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Civil Rights - Housing Discrimination - Federal Courts May Order Metropolitan Area Remedy to Correct Wrongs Committed Solely Against City Residents Where Agencies Have Statutory Authority to Conduct Activities Outside the City Limits

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CASE NOTES

CIVIL RIGHTS—Housing Discrimination—Federal Courts May Order Metropolitan Area Remedy To Correct Wrongs Committed Solely Against City Residents Where Agencies Have Statutory Authority To Conduct Activities Outside the City Limits. *Hills v. Gautreaux*, 96 S. Ct. 1538 (1976).

Six residents of and applicants for public housing in the city of Chicago initiated a class action claiming that the Chicago Housing Authority (CHA) had violated the fourteenth amendment to the Constitution by discriminating against blacks in the selection of tenants and sites for public housing.[1] The suit alleged that since 1950 a pattern existed by which CHA would locate blacks in predominantly black projects and limit their access into primarily white projects.[2] Plaintiffs sought injunctive and other remedial relief to prohibit such practices.[3] The district court granted partial summary judgment against CHA, citing that agency's discriminatory policies and the existence of a quota system intended to minimize black presence in four white projects.[4] The court ordered CHA to construct at least seven hundred housing units in predominantly white areas before building any other units and further ordered that 75 percent of all units be located in white areas.[5]

Plaintiffs also brought a suit against the Department of Housing and Urban Development (HUD) for a declaratory judgment that HUD had assisted in effecting a racially discriminatory system of public housing in the city of Chicago and for an injunction preventing HUD from using additional federal funds in connection with or in support of the racially discriminatory aspects of the public hous-

1. Gautreaux v. Chicago Housing Authority, 296 F. Supp. 907 (N.D. Ill. 1969). The original action began with seven plaintiffs. One died during the course of the litigation.

2. The court noted that CHA had established a racial quota to restrict the number of black families residing in the public housing projects. The projects in question (mainly the white projects), all built prior to 1944, had black tenant populations of 7 percent, 6 percent, 4 percent and 1 percent despite that the black population for all projects was about 90 percent. Evidence presented also indicated that the white projects were listed as being suitable for white families only. *Id.* at 909.

3. 296 F. Supp. at 908.

4. *Id.*

5. Gautreaux v. Chicago Housing Authority, 304 F. Supp. 736 (N.D. Ill. 1969).

ing system.[6] The district court dismissed the complaint for failure to state a cause of action and for lack of jurisdiction.[7] The Court of Appeals for the Seventh Circuit reversed and granted summary judgment on the grounds that HUD had violated the fifth amendment to the Constitution and section 601 of the Civil Rights Act of 1964[8] by its acquiescence and assistance in maintaining a racially discriminatory system.[9]

On remand, the district court consolidated the two cases. It ordered HUD to comply with all pertinent federal and state statutes and to abide by its holding against CHA.[10] The court rejected plaintiffs' suggestion that the remedy apply throughout the entire metropolitan area of Chicago rather than within the boundaries of the city itself.[11] The court of appeals reversed, holding that the remedial plan must encompass the surrounding areas,[12] and that the district court's rejection of such a plan was erroneous.[13]

HUD appealed to the Supreme Court, contending that such an order was impermissable because it constituted an undue interference with the activities of local governments.[14] HUD also asserted that the Court's decision in *Milliken v. Bradley*[15] precluded a metropolitan area remedy.[16]

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6. Plaintiffs filed suit against HUD at the same time as against CHA. An unpublished order of the district court stayed all proceedings in the suit against HUD until disposition of the case against CHA. *See* Hills v. Gautreaux, 96 S. Ct. 1538, 1542 (1976).

7. On September 1, 1970 the district court dismissed the case in an unpublished memorandum decision. *See* Gautreaux v. Romney, Civil No. 66C1460 (N.D. Ill., filed Sept. 1, 1970).

8. Civil Rights Act of 1964, § 601, 42 U.S.C. § 2000d (1970), which states: "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

9. Gautreaux v. Romney, 448 F.2d 731 (7th Cir. 1971).

10. Gautreaux v. Romney, 363 F. Supp. 690 (N.D. Ill. 1973). The district court, in so deciding, stated:

> [T]he wrongs were committed within the limits of Chicago and solely against residents of the City. 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.

Id. at 691.

11. 363 F. Supp. at 691.

12. Gautreaux v. Chicago Housing Authority, 503 F.2d 930 (7th Cir. 1974).

13. *Id.* at 939.

14. 96 S. Ct. at 1546.

15. 418 U.S. 717 (1974).

16. HUD relied primarily on the Court's opinion in *Milliken*. HUD argued that the restric-

The Supreme Court held that *Milliken* did not per se limit remedial orders to city boundaries and added that the instant case warranted a metropolitan area remedy because HUD had violated the Constitution and federal statutes in surrounding areas.[17]

Since the Supreme Court decided that separate is not equal in *Brown v. Board of Education (Brown I)*,[18] courts have been struggling with remedies to eradicate racial discrimination. A question has often been raised concerning the permissable extent of judicial intrusion into local matters for the purpose of remedying violations of the Constitution and of federal statutes. In attempting to establish guidelines for such remedial orders, the Supreme Court in *Brown v. Board of Education (Brown II)* specifically authorized "the revision of school districts and attendance areas into compact units to achieve a system of determining admission to public schools on a non-racial basis . . . ."[19]

The principle most often cited to support any remedial measure is that the scope of the remedy is determined by the nature and

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tions in *Milliken* meant that unless violations were found to exist in the surrounding areas, and then only by the governing bodies of such areas, no metropolitan area remedy could be ordered. 96 S. Ct. at 1545. *See* notes 23-32 *infra*.

17. 96 S. Ct. 1538 (1976). In so deciding, the Court stated:

> 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 8 (Jan. 1970) *quoting* The Institute for Urban Land Use and Housing Studies, Housing Market Analysis: A Study of Theory and Methods, c. II (1953). (emphasis added).

Id. at 1547. This distinction between the city limits and "housing market areas" becomes crucial as at times it appears that the terms are used interchangably by the Court. *See* note 46 *infra*.

18. 347 U.S. 483, 495 (1954) (holding that maintenance of two separate educational systems based on race, constituted a violation of the equal protection clause); *accord* Griffin v. School Bd., 377 U.S. 218 (1964) (local school choice program held to violate the equal protection clause as being *in fact* a scheme to promote segregation); Watson v. Memphis, 373 U.S. 526 (1963) (recreational facilities); Holmes v. Atlanta, 350 U.S. 879 (1955) (per curiam) (public golf course); City of Baltimore v. Dawson, 350 U.S. 877 (1955) (per curiam) (public beaches).

19. 349 U.S. 294, 300 (1955).

extent of the constitutional violation.[20] In single district cases, the courts have fashioned remedial orders without much difficulty.[21] For example, courts have rearranged the attendance zones of individual school districts into areas less likely to produce a segregative effect. The power of the courts to order such remedies has never been seriously questioned.[22]

Where several districts or disparate areas are involved the problem is more difficult. The Supreme Court faced this situation in *Milliken*.[23] The *Milliken* plaintiffs, a class comprised of "all school children in the City of Detroit, Michigan, and all Detroit resident parents who have children of school age" charged that the Governor of Michigan, the Attorney General, the State Board of Education, the Board of Education of the City of Detroit and others had conducted a racially discriminatory school system in the city of Detroit in violation of the Constitution.[24] The district court and court of appeals authorized a remedy which involved school districts outside the city of Detroit.[25] That remedy required the consolidation of the suburban school districts and those within the city of Detroit. It also required the busing of suburban students to the city schools and the busing of city residents (mostly black) to the suburban schools.[26] The Supreme Court ruled that a plan involving Detroit's surrounding school districts could not be implemented unless the district court found an actual violation by those districts.[27] Absent such a showing, a metropolitan area remedy was inappropriate.[28]

20. United States v. Scotland Neck Bd. of Educ., 407 U.S. 484 (1972); Wright v. Council of the City of Emporia, 407 U.S. 451 (1972); Davis v. Board of School Comm'rs, 402 U.S. 33 (1971); Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 1, *rehearing denied*, 403 U.S. 912 (1971).

21. Since the "nature and extent" of the violation involved only one district, the relief requested and granted, included the district in question and no consideration was made in relation to the surrounding areas. *See* note 20 *supra*.

22. The Court in deciding *Milliken* did not overrule any of the previous cases dealing with remedial powers and, indeed, vigorously affirmed the remedies initiated in those cases. 418 U.S. 717 (1974). For a discussion of remedial orders in discrimination cases, with particular emphasis on *Milliken*, see Comment, *Desegregation—The Times They Are A-Changin'*, 3 FORDHAM URBAN L.J. 245 (1975).

23. 418 U.S. 717 (1974).

24. *Id.* at 722.

25. *Id.* at 730, 735.

26. *Id.* at 735.

27. *Id.* at 745.

28. *Id.*

Thus, the Supreme Court ordered that the remedy affect only those school districts within the city of Detroit.[29]

The Court in *Milliken* did not prohibit the implementation of all or any metropolitan area relief.[30] It merely attempted to establish guidelines to aid federal courts in handling situations involving more than one district. Thus, after *Milliken*, it is possible to conclude that a metropolitan area remedy is appropriate where there are violations by the surrounding areas which have a segregative effect on other districts.[31] Certain language in *Milliken* indicates that any form of relief which would interfere with the rights and powers of the local governments is inapplicable.[32]

Hills v. Gautreaux[33] considered both these possibilities. In deciding that a metropolitan area remedy would be acceptable, the Court initially set forth certain limitations noted in *Milliken*.[34] Mr. Justice Stewart, writing for a unanimous Court,[35] agreed with *Milliken* that federal courts have no power to extend a remedy into a district which had not violated the Constitution.[36] The *Gautreaux* opinion concluded that *Milliken* "was actually based on the fundamental

29. *Id.* at 753.

30. "[A]n interdistrict remedy might be in order where the racially discriminatory acts of one or more school districts caused racial segregation in an adjacent district, or where district lines have been deliberately drawn on the basis of race." *Id.* at 745.

"This is not to say, however, that an interdistrict remedy of the sort approved by the Court of Appeals would not be proper, or even necessary, in other factual situations. Were it to be shown, for example, that state officials had contributed to the separation of the races by drawing or redrawing school district lines, (citation omitted), by transfer of school units between districts (citation omitted); or by purposeful, racially discriminatory use of state housing or zoning laws, then a decree calling for transfer of pupils across district lines or for restructuring of district lines might well be appropriate." *Id.* at 755. (Stewart J., concurring).

31. "Before the boundaries of separate and autonomous school districts may be set aside by consolidating the separate units for remedial purposes or by imposing a cross-district remedy, it must first be shown that there has been a constitutional violation within one district that produces a *significant segregative effect* in another district." 418 U.S. at 744-45. (emphasis added).

32. The Court in *Milliken* stated that "The Michigan educational structure involved in this case, in common with most States, provides for a large measure of local control, and a review of the scope and character of these local powers indicates the extent to which the interdistrict remedy approved by the two courts could disrupt and alter the structure of public education in Michigan." 418 U.S. at 742-43.

33. 96 S. Ct. 1538 (1976).

34. *Id.* at 1543.

35. Justice John P. Stevens did not take part in the consideration of the decision. 96 S. Ct. at 1550.

36. 96 S. Ct. at 1544.

limitations on the remedial powers of the federal courts to restructure the operation of local and state governmental entities."[37] and noted that *Milliken* had found no violation by the surrounding areas.[38] In pointing out this factual distinction, the Court set the stage for approving a remedy which *Milliken* expressly rejected.

The *Gautreaux* Court appears to have taken its cue from statements in *Milliken* itself regarding the possibility of a metropolitan area remedy.[39] The question remains whether *Gautreaux* maintains or broadens the standards set up by *Milliken*.[40] Although *Milliken* dealt only with school districts within the city of Detroit,[41] it did not limit judicial intervention to a single city or district.[42] The *Gautreaux* Court's approval of a remedy encompassing both the city of Chicago and the surrounding areas was based on the ability of HUD and CHA to construct projects outside the Chicago city limits.[43] Given the HUD and CHA constitutional violations and the *power* of both defendants to conduct activities *outside* the city limits, judicial intervention was proper. What concerned the *Milliken* Court was that existing districts would be rearranged to the point of being unrecognizable and unmanageable.[44] In dealing with "housing market areas" the *Gautreaux* Court found no such problem.[45] The Court stated:[46]

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37. *Id.*

38. *Id.*

39. *See* note 30 *supra*.

40. *See* notes 30-32 *supra*.

41. 418 U.S. at 723.

42. *Id.* at 744-45.

43. 96 S. Ct. at 1546. The Court specifically rejected the court of appeals' argument that the violation of the surrounding areas consisted of ten of twelve housing projects constructed in close proximity to primarily white areas, stating that "[s]uch unsupported speculation falls far short of the demonstration of a 'significant segregative effect in another district' discussed in the *Milliken* opinion." *Id.* at 1545, n.11.

Illinois statute permits a city housing authority to exercise its power in areas within three miles of the city boundaries which are not located in another city, village or incorporated town. ILL. REV. STAT. ch. 67 ½, §§ 17(b), 27c (1965).

The Court also stated that "[i]n principle markets such as Chicago, the Standard Metropolitan Statistical Area is coterminous with the housing market area." 96 S. Ct. at 1547, n.15.

44. 418 U.S. at 743.

45. 96 S. Ct. at 1547.

46. *Id.* (citation omitted). It is not clear why Justice Stewart uses the term "city limits of Chicago." In the context of the decision and his prior discussion of "housing market areas," this would appear to be incorrect. *See* note 17 *supra*.

> 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." 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.

The Court thus maintained the standards set forth in *Milliken* by its finding that CHA and HUD had violated the Constitution and that both had the power to act outside the boundaries of the city of Chicago.[47] It also dispelled any thought that *Milliken* affirmatively prohibits any form of relief encompassing areas outside city boundaries.[48] A remedy which would include the "housing market areas" used in HUD guidelines would be within the *Milliken* standards.

The *Gautreaux* Court's concentration on the statutory authority afforded HUD and CHA suggests that the Court is inquiring into who has power to affect policy decisions outside the city limits. After finding a constitutional violation by the surrounding areas, the Court will then determine who can most clearly rectify the situation. In *Milliken*, the school districts from Detroit lacked power to act outside the city of Detroit.[49] In *Gautreaux*, HUD and CHA had such statutory authority to conduct activities outside the city limits of Chicago.[50] Therefore, a metropolitan area remedy would be ordered for those agencies which have already-existing authority to function.

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47. 96 S. Ct. at 1547.

48. *Id.*

49. It should also be noted that the *Milliken* Court was bothered by the prospects of authorizing a metropolitan area remedy which would involve districts which were not before it. In presenting the issues to be decided, Justice Burger stated:

> We granted certiorari in these consolidated cases to determine whether a federal court may impose a multi-district, areawide remedy to a single-district *de jure* segregation problem . . . absent a meaningful opportunity for the included neighboring school districts to present evidence or be heard on the propriety of a multidistrict remedy or on the question of constitutional violations by those neighboring districts.

418 U.S. at 721-22. The Court then explained the procedures, in detail, excluding the neighboring school districts from any consideration of a metropolitan area remedy. 418 U.S. at 728-36. No such problem faced the Court in *Gautreaux*. All necessary parties participated in all phases of the decision to consider a metropolitan area remedy.

50. *See* note 43 *supra*.

Another important consideration in *Milliken* was that the remedy not unduly interfere with the rights and powers of the local government.[51] HUD argued that a metropolitan area remedy would lead to the precise interference prohibited by *Milliken*.[52] The Court rejected this contention stating that various state, local and federal laws regulating the conduct of HUD and CHA would continue to provide for local approval of any project before funds could be advanced.[53] The Court stated:[54]

> 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 Court also found support in a series of federal statutes which call for federal and local cooperation in connection with public housing projects, as well as local authorization of such projects.[55] While local governments would have the power to authorize or reject projects suggested by HUD, the Constitution requires the federal government to refrain from funding projects which discriminate on the basis of race.[56] An order calling for a metropolitan area remedy would thus be consistent with existing federal statutes and the principle of local autonomy.

The Court stated that "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."[57]

The basis of the distinction which the Court so painstakingly makes between *Gautreaux* and *Milliken* can be found in the difference between housing districts and school districts. The *Gautreaux*

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51. *See* text accompanying note 31 *supra*.

52. 96 S. Ct. at 1546.

53. *Id.* at 1548.

54. *Id.* at 1549.

55. *Id. citing* 42 U.S.C. §§ 1415(7)(b); 1421(a)(2) (1970); *Id.* § 1439(a)-(c) (Supp. IV, 1974).

56. 96 S. Ct. at 1548. This would appear to be merely an order to HUD that it comply with existing statutes regarding funding and approval of public housing projects maintained by systems whose policies are determined to be racially discriminatory.

57. 96 S. Ct. at 1550.

Court noted that a metropolitan area remedy in *Milliken* would have required a major restructuring of school districts, funding plans, attendance zones and most importantly, a diminution of the control exerted by the local boards.[58] The *Milliken* Court was fearful of any interference with these school boards and of any lessening of their traditional powers.[59] The authority over housing projects, which have traditionally employed both state and federal funds, presents a different situation.[60] The remedy approved by the *Gautreaux* Court left district lines and authority over approval and funding unchanged.[61] While the remedy involved a metropolitan area, the *Gautreaux* Court avoided the interference with the structure and functions of the local governments which the *Milliken* Court found objectionable.

The *Gautreaux* Court, however, did not indicate whether approval of a metropolitan area remedy in future cases will depend on such abstract and complex standards as federal involvement in local governments. While interference with local authorities in *Gautreaux* would appear to be minimal, the Court makes no mention of how much interference it would permit in cases where other criteria (*e.g.*, constitutional violations by local governments) had been met. Nor does it state whether metropolitan area remedies would be proper where there would be little or no interference with suburban governments but where the violations had been committed by city governments without statutory authority to act outside their own boundaries.[62]

Nevertheless, *Gautreaux* puts to rest the notion that *Milliken*

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58. *Id.* at 1546-47.

59. The Court in *Milliken* stated that "[n]o single tradition in public education is more deeply rooted than local control over the operation of schools; local autonomy has long been thought essential both to the maintenance of community concern and support for public schools and to quality of the educational process." 418 U.S. at 741-42.

60. That there is no existing scheme of statutes in the area of education, such as is found in the housing area, provides the Court with a means of distinguishing *Milliken*, while accepting its limitations.

61. *See* text accompanying note 57 *supra*.

62. The *Gautreaux* Court indicated that 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 . . . ." 96 S. Ct. at 1547. However, it resolved the issue by again analyzing the *statutory authority* conferred on HUD to act in conjunction with local governments. This seems to imply that such powers must be established before the Court will sanction a metropolitan area remedy.

created a complete bar to metropolitan area relief. It is apparent that courts in the future may consider factors other than geographic locations and demographic boundaries.[63] The viability of metropolitan area remedies as a form of federal relief will, however, be dependent on how far the Court is willing to resist the strictures of *Milliken* in future cases.[64]

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63. Zoning ordinances of eleven municipalities that failed to afford opportunity for construction of low and middle income housing to the extent of their respective fair share of the community housing needs were declared unconstitutional by a state trial court in New Jersey. The court issued an order requiring the municipalities to increase their proportion of low and moderate income housing to reflect the population of the entire county. Urban League v. Borough of Cartaret, No. C-4122-73, (N.J. Super., May 17, 1976).

64. In a letter dated June 7, 1976, HUD announced the initiation of a one-year plan by which it would house approximately four hundred minority families in existing housing throughout the Chicago Standard Metropolitan Statistical Area. Under the plan, no more than 25 percent of these families will be located in any portion of the city of Chicago or in minority areas outside the city limits. The *Gautreaux* plaintiffs agreed to postpone requesting a metropolitan area relief order from the district court for nine months from July 1, 1976. 3 CCH, POVERTY LAW REPORTS ¶ 22806 (1976).