensurate with the constitutional violation to be repaired.

Since the *Milliken* decision was based on basic limitations on the exercise of the equity power of the federal courts and not on a balancing of particular considerations presented by school desegregation cases, it is apparent that the Court of Appeals erred in finding *Milliken* inapplicable to this public housing case.[11] The school de-

[11] The Court of Appeals interpreted the *Milliken* opinion as limited to a determination that, in view of the administrative com-

segregation context of the *Milliken* case is nonetheless important to an understanding of its discussion of the limitations on the exercise of federal judicial power. As

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plexities of school district consolidation and the deeply-rooted tradition of local control of public schools, the balance of equitable factors weighed against metropolitan school desegregation remedies. See 503 F. 2d, at 935–936. But the Court's decision in *Milliken* was premised on a controlling principle governing the permissible scope of federal judicial power, a principle not limited to a school desegregation context. See 418 U. S., at 744

In addition, the Court of Appeals surmised that either an interdistrict violation or an interdistrict segregative effect may have been present in this case. There is no support for either conclusion. The sole basis of the appellate court's discussion of alleged suburban discrimination was the respondents' exhibit 11 illustrating the location of 12 housing projects within the portion of the Chicago Urbanized Area outside the city limits of Chicago. That exhibit showed that 11 of the 12 projects were located in areas that, at the time of the hearing in November of 1972, were within one mile of the boundary of a census tract with less than a 70% white population. The exhibit was offered to illustrate the scarcity of integrated public housing opportunities for the plaintiff class and for lower-income white families and to indicate why the respondents did not "expect cooperation from the suburban areas" in providing housing alternatives in predominately white areas. In discussing the data underlying the exhibit, counsel for the respondents in the trial court expressly attempted to avoid the "possible misconception" that he was asserting that the suburban municipalities and housing authorities were "guilty of any discrimination or wrongdoing." In view of the purpose for which the exhibit was offered and the District Court's determination that "the wrongs were committed within the limits of Chicago," it is apparent that the Court of Appeals was mistaken in supposing that the exhibit constitutes evidence of suburban discrimination justifying metropolitan area relief.

In its brief opinion on rehearing, the Court of Appeals asserted that "it is reasonable to conclude from the record" that the intracity violation "may well have fostered racial paranoia and encouraged the 'white flight' phenomenon which has exacerbated the problems of achieving integration." 503 F. 2d, at 939–940. The

the Court noted, school district lines cannot be "casually ignored or treated as a mere administrative convenience" because they separate independent governmental entities responsible for the operation of autonomous public school systems. 418 U. S., at 741–743. The Court's holding that there had to be an interdistrict violation or effect before a federal court could order the crossing of district boundary lines reflected the substantive impact of a consolidation remedy on [redacted] separate and independent school districts.[12] The District Court's desegregation order in *Milliken* was held to be an impermissible remedy not because it envisioned relief against a wrongdoer extending beyond the city in which the violation occurred but because it contemplated a [redacted] judicial decree restructuring the operation of local governmental entities that were not implicated in any constitutional violation.

III

The question presented in this case concerns only the authority of the District Court to order HUD to take remedial action outside the city limits of Chicago. HUD does not dispute the Court of Appeals' determination

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Court of Appeals' speculation about the effects of the discriminatory site selection in Chicago [redacted] is contrary both to [redacted] and to expert testimony in the record [redacted] also falls far short of the demonstration of a "significant segregative effect in another district" discussed in the *Milliken* opinion. See 418 U. S., at 745.

[12] The Court in *Milliken* required either a showing of an interdistrict violation or a significant segregative effect "[b]efore the boundaries of separate and autonomous school districts may be set aside by consolidating the separate units for remedial purposes." 418 U. S., at 744–745. In its *amicus* brief in *Milliken*, the United States emphasized that an interdistrict remedy in that case would require "the restructuring of state or local governmental entities" and result in "judicial interference with state perogative concerning the organization of local governments."

that it violated the Fifth Amendment and § 601 of the Civil Rights Act of 1964 by knowingly funding CHA's racially discriminatory family public housing program, nor does it question the appropriateness of a remedial order designed to alleviate the effects of past segregative practices by requiring that public housing be developed in areas that will afford respondents an opportunity to reside in desegregated neighborhoods. But HUD contends that the *Milliken* decision bars a remedy affecting its conduct beyond the boundaries of Chicago for two reasons. First, it asserts that such a remedial order would constitute the grant of relief incommensurate with the constitutional violation to be repaired. And, second, it claims that a decree regulating HUD's conduct beyond Chicago's boundaries would inevitably have the effect of "consolidat[ing] for remedial purposes" governmental units not implicated in HUD's and CHA's violations. We address each of these arguments in turn.

A

We reject the contention that, since HUD's constitutional and statutory violations were committed in Chicago, *Milliken* precludes an order against HUD that will affect its conduct in the greater Metropolitan area. The critical distinction between HUD and the suburban schools districts in *Milliken* is that HUD has been found to have violated the Constitution. That violation provided the necessary predicate for the entry of a remedial order against HUD and, indeed, imposed a duty on the District Court to grant appropriate relief. See 418 U. S., at 744. Our prior decisions counsel that in the event of a constitutional violation "all reasonable methods be available to formulate an effective remedy," *North Carolina State Board of Education* v. *Swann*, 402 U. S. 43, 46, and that every effort should be made by

a federal court to employ those methods "to achieve the greatest possible degree of [relief], taking into account the practicalities of the situation." *Davis* v. *Board of School Comm'rs.*, 402 U. S. 33, 37. As the Court observed in *Swann* v. *Charlotte-Mecklenburg Board of Education*: "Once a right and a violation have been shown, the scope of a district court's equitable powers to remedy past wrongs is broad, for breath and flexibility are inherent in equitable remedies." 402 U. S., at 15.

Nothing in the *Milliken* decision suggests a *per se* rule that federal courts lack authority to order parties found to have violated the Constitution to undertake remedial efforts beyond the municipal boundaries of the city where the violation occurred.[18] As we noted in Part II, *supra*, the District Court's proposed remedy in *Milliken* was impermissible because of the limits on the federal judicial power to interfere with the operation of state political entities that were not implicated in unconstitutional conduct. Here, unlike the desegregation remedy found erroneous in *Milliken*, a judicial order directing relief beyond the boundary lines of Chicago will not

[18] Although the State of Michigan had been found to have committed constitutional violations contributing to racial segregation in the Detroit schools, 418 U. S., at 734–735, n. 16, the Court in *Milliken* concluded that the interdistrict order was a wrongful exercise of judicial power because prior cases had established that such violations are to be dealt with in terms of "an established geographic and administrative school system" and because the State's educational structure vested substantial independent control over school affairs in the local school districts. See 418 U. S., at 742–744. In *Milliken*, a consolidation order directed against the State would of necessity have abrogated the rights and powers of the suburban school districts under Michigan law. See *id.*, at 742 n. 20. Here, by contrast, a metropolitan area remedy involving HUD need [illegible] See Part III–B, *infra*.

Again Bill wants to oust autonomy

leave it

(not displace the rights and powers accorded Suburban governmental entities under federal or state ~~housing statutes~~ law.

I won't agree to limiting this to housing statutes.

necessarily entail coercion of uninvolved governmental units, because both CHA and HUD have the authority to operate outside the Chicago city limits.[14]

In this case, it is entirely appropriate and consistent with *Milliken* to order CHA and HUD to attempt to create housing alternatives for the respondents in the Chicago suburbs. Here the wrong committed by HUD confined the respondents to segregated public housing. The relevant geographic area for purposes of the respondents' housing options is the Chicago housing market, not the Chicago city limits. That HUD recognizes this reality is evident in its administration of federal housing assistance programs through "housing market areas" encompassing "the geographic area 'within which all dwelling units . . .' are in competition with one another as alternatives for the users of housing." Department of Housing and Urban Development, FHA Techniques of Housing Market Analysis, January 1970, at 8, *quoting* The Institute for Urban Land Use and Housing Studies, Housing Market Analysis: A Study of Theory and Methods, 1953, at Ch. II. The housing market area "usually extends beyond the city limits" and in the larger

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[14] Illinois statutes permit a city housing authority to exercise its powers within an "area of operation" defined to include the territorial boundary of the city and all of the area within three miles beyond the city boundary that is not located within the boundaries of another city, town, or village. In addition, the housing authority may act outside its area of operation by contract with another housing authority or with a state public body not within the area of operation of another housing authority. Ill. Rev. Stat. c. 67½, §§ 17 (b), 27c (1971).

Although the state officials in *Milliken* had the authority to operate across school district lines, the exercise of that authority to effectuate the Court's desegregation order would have eliminated numerous independent school districts or at least have displaced important powers of those uninvolved governmental entities. See n. 13, *supra*.

granted

under state ~~statutes~~ law. OK

School districts & boards may be created by state constitutions.

markets 'may extend into several adjoining counties.' *Id.*, at p. 12.[15] An order against HUD and CHA regulating their conduct in the greater metropolitan area will do no more than take into account HUD's expert determination of the area relevant to the respondents' housing opportunities and will thus be wholly commensurate with the "nature and extent of the constitutional violation." 418 U. S., at 744. To foreclose such relief solely because HUD's constitutional violation took place within the city limits of Chicago would transform *Milliken*'s principled limitation on the exercise of federal judicial authority into an arbitrary and mechanical shield for those found to have engaged in unconstitutional conduct.

B

The more substantial question under *Milliken* is whether an order against HUD affecting its conduct beyond Chicago's boundaries would impermissibly interfere with local governments and suburban housing authorities that have not been implicated in HUD's unconstitutional conduct. In examining this issue, it is important to note that the Court of Appeals' decision did not endorse or even discuss "any specific metropolitan plan" but instead left the formulation of the remedial plan to the District Court on remand. 503 F. 2d, at 936. On rehearing, the Court of Appeals characterized its remand order as one calling "for additional evidence and for further consideration of the issue of metropolitan area relief in light of this opinion and that of the

[15] In principal markets such as Chicago, the Standard Metropolitan Statistical Area is coterminous with the housing market area. See Department of Housing and Urban Development, FHA Techniques of Housing Market Analysis, January 1970, at 13; Department of Housing and Urban Development, Urban Housing Market Analysis, 1966, at 5.

Supreme Court in Milliken v. Bradley." *Id.*, at 940. In the current posture of the case, HUD's contention that any remand for consideration of a metropolitan area order would be impermissible as a matter of law must necessarily be based on its claim at oral argument "that court-ordered metropolitan relief in this case, no matter how gently it's gone about, no matter how it's framed, is bound to require HUD to ignore the safeguards of local autonomy and local political processes" and therefore to violate the limitations on federal judicial power established in *Milliken*. In addressing this contention we are not called upon, in other words, to evaluate the validity of any specific order, since no such order has yet been formulated.

HUD's position, we think, grossly underestimates the ability of a federal court to formulate a decree that will grant the respondents the constitutional relief to which they may be entitled without overstepping the limits of judicial power established in the *Milliken* case. HUD's discretion regarding the selection of housing proposals to assist with funding as well as its authority under a recent statute to contract for low-income housing directly with private owners and developers can clearly be directed towards providing the respondents constitutional relief in the greater Chicago metropolitan area without ~~coercing participation by unwilling local governments or~~ undercutting the role of those governments in the federal housing assistance scheme.

An order directing HUD to use its discretion under the various federal housing programs to foster projects located in white areas of the Chicago housing market would be consistent with and supportive of well-established federal housing policy.[16] Title VI of the Civil Rights

[16] In the District Court, HUD filed an appendix detailing the various federal programs designed to secure better housing oppor-

Act of 1964 prohibits racial discrimination in federally assisted programs including, of course, public housing programs.[17] Based upon this statutory prohibition, HUD in 1967 issued site approval rules for low-rent housing designed to avoid racial segregation and expand the opportunities of minority group members "to locate outside areas of [minority] concentration." Department of Housing and Urban Development, Low-Rent Housing Manual, § 205.1 ¶ 4 (g) (February 1967 revision). Title VIII of the Civil Rights Act of 1968, expressly directed the Secretary of HUD to "administer the programs and activities relating to housing and urban development in a manner affirmatively to further" the Act's fair housing policy. 42 U. S. C. § 3608 (d)(5) (1970).

Among the steps taken by HUD to discharge its statutory duty to promote fair housing was the adoption of project selection criteria for use in "eliminating clearly unacceptable proposals and assigning priorities in funding to assure that the best proposals are funded first." Evaluation of Rent Supplement Projects and Low-rent Housing Assistance Applications, 37 Fed. Reg. 203 (1972). In structuring the minority housing opportunity component of the project selection criteria, HUD attempted "to assure that building in minority areas goes forward only after there truly exists housing opportunities for minorities elsewhere" in the housing market and to avoid encouraging projects located in racially mixed areas. *Id.*, at 204. See 24 CFR § 200.710 (1975). See

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tunities for low-income families and represented that "the Department will continue to use its best efforts in review and approval of housing programs for Chicago which address the needs of low income families."

[17] It was this statutory prohibition that HUD was held to have violated by its funding of CHA's housing projects. See 448 F. 2d 731, 740.

generally Maxwell, HUD's Project Selection Criteria, 48 Notre Dame L. Rev. 92 (1972).[16] More recently, in the Housing and Community Development Act of 1974, Congress emphasized the importance of locating housing so as to promote greater choice of housing opportunities and to avoid undue concentrations of lower income persons. See 42 U. S. C. §§ 5301 (c)(6), 5304 (a)(4)(A), (c)(ii) (Supp. 1975); H. R. Rep. No. 93–1114, at 8.

A remedial plan designed to insure that HUD will utilize its funding and administrative powers in a manner consistent with affording relief to the respondents need not abrogate the role of local governmental units in the federal housing assistance programs. Under the major housing programs in existence at the time the District Court entered its remedial order pertaining to HUD, local housing authorities and municipal governments had to make application for funds or approve the use of funds in the locality before HUD could make housing assistance money available. See 42 U. S. C. §§ 1415 (7)(b), 1421b (a)(2) (1970). An order directed solely to HUD would not force unwilling localities to apply for assistance under these programs but would merely reinforce the regulations guiding HUD's determination of which of the locally authorized projects to assist with federal funds.

The Housing and Community development Act of

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[16] A HUD study of the implementation of the project selection criteria revealed that the actual operation of the minority housing opportunity criterion depends on the definition of "area of minority concentration" and "racially mixed area" employed by each field office. The meaning of those terms, which are not defined in the applicable regulations, 24 CFR § 200.710, varied among field offices and within the jurisdiction of particular field offices. Department of Housing and Urban Development, Implementation of HUD Project Selection Criteria for Subsidized Housing: An Evaluation, December 1972, at 116–117.

1974, 42 U. S. C. § 1437 *et seq.* (Supp. 1975), significantly enlarged HUD's role in the creation of housing opportunities. Under the § 8 Lower-Income Housing Assistance program, which has largely replaced the older federal low-income housing programs,[19] HUD may contract directly with private owners to make leased housing units available to eligible lower-income persons.[20] As HUD has acknowledged in this case, "local governmental approval is no longer explicitly required as a condition of the program's applicability to a locality." Regulations governing the § 8 program permit HUD to select "the geographic area or areas in which the housing is to be constructed," 24 CFR § 880.203 (b), and direct that sites be chosen to "promote greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of low-income persons." 24 CFR §§ 880.112 (d), 883.209 (a)(3) (1975). See *id.*, §§ 880.112 (b), (c), 883.209 (a)(2), (b)(2). In most cases the Act grants the unit of local government in which the assistance is to be provided the

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[19] For fiscal year 1975 estimated contract payments under the § 8 program were approximately $10,700,000 as compared to a total estimated payment of $16,350,000 for all federal subsidized housing programs. The comparable figures for fiscal year 1976 indicate that $22,725,000 of a total $24,800,000 in estimated contractual payments are to be made under the § 8 program. See Hearings on Department of Housing and Urban Development—Independent Agencies Appropriations for 1976, before the Subcomm. on HUD—Independent Agencies of the House Comm. on Appropriations, 94th Cong., 1st Sess., pt. 5, at 85–86 (1975). See also *id.*, at 119 (testiomny of HUD Secretary Hills).

[20] Under the § 8 program, HUD contracts to make payments to local public housing agencies or to private owners of housing units to make up the difference between a fair market rent for the area and the amount contributed by the low-income tenant. The eligible tenant family pays between 15% and 25% of its gross income for rent. See 42 U. S. C. § 1437f (Supp. 1975).

right to comment on the application and, in certain specified circumstances, to preclude the Secretary of HUD from approving the application. See 42 U. S. C. §§ 1439 (a)-(c) (Supp. 1975).[21] Use of the § 8 program to expand low-income housing opportunities outside areas of minority concentration would not have a coercive effect on suburban municipalities. For under the program, the local governmental units retain the right to comment

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[21] If the local unit of government in which the proposed assistance is to be provided does not have an approved housing assistance plan, the Secretary of HUD is directed by statute to give the local governmental entity 30 days to comment on the proposal after which time the Secretary may approve the project unless he determines that there is not a need for the assistance. 42 U. S. C. § 1439 (c) (Supp. 1975). In areas covered by an approved plan, the local governmental entity is afforded a 30-day period in which to object to the project on the ground that it is inconsistent with the municipality's approved housing assistance plan. If such an objection is filed, the Secretary may nonetheless approve the application if he determines that the proposal is consistent with the housing assistance plan. 42 U. S. C. § 1439 (a). The local comment and objection procedures do not apply to applications for assistance involving 12 or fewer units in a single project or development. 42 U. S. C. § 1439 (b).

The ability of local governments to block proposed § 8 projects thus depends on the size of the proposed project and the provisions of the approved housing assistance plans. Under the 1974 Act, the housing assistance plan must assess the needs of lower-income persons residing in or expected to reside in the community and must indicate the general locations of proposed housing for lower-income persons selected in accordance with the statutory objective of "promoting greater choice of housing opportunities and avoiding undue concentration of assisted persons." 42 U. S. C. §§ 5304 (a)(4)(A), (C)(ii). See also *City of Hartford* v. *Hills*, —— F. Supp. ——, Civil No. H-75-258 (Conn., Jan. 28, 1976). In view of these requirements of the Act, the location of subsidized housing in predominately white areas of suburban municipalities may well be consistent with the communities' housing assistance plans.

on specific assistance proposals, to reject proposals that are inconsistent with their housing assistance plans, and to require that zoning and other land use restrictions be adhered to by builders.

In sum, there is no basis for the petitioner's claim that court-ordered metropolitan relief in this case would be impermissible as a matter of law under the *Milliken* decision. In contrast to the desegregation order in that case, a metropolitan relief order directed to HUD would not consolidate or in any way restructure local governmental units. The remedial decree would neither force suburban governments to submit public housing proposals to HUD nor displace the rights and powers accorded local government entities under federal or state housing statutes or existing land use laws. The order would have the same effect on the suburban governments as a discretionary decision by HUD to use its statutory powers to provide the respondents with alternatives to the racially segregated Chicago public housing system created by CHA and HUD.

Since we conclude that a metropolitan area remedy in this case is not impermissible as a matter of law, we affirm the judgment of the Court of Appeals remanding the case to the District Court "for additional evidence and for further consideration of metropolitan relief." 503 F. 2d, at 940. Our determination that the District Court has the authority to direct HUD to engage in remedial efforts in the metropolitan area outside the city limits of Chicago should not be interpreted as requiring a metropolitan area order. The nature and scope of the remedial decree to be entered on remand is a matter for the District Court in the exercise of its equitable discretion, after affording the parties an opportunity to present their views.

The judgment of the Court of Appeals remanding this

case to the District Court is affirmed, but further proceedings in the District Court are to be consistent with this opinion.

It is so ordered.

MR. JUSTICE STEVENS took no part in the consideration or decision of this case.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

March 30, 1976

Re: 74-1047 - Hills v. Gautreaux et al.

Dear Potter:

I join your proposed opinion circulated March 17.

Regards,

WEB

Mr. Justice Stewart

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

April 5, 1976

RE: No. 74-1047 - Hills v. Gautreaux

Dear Potter:

Please join me in your recirculation of April 2.

I may add a sentence reaffirming my adherence to the views expressed in the dissents of Byron and Thurgood in Milliken. I'll let you know.

Sincerely,

Bill

Mr. Justice Stewart

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 5, 1976

Re: No. 74-1047 - Hills v. Gautreaux

Dear Potter:

Please join me in your recirculation of April 2.

Sincerely,

Harry

Mr. Justice Stewart

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

April 7, 1976

RE: No. 74-1047 Hills v. Gautreaux, et al.

Dear Thurgood:

Please join me in your concurring opinion in the above.

Sincerely,

Bill

Mr. Justice Marshall

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

April 9, 1976

Re: No. 74-1047 - Hills v. Gautreaux

Dear Thurgood:

Please add my name to your concurring statement in this case.

Sincerely,

Mr. Justice Marshall

Copies to Conference

JPS

THE C. J.	~~W. O. D.~~	W. J. B.	P. S.	B. R. W.	T. M.	H. A. B.	L. F. P.	W. H. R.
Join PS 3/30/76		~~Join PS 4/5/76~~	1st draft 3/17/76 2nd draft	Join PS 4/7/76	Concurring opinion 1st draft 4/6/76	Join PS 4/5/76	Join PS 3/18/76	Join PS 3/19/76
		Join TM 4/7/76	4/2/76 3rd draft 4/16/76	Join TM 4/9/76	2nd draft 4/16/76			
					74-1047 Hills v. Gautreaux			