Hartford v. Glastonbury: History and Aftermath

William J. O'Sullivan
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I. Introduction

For American cities, 1975 was neatly summarized by a now-famous headline of the New York Daily News. The headline, which read, "Ford to City: Drop Dead," referred specifically to New York City. But to America's beleaguered urban centers, weakened by a steady outflow of people, jobs, and dollars, the News' inelegant paraphrase captured the widespread sense that the cities had been somehow betrayed by the nation itself.

President Ford's response to New York's request for an infusion of Federal dollars reflected a growing exasperation, both in Washington and in America's hinterlands, with the cities' seemingly insatiable appetite for Federal relief. The cities, on the other hand, were shouldering an ever-greater share of the responsibility for the country's poor, and felt that Federal support was both too modest and too heavily encumbered with red tape.

It was against this backdrop that the newly-sworn President had signed the Housing and Community Development Act of 1974, two weeks after the resignation of President Nixon. The Act aimed to consolidate and streamline a number of Federal categorical grant programs to American cities. For the cities, that was the good news. The bad news was that the new allocation formula that would be gradually phased in would eventually cut deeply into their total entitlements.

One of the cities injured by the new system was Hartford. Like so many of its counterparts in the Northeast, Hartford had witnessed tens of thousands of low income, low skilled people moving into the city in search of manufacturing jobs that were just as quickly moving out. Unlike other Northern cities, Hartford offered the further attraction of close proximity to tobacco fields; numerous Southern Blacks, West Indians and Puerto Ricans who had worked on farms back home sought new opportunities in the Hartford area. Seeking inexpensive housing, they, too, moved into the City, occupying public housing and the old apartment complexes that had been built for 19th- and early 20th-century factory workers. The mismatch of housing and job opportunities left Hartford in the unenviable role of low-income housing provider for the entire Capital Region.

When the Housing and Community Development Act was first enacted, Hartford had hoped that the new regime would prod some of its suburban neighbors into providing housing for some of the Hartford residents who either worked in the suburbs or wanted to but were unable to due to the logistics of reverse-commuting out of the city. Those hopes were dashed in the spring of 1975 by a loophole in the new Act that allowed the suburbs to set their own "community development" priorities without regard for their regional implications.

The result was the case of Hartford v. Hills, 408 F.Supp. 889 (D.Conn. 1976), *reversed sub nom* Hartford v. Glastonbury, 561 F.2d 1032 (2d Circ. 1977). Hartford's suit against the U.S. Department of Housing and Urban Development (HUD), which in turn joined seven Hartford suburbs as co-defendants, proved fruitless when the Court of Appeals ruled that Hartford

lacked standing to bring suit. But the substantive issues that were left unresolved, centering on regional and national responsibility for redressing "city" problems, as well as Washington's inability to decide where it stands on the issue, merit discussion.

In this paper, I will trace the history of the Housing and Community Development Act of 1974, focusing on the debate over Federal control of local grants and its implications for America's cities. I will then discuss the two Hartford cases, in which the two sides of the debate became crystallized in a real-life situation. I will then discuss the subsequent history of the Act, and, with the benefit of this hindsight, conclude with remarks from some of the principals in the Hartford cases.

II. The Housing and Community Development Act of 1974

A. Background

The Housing and Community Development Act of 1974 sought to bring under one roof numerous Federal programs aimed at providing housing and stabilizing neighborhoods. The "housing" side of the Act, Title II, has a lineage dating to the Housing Acts of 1937 and 1949. However, the Hartford cases concerned only Title I of the Act, "Community Development," and so I will confine my history and discussion to Title I.

The postwar Federal housing boom, which continued steadily through the 1950's and 1960's, was motivated by the desire to provide a "decent home and a suitable living environment for every American family."[1]

Unfortunately, the notion of "suitable living environment" seemed not to extend beyond the four walls of a family's dwelling unit. Vibrant but poor urban neighborhoods were bulldozed under to make way for concrete towers that indeed provided modern amenities on the inside but wiped out any sense of community on the outside. The Vietnam quote that "we had to destroy the village to save it" had its domestic applications as well.

The urban riots of the 1960's underscored the indigents' discontent with their "neighborhoods." In response, President Johnson, as part of his Great Society, extended and initiated a variety of programs that sought to provide both the physical infrastructure and the social supports needed for stable neighborhoods. Under the rubric of "community development," these programs provided everything from playgrounds and libraries ("hardware") to job training and crime prevention ("software"). Under the "Model Cities" program, a whole battery of these resources would be concentrated on a single neighborhood to complement new public housing.

One problem with these initiatives was that they imposed onerous application and reporting requirements on the cities seeking support. The Government, in the name of ensuring accountability on the part of grant recipients, required detailed program descriptions supported by exhaustive documentation of need. In one city's case, the crush of paper proved so burdensome that local officials commissioned a $200,000 study simply to help the various city departments figure out how to ask for Federal money.[2] City fathers throughout the country begged Washington for relief.

B. Early Formulations of the Act

The cities found a sympathetic ear in President Nixon. Under the banner of "The New Federalism," Nixon favored an enhanced local voice in identifying and treating local problems, with a commensurate reduction in Federal input and oversight. As applied to Community Development programs, this meant combining the various grant categories into one pot of money, distributing the funds to the cities, and letting them decide how best to spend it.

This approach found some favor in both houses of Congress. One group of Congressmen introduced the "Urban Community Development Revenue Sharing Act of 1971," HR-8853, 92nd Congress, 1st Sess. (1971), whose purpose was "to provide Federal revenues to State and local governments and afford them broad discretion in carrying out community development activities to help States and localities to improve their decisionmaking and management capabilities."[3]

Under this proposal, each city would receive a grant in an amount determined by a strict formula, taking into account population, level of poverty, amount of overcrowding, and extent of substandard housing.[4] The funds would need to be directed toward the elimination of slums, the improvement of public planning, facilities, or services, or the support of public housing that primarily serves low- and moderate-income people. Examples of eligible activities would be code enforcement, historic preservation, public works and facilities, and acquisition of real estate for purpose of slum clearance.[5] Federal control would be slight; before

receiving the funds, each grantee would need to develop a statement of community development objectives and projected use of funds, and then "comply substantially with the provisions of this title."[6]

A likeminded group of Senators introduced a companion bill.[7] However, neither bill commanded majority support. In each chamber, while there was general agreement that the grant process needed to be consolidated and simplified, there was also strong sentiment that the proposed bills went too far. It was one thing for HUD to untangle and loosen the strings, but quite another to cut them completely.

Therefore, in response to the Revenue Sharing Act, another group of Congressmen introduced the "Housing and Urban Development Act of 1971," HR-9688, 92nd Cong., 1st Sess. (1971). This bill had similar objectives, including "preservation and more efficient use of the existing housing stock...revitalization of declining neighborhoods [and improvement of] Federal planning assistance with emphasis upon modernizing and increasing the management capabilities of State and local governments." But the bill made no reference to "revenue sharing"; funds would be disbursed via block grants, pursuant to a multi-year plan and following a front-end determination by HUD that the plan was workable.

Congress adjourned before the Senate could respond with a companion bill. That response came the next year, in the "Housing and Urban Development Act of 1972," S-3248, 92nd Cong., 2nd Sess. (1972). This bill resembled the House's HUD Act of 1971 in terms of objectives and extent of Federal oversight, but differed from that bill in one key respect: as an alternative to

the allocation formula included in all three earlier bills, this one contained a "hold harmless" provision that would prevent earlier grantees from suffering a loss through strict use of the new formula.

C. Different Houses, Different Philosophies

At this point, in 1972, proponents of each viewpoint, strong local control and strong Federal control, had introduced a bill in each chamber of Congress. During the ensuing battle, which continued for two years, opposite views rose to the fore in the Senate and the House. Most of the Senate rallied around Sens. William Proxmire (D.Wisc.) and John Sparkman (D.Ala.), the latter the chairman of the Senate Committee on Banking, Housing and Urban Affairs, who strongly believed that Community Development funds should be targeted on America's neediest neighborhoods, necessitating close oversight from HUD to ensure that the money was spent there. By contrast, the House favored strong local control, reasoning that adoption of the Senate bill would likely result in a Presidential veto, and that an imperfect bill was better than none. Many Congressmen from suburban districts were doubtlessly influenced by the need to run for election every two years; for them, it would be hard to explain support for a plan that would divert funds away from their constituents and toward the central cities.

These two opposing views found voice in the bills adopted by the respective houses in 1974.[8] Both shared the same three general objectives: eliminating slums and blight, assisting low- and moderate-income people, and addressing other "urgent needs" in recipient communities. But the two

bills diverged widely in their views on how deeply involved HUD should be in ensuring that the Community Development Block Grant monies would be used for those purposes.

The Senate Committee Report[9] made repeated references to its emphasis on carrying out "national objectives." The bill, as elaborated upon in the report, contained a number of provisions aimed at preserving that emphasis. First, the Senate proposed a 20% cap on the catch-all "urgent needs" category; that is, 80% of each community's grant would have to be used for the somewhat more specific objectives of eliminating slums and assisting the poor and near-poor. Second, the Senate bill listed a number of proscribed projects which, though they may serve the poor and enhance "community development," were best left to local funding. These included schools, libraries, hospitals, and other public facilities. Third, the Senate hoped to retain the "hold harmless" allocation provision, to ensure that the needy cities that had actively participated in the categorical programs would not see their funds cut back. Finally, the Senate proposed fairly strict reporting requirement and active up-front review by HUD of each application.

Conversely, the House emphasized local control. In the introduction to the Committee Report of the House Committee on Banking and Currency, it was stressed that "local elected officials, rather than special-purpose agencies, would have principal responsibility for determining community development needs, establishing priorities, and allocating resources."[10] The House bill eschewed percentage or program limitations on expenditures, while offering less demanding reporting requirements. The House would stick to

a strict needs-based formula, regardless of its impact on recipients of the old programs that would now be left out. Finally, the House bill would require the HUD Secretary to approve each grant application unless

> (1) on the basis of significant facts and data, generally available and pertaining to community development and housing needs and objectives, he determines that the applicant's description of its needs is *plainly inconsistent* with those facts and data; or
> (2) on the basis of the application, he determines that the activities to be undertaken are *plainly inappropriate* to meeting the needs identified in the application.[11]

In the meetings of the Conference Committee, a compromise was reached on the "hold harmless" issue -- a 3-year phase-in of the new formula. With that exception, the House clearly carried the day. The Senate's proposed requirement that applicants furnish a 4-year plan of development and a 2-year description of specific programs was scaled back to 3-year and 1-year reports as suggested by the House. The Senate's 80% minimum on spending for slum clearance and programs for the poor was reduced to a "maximum feasible priority" requirement. The Senate's list of proscribed uses was deleted. And the House's proposed standard of HUD review, "plainly inconsistent/plainly inappropriate," prevailed, with the further provision that any application would be deemed approved 75 days after submission unless HUD rejected it.[12]

Congress got its veto-proof bill. President Nixon reluctantly passed the "New Federalism" torch to Gerald Ford on August 8, 1974, and two weeks

later Ford signed the Housing and Community Development Act of 1974. HUD issued implementing regulations in November, and the application process for 1975, year one of the program, began.

III. Hartford and its Suburbs: Applying for CDBG Funds

A. The Suburbs, Held Harmless

The HCD Act's "hold harmless" provision created an anomaly. The Senate had argued for it to ensure that needy cities, which had received the bulk of Urban Renewal and Model Cities funds, would not see their funding cut. The Act's new allocation formula, by guaranteeing funds for every municipality with a population of 50,000 or more, would reallocate funds from the cities to the suburbs unless a safeguard was built in. The "hold harmless" provision aimed to provide just that, for the first three years of the program.

But not all of the money under the old programs had gone to needy inner cities. Some of the smaller consolidated programs, such as Water/Sewer and Open Spaces, were intended to ease the growing pains of smaller cities and suburbs. Those recipients had never had to pretend that they were eliminating slums or helping the poor. But they, too, were now "held harmless," and thus guaranteed block grants under the new Act.

As a result, some fairly well-to-do communities were informed that some money was waiting for them, under an anti-blight, anti-poverty Federal program. Most such applicants took refuge in the third broad objective of

the Act: addressing other "urgent needs" of the community. In Greater Hartford, these included interior street construction (West Hartford), downtown commercial development (Glastonbury), sewers (Farmington), and parks (Vernon).

Hartford officials, preoccupied with providing basic services for tens of thousands of desperately needy people, had held numerous informal talks with their counterparts in the suburbs, hoping to share the burden. Little had been accomplished. In the 1974 Act, Hartford saw an opportunity for regional cooperation, but the CDBG applications submitted by the suburbs emphatically drove home the point that Hartford's urgent needs were not the region's. Since voluntary cooperation now seemed an impossibility, the City sought to force the suburbs to use their CDBG funds in a manner consistent with the main thrust of the Act. Hartford carefully scrutinized the requirements of the Act and applications submitted by the suburbs, looking for an inconsistency that could form the basis of a legal challenge.

B. "Expected to Reside"

HUD's regulations, following the mandate of the Act, imposed six general requirements upon CDBG applicants: a 3-year community development plan, a more detailed 1-year community development program, a housing assistance plan (HAP), a community development budget, certifications of compliance with the Civil Rights Act and other statutes and regulations, and, in future applications, a progress report.[13]

The HAP played an important dual role. Besides being a requirement for CDBG applications under Title I of the HCD Act, it was also the cornerstone of applications under Title II, the housing component of the Act. The HAP thus provided the crucial link between bricks-and-mortar housing projects and the community development programs that were supposed to complement them. The HAP was accordingly singled out by Congress as the only CDBG application requirement that could not be waived by HUD.[14]

Within the HAP were four more specific requirements. These included (1) a survey of the condition of housing stock within the applicant's community, (2) an estimate of "the housing assistance needs of lower-income persons...either already residing in the community or planning or expected to reside in the community as a result of planned or existing employment facilities,"[15] (3) development of an annual goal for assisted housing units, and (4) identification of the location of proposed low-income housing projects.

These regulations had been pieced together within three months of passage of the Act. Their exact meaning was unclear, both to would-be applicants and to the local HUD offices that were charged with implementing them. Washington issued a steady stream of instructions on various aspects of the regulations, which were duly noted by local HUD officials.[16] However, some problems with the regulations would not become apparent until completed first-year applications were submitted, in advance of the April 15, 1975, deadline.

One such problem area was the projection of low-income families "expected to reside" within an applicant community. HUD provided no methodology beyond instructions to calculate "the number of lower-income families with workers commuting into the community minus those lower-income residents commuting out of the community."[17] Six Hartford-area applicants -- Enfield, Farmington, Glastonbury, Vernon, West Hartford, and Windsor Locks -- submitted either a zero figure or no figure at all. A seventh, East Hartford, adopted a different approach, submitting instead a figure of 131, the number of people on that town's Housing Authority waiting list. Confusion reigned in HUD offices throughout the country as each applicant and local HUD official offered his own interpretation of what "expected to reside" meant.

HUD realized that the ETR requirement had been reduced to a nullity. However, developing and promulgating a meaningful methodology would take time, and much manpower had already been devoted to the application and review process, both by the applicants and by HUD. Moreover, many communities were counting on the timely release of their funds. To minimize disruption to all concerned parties, HUD's Assistant Secretary for Community Planning and Development, David Meeker, issued a memorandum to all local HUD offices on May 21, 1975, advising them that the ETR requirement had been effectively tabled until the second year of the program. HUD would either insert its own figure, accept the applicant's figure, or require the applicant to identify a better methodology that it would use in future applications.

C. Hartford's Opportunity

To the local HUD offices, Meeker's memorandum was, in the words of Lawrence L. Thompson, then head of the Hartford office, "just another implementing instruction from Washington." It hardly signified that ETR had become a major issue; at the time, many other concerns, involving eligibility, review, and other aspects of the HAP, seemed more pressing. ETR was but "one clause in a lengthy piece of legislation."

But to officials in Hartford, that one clause held far more significance. In Hartford's view, by claiming to "expect" zero additional low-income residents, the suburbs made it more easy to justify an "urgent need" for a park or street improvements in a middle-class neighborhood. If the suburbs were required to adopt a regional view, with the expectation of hundreds or thousands of low-income families moving in, HUD would recognize such "needs" as frivolous. The towns would then have two choices: submit a revised application, for a project addressing the truly urgent needs of the region's poor, or forego their grants, which would then go back into the pool for reallocation -- possibly to Hartford.

The two sides of the Congressional debate resonated in those viewpoints. To the Hartford area HUD office, the HCD Act was "a major step toward decentralization."[18] As such, local grant recipients would retain broad discretion in identifying their own needs and spending their grant money as they saw fit, within general HUD guidelines. Temporary waiver of one seemingly unworkable application requirement was both consistent with that philosophy and necessary to keep the program moving forward.

To Hartford, deferral of the ETR provision was nothing less than a betrayal of the program's intent: to eliminate slums and assist low- and moderate-income people. By claiming an ETR figure of zero, the suburbs had carte blanche to indulge their residents' wants while ignoring the region's most pressing needs. Factually, zero ETR was belied by the many Hartford residents who worked in the suburbs and presumably would live there if they could; legally, dismissal of the ETR requirement defied the statutory mandate that the HAP requirement not be waived for any applicant.

Hartford pressed its point before the Federal District Court, obtaining a preliminary injunction in September to prevent HUD from releasing CDBG monies to the seven suburban applicants noted above. The City then sought to make the injunction a permanent one, bringing suit against HUD in the case of Hartford v. Hills.[19]

IV. Hartford v. Hills

The City of Hartford, eight City Council members, and two low-income Hartford residents brought suit against HUD (Secretary Carla Hills as named defendant), which in turn impleaded the seven suburban towns whose applications were at issue. The defendants first challenged the plaintiffs' standing to sue, and Judge Blumenfeld considered the defense as applied to all three types of plaintiff.

The individual City Council members, who attempted to sue in their official capacities, were deemed to lack standing, since they had "no cognizable legal interest in the outcome of this suit."[20] But the Court found that the

City had standing. Because the Housing and Community Development Act of 1974 was enacted to help cities like Hartford, the City was found to fall within the "zone of interests" created by the Act. The City also met the "injury-in-fact" requirement; because a favorable verdict could result in reallocation of the challenged grant money to Hartford, the City stood to gain from the Court's intervention.

Similarly, the Court found that the two individual plaintiffs had standing. The Court theorized that "[i]f approval [of the suburbs' grant applications] was improper, the plaintiffs may well have lost the benefits of re-directed priorities by the applicant towns, or, perhaps, the benefits of projects implemented by the City of Hartford with any reallocated funds."[21]

Proceeding to the merits, the Court found for the plaintiffs. One of the objectives embodied in the introduction to the Act was reducing "the isolation of income groups within communities and geographical areas...through the spacial deconcentration of housing opportunities for persons of lower income."[22] To properly assess progress toward this goal, HUD needed a fully completed HAP, including a factually supportable ETR figure. This requirement was underscored by Congress' command that the HAP not be waived for any applicant. By postponing the ETR provision, HUD had effected "the unauthorized assumption by an agency of major policy decisions properly made by Congress."[23] In allowing six of the suburban defendants to effectively ignore the ETR, and in allowing East Hartford's slipshod methodology, HUD had violated Congressional command.

Accordingly, Judge Blumenfeld ordered that the seven towns' CDBG funds be frozen until satisfactory applications were tendered. HUD, which had been attempting to refine the ETR calculation anyway, created a methodology that, in its estimation, would satisfy the Court. HUD therefore chose not to appeal.

The seven towns could choose between appealing the injunction and submitting a revised year-one application, using HUD's new ETR approach. Vernon, Enfield, and Farmington chose only to resubmit, while East Hartford elected only to appeal. West Hartford and Glastonbury did both, while Windsor Locks did neither. HUD provided *amicus* support for the three appellants.

V. City of Hartford v. Towns of Glastonbury[24]

A. Panel Decision: Affirmed

Before a three-judge panel of the Second Circuit, Hartford successfully fought off the suburbs' appeal. Writing for a 2-1 majority, Judge Oakes applauded the reasoning of District Judge Blumenfeld, on both the procedural issue of standing and the substantive issue of HUD's standard of review.

Circuit Judge Meskill vigorously dissented, on the issue of standing. The judge noted that, to have standing, an aggrieved party must have a genuine chance of relief from a favorable ruling. Here, however, "there is not the slightest chance that Hartford will ever receive reallocated funds as a result

of this lawsuit."[25] A favorable ruling would simply prompt the three suburban applicants to revise their applications -- not refuse their grants and make them available for reallocation. Indeed, West Hartford and Glastonbury had already resubmitted, using HUD's new ETR guidelines, and "there is not the slightest indication that East Hartford has any intention of forfeiting its $440,000 grant by failing to do likewise."[26]

Judge Meskill also attacked Hartford's claim that the City's bleak housing situation constituted an "injury in fact." His three major points in this regard were that (1) Hartford's pre-existing housing problems could not be traced to the challenged action of the defendants, (2) the possibility that more realistic ETR figures would improve the situation was "remote and speculative," and (3) Hartford was improperly suing as *parens patriae*, seeking to vindicate the rights of its citizens rather than its own as a municipal corporation.

Judge Meskill would also have denied standing to the two low-income individual plaintiffs. He reiterated his point that the alleged injury -- the women's inability to find decent housing in either the City or the suburbs -- was not fairly traceable to the actions of the defendants challenged at bar. "The housing situation in Hartford was bleak long before 1974."[27] The plaintiffs could not credibly claim that HUD's and the suburbs' actions had exacerbated this situation -- only that they had failed to improve it.

Notwithstanding Judge Meskill's dissent, the December 23, 1976, panel decision affirmed Hartford's District Court victory. But the triumph proved to be short-lived. Early in 1977, the Second Circuit agreed to rehear the

case en banc, and on August 15, 1977, Meskill's earlier dissent laid the foundation for a 6-4 reversal.

B. En Banc Decision: Reversed

Now writing for the majority, Judge Meskill held that Hartford's action should be dismissed for lack of standing. The opinion largely echoed his dissent to the panel opinion, adding one significant point to bolster his contention that the would-be plaintiffs had suffered no injury in fact.

As I have discussed above, the Housing Assistance Plan (HAP), of which the ETR is part, provides the basis both for Title I (community development) grants and for Title II (housing) grants. Hartford's claimed injury-in-fact derived from the suburbs' zero ETR figure, which, if left unchallenged, would justify the suburbs in not providing their fair share of low-income housing. But in 1975, *the suburban defendants did utilize all of the money available to them under Title II,* for Section 8 housing subsidies.

Under Meskill's view, "because no additional Title II subsidies [were] available, it [was] unlikely that the lack of expected to reside figures [had] had any effect on the interests of the plaintiffs."[28] Furthermore, "upward revision of the defendant towns' expected to reside figures could not make additional housing subsidies available."[29] As a result, the plaintiffs "failed to trace their alleged injury to the allegedly unlawful conduct of the defendants, and...failed to demonstrate the the relief they [sought] would serve to redress that injury."[30]

The injunction was lifted, and, more than two years after submission of the applications, the 1975 CDBG monies were disbursed. During the trial and its appeals, the 1976 and 1977 funding cycles had come and gone, under the revised HUD regulations that included newly "stringent" ETR requirements. The suburban towns had sought funding for essentially the same kinds of projects as those at issue in the 1975 applications, and, by and large, had received it.

V. Subsequent History of the Act

Because of its resolution via a rule of procedure, Hartford v. Glastonbury does not reveal the Second Circuit's view of the larger issues underlying the case: the proper Federal role in encouraging or requiring regional approaches to inner-city housing problems, and whether or not CDBG was intended to enhance that role. But the Act's subsequent history in the political arena sheds some light on the bitterness of that debate.

By the time Hartford v. Glastonbury was resolved, Jimmy Carter had assumed the Presidency. Through his aggressive HUD Secretary, Patricia Harris, Carter sought to ensure that CDBG monies were targeted toward America's neediest. To that end, in 1977, HUD attempted to achieve through regulation what Congress had refused to do through statute: require all grant recipients to spend a set minimum of their funds (here, 75%) on programs benefitting the poor and near-poor. The proposed regulations also sought to redefine expected-to-reside as a "fair share" percentage of the low-income people living in the applicant's region.

Congress' response was swift and decisive. In the Housing and Community Development Amendments of 1978,[31] Congress met these two requirements head-on. First, the Amendments codified the right of grant recipients to choose among the three broad objectives -- clearing slums, helping the poor and near-poor, and meeting other "urgent" needs -- as they see fit. The Act was amended to note that "the Secretary may not disapprove an application on the basis that such application addresses any one of the primary purposes...to a greater or lesser degree than any other."[32]

Second, the Amendments clarified exactly what was meant by "expected to reside." The original regulations -- but not the original Act -- had described ETR as those "expected to reside in the community *as a result of planned or existing employment facilities.*" Congress seized on this amplification as limiting language to be placed into the Act itself. The Conference Report makes the Congressional intent clear: "A community need not set the number of units under the expected to reside element of its housing assistance plan goals at a level greater than that which is needed to accommodate the existing or projected employment opportunities in the community."[33]

This local-control emphasis was seized upon by President Reagan, who, upon assuming office in 1981, revived Nixon's call for "The New Federalism." Reagan's agenda called for decentralization of virtually every domestic Federal program. Accordingly, in 1982, Reagan's HUD Secretary, Samuel Pierce, proposed new regulations that would make it unnecessary

for CDBG recipients to show any intent to use the funds to benefit the poor. The proposal would effectively eliminate Federal oversight of the CDBG program.

Congress, realizing that the pendulum had swung too far, responded with the final significant amendment to the Act.[34] In a direct repudiation of the proposed regulations, Congress passed a requirement that at least 51% of each CDBG grant be spent on programs benefiting the poor or near-poor. "Expected to reside" retains its limiting definition, as derived from projected employment.

Through all of the legal and regulatory changes, and through severe funding cutbacks, Title I remains essentially the same program it was at its inception. Congress' original intent that recipients determine their own priorities has prevailed. According to Lawrence Thompson, who was director of the Hartford area HUD office at the time of the Hartford cases and who now heads the Hartford Redevelopment Agency, neither the "toughened" ETR requirement nor any of the other fine-tuning of the application process led to much progress toward the City of Hartford's goal: use of CDBG funds for regional, not just suburban, needs. The suburbs' 1975 grant applications, which prompted the Hartford suits, were resubmitted and approved; Mr. Thompson recalls rejecting only "a couple" of applications subsequent to that, until his departure from HUD in 1979. The suburbs continued to use their grants for local infrastructure improvements, and still do.

At this writing, in March 1989, Hartford and its neighbors have just completed joint sponsorship of "CDBG Awareness Week." Their objective: maintain current funding levels and keep the program just the way it is.

VI. Recollections

Hartford v. Glastonbury ended abruptly because Hartford was deemed to lack standing, and Hartford was deemed to lack standing because it could not possibly obtain the relief that it sought. Why, then, did Hartford pursue the case?

The challenge was spearheaded by Hartford's Deputy Mayor Nicholas Carbone. Viewed in isolation, and in retrospect, Hartford's cause may seem quixotic, but to Carbone and his colleagues it was part of a far broader strategy that included education when possible and confrontation when necessary.

In the mid 1970's, Westfarms Mall and the UConn Medical Center opened in West Hartford and Farmington, and a number of manufacturers left the city for cheaper land in the suburbs. All had a high demand for low-skill workers. But Hartford's poor were trapped in the city by a variety of institutional barriers, and thus unable to either commute to the jobs or live near them. With a $250,000 litigation budget, Carbone took on those barriers one by one: the bus company's refusal to provide "reverse commute" service, from Hartford to the suburbs; the banks' redlining policies that made it impossible for Hartford's poor to obtain auto loans; auto

insurance premiums for city dwellers as much as 100% higher than those for suburbanites, to name a few. The manipulable ETR requirement was another such barrier, since it effectively eliminated CDBG as an incentive for the suburbs to build low-cost housing.

The City had attempted to gain suburban support for a "fair share" view through education; Carbone and other city officials had made presentations to numerous suburban church and civic groups, describing the city's problems and seeking support for regional assistance. As of 1975, those efforts had netted Hartford little more than sympathy. The suit against HUD represented a strategic switch from carrot to stick.

But the suit was not just an attention-getting device. Jonathan Colman, who was Hartford's Director of Planning at the time of the suits, recalls a strong sense that the intent of the program had been betrayed. In his view, Hartford's use of CDBG embodied the intent of the program: curbs and streets in poor neighborhoods, housing rehabilitation, revolving loan and down payment funds, establishment of non-profit housing and community organizations, and a host of social services, including health, legal aid, and job training programs. The program simply was "not for the wealthy." Given the opportunity to make that case, Hartford hoped to induce the suburbs to either spend the funds responsibly or return them for reallocation.

In Mr. Thompson's view, Hartford's focus on CDBG, and more specifically on the ETR requirement, was misplaced. His instructions from Washington carried the unequivocal message that HUD should accord maximal deference to the suburbs in setting their own spending priorities: "It was clear to me

that that was the philosophy, and that was the law." Even under a stricter standard of review, a by-the-book application of the ETR standard would have had little substantive impact; for one example, Glastonbury's resubmitted 1975 application, using the revised ETR formula, called for an assisted housing goal of 44 units. The town received its CDBG funds, for downtown commercial development.

Most importantly, Mr. Thompson echoed the point made by Circuit Judge Meskill: that real relief for Hartford could come only from additional housing, and that Hartford's suburbs had used all their allocated Title II (assisted housing) funds. No matter how the suburbs used their CDBG monies, the most critical need, bricks and mortar, would not be addressed.

Hartford v. Hills and Hartford v. Glastonbury seem to have had little lasting impact. Hartford and its suburbs continue to receive CDBG and housing funds, but no appreciable amount appears to be used for encouraging regional integration. Hartford will need another vehicle to reach its objective of regionalism. As for the message behind Hartford v. Glastonbury, regulatory niceties aside, Carbone sums up: "I know I was right."

Notes

(1) Preamble to Housing Act of 1949, S. 1070, 81st Cong., 1st Sess. (1949).

(2) Farnham, Paul G., "The Targeting of Federal Aid: Continued Ambivalence," Public Policy, 29:75-92, Winter 1981.

(3) H.R. 8853, 92nd Cong., 1st Sess., (1971), at 1.

(4) Id. at 8.

(5) Id. at 6-7.

(6) Id. at 12.

(7) S. 1618, 92nd Cong., 1st Sess., (1971).

(8) S. 3066, 93rd Cong., 2d Sess. (1974); H.R. 15361, 93rd Cong., 2nd Sess. (1974).

(9) S. Rep. No. 693, 93rd Cong., 2nd Sess. (1974).

(10) H.R. Rep. No. 1114, 93rd Cong., 2nd Sess. (1974).

(11) Id. at 8.

(12) H.R. Conf. Rep. No. 1279, 93rd Cong., 2nd Sess. (1974).

(13) 39 Fed. Reg. 40,141, November 13, 1974.

(14) S. 3066, 93rd Cong., 2nd Sess. (1974), at §104(b)(3).

(15) 24 C.F.R. §570.303(c)(2).

(16) Interview with Lawrence L. Thompson, former director of Hartford area HUD office, March 22, 1989.

(17) Amicus brief of HUD, Hartford v. Glastonbury, at 15.

(18) Thompson interview.

(19) 408 F.Supp. 889 (D.Conn. 1976). Defendant Carla Hills was the Secretary of HUD.

(20) Id. at 895.

(21) Id. at 897.

(22) S. 3066, 93rd Cong., 2nd Sess. (1974), §101(c)(6).

(23) Id. at 900, quoting American Ship Building v. Labor Board, 380 U.S. 300, 318 (1965).

(24) 561 F.2d 1032 (2nd Circ. 1977).

(25) Id. at 1046.

(26) Id.

(27) Id. at 1047.

(28) Id. at 1051.

(29) Id.

(30) Id. at 1052.

(31) S. 3084, 95th Cong., 2nd Sess. (1978).

(32) Id. at §104(c).

(33) H. Rep. No. 1792, 95th Cong., 2nd Sess. (1978), p. 59.

(34) P.L. 98-181, 98th Cong., 1st Sess. (1983).