

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

DOROTHY GAUTREAUX, et al.)	
)	
Plaintiffs,)	
)	
vs.)	No. 66 C 1459
)	Hon. Marvin Aspen
)	
CHICAGO HOUSING AUTHORITY,)	
)	
Defendant.)	

**ABLA PLAINTIFFS' MEMORANDUM IN SUPPORT OF THEIR
MOTION TO INTERVENE IN THE GAUTREAUX LITIGATION**

I. INTRODUCTION

On July 29, 1999, a group of current, former, and potential ABLA residents ("ABLA plaintiffs") filed a lawsuit against the Chicago Housing Authority ("CHA") and the United States Department of Housing and Urban Development ("HUD"), challenging CHA's redevelopment plan for ABLA ("ABLA case"). The ABLA plaintiffs challenge the plan on three fronts: its design, its results, and its implementation. First, the ABLA plaintiffs allege that CHA unlawfully shut them out of the redevelopment planning process, in violation of the United States Housing Act of 1937 ("USHA"). Second, the ABLA plaintiffs allege that the resulting plan discriminates against protected classes and perpetuates racial segregation, in violation of both the Fair Housing Act ("FHA") and HUD's regulations implementing Title VI, because the plan severely reduces the number of very low-income units at ABLA and pushes ABLA residents either south of Roosevelt Road or out of ABLA altogether, into segregated neighborhoods. Third, in beginning to implement its plan, CHA has so far displaced over 1,000 families without respecting their rights to housing choice under the USHA, or their relocation rights under the Uniform Relocation Act ("URA") and or the Housing and Community Development Act ("HCDA"). See Intervenors' Complaint.

As soon as the ABLA plaintiffs filed their lawsuit, which was assigned to Judge Gettleman, the Gautreaux plaintiffs and the Gautreaux court-appointed Receiver ("Habitat") filed a joint motion before this court seeking dismissal of the ABLA case without prejudice of the ABLA plaintiffs' right to seek leave of court to intervene in Gautreaux. The Gautreaux plaintiffs and Receiver argued that the ABLA plaintiffs sought to bring the same types of civil rights claims litigated against the CHA in Gautreaux. They also argued that ABLA case constituted a "collateral attack" on Gautreaux, since the ABLA plaintiffs were challenging the number of very low-income units to be built under CHA's plan (1,084), a number tentatively approved by this court in its order of June 19, 1998. CHA and HUD joined in the motion and advanced the same arguments.

This court granted the motion on November 4, 1999, adopting the Gautreaux plaintiffs' and Receiver's core argument that "the entirety of the [ABLA] complaint attacks the revitalization plan created pursuant to this Court's June 19, 1998 order." Order of November 4, 1999. This court reasoned that reassignment would promote judicial economy by allowing all claims related to ABLA to be litigated in one forum, with all the necessary parties present:

[T]here is little chance that reassignment will delay the Gautreaux case because the ABLA piece is still in the development phase, unlikely to move forward until the [ABLA plaintiffs'] challenge is resolved....[A]ll of the ABLA plaintiffs' challenges to the ABLA revitalizing plan may be addressed in a single proceeding concerning the development of the area. Any plan for the area that involves the construction of public housing must be approved by a host of entities, all of whom are parties to the Gautreaux litigation. It would be much more expedient to address all of the challenges to the ABLA plan now, in one forum, instead of pursuing piecemeal litigation in different courts with the intention of later moving for waivers and approval pursuant to the Gautreaux decree.

Id. The court concluded, "We therefore grant the joint motion, reassign the case to this Court, and dismiss it without prejudice to the ABLA plaintiffs' right to intervene in Gautreaux." Order, November 4, 1999, emphasis added. ABLA plaintiffs wish to avoid further procedural delays and get to the heart of their many serious concerns about the revitalization plan. Thus, the ABLA plaintiffs are not appealing this court's order dismissing their lawsuit, but instead, are following this court's direction and are seeking to intervene in Gautreaux.. Therefore, according

to this court's order of November 4, 1999, the ABLA plaintiffs may intervene in Gautreaux. Indeed, this court has ruled that this is the only forum in which the ABLA plaintiffs may pursue their claims. This is the same approach that this court has recently taken with the case of Cabrini-Green LAC v. CHA et al., No. 96 C 6949 ("Cabrini-Green case"). This court has indicated that it will allow the plaintiff in that case, the Cabrini-Green Local Advisory Council ("LAC"), to intervene in Gautreaux if the LAC feels that the redevelopment plan designed by the Cabrini-Green "Working Group" (led by Habitat) violates federal law: "If . . . the LAC feels the plan is violative of federal law or some other law or contract, we will allow it to intervene for the purpose of filing a motion to challenge the plan." Memorandum Opinion and Order, November 3, 1999, at 4 n. 3, emphasis added. In other words, this is to be the sole forum for litigating claims construed as relating to Gautreaux issues (i.e., the number and location of public housing units within a "revitalization" area).

Now that the ABLA plaintiffs are pursuing their claims in this court, they can also pursue claims against the Gautreaux Receiver. Intervenors' complaint therefore adds Habitat as a defendant on the appropriate (fair housing) counts. See Intervenors' Complaint. Each of these claims relates to actions taken by Habitat to limit the number and siting of very low-income units to be built or rehabilitated at ABLA. Plaintiffs allege that such actions amount to violations of the FHA and HUD's regulations implementing Title VI. Again, this court has signaled, in connection with the Cabrini-Green case, that this is the sole forum for adjudicating claims that relate to the number and location of public housing units within a Gautreaux revitalization area. Memorandum Opinion and Order, November 3, 1999, at 4.

The ABLA plaintiffs believe that this court's November 4 order is clear in granting plaintiffs the right to intervene in Gautreaux. However, despite their efforts, the ABLA plaintiffs have been unable to obtain the consent of the Gautreaux parties to intervene herein. Therefore, the ABLA plaintiffs have set forth below a complete analysis under Federal Rule of Civil Procedure 24 as to why they have a right to intervene in this case.

II. THE ABLA PLAINTIFFS ARE ENTITLED TO INTERVENE AS OF RIGHT

In order to intervene as of right under Rule 24(a)(2), the ABLA plaintiffs (also referred to as “movants”) must satisfy four requirements: (1) they must make a timely application (2) they must possess an interest relating to the subject matter of the action; (3) they must be at risk the interest will be impaired as a practical matter by the action’s disposition, and (4) they must lack adequate representation of their interest by the existing parties. Nissei Sangyo America Ltd. v. United States, 31 F.3d 435, 438 (7th Cir. 1994). The court must accept as true all non-conclusory allegations of the motion and proposed pleading. Reich v. ABC/York-Estes Corp., 64 F.3d 316, 321 (7th Cir. 1995). A motion to intervene as a matter of right should not be dismissed unless it appears to a certainty that the intervenor is not entitled to relief under any set of facts which could be proved under the complaint. Id. Here, the ABLA plaintiffs satisfy all four requirements, and thus, are entitled to intervene as of right.

A. The Motion Is Timely.

There is no precise time limit for filing a motion to intervene. Atlantic Mutual Ins. Co. v. Northwest Airlines, Inc., 24 F.3d 958, 960 (7th Cir. 1994). Rather, the Seventh Circuit employs a four-part test to determine timeliness: (1) the length of time the intervenor knew or should have known of his interest in the case; (2) the prejudice to the original party caused by the delay; (3) the resulting prejudice to the intervenor if the motion is denied; and (4) any unusual circumstances. People Who Care v. Rockford Bd. of Educ., 68 F.3d 172, 175 (7th Cir. 1995). The purpose of the timeliness requirement is to “prevent a tardy intervenor from derailing a lawsuit within sight of the terminal.” United States v. City of Chicago, 870 F.2d 1256, 1263 (7th Cir. 1989). Here, there is no risk that the Gautreaux litigation will be “derailed”; indeed, the ABLA phase of the litigation is just beginning. Moreover, ABLA plaintiffs filed their motion to intervene as soon as they learned they had no other means of protecting their interests.

Although the movants have long taken an interest in the revitalization of ABLA, they did not resort to litigation until all else failed. The ABLA plaintiffs repeatedly attempted to gain a seat at the table, but CHA refused to include them in the process of formulating and

implementing plans for the ABLA community. Indeed, on one occasion, CHA police physically blocked CRA members and their attorneys from entering a meeting regarding replacement housing for ABLA residents. In response to CRA's repeated requests to be included in the process, CHA stated that its policy is to negotiate major redevelopment and modernization activities only with the local LAC, in direct conflict with federal regulations, which require the CHA to consult with all tenants affected by HOPE VI-funded demolition and revitalization activities. 42 U.S.C. § 1437p(b)(1); 24 C.F.R. § 970.4(a); HUD FY 1998 HOPE VI Guidebook at 1. Unfortunately, the ABLA LAC does not represent the views of many ABLA residents, including CRA and its members, and has refused to present their views to CHA during its consultations.

On July 13, 1999, the CHA Defendants caused to be issued a Request For Proposals ("RFP") for a development manager to implement the ABLA revitalization plan. The RFP specified the precise numbers of very low-income units to be developed and asserted that this number was expected to decrease even further over time. At that point it became clear that nothing short of litigation would give CRA a voice in the process, and that the tentative redevelopment plan approved by this court was moving to the implementation stage; thus, on July 29, 1999, ABLA plaintiffs filed suit against the CHA and HUD. On November 4, 1999, this court issued its opinion dismissing the ABLA case. Memorandum Opinion and Order, November 4, 1999, at 1. The ABLA plaintiffs filed their motion to intervene as soon as possible thereafter. Thus, the motion is timely.

The second factor, prejudice to the original parties caused by the delay, weighs in ABLA plaintiffs' favor. As this court notes in its decision dismissing ABLA plaintiffs' complaint, the "ABLA piece" of the Gautreaux case is "still in the development phase, unlikely to move forward until the CRA challenge is resolved." Order at 1. This court notes that it would actually be "much more expedient" for all concerned parties to address ABLA plaintiffs' concerns "now, in one forum, instead of pursuing piecemeal litigation in different courts." Id.; see also Jansen v. Cincinnati, 904 F.2d 336, 341 (6th Cir. 1990) (original parties in employment discrimination

action were not prejudiced by intervention, as their interests were better served by having all relevant interests represented in one case to avoid “piecemeal” litigation).

CHA itself acknowledges that ABLA plaintiffs should be granted leave to intervene, noting that the “ABLA phase of Gautreaux is just beginning,” and that “ABLA and Gautreaux could be resolved in a single proceeding.” CHA’s Memorandum In Support Of Joint Motion Of Receiver And Gautreaux Plaintiffs, at 3. Indeed, CHA, HUD, the Receiver, and Gautreaux plaintiffs—all of whom argued strenuously that intervention was ABLA plaintiffs’ only remedy—cannot legitimately argue now that intervention should be denied. See City of Chicago, 870 F.2d at at 1260 (observing that it was “disingenuous” of City to argue intervenors did not meet criteria for intervention in employment discrimination litigation, while at same time arguing that intervenors’ separate lawsuit could not proceed because it was a collateral attack). Thus, as this court has already observed, existing parties would not be prejudiced by granting intervention to ABLA plaintiffs.¹

The third factor, prejudice to movants if the motion is denied, weighs heavily in favor of intervention. The ABLA plaintiffs will suffer extreme prejudice if their motion to intervene is denied. As this court has already dismissed their independent lawsuit, denying intervention would effectively leave the ABLA plaintiffs without any forum to raise their substantial concerns over the plan. See Edwards v. City of Houston, 78 F.3d 983, 1003 (5th Cir. 1996) (finding that white, female, and Asian-American police officers were entitled to intervene in employment discrimination suit brought by African-American and Hispanic police officers, since proposed intervenors could not bring separate lawsuit and, thus, denying intervention would mean court’s decrees were “unassailable” by persons who clearly had substantial interest in litigation).

At least one court in this jurisdiction has held that claims similar to those raised by ABLA plaintiffs stated legitimate claims upon which relief could be granted. See Cabrini-Green LAC v. CHA, 1997 U.S. Dist. LEXIS 625 (N.D. Ill. 1997) (denying motion to dismiss). Denying

¹ Although HUD is no longer an existing party in Gautreaux, it is noteworthy that HUD has also recommended that “the ABLA case should be handled by the Gautreaux court,” thereby causing HUD to again become a party in Gautreaux. HUD’s Response In Support Of Joint Motion, at 3.

ABLA plaintiffs any forum to raise their legitimate claims would be contrary to our “deep-rooted historic tradition that everyone should have his own day in court.” Martin v. Wilks, 490 U.S. 755, 762 (1981); cf. Bowen v. Michigan Academy of Family Physicians, 476 U.S. 667, 670 (1986) (“judicial review of agency action by an aggrieved person will not be cut off unless there is persuasive reason to believe that such was the purpose of Congress”); Marbury v. Madison, 1 Cranch 137, 163 (1803) (“[the] very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws”). Thus, this factor weighs in favor of granting intervention.

Lastly, the fourth factor, which requires the court to consider any unusual circumstances, militates toward allowing intervention. The recent “convergence” of the ABLA case and the Gautreaux litigation is certainly unusual. Based on the manner in which similar cases at the Henry Horner and Cabrini-Green developments had proceeded, the ABLA plaintiffs believed the appropriate method for raising their concerns was through a separate lawsuit, not intervention in Gautreaux. In the Horner and Cabrini cases, the Receiver and Gautreaux plaintiffs made no motion to require the residents to intervene in Gautreaux, nor did this court act sua sponte to order such relief. Indeed, in Cabrini, Judge Coar expressly rejected the argument by CHA that the case, which presented strikingly similar race discrimination claims as those raised in ABLA, was a collateral attack on Gautreaux. See Cabrini-Green LAC v. CHA, 1997 U.S. Dist. LEXIS 625 (N.D. Ill. 1997) (holding that residents could proceed with separate litigation, but that any relief granted must necessarily comply with Gautreaux orders); see also Gautreaux Orders of March 9, 1995; August 14, 1995; April 15, 1996 and October 22, 1998 (relating to the number and location of public housing units within the Horner Revitalization Area); compare Gautreaux Order of June 10, 1997 (denying Receiver’s Motion for Instructions relating to Horner filed with this court, noting that the Receiver’s concerns related “essentially to the Horner decree,” holding that “notwithstanding the implications to Gautreaux, [that] the proper venue to resolve the Receiver’s concerns is Horner,” and deferring “to Judge Zagel to resolve these disputes in the Horner case”). When this court made clear by its November 4, 1999, decision that intervention

was ABLA plaintiffs' only remedy, they filed this motion as soon as possible thereafter. Given the unusual facts of this case, the motion to intervene should be considered timely and intervention should be granted.

B. The ABLA Plaintiffs Have A Substantial Interest In The Subject Matter Of The Gautreaux Litigation.

To satisfy this requirement, the ABLA plaintiffs do not have to establish a “vested” or “property” right. City of Chicago, 870 F.2d at 1260. Rather, the “interest” test is primarily a practical guide for involving as many apparently concerned persons as is compatible with efficiency and due process. Cook v. Boorstin, 763 F.2d 1462, 1466 (D.C. Cir. 1985). Here, the ABLA plaintiffs, as current residents, persons illegally displaced from ABLA who wish to return, and persons on the waiting list for public housing, have a strong interest in the redevelopment of ABLA. The contours of the redevelopment plan, particularly the number, location, and type of public housing replacement units, will ultimately determine whether they will live in a revitalized community with close proximity to downtown Chicago, or whether they will be required to live in highly segregated areas of the city, away from neighborhood amenities, away from decent, safe, sanitary housing, away from integrated schools, and away from job opportunities.

The ABLA plaintiffs believe that the current plan not only fails to remedy past discrimination in Chicago public housing, but actually discriminates against protected groups and perpetuates segregation. Persons have a “significantly protectible interest” in being free from race discrimination sufficient to warrant intervention. Cook, 763 F.2d at 1466 (allowing employees to intervene in employment discrimination case, where they alleged discriminatory treatment); Bradley v. Pinellas Co. Sch. Bd., 961 F.2d 1554, 1557 (11th Cir. 1992) (allowing parents to intervene in school desegregation case, where they alleged that various school board policies used to implement court-ordered maximum and minimum black student ratios had caused burden of busing to fall on black students rather than whites). Courts have also recognized the strong interest of subsidized tenants to intervene in cases where the future of their

homes is at stake. United States v. Dixwell Hous. Dev. Corp., 71 F.R.D. 558, 560 (D. Ct. 1976) (allowing tenants to intervene in foreclosure of HUD- subsidized multi-family building, given their leasehold interest and interest as beneficiaries of the assisted housing program); United States v. Germantown Settlement Homes, 1985 U.S. Dist. LEXIS 18193, *7-8 (E.D. Pa. 1985) (same). Here, then, the ABLA plaintiffs have a significant interest in the outcome of the Gautreux litigation.

C. The ABLA Plaintiffs’ Interest Will Be Impaired By The Disposition of Gautreux.

The ABLA plaintiffs’ interest in remaining in the revitalized ABLA community has been, and will continue to be, impaired by decisions made in Gautreux. The current plan, tentatively approved by this court, will not provide sufficient units for the 1,500 current residents of ABLA and the 1,000 persons illegally displaced from ABLA who may wish to return. Intervenors’ Complaint at ¶ 3. The “revitalized” ABLA neighborhood will contain only 1,084 housing units for very low-income families, 478 of which (or 45%) will be renovated barracks-type housing south of Roosevelt Road. Intervenors’ Complaint at ¶ 57-60. Thus, more than 400 families—roughly 30% of current ABLA residents—will be forced to leave their homes and move out of the ABLA neighborhood altogether. Many of those who are allowed to remain will be squeezed into census tracts south of Roosevelt Road with predominately minority populations.

These families will lose out an opportunity to live in a revitalized, integrated ABLA neighborhood. The plan will most severely impact residents of the Jane Addams Homes, a historically significant housing development located north of Roosevelt Road. In the census tract in which Jane Addams is situated, 87% of residents are African American. Intervenors’ Complaint at ¶65. By contrast, four out of the five adjoining census tracts are predominately white. Under the plan, all of the 987 units at Addams will be demolished, and 700 units will be built in their place. Eighty percent of these replacement units will be sold at market rate prices, making them well out of reach of Addams residents, who are overwhelming very low income (between 0-50% of the Area Median Income or AMI). Intervenors’ Complaint at ¶ 66. The

remaining 20% will be “public housing eligible” units for families earning up to 80% of AMI. Id. It is unclear how many, if any, of the Addams replacement units will be reserved for very poor ABLA families. Id.

The use of Section 8 certificates for displaced ABLA families will not mitigate the disparate impact of the plan. The Section 8 program, as currently administered, perpetuates segregated living patterns in Chicago. There is no requirement that Section 8 certificates be used in integrated areas of the city. See Gautreaux v. CHA et al., Nos. 66-1459/60 (slip op. Aug. 26, 1997) (declining to bring the Section 8 program within the ambit of Gautreaux). In fact, the bulk of Section 8 recipients are located in neighborhoods that are highly racially segregated. Between 1995 and 1998, 80% of CHA families relocated through the Section 8 program moved to census tracts that were at least 90% African American. Intervenors’ Complaint at ¶ 72. Clearly, the plan, ostensibly meant to increase integration, will have a devastating discriminatory effect on those least able to shoulder the burden—poor, African American female-headed households.

The Seventh Circuit has recognized that persons whose interests are harmed by a decree entered in a race discrimination case have a right to be heard through intervention, particularly where they themselves are members of a protected class. A group of white female police sergeants had a right to intervene in a lawsuit brought by black male sergeants alleging that the examination used by the City to determine eligibility for promotion from sergeant to lieutenant had a disparate impact on blacks. United States v. City of Chicago, 870 F.2d 1256, 1258 (7th Cir. 1989). After the district judge ordered immediate promotions of non-white sergeants, the parties agreed to “adjust” the test results by raising the mean scores of non-white sergeants who had taken the test. Id. The white female sergeants filed a motion to intervene, claiming they were denied promotions due to the post-exam “leg-up” given to non-white sergeants. Id. The district court denied the motion to intervene, but the Seventh Circuit reversed. Id.

The court noted that although the white female sergeants did not have a “vested” or “property” right to be promoted, they had a “confident expectation” of being promoted based on their performance on the exam, which was a sufficient interest to satisfy Rule 24(a)(2). Id. at

1260. This interest was at risk of impairment, as the “leg-up” given minority sergeants could permanently impair the intervenors’ chances for promotion within the ranks of the Chicago Police Department. Id. at 1262. The court noted that “[e]quitable decrees are not to be made without consideration of the interests of third parties who may be affected by the decrees...These would-be intervenors are third parties who may be vitally, adversely, and irreparably affected by the Bigby decree.” Id. Thus, they were allowed to intervene for the purpose of challenging the court’s order approving promotions on the basis of racially altered test results. Id. at 1263-64.² Although the district judge may have been “tired of this endless...litigation,” he was required to give the female sergeants an opportunity to be heard:

[W]hen a federal judicial decree unexpectedly impairs settled expectations, and does so on what might appear to be arbitrary and discriminatory grounds, the judge is obliged to listen to the victims of the decree when they make a prompt application to intervene; and perhaps especially when the victims are themselves a protected group....Decrees requiring discrimination in the name of ending discrimination should be administered with due regard for the interests of those upon whom the decrees bear hardest.

Id. at 1263 (emphasis added).

Here, where members of protected groups—African-Americans, female-headed households, and children—have made legitimate, substantial claims that a plan tentatively approved by this court will discriminate against them and perpetuate segregation, this court should give them an opportunity to be heard. Notably, in the context of the Cabrini-Green case, this court indicated that it would allow the Cabrini LAC to intervene in Gautreaux if the LAC felt the plan ultimately developed by the “Working Group,” of which the Cabrini LAC was to be a part, violated federal law. Memorandum Opinion and Order, November 3, 1999, at 4 n.3. Here, the ABLA plaintiffs do not even have the limited avenue of participating in the ABLA

² The Seventh Circuit observed that if alteration of the test results was actionable discrimination, the City could not shield itself from liability by invoking the district judge’s approval of promotions based on the altered results, since all the judge cared about was the “bottom line” of increased minority lieutenants. Id. at 1261. Here, then, if the ABLA plan is discriminatory, Gautreaux defendants cannot shield themselves from liability by invoking the fact that this court gave tentative approval of the plan.

“Working Group.” Indeed, a significant portion of ABLA plaintiffs’ complaint involved claims that they have been systematically shut out of the planning process. The fact that CHA argued vigorously in its Motion to Dismiss the ABLA case that it has no duty to consult with CRA suggests that CRA will continue to be excluded from the planning process. Thus, intervention becomes all the more imperative in this case.

D. The ABLA Plaintiffs Are Not Adequately Represented By The Existing Parties.

This requirement is satisfied “if the applicant shows that representation of his interest ‘may be’ inadequate; the burden of making that showing should be treated as minimal.” Trbovich v. United Mine Workers, 404 U.S. 528, 538 n.10 (1972); Gautreaux v. Pierce, 548 F. Supp. 1284, 1289 (N.D. Ill. 1982). Any doubt about the adequacy of representation should be resolved in favor of the proposed intervenors. Moore’s Federal Practice, § 24.03(4)(a).

This court itself previously allowed developers and community members to intervene in Gautreaux when it was clear their interests were not adequately represented by existing parties. Gautreaux v. Pierce, 548 F. Supp. 1284, 1287 (N.D. Ill. 1982). Community members and developers disagreed over whether HUD had violated the Gautreaux decree by reserving Section 8 contract authority for a building on the Near West Side. Community members argued that HUD’s action would push the number of assisted housing units in their census tract to more than 15%, the limit set by the decree. Id. at 1286. It was apparent to this court that their interests were not adequately represented by existing parties, since HUD did not seek to clarify its obligations under the decree until after the intervention motions were filed, and more importantly, the Gautreaux plaintiffs opposed the relief sought by some of the intervenors. Id. at n.3

Here, existing parties do not adequately represent the interests of the ABLA plaintiffs. The CHA certainly cannot be said to represent their interests, as it has played a key role in developing the plan that ABLA plaintiffs believe is discriminatory. It is the CHA that caused the unlawful dislocation of 1,000 ABLA families since 1995, a number that continues to grow by the

day. And it is the CHA that purposely allowed ABLA buildings to deteriorate beyond repair in an effort to vacate, consolidate, and demolish them. Far from representing ABLA plaintiffs' interests, then, CHA is at the root of the problem.

Nor do the Gautreaux plaintiffs or Receiver represent the interests of the ABLA plaintiffs. The organizational plaintiff CRA and persons displaced from ABLA are not members of the Gautreaux class and, thus, have no current representation in this litigation at all. Further, the ABLA plaintiffs have raised numerous concerns with the plan that do not relate to Gautreaux or race discrimination, such as failure to consult with all affected residents in accordance with Section 18 of the United States Housing Act, failure to provide relocation rights under the Uniform Relocation Act, and failure to comply with the Housing and Community Development Act. Since these concerns do not relate to race discrimination, they have not and will not be raised as a part of the Gautreaux case.³

Lastly, ABLA plaintiffs who are also members of the Gautreaux class (individual current residents and individuals on the waiting list) believe their interests are not adequately represented by the Gautreaux plaintiffs' counsel and the Receiver with respect to their race discrimination claims. Both parties signed off on the ABLA redevelopment plan without any apparent concern for its devastating discriminatory affect. Certainly no such concerns were raised in any public hearing before this court; indeed, no hearing of any kind even took place at the time this court entered its June 19, 1998, order tentatively approving the plan. Moreover, the Gautreaux plaintiffs and Receiver oppose the relief sought by ABLA plaintiffs, namely, requiring consultation with all affected residents to create a new plan that will provide the maximum amount of integrated housing for very low income families. See Joint Motion at 5; see also

³ Hines and its progeny indicate that intervention does not result in the loss of any substantive rights and that, if granted intervention, ABLA plaintiffs can raise all claims raised in their complaint, even though these issues were not raised by the original Gautreaux parties. See Davis v. Board of Sch. Comm. Of Mobile County, 517 F.2d 1044, 1049 (5th Cir. 1975) (dismissing suit brought by school employee based on Hines Doctrine and directing him to intervene in school desegregation case, even though he raised claims under Title VII which were not raised by the plaintiffs in the desegregation case; district court would consider Title VII claims, as well as any rights he had under statutes relied on by original plaintiffs and consent decree), later proceeding at 600 F.2d 470 (5th Cir. 1979) (litigating claims brought by employee-intervenor).

Edwards v. City of Houston, 78 F.3d 983, 1004 (5th Cir. 1996) (no adequacy of representation where there was “sharp disalignment” between positions of original plaintiffs and proposed intervenors). Thus, it is clear that ABLA plaintiffs meet the “minimal” standard of showing that their interests are not adequately represented by current parties to Gautreaux.

III. MOVANTS SHOULD BE GRANTED PERMISSIVE INTERVENTION

Even if this court had not already ruled that the ABLA plaintiffs have the right to intervene and even if the requirements for intervention of right were not met here, this court should grant them permissive leave to intervene under 24(b)(2) to give them a forum to pursue their claims. Rule 24(b)(2) provides that, upon timely application, anyone with a claim or defense that has a question of law or fact in common with the main action may be permitted to intervene. See e.g., Romasanta v. United Airlines, 537 F.2d 915, 920 (7th Cir. 1976)(granting permissive intervention in employment discrimination case where proposed intervenor’s claim and main action had questions of law in common, namely, the appropriate remedy for the employer’s illegal no-marriage policy); Miller v. Silbermann, 832 F. Supp. 663, 674 (S.D.N.Y. 1993) (allowing permissive intervention by tenants in suit brought by landlords challenging procedures of housing court, where positions were divergent but claims all related to constitutionality of procedures); McNeill v. New York City Housing Authority, 719 F. Supp. 233, 250 (S.D.N.Y. 1989) (despite factual differences between plaintiffs and intervenors, claims all involved constitutionality of New York City Housing Authority’s implementation of Section 8 program). Here, this court believed the claims raised in ABLA were so similar with those being litigated in Gautreaux that the two cases were properly classified as “related” under Local Rule 2.31. Thus, the requirements for permissive intervention are met here.⁴

⁴ For the reasons discussed in Sections II.A. and II.D. above, the motion for permissive intervention also meets the timeliness and inadequacy of representation requirements.

IV. CONCLUSION

For the above reasons, ABLA plaintiffs respectfully request that this court grant them intervention in this matter.

Dated: November 24, 1999

Respectfully submitted,

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