Catholic University Law Review

Volume 60
Issue 3 *Spring 2011*

Article 5

2011

How Government Housing Perpetuates Racial Segregation: Lessons from Post-Katrina New Orleans

Stacy E. Seicshnaydre

HOW GOVERNMENT HOUSING PERPETUATES RACIAL SEGREGATION: LESSONS FROM POST-KATRINA NEW ORLEANS

Stacy E. Seicshnaydre[+]

[+] William K. Christovich Associate Professor of Law, Tulane Law School. Thanks to Jeanne Carriere, Claire Dickerson, and Adam Feibelman for their thoughtful editorial suggestions, as well as to Sarah Lewis for her excellent research assistance. Additional thanks go to Lucia Blacksher, Kate Scott, and Morgan Williams for their invaluable insights into local housing conditions. I would also like to thank Tulane Law School for the summer research grants that supported the work on this Article. Special thanks to GLE.

Federal law has prohibited racial segregation in government-housing programs for decades,[1] yet it has proven difficult to reverse entrenched patterns of segregation in these programs.[2] Patterns of racial segregation have been particularly intractable in New Orleans, which, prior to Hurricane Katrina in 2005, boasted the second-highest level of poverty concentration in the nation[3] and relatively high levels of poverty concentration in all of the major government-housing programs.[4] Furthermore, low-income white residents in pre-Katrina New Orleans had greater access to middle-income neighborhoods throughout the metropolitan area of New Orleans than low-income black[5] residents, who were overwhelmingly concentrated into high-poverty neighborhoods.[6] As a result, low-income white residents had access to tools of upward economic mobility not available to urban black residents.[7]

Hurricane Katrina, with its massive levee failures and neighborhood flooding, offered an opportunity for New Orleans to emerge as a more inclusive region; new government-assisted housing could have helped facilitate

1. *See, e.g.*, Fair Housing Act, 42 U.S.C. § 3604 (2006) (prohibiting discrimination based on race and other grounds in housing); *see also* 42 U.S.C. § 1982 (2006) ("All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property."); Clients' Council v. Pierce, 711 F.2d 1406, 1408 (8th Cir. 1983) (holding that HUD's actions were unconstitutional because HUD continued to fund racial discrimination and segregation in its housing programs); *infra* note 15.

2. *See* Young v. Pierce, 628 F. Supp. 1037, 1045–47 (E.D. Tex. 1985) (describing the historical ineffectiveness of HUD's efforts to desegregate housing), *vacated*, 822 F.2d 1368 (5th Cir. 1987).

3. *See* ALAN BERUBE & BRUCE KATZ, KATRINA'S WINDOW: CONFRONTING CONCENTRATED POVERTY ACROSS AMERICA 3 & tbl.1 (Brookings Institution 2005), *available at* http://www.brookings.edu/~/media/Files/rc/reports/2005/10poverty_berube/20051012_Concentratedpoverty.pdf.

4. *See id.* at 5 (listing the average neighborhood-poverty rate for public-housing residents in New Orleans at 74% in 2000); *infra* Part III.A–D.

5. In this Article, the terms "black" and "white" are used, rather than "African American" and "white," for the sake of parallelism.

6. *See infra* Part III.E.

7. *See infra* Part III.E.

inclusion, while also responding to the regional-housing needs of the area.[8] However, as Orleans Parish attempted after the storm to reverse a dynamic in which a disproportionate number of its occupants were renters, compared with the metro area as a whole, neighboring jurisdictions acted aggressively to avoid any demographic shifts that new rental housing, particularly new government-assisted rental housing, might bring.[9] Rental bans proliferated throughout the region, primarily in communities that had previously served as affordable suburban alternatives for lower- and middle-income whites in prior decades.[10] These communities sought not only to prevent the development of new rental housing, but also to limit the repair of rental housing that preexisted the storm.[11] At the same time, other communities in metropolitan New Orleans that were the least affordable, most homogeneous, and nationally recognized as desirable places to live were not targeted for government-assisted housing, and thus did not pass similar sweeping rental bans.[12] Therefore, rather than using recovery efforts to reverse racially segregated housing patterns, the region took steps to exacerbate them.

This Article contends that post-Katrina New Orleans exemplifies the exclusionary dynamic in which government-assisted housing operates throughout America and the fundamental failure of American housing policy at the federal, state, and local levels to prevent the racial segregation that inevitably results. Part I discusses the well-established legal framework prohibiting racial segregation in government-assisted housing. Part II explains that, despite established law, it has proven extremely difficult to reverse entrenched patterns of racial segregation in government-housing programs. In fact, recent studies have found that low-income blacks using government housing programs live in worse or more segregated housing conditions when compared with either whites who are using the programs or blacks who are not using the programs. This Part also describes a perennial dynamic of two impulses pulling in opposite directions—the anywhere-ist and nowhere-ist impulses, which conspire to perpetuate segregation. The anywhere-ists are primarily focused on securing as much federally assisted housing as possible; the nowhere-ists are primarily focused on keeping it out of their communities. This dynamic has created a "path of least resistance," whereby government-assisted housing continues to be provided in places where it already exists or in places that are already open and affordable. Part III describes the way in which racial segregation and poverty concentration were particularly exaggerated pre-Katrina across all the government-housing programs in metropolitan New Orleans, as compared to levels documented in

8. *See* BERUBE & KATZ, *supra* note 3, at 2 (discussing the opportunity the rebuilding effort would provide the government to combat segregation).

9. *See infra* Part V.B.

10. *See infra* notes 187–92 and accompanying text.

11. *See infra* text accompanying note 187.

12. *See infra* notes 320–22 and accompanying text.

the top fifty metropolitan areas in the United States. In addition, low-income whites had disproportionately greater access to middle-income neighborhoods when compared with low-income blacks. Part IV discusses the opportunity presented by the post-Katrina rebuilding effort to reverse entrenched patterns of racial segregation in government housing.

Part V describes that, regardless of the opportunity, the region seems poised to recreate segregated-housing patterns. This Part discusses examples of the anywhere-ist and nowhere-ist impulses at work in post-Katrina New Orleans, noting the rental-affordability crisis and the exclusionary-zoning activity emerging in towns, cities, and parishes surrounding New Orleans. It describes in detail the restrictions on rental housing enacted in the affordable suburbs of Terrytown, Kenner, and Saint Bernard Parish, as compared with the absence of sweeping restrictions in more expensive suburbs such as Metairie and Mandeville.

In Part VI, the Article recommends several fair-housing reforms in response to the post-Katrina experience, including rejection of the "path of least resistance" approach to the location of government housing, distribution, and management of government-assisted housing on a regional basis, and a more targeted intervention in the housing market by the U.S. Department of Housing and Urban Development (HUD) to ensure that government-assisted housing is actually provided in markets that are not already open and affordable.

I. THE WELL-ESTABLISHED PROHIBITION ON RACIAL SEGREGATION IN GOVERNMENT-ASSISTED HOUSING PROGRAMS

The idea that public housing in the United States was created pursuant to a policy of de jure racial segregation is not particularly controversial.[13] In fact, government agencies, both federal and local, were leaders in formalizing racially segregated housing patterns throughout the nation.[14] In New Orleans, "the creation of racially segregated New Deal public housing developments was the first implementation of legally enforced residential segregation in the city."[15]

In the civil rights era, communities began to challenge government-sponsored segregation in government-assisted housing. As early as 1969, courts pronounced it unconstitutional to select sites for government-

13. Young v. Pierce, 628 F. Supp. 1037, 1045 (E.D. Tex. 1985) ("Prior to 1964, public housing was *de jure* segregated."), *vacated*, 822 F.2d 1368 (5th Cir. 1987).

14. *See, e.g.*, *id.* at 1044–50 (detailing HUD's and local agencies' contributions to segregated housing in east Texas).

15. Elizabeth Fussell, *Constructing New Orleans, Constructing Race: A Population History of New Orleans*, 94 J. AM. HIST. 846, 581 (2007); *see also* Martha Mahoney, *Law and Racial Geography: Public Housing and the Economy in New Orleans*, 42 STAN. L. REV. 1251, 1270 (1990) (describing how segregated public-housing projects in New Orleans, although an improvement over decaying private housing, disrupted racially mixed residential patterns and increased racial concentration within the city).

assisted housing developments on the basis of race.[16] Similarly, in the late 1960s, HUD began to issue rules and regulations prohibiting the concentration of new government-assisted housing exclusively in black neighborhoods.[17] As observed by one commentator, the idea that HUD "should no longer be permitted to routinely build new low-income housing in segregated, high-poverty neighborhoods" is a point civil rights advocates "won" decades ago.[18] Nor can housing agencies reserve units developed in white areas for white occupants.[19] Despite the historical refusal of some local agencies "to accept the premise that federal law applied" to them,[20] the federal prohibition against segregation and discrimination in both public and private housing programs is well established.[21]

The *Gautreaux* line of cases represents the prototypical challenge to government-sponsored segregation.[22] In *Gautreaux v. Chicago Housing*

16. *See, e.g.*, Gautreaux v. Chi. Hous. Auth. (*Gautreaux I*), 296 F. Supp. 907, 913 (N.D. Ill. 1969), *aff'd*, 436 F.2d 306 (7th Cir. 1970). The plaintiffs in *Gautreaux* also alleged that tenant assignment was conducted on a racially discriminatory basis. *Id.* at 908. Even before 1969, courts held that the maintenance of segregation in public housing through the assignment of tenants on the basis of race violated the Constitution and the Civil Rights statutes. *See, e.g.*, Vann v. Toledo Metro. Hous. Auth., 113 F. Supp. 210, 212 (N.D. Ohio 1953) (citing Seawell v. MacWithey, 63 A.2d 542, 542 (N.J. Super. Ct. Ch. Div. 1949)) (noting that public-housing projects cannot segregate based on race because of the Privileges and Immunities and Due Process Clauses of the Federal Constitution and because of language in the statute that authorized the public housing); *see also Young*, 628 F. Supp. at 1045 (discussing the 1962 passage of President John F. Kennedy's Executive Order Number 11063 and Title VI of the Civil Rights Act of 1964, each requiring a policy of nondiscrimination in federally assisted housing).

17. *See Young*, 628 F. Supp. at 1045–47 (discussing HUD's site selection and marketing rules and regulations issued in 1967, 1972, and 1977 pertaining to a variety of federally assisted housing programs). Despite these regulations, however, HUD's actions continued to create segregated housing. *Id.* at 1048 (discussing the failure to market units built in white neighborhoods to black individuals).

18. Philip D. Tegeler, *The Persistence of Segregation in Government Housing Programs*, *in* THE GEOGRAPHY OF OPPORTUNITY: RACE AND HOUSING CHOICE IN METROPOLITAN AMERICA 197, 197 (Xavier de Souza Briggs ed., 2005).

19. *See* Clients' Council v. Pierce, 711 F.2d 1406, 1415, 1419 (8th Cir. 1983) (noting that, during a compliance review, HUD found the housing authority's policies discriminatory because the housing authority intended to assign white occupants to new projects in a "traditionally White neighborhood" and because the housing authority instructed employees "'to rent to whites in the white area and to Blacks in the black area'").

20. *Id.* at 1415.

21. *Young*, 628 F. Supp. at 1045–47. Of course, HUD policies in the post-civil rights era, designed to prohibit discriminatory site selection of new housing developments, as well as the assignment of tenants on a discriminatory basis, were largely prospective in nature and "ineffective in remedying past segregation or preventing segregated occupancy in new project sites." *Id.* at 1046.

22. *See* Hills v. Gautreaux, 425 U.S. 284 (1976), *aff'g* 503 F.2d 930 (7th Cir. 1974); Gautreaux v. Chi. Hous. Auth., 436 F.2d 306 (7th Cir. 1970) (*Gautreaux II*), *aff'g* 296 F. Supp. 907 (N.D. Ill. 1969). *Hills* and *Gautreaux II* are the culmination of two separate lines of cases involving the same plaintiffs. In *Gautreaux II*, the plaintiffs brought suit against the Chicago Housing Authority, 436 F.2d at 307; in *Hills*, the same plaintiffs brought suit against HUD for the

Authority, black tenants in and applicants for public housing in Chicago alleged that the Chicago Housing Authority "intentionally chose sites for family public housing and adopted tenant assignment procedures . . . for the purpose of maintaining existing patterns of residential separation of races in the City of Chicago," and that the Chicago Housing Authority "fail[ed] to select sites for public housing in a manner which would alleviate existing patterns of racial separation."[23] At the time, the membership of the housing authority's public-housing waiting list was 90% black.[24] The housing authority used a preclearance procedure, allowing elected officials to exercise a "racial veto" over public housing sites selected in white neighborhoods in their districts.[25] In 1969, the district court found the local defendants liable under the Constitution and federal statutes, holding that "[n]o criterion, other than race, can plausibly explain the veto of over [99.5%] of the housing units located on the White sites" when only 10% of those sites in black neighborhoods were vetoed.[26] Later, in the companion case to this district-court decision, the Seventh Circuit held that HUD had also violated the Fifth Amendment of the Constitution and Title VI of the Civil Rights Act of 1964 (Title VI) by knowingly providing financial assistance to the segregated housing program, among other things.[27]

Courts throughout the country have reached similar holdings in the face of evidence of racially motivated decision-making in the selection of sites for government-assisted housing.[28] Courts have also considered statistics that

---

same allegedly discriminatory housing policies. 425 U.S. at 286. For a comprehensive history of the *Gautreaux* litigation, see Alexander Polikoff, WAITING FOR GAUTREAUX: A STORY OF SEGREGATION, HOUSING, AND THE BLACK GHETTO (2006).

23. *Gautreaux II*, 436 F.2d at 307; *see also Gautreaux I*, 296 F. Supp. 907, 910 (N.D. Ill. 1969) (noting that, given population trends at the time, "[99.5%] of [Chicago Housing Authority] family units are located in areas which are or soon will be substantially all Negro").

24. *Gautreaux I*, 296 F. Supp. at 909.

25. *Id.* at 910. State law required City Council approval of all Chicago Housing Authority (CHA) sites; however, rather than formally submit the sites to the Council, CHA conceded that it informally precleared the sites, resulting in the veto of virtually all sites in white neighborhoods. *Id.* The housing authority initially identified forty-one sites in white neighborhoods, which could have yielded 7883 desegregative housing options for its 90% black waiting list. *Id.* at 909–11. However, it chose only two sites in white neighborhoods during the relevant period: one site bordering a predominantly black neighborhood and another yielding only thirty-six units. *Id.* In the opinion of CHA's General Counsel, "land in White areas equally suitable for development and often cheaper than land in Negro areas was unavailable solely because of the requirement of City Council approval." *Id.* at 913.

26. *Id.* at 912. The district court found that based on numerous uncontroverted statements made by housing-authority officials, there was no genuine issue of fact that the veto of a substantial number of public-housing sites was made on racial grounds. *Id.* at 913.

27. Gautreaux v. Romney, 448 F.2d 731, 739–40 (7th Cir. 1971), *aff'd*, 425 U.S. 284 (1976).

28. *See, e.g.*, United States v. Yonkers Bd. of Educ., 837 F.2d 1181, 1226 (2d. Cir. 1987) (upholding the district court's finding "that racial animus was a significant factor motivating those white residents who opposed the location of low-income housing in their predominantly

demonstrate the overwhelming segregation in public-housing sites, finding "a very high probability, a near certainty, that many sites were vetoed on the basis of the racial composition of the site's neighborhood."[29] Courts have consistently struck down such practices, stating that "this nation is committed to a policy of balanced and dispersed public housing."[30]

As illustrated in the *Gautreaux* cases, HUD, as the principal federal agency providing financial backing to local housing authorities, municipal governments, and private-property owners, need not be the central architect of discrimination to be held accountable.[31] Courts have held HUD liable when it did nothing to change a grantee's operation in the face of "blatant segregation and an admitted determination to intentionally discriminate."[32] Though HUD's awareness of discriminatory practices is important in establishing its liability for the discrimination and segregation in public housing, courts have rejected HUD's claims of ignorance of widespread segregation in the programs

---

white neighborhoods," and holding the City liable for segregated public housing because the City "cater[ed] to this 'will of the people'"); Crow v. Brown, 332 F. Supp. 382, 389–90 (N.D. Ga. 1971) (finding that Fulton County officials had deliberately obstructed, on the basis of race, attempts to place low-income public housing in unincorporated areas of the county inhabited principally by whites); Kennedy Park Homes Ass'n v. City of Lackawanna, 318 F. Supp. 669, 674–75, 693–95 (W.D.N.Y. 1970) (holding that the city's planning and zoning boards and city council violated the Equal Protection Clause and Fair Housing Act because they confined 98.9% of the nonwhite population to an area separated from the rest of the city by railroad tracks that was heavily polluted by an adjacent steel mill and that contained aging, dilapidated housing), *aff'd*, 436 F.2d 108 (2d Cir. 1970); Hicks v. Weaver, 302 F. Supp. 619, 623 (E.D. La. 1969) (holding that HUD and the Bogalusa Housing Authority engaged in "rank discrimination" by "selecting sites for the location of public housing [based on] the racial concentration of the neighborhoods," when the purpose of such site selection "was to perpetuate segregation of the races in public housing"); Dailey v. City of Lawton, 296 F. Supp. 266, 268–69 (W.D. Okla. 1969) (holding that the city's denial of a rezoning request was racially motivated and unconstitutional because the city sought to prevent the building of low-income housing in an area predominately occupied by whites), *aff'd*, 425 F.2d 1037 (10th Cir. 1970).

29. *Gautreaux I*, 296 F. Supp. at 913.

30. *Crow*, 332 F. Supp. at 390; *see also Hicks*, 302 F. Supp. at 622 ("In a series of interpretations, and with increasing clarity and vigor, HUD has indicated that Title VI of the Civil Rights Act of 1964 forbids the construction of federally financed public housing in all-Negro neighborhoods in the absence of a clear showing that no other acceptable sites are available.").

31. *Gautreaux*, 448 F.2d at 739.

32. Clients' Council v. Pierce, 711 F.2d 1406, 1422–23 (8th Cir. 1983) (explaining that HUD provided over $1,475,528 in funds to the Texarkana Housing Authority (THA) despite HUD's findings of THA noncompliance with civil rights laws); *see also* Garrett v. City of Hamtramck, 503 F.2d 1236, 1247 (6th Cir. 1974) ("By failing to halt a city program [after it knew] discrimination in housing was being practiced and encouraged, HUD perpetuated segregation in public housing and participated in denial to the plaintiffs of their constitutional rights."); Young v. Pierce, 628 F. Supp. 1037, 1056 (E.D. Tex. 1985), *vacated*, 822 F.2d 1368 (5th Cir. 1987) ("HUD's intent to discriminate is established by the combination of HUD's disingenuous assertions of ignorance, its actual knowledge of segregation, and its continuing financial support of each public housing site in the [36 East Texas] counties.").

it funds.[33] As then-Chief Judge William Wayne Justice stated in *Young v. Pierce*, "HUD does have a duty to know if it is funding discrimination."[34]

It is also not necessary for a government agency to act with actual malice to be accountable for perpetuating segregation.[35] A HUD decision to continue funding programs and entities that perpetuate segregation—whether through site selection or tenant assignment—is likely not accompanied by an intention to humiliate or cause others to suffer.[36] It is more likely that these decisions result from a capitulation to the idea that segregation is inevitable and, therefore, acceptable.[37] And yet, courts have inferred discriminatory purpose in such instances:[38] "It is inconceivable that HUD would have so frequently acted to approve the [local housing authority's] actions for so long unless its officials held the view that segregation and discrimination were acceptable."[39]

HUD's obligations extend beyond the prohibition on discrimination and also encompass an affirmative duty to further fair housing in the programs it funds. This affirmative obligation is located in the Fair Housing Act of 1968.[40] For example, "Congress imposed on HUD a substantive obligation to promote racial and economic integration in administering the section 8 program."[41] Further, "[a]s part of HUD's duty under the Fair Housing Act, an approved housing project must not be located in an area of undue minority concentration, which would have the effect of perpetuating racial segregation."[42] Some

33. *See Garrett*, 503 F.2d at 1246 ("The record supports a finding that HUD must have known of the discriminatory practices which pervaded the private housing market . . . ."); *Young*, 628 F. Supp. at 1056–57 (explaining that HUD knew of and continued to fund segregated housing and therefore "played a crucial and continuing role in creating and maintaining a large system of publicly funded segregated housing").

34. *Young*, 628 F. Supp. at 1044 n.4.

35. *See Gautreaux I*, 296 F. Supp. 907, 914 (N.D. Ill. 1969) (holding the city liable even though the aldermen who vetoed public housing in white neighborhoods were responding to public pressure and were not necessarily motivated by their own racial animus), *aff'd*, 436 F.2d 306 (7th Cir. 1970); *see also Clients' Council*, 711 F.2d at 1423 ("We do not suggest that HUD officials were motivated by malice, but we do believe that this record compels a conclusion that they acted at least in part because of a discriminatory purpose.").

36. *Clients' Council*, 711 F.2d at 1423.

37. *See id.* (rejecting HUD's argument that "its actions were an inevitable consequence of its desire to provide low income housing").

38. *See, e.g., id.* ("[T]he only reasonable inference that can be drawn is that HUD's actions [of continued funding of a housing authority it cited for discrimination] were motivated at least in part by a discriminatory purpose.").

39. *Id.*

40. *See* Fair Housing Act, 42 U.S.C. § 3608(e)(5) (2006) ("The Secretary of Housing and Urban Development shall . . . administer the programs and activities relating to housing and urban development in a manner affirmatively to further the policies of this subchapter.").

41. Alschuler v. Dep't of Hous. & Urban Dev., 686 F.2d 472, 482 (7th Cir. 1982) (citing 42 U.S.C. §§ 1437f(a), 3608(d)(5), the latter of which was a precursor to § 3608(e)(5)).

42. *Id.* (citing Otero v. N.Y.C. Hous. Auth., 484 F.2d. 1122 (2d Cir. 1973); Shannon v. U.S. Dep't of Hous. & Urban Dev., 436 F.2d 809, 820 (3d Cir. 1970)).

courts have interpreted HUD's affirmative obligation to extend to local agencies that receive federal housing funds.[43]

Given the longstanding precedents establishing constitutional and statutory prohibitions against segregation in the nation's housing programs, one might think that a nondiscriminatory and desegregative ethos would have infused the nation's housing programs at both the federal and local levels. This, as evidenced, is not so.

II. THE DIFFICULTY OF REVERSING ENTRENCHED PATTERNS OF RACIAL SEGREGATION IN THE NATION'S HOUSING PROGRAMS

Despite the well-established pronouncements against discrimination and segregation in the nation's housing programs, reversing patterns of racial segregation in these programs has proven difficult.[44] The National Commission on Fair Housing and Equal Opportunity notes that "[t]he federal government's three largest federal housing programs (Section 8, public housing, and the Low Income Housing Tax Credit) serve more than 4.5 million families and yet do very little to further fair housing and, in some cases, work to create and/or maintain segregated housing patterns."[45] This persistent and seemingly intractable segregation is demonstrated by a 2008 HUD study entitled *Characteristics of HUD-Assisted Renters and Their Units in 2003*.[46] The study is based on census data collected in 2003 through the American Housing Survey (AHS) that was matched with HUD rental-assistance data.[47] According to Elizabeth Julian and Michael Daniel, who have analyzed the data, "poor [b]lack renters, as a result of accepting HUD rental assistance, will

---

43. *See, e.g.*, *Otero*, 484 F.2d at 1133–34.

44. *See* Young v. Pierce, 628 F. Supp. 1037, 1043–47 (E.D. Tex. 1985) (discussing the ongoing failure of federal-housing agencies to reverse patterns of racial segregation in the federally assisted housing they funded following the end of de jure segregation); NAT'L COMM'N ON FAIR HOUS. & EQUAL OPPORTUNITY, THE FUTURE OF FAIR HOUSING: REPORT OF THE NATIONAL COMMISSION ON FAIR HOUSING AND EQUAL OPPORTUNITY 38 (2008) [hereinafter NATIONAL COMMISSION REPORT], *available at* http://www.nationalfairhousing.org/Portals/33/reports/Future_of_Fair_Housing.PDF ("Today, for a number of reasons, federal programs are still focusing low-income housing resources in higher poverty, segregated areas."); Florence Wagman Roisman, *Keeping the Promise: Ending Racial Discrimination and Segregation in Federally Financed Housing*, 48 HOW. L.J. 913, 913 (2005) (noting "pervasive racial discrimination and segregation" in federally assisted housing programs despite legal standards aimed at prohibiting such segregation).

45. NATIONAL COMMISSION REPORT, *supra* note 44, Executive Summary.

46. *See* U.S. DEP'T OF HOUS. & URBAN DEV., CHARACTERISTICS OF HUD-ASSISTED RENTERS AND THEIR UNITS IN 2003 *passim* (2008), *available at* http://www.huduser.org/portal/publications/pubasst/hud_asst_rent.html.

47. *Id.* at 4–5; *see also* Elizabeth Julian & Michael M. Daniel, *HUD-Assisted Low-Income Housing: Is It Working and for Whom?*, POVERTY & RACE, July–Aug. 2009, at 3, 3 ("The information includes demographic data for hundreds of units, projects and neighborhood conditions for individuals living in HUD-assisted housing and those eligible for, but not receiving, such assistance.").

be subjected to worse conditions or more segregated conditions, or both, compared to similarly situated [w]hites using HUD assistance," and compared to similarly situated poor black renters not using any HUD assistance at all.[48] Thus, not only are blacks worse off than their white counterparts in government-assisted housing programs, but poor blacks who participate in government-assisted housing programs seem to be worse off than those who do not. After pointing out the constitutional and statutory prohibitions against providing housing on such unequal terms, Julian and Daniel note that "much of the debate about national housing policy for the poor goes on as if these [unequal housing] conditions did not exist, do not exist, and that the nation does not know about it."[49]

The Low Income Housing Tax Credit Program (LIHTC), which was launched in 1986, is now the nation's largest low-income-housing production program.[50] The Department of the Treasury administers the program, as opposed to HUD, and "state agencies . . . distribute the [tax] credit to developers on a competitive basis."[51] Despite its size—as of 2007 about 1.5 million units, funded[52] at $5 billion per year and matched by hundreds of millions of state, local, and private funds—the federal government has never collected data revealing the impact of the program on racial residential segregation.[53] Available data suggest that "[t]ax credit units are . . . more likely [than rental units generally] to be located in high-poverty areas, and in largely minority or rental occupied tracts with large proportions of female-headed households."[54] A recent, national study of where tax credit units are developed reveals that "the program is not directing units where few or no affordable housing options exist," but rather, is concentrating the units where they are the least needed, thus contributing to poverty concentration.[55]

---

48. Julian & Daniel, *supra* note 47, at 6–7. In segregated housing developments historically, units that were occupied by blacks were frequently inferior, suffering from a lack of maintenance or inferior construction methods. *See* Clients' Council v. Pierce, 711 F.2d 1406, 1419 (8th Cir. 1983) ("HUD found that black projects suffered from neglect 'in spite of constant and numerous complaints resulting from faulty original construction' . . . .").

49. Julian & Daniel, *supra* note 47, at 7.

50. Tegeler, *supra* note 18, at 201. "The Low Income Housing Tax Credit provides investors in rental housing developments a credit against their federal income tax obligations. State agencies receive an allocation of tax credit each year from the U.S. Treasury, which they in turn allocate to developers of rental housing . . . ." JILL KHADDURI ET AL., LIHTC AND MIXED INCOME HOUSING: ENABLING FAMILIES WITH CHILDREN TO LIVE IN LOW POVERTY NEIGHBORHOODS? 2 (2004). These developers must reserve a percentage of units for households with incomes ranging from 30–60% of the area's median income. *Id.*

51. Myron Orfield, *Racial Integration and Community Revitalization: Applying the Fair Housing Act to the Low Income Housing Tax Credit*, 58 VAND. L. REV. 1747, 1749–50 (2005).

52. *See* Kirk McClure, *Are Low-Income Housing Tax Credit Developments Locating Where There Is a Shortage of Affordable Units?*, 20 HOUSING POL'Y DEBATE 153, 153 (2010).

53. Orfield, *supra* note 51, at 1779–80.

54. *See id.* at 1781.

55. McClure, *supra* note 52, at 169.

There are multiple possible explanations for the persistence of segregation in the nation's housing programs. First, court pronouncements of liability for government-sponsored segregation are inadequate by themselves and must be accompanied by strong remedies, which then must be enforced through ongoing, sometimes decades-long, litigation.[56] Second, according to some commentators, HUD's regulations prohibiting the location of new public housing and Section 8 housing in an "area of minority concentration"[57] are riddled with "ambiguity," resulting in "substantial litigation and weakening of the standards over time to the point where they [are] no longer effective in controlling segregated housing development."[58] Third, as noted by commentators including Florence Roisman and Phil Tegeler, programs creating significant amounts of housing, such as the LIHTC program, have been "largely unregulated from a civil rights perspective."[59]

Beyond the regulatory shortcomings, however, another, more insidious dynamic is at work. There are two impulses pulling in opposite directions that operate in tandem to perpetuate concentrated poverty and segregation. One impulse is to take any affordable housing that can be acquired and use it to meet critical housing shortages, an approach that might be described as "get

---

56. *See, e.g.*, Thompson v. U.S. Dep't of Hous. & Urban Dev., 404 F.3d 821, 824 (4th Cir. 2005) (affirming the district court's modification of a consent decree to extend the district court's jurisdiction over HUD for more than the originally ordered seven years); *see also* Orfield, *supra* note 51, at 1804 (referring to the passage of the Fair Housing Act in 1968 and noting the need for "persistent advocacy" to achieve the Act's goals).

57. 24 C.F.R. § 941.202(c)(1)(i) (2010). In addition, this regulation prohibits sites that would increase poverty concentration by requiring that the site must "avoid undue concentration of assisted persons in areas containing a high proportion of low-income persons." *Id.* § 941.202(d).

58. Tegeler, *supra* note 18, at 200 (citing Michael J. Vernarelli, *Where Should HUD Locate Assisted Housing? in* HOUSING DESEGREGATION AND FEDERAL POLICY 214 (John Goering ed. 1986)).

59. *Id.* at 197–98 (discussing, in addition to the LIHTC program, the lack of anti-segregation controls in the HOPE VI public-housing redevelopment program, low-income housing financed through incentives in the Community Reinvestment Act, and the Housing Opportunities Made Equal (HOME) program for housing rehabilitation); Florence Wagman Roisman, *Mandates Unsatisfied: The Low Income Housing Tax Credit Program and the Civil Rights Laws*, 52 U. MIAMI L. REV. 1011, 1012 (1998) ("Despite massive governmental involvement, the LIHTC program operates without effective regard to civil rights laws, due primarily to the fact that the Treasury and state and local agencies have failed to impose meaningful bars to discrimination."). Recent case law suggests that tax-credit agencies ignore civil rights laws at their own risk. *See* Inclusive Cmtys. Project, Inc. v. Tex. Dep't of Hous. & Cmty. Affairs, No. 3:08-CV-0546-D, 2010 WL 3766714, at *9, *13 (N.D. Tex. Sept. 28, 2010) (granting partial summary judgment to a nonprofit alleging that the Texas tax-credit agency's decision to disproportionately approve applications for non-elderly tax-credit units in minority neighborhoods constituted a disparate impact as well as intentional discrimination, and holding that prima facie cases were established under the Fair Housing Act, 42 U.S.C. § 1982 (2006), and the Equal Protection Clause of the Constitution).

the housing now."[60] The other impulse is to block affordable housing in all forms.[61] The resulting conflict between those who would accept affordable housing anywhere, in any configuration, and on any terms, and those who would not accept it in any configuration anywhere near them, fuels the worst fears of each camp.

The anywhere-ists most fear the success of the nowhere-ists in abolishing a federal role in providing low-income housing.[62] Thus, the first priority for the anywhere-ists is to secure as much government-assisted housing as possible.[63] The details of development, including the location, density level, income mix, quality of construction, access to transportation networks, availability of high-performing schools, and prospects for maintenance may be important, but these are secondary to the primary goal of securing the government's role in providing housing to low-income households on a long-term basis. The term "anywhere-ists" is not meant to suggest an affirmative effort to locate government housing in impoverished or segregated neighborhoods. Rather, it refers to a phenomenon whereby the anywhere-ists will accept government housing on segregated terms when the alternative is no housing at all. On the other hand, the nowhere-ists most fear the potential that the anywhere-ists will develop government-assisted housing next door.[64] Accordingly, the first priority for the nowhere-ists is to block government-assisted housing in all forms.[65] They may point to the abundant failures of government-housing programs with respect to poor maintenance and mismanagement to justify their fears of blight, crime, and lowered property values.[66] Worse, the nowhere-ists

---

60. Stacy E. Seicshnaydre, *The More Things Change, the More They Stay the Same: In Search of a Just Public Housing Policy Post-Katrina*, 81 TUL. L. REV. 1263, 1268–71 (2007) (describing, within the context of the post-Katrina public-housing demolition controversy, the perennial impulse to save or obtain whatever affordable units can be acquired, despite any resulting segregation or discrimination); *see also* Thompson v. U.S. Dep't of Hous. & Urban Dev., 348 F. Supp. 2d 398, 444 (D. Md. 2005) (noting the desire of public-housing authorities in Baltimore to "hous[e] as many as possible of the individuals and families that needed public housing," and noting that the Baltimore Housing Commissioner said, "we were simply looking to be able to put a roof over people's heads").

61. *See infra* Part V.B.

62. *See infra* Part V.A.

63. *See* Elizabeth K. Julian & Michael M. Daniel, *Separate and Unequal—The Root and Branch of Public Housing Segregation*, 23 CLEARINGHOUSE REV. 666, 668 (1989).

64. *See* Lolis E. Elie, *Affordable Housing? Not in My Backyard, Many Say*, TIMES-PICAYUNE (New Orleans) May 2, 2009, at A-1 (discussing "residents' aversion to putting affordable housing near them").

65. *See, e.g.*, *infra* Part V.B (discussing the nowhere-ists' attempts to block housing in Terrytown, Kenner, and Saint Bernard Parish).

66. *See* GERRIT KNAPP ET AL., ZONING AS A BARRIER TO MULTIFAMILY HOUSING DEVELOPMENT 51 (2007) (discussing community opposition to multifamily developments resulting from a fear of decreased property values); *see also* Lolis E. Elie, *Fears About Falling Property Values Unfounded*, TIMES-PICAYUNE (New Orleans), May 2, 2009, at A-9 (noting research that suggests that "the type of affordable housing matters less than the quality of the properties' design, management and maintenance" (internal quotation marks omitted)).

may associate poor persons of color with historic management and maintenance failures and even blame them for those failures.[67] As a result, many of these nowhere-ists associate neighborhood stability with racial and socioeconomic homogeneity and are singularly focused on blocking government-assisted housing in order to maintain that homogeneity.

It appears, then, that the "path of least resistance" for both groups is to allow for the continued creation of government-assisted housing in impoverished, isolated, or resegregating communities. In this scenario, the primary concerns of both groups are addressed. The anywhere-ists achieve the development of government-assisted housing. The nowhere-ists keep it out of their communities.

The other players in this seemingly inevitable path toward segregation are the local-government representatives of impoverished and blighted communities. The housing- and community-development officials and administrators of these communities are naturally looking for resources to help counteract blight and decline in the neighborhoods within their jurisdictions.[68] The impulse operating among community-development administrators in disadvantaged neighborhoods is to secure any available resources for housing redevelopment as part of the overall blight-busting strategy.[69] Prominent among available federal community-development resources will be HUD-funded programs for affordable housing and state-administered tax-credit housing programs.[70] Thus, the high demand for affordable-housing development dollars in impoverished and blighted communities, coupled with the "path of least resistance" dynamic illustrated above, results in most affordable-housing units being developed in communities that already have a disproportionate amount of affordable-housing units relative to other neighborhoods within the region. In fact, the willingness of a local government to accept government-assisted housing in a particular location might be an indicator of that neighborhood's degree of blight.[71] This tendency to view affordable-housing programs primarily as blight-removal programs—rather than as ladders of opportunity—has helped perpetuate

---

67. *See* David D. Troutt, *Katrina's Window: Localism, Resegregation, and Equitable Regionalism*, 55 BUFF. L. REV. 1109, 1133 (2008) ("Public housing . . . is identified less with the failures of governmental policies or democratically enforced prejudices and more with the poor black residents concentrated within the projects.").

68. *See* Orfield, *supra* note 51, at 1752–53 (explaining that city leaders suggest that "targeting affordable housing in poor neighborhoods can revitalize those neighborhoods" and noting that "[s]egregated, fiscally poor cities need investment of any kind, and the [tax-credit program] is virtually the only capital available to neighborhoods that have been effectively redlined by the private market").

69. *See id. But see id.* at 1796 (discussing the prediction of some critics that using tax credits to revitalize deeply distressed areas will fail).

70. *See id.* at 1752–53.

71. *See id.*; Seicshnaydre, *supra* note 60, at 1271 (discussing the use of a "public housing redevelopment agenda" to combat blight in neighborhoods).

segregation and the corresponding inequities that persist alongside residential segregation.

This conflict reflects a fundamental failure of American housing policy with respect to both its vision and its implementation at the federal, state, and local levels. The resulting "path of least resistance"—the provision of government-assisted housing for low-income families outside of, or away from, high-opportunity neighborhoods and communities—represents a kind of toxic cocktail of market failure and government impotence.[72] This dynamic has had enduring force in New Orleans both historically and presently.

III. THE PARTICULAR DIFFICULTIES NEW ORLEANS HAS FACED IN ELIMINATING RACIAL SEGREGATION IN GOVERNMENT-ASSISTED HOUSING PROGRAMS

Prior to Katrina, New Orleans not only mimicked the national pattern of government-assisted housing programs serving as engines of poverty concentration and segregation, but it also exceeded the national averages for such poverty concentration.[73] Families participating in government-assisted housing programs in the New Orleans area, who were overwhelmingly black,[74] were living in poorer neighborhoods on average than their counterparts in the nation's largest metropolitan areas.[75] With uneven levels of poverty concentration occurring throughout the city, poor blacks were more concentrated in poor neighborhoods and had less access to middle-income neighborhoods than their low-income white counterparts.[76]

A. Vouchers

The Housing Choice Voucher Program (HCV) is currently the largest rental-assistance program administered by HUD.[77] This program has the potential to provide greater housing mobility to the consumer because the subsidy can be used to rent an apartment in the private market.[78] According to a HUD study of housing-voucher use released in 2003, metro New Orleans had

---

72. *See* Mahoney, *supra* note 15, at 1259–60 (describing the complex interaction between government policies and the market in promoting segregation). Notably, "[t]he history of public housing in New Orleans demonstrates an enormous array of governmental and market mechanisms that shaped the projects and their urban environment." *Id.* at 1283.

73. *See infra* Part III.A–D.

74. *See infra* Part III.A–D.

75. *See infra* notes 110–13 and accompanying text.

76. *See infra* notes 110–13 and accompanying text.

77. OFFICE OF POLICY DEV. & RESEARCH, U.S. DEP'T OF HOUS. & URBAN DEV., HOUSING CHOICE VOUCHER LOCATION PATTERNS: IMPLICATIONS FOR PARTICIPANT AND NEIGHBORHOOD WELFARE, at x (2003) [hereinafter HUD VOUCHER LOCATION PATTERNS REPORT]. The HCV is the current tenant-based housing-subsidy program run by HUD; it was created in 1998, when a separate voucher program merged with the Section 8 certificate program, which began in 1975. Alberto F. Treviño, *Foreword* to HUD VOUCHER LOCATION PATTERNS REPORT, *supra*, at iv.

78. HUD VOUCHER LOCATION PATTERNS REPORT, *supra* note 77, at vii.

twice the percentage of voucher families living in neighborhoods with poverty concentrations above 30% (46.9%), compared with voucher families in the top fifty metropolitan statistical areas (MSAs) (22%).[79] Although New Orleans follows the national pattern of a higher level of poverty concentration for voucher use in central-city neighborhoods compared with suburban ones, the level of concentration has been much higher in both the central city of New Orleans as well as its suburbs. For example, in central-city neighborhoods in the top fifty MSAs, 33.6% of voucher users lived in neighborhoods that were above 30% poverty concentration,[80] compared with over one-half (51.8%), for the central city of New Orleans.[81] On the other hand, although only 6.1% of voucher users in the suburban neighborhoods of the top fifty MSAs lived in neighborhoods above 30% poverty concentration,[82] a startling 40.4% of voucher users in the suburbs of New Orleans lived in these high-poverty neighborhoods.[83] Research conducted post-Katrina indicates that voucher discrimination could explain some of the concentration occurring in the program,[84] as well as resistance by some suburban-housing authorities to allow voucher holders to "cross parish lines."[85]

Given the high degree of poverty concentration in the New Orleans area voucher program, the question arises whether the level of concentration is occurring evenly for whites and blacks who use the program. Consistent with national averages,[86] black families using the voucher program in the greater New Orleans area were more concentrated in high-poverty neighborhoods than their white counterparts.[87] The starkest example of this phenomenon is evident in families living in neighborhoods with a greater than 40% poverty

---

79. *Id.* at 33, 40 tbl.III-9. HUD notes that families and neighborhoods are "negatively affected" when the poverty-concentration levels reach 30%. *Id.* at 26. The 2003 HUD Voucher Location Patterns Report relies on then-current characteristics of voucher holders, but neighborhood characteristics were derived from the 1990 census. *Id.* at 3. The use of the term "neighborhood" denotes the boundaries of census tracts. *Id.* at 122.

80. *Id.* at 27 tbl.III-1.

81. *Id.* at 34 tbl.III-2.

82. *Id.* at 27 tbl.III-1.

83. *Id.* at 34 tbl.III-2.

84. GREATER NEW ORLEANS FAIR HOUS. ACTION CTR., HOUSING CHOICE IN CRISIS: AN AUDIT REPORT ON DISCRIMINATION AGAINST HOUSING CHOICE VOUCHER HOLDERS IN THE GREATER NEW ORLEANS RENTAL HOUSING MARKET 8 (2009) (finding that, throughout the New Orleans area, "[l]andlords denied voucher holders the opportunity to rent units *eighty-two percent* (82%) of the time, either by outright refusal to accept vouchers or by the addition of insurmountable requirements for voucher holders making it impossible for voucher holders to rent units").

85. *Id.* at 18 ("[The Housing Authority of New Orleans] currently accepts voucher transfers from other jurisdictions in the region, however neighboring jurisdictions do not as readily accept transfers. Therefore, voucher holders face limited regional choice, hampering economic and racial integration on a regional level.").

86. HUD VOUCHER LOCATION PATTERNS REPORT, *supra* note 77, at 28 tbl.III-3.

87. *Id.* at 36 tbl.III-5.

concentration. Only 1.8% of white families using vouchers in the New Orleans MSA lived in such extreme poverty concentration, compared with 21.3% of black households using vouchers.[88] When compared with the top fifty MSAs, white voucher users in the New Orleans metro area were half as likely to experience extreme-poverty concentration, whereas black voucher users in the New Orleans metro area were twice as likely to experience such extreme concentration.[89]

B. Public Housing and Project-Based Section 8 Subsidies

When considering public housing, project-based Section 8 programs, and voucher programs prior to Katrina, there was greater poverty concentration in the New Orleans metro area, on average, than in the top fifty MSAs.[90] The level of poverty concentration increases when the three are compared individually. For example, 46.9% of voucher users in the New Orleans metro area lived in neighborhoods of over 30% poverty concentration, 78.9% of all project-based Section 8 housing tenants lived in such neighborhoods, and an eye-popping 97.4% of public-housing residents lived in such neighborhoods.[91] This compares with 22.2% of voucher users, 44.4% of Section 8 project-based tenants, and 66.1% of public-housing residents living in over 30% poverty concentration in the nation's top fifty MSAs.[92] Stated another way, the average neighborhood-poverty rate for public-housing residents in New Orleans in 2000 was 74%,[93] nearly double the poverty rate associated with neighborhoods of "extreme poverty"[94] and 2.5 times the poverty rate for the City of New Orleans.[95]

C. Low Income Housing Tax Credit

The Low Income Housing Tax Credit Program, the nation's largest low-income-housing production program, was a principal means of restoring

---

88. *Id.* Notably, blacks (non-Hispanic) made up the vast majority, or 93.2%, of the 7864 total voucher users in the New Orleans MSA at the time of this study, with whites representing only 5.5% of total voucher users. *Id.* at app. B-1.

89. *See id.* at 28 tbl.III-3, 36 tbl.III-5. In the top fifty MSAs nationally, 3.5% of whites lived in neighborhoods that had concentrations of poverty greater than 40%, and 10.6% of blacks lived in such neighborhoods. *Id.* If voucher users who lived in New Orleans metro neighborhoods with greater than 30% poverty concentration are included, the numbers jump to nearly 26% for whites and 47.8% for blacks. *Id.* at tbl.III-5.

90. *Id.* at 31 tbl.III-8, 40 tbl.III-9.

91. *Id.* at 40 tbl.III-9.

92. *Id.* at 31 tbl.III-8.

93. BERUBE & KATZ, *supra* note 3, at 5.

94. *Id.* at 3 tbl.1 (defining "extreme-poverty neighborhoods" as those neighborhoods that had more than 40% of residents living below the poverty line).

95. U.S. CENSUS BUREAU, *State & County Quickfacts, New Orleans, LA*, http://quickfacts.census.gov/qfd/states/22/2255000.html (last updated July 8, 2009) (reporting that New Orleans's poverty rate in 2000 was 28%).

rental housing to the New Orleans area after Hurricane Katrina.[96] A study examining the neighborhood locations of family LIHTC developments between 1995 and 2001 reveals that, in pre-Katrina metro New Orleans, no tax-credit units with at least 2 bedrooms were placed in the lowest-poverty census tracts (between 0% and 10% poverty concentration), compared with a rate of 41.3% nationally.[97] New Orleans was the *only* metro area in the nation's top fifty metro areas to have *no* tax-credit units in the lowest-poverty neighborhoods during this pre-Katrina period.[98] Southern cities such as Atlanta (32%), Charlotte (71.5%), Houston (26.2%), and Nashville (64.3%) all managed to place tax-credit units in their lowest-poverty neighborhoods over the same time frame.[99] On the other hand, 44% of tax-credit units in the metro New Orleans area in 2000 were located in high-poverty neighborhoods.[100] This represents the second-highest level of poverty concentration in the nation when considering the top one hundred metro areas with the largest numbers of tax-credit units.[101] Thus, prior to Katrina, metro New Orleans was not using the tax-credit program to counteract the high-poverty concentrations existing in all of the other government-assisted housing programs; rather, the tax-credit program appeared to follow the same patterns of concentration and segregation that existed in all the other public-housing and voucher programs.[102]

D. Unsubsidized Housing

Significantly, the level of poverty concentration for families assisted by federal-housing programs is much greater than for those who live in

---

96. Amilda Dymi, *LIHTC Viewed as Helpful to Regions Recovering from Hurricanes*, NAT'L MORTG. NEWS, May 22, 2006, at 11.

97. KHADDURI ET AL., *supra* note 50, at 13 ex. 11, 15 tbl.12. This study sought to compare the locational decisions of families with children using housing vouchers and the placement of LIHTC units occupied by families. *See id.* at 13–16. Because the LIHTC program does not keep data relative to family occupancy, the study uses units of two bedrooms or more as a proxy for family occupancy. *Id.* at 4.

98. *Id.* at 14–15 tbl.12. Six percent of families using vouchers in the New Orleans metro area used them in census tracts with between zero- and ten-percent poverty. *Id.* at 15 tbl.12.

99. *Id.* at 14–15 tbl.12; *see also* Orfield, *supra* note 50, at 1782–83 (noting that tax-credit units appear to be less segregative in the South and West).

100. LANCE FREEMAN, SITING AFFORDABLE HOUSING: LOCATION AND NEIGHBORHOOD TRENDS OF LOW INCOME HOUSING TAX CREDIT DEVELOPMENTS IN THE 1990S app. D, at 14–16 (Brookings Institution 2004).

101. *Id.*

102. The Louisiana Housing Finance Agency has made efforts post-Katrina to create incentives for tax-credit developments to be placed in areas that have been traditionally difficult to develop, including areas near commercial and public services and areas "in which the median income of the census tract exceeds 120% of the area median income." LA. HOUS. FIN. AGENCY, LOW-INCOME HOUSING TAX CREDIT PROGRAM: RESERVATIONS OF PER CAPITA CREDIT CEILING FOR CALENDAR YEAR 2007–2008 47–48, *available at* http://www.novoco.com/low_income_housing/resource_files/qap/louisiana_final_percapita_07.pdf. However, the resistance of parishes outside Orleans to tax-credit developments has undermined these poverty-deconcentration goals. *See infra* notes 164–72.

unsubsidized, affordable housing.[103] For example, only 16.5% of unsubsidized households nationally and 40.3% of unsubsidized households in the New Orleans metro area live in neighborhoods with a greater than 30% poverty concentration, compared with larger percentages in all other HUD-subsidized programs.[104] Thus, blacks in New Orleans prior to Katrina have been forced to weigh the trade-off described in Part II—the families receive housing subsidies, but pay a heavy price in the form of increased poverty concentration and likely worse neighborhood conditions.[105]

E. Who Bears the Costs of Racial and Economic Segregation?

When considering the New Orleans population generally prior to Katrina, Orleans Parish was a portrait of racial segregation. Despite the national trend in the 1990s toward decreasing segregation,[106] New Orleans between 1980 and 2000 became more racially segregated, with the average black resident in 2000 living in a neighborhood where 82% of fellow residents were black.[107] Further, in 2000, blacks were not settled uniformly across the metropolitan area.[108] For example, although 60.1% of households in Orleans Parish were black in 2000, only 33.4% of New Orleans MSA households were black, and only 6.1% of households in Saint Bernard Parish were black.[109]

What have been the consequences of racial segregation for residents of New Orleans? Are whites and blacks similarly segregated by income?[110] The 2000

---

103. HUD VOUCHER LOCATION PATTERNS REPORT, *supra* note 77, at 31 tbl.III-8, 40 tbl.III-9. HUD defined "affordable housing" in its 2003 study as units with rents set at or below the metropolitan area Fair Market Rents, which are roughly those "units costing up to the 40th percentile of rents for the metropolitan area, controlling for bedroom size." *Id.* at 8 & n.5. The vast majority of renters live in unsubsidized housing. JOINT CTR. FOR HOUS. STUDIES, HARVARD UNIV., AMERICA'S RENTAL HOUSING: THE KEY TO A BALANCED NATIONAL POLICY 13 (2008) ("More than 80 percent of all renters, as well as more than 70 percent of renters with incomes in the lowest quartile, live in privately owned, unsubsidized housing.").

104. HUD VOUCHER LOCATION PATTERNS REPORT, *supra* note 77, at 31 tbl. III-8, 40 tbl.III-9.

105. *See infra* notes 119–21 and accompanying text; *see also* Mahoney, *supra* note 15, at 1281 (noting that one federally funded private development decreased its maintenance staff upon the arrival of the first black tenants).

106. THE GEOGRAPHY OF OPPORTUNITY: RACE AND HOUSING CHOICE IN METROPOLITAN AMERICA 8 (Xavier de Souza Briggs ed., 2005).

107. BERUBE & KATZ, *supra* note 3, at 3.

108. Motion to Enforce Judgment by Greater New Orleans Fair Housing Action Center attach. 3 at 6, Greater New Orleans Fair Hous. Action Ctr. v. St. Bernard Parish, 641 F. Supp. 2d 563 (E.D. La. 2009) (No. 2:06-cv-07185-HGB-SS), ECF No. 126-3 [hereinafter Bradford Declaration].

109. *Id.* at 7 (calculating data from information provided by the U.S. Census Bureau).

110. This Article focuses on the respective situations of blacks and whites, as opposed to any other groups, because New Orleans immediately prior to Katrina could be characterized as largely biracial. *See* Fussell, *supra* note 15, at 846–55 (2007) (discussing the assimilation of Latin and Asian immigrants prior to Katrina and noting that "[t]he biracial dynamic of the city was hardly challenged by the small numbers of Latin American migrants—mostly Cubans, Hondurans,

U.S. Census data show that blacks living in New Orleans, regardless of income, were more concentrated in high-poverty neighborhoods than the overall average of people concentrated in high-poverty neighborhoods.[111] On the other hand, low-income whites in the New Orleans metro area have had greater access to low-poverty, middle-income neighborhoods than any other low-income group in the metro area.[112] As noted by Sheryll Cashin, "By allowing them to live in more socioeconomically integrated settings, American society tends to afford the white poor a chance at upward mobility that it denies many of its poor black and Latino citizens."[113]

By 2000, roughly one-quarter of New Orleans's neighborhoods were considered to be ones of "extreme poverty"—that is, at least 40% of their residents had family incomes below the federal poverty line.[114] The percentage of people living in neighborhoods of extreme poverty in New Orleans (37.7%)[115] is not a mere reflection of general high-poverty rates in the city given that, in 2000, the poverty rate was 28% in the City of New Orleans and 18% for the metro area.[116] Further, low-income blacks (42.6%) lived in these neighborhoods of extreme poverty in New Orleans at roughly four times the rate of low-income whites (10.9%).[117] When considering the New Orleans metro area as a whole before Katrina, low-income blacks (32%) lived in neighborhoods of extreme poverty at a rate *ten times greater* than that of low-income whites (3%).[118]

The effects of extreme-poverty concentration have been well-documented and include multiple human costs such as reduced private-market activity,

---

Mexicans, and Nicaraguans—that arrived in the city at distinct moments in the mid-twentieth century and the Vietnamese migrants that arrived in the late 1970s").

111. *See* BERUBE & KATZ, *supra* note 3, at 3 (discussing the increased concentration of blacks within high-poverty neighborhoods and showing that 42.6% of blacks lived in concentrated poverty, as compared to 37.7% of whites).

112. *See supra* Part III.A–D.

113. SHERYLL CASHIN, THE FAILURES OF INTEGRATION: HOW RACE AND CLASS ARE UNDERMINING THE AMERICAN DREAM 246 (2004); *see also* Troutt, *supra* note 67, at 1134 n.113 ("White poverty is simply not spatially comparable to black poverty in its character and concentrations."); *supra* text accompanying notes 48–49.

114. BERUBE & KATZ, *supra* note 3, at 3. New Orleans as of 2000 ranked second highest in the nation for its percentage of poor people living in extreme-poverty neighborhoods. *Id.* at 3 tbl.1.

115. *Id.* at app. A, at 10.

116. U.S. CENSUS BUREAU, TABLE DP-3, PROFILE OF SELECTED ECONOMIC CHARACTERISTICS: 2000 (NEW ORLEANS, LA MSA) (2000); U.S. CENSUS BUREAU, TABLE DP-3, PROFILE OF SELECTED ECONOMIC CHARACTERISTICS: 2000 (NEW ORLEANS CITY, LOUISIANA) (2000).

117. BERUBE & KATZ, *supra* note 3, at app. A, at 10.

118. FAIR HOUS. JUSTICE CTR., POVERTY LEVELS REPORT: POPULATION BELOW POVERTY LEVEL BY RACE AND BY POVERTY CONCENTRATION OF AREA; NEW ORLEANS-METAIRIE-KENNER, LA METRO (2010) [hereinafter FAIR HOUS. JUSTICE CTR., METRO NEW ORLEANS] (on file with author).

jobs, public services, and wealth-building opportunities, as well as limited educational opportunity, negative health impacts, and increased crime.[119] But, what about neighborhoods of low poverty? How may they be characterized? HUD has defined a "low-poverty neighborhood" as "a census tract in which fewer than 10 percent of the residents live in households with incomes below the poverty line."[120] Some commentators have described these neighborhoods as "solidly middle class" with a majority (over 75%) of the residents owning homes and a miniscule number (1.6%) on public assistance.[121] A healthy majority of Americans in metro areas (58%) lived in low-poverty neighborhoods in 2000.[122] When considering neighborhoods with between 10% and 20% of residents living in households with incomes below the poverty line, a majority own homes, and only 4% receive public assistance.[123] Twenty-four percent of Americans live in these neighborhoods.[124] Thus, 82% of the U.S. metropolitan population in 2000 lived in what could be characterized as middle-class neighborhoods.

Low-income whites before Katrina had overwhelmingly greater access to these low-poverty, middle-income neighborhoods in metro New Orleans than did low-income blacks. In fact, low-income whites (30%) were *fifteen times more likely* than low-income blacks (2%) to live in the lowest-poverty neighborhoods of metro New Orleans—meaning those neighborhoods with less than 10% of people living in below-poverty households.[125] This disparity is greater in metro New Orleans than in any of the thirty-five largest metropolitan areas of the United States.[126] Moreover, in Orleans Parish, only 1% of low-income blacks lived in the lowest-poverty neighborhoods.[127]

Interestingly, low-income whites lived in middle-income neighborhoods in metro New Orleans, pre-Katrina, nearly as often as Americans as a whole across all income groups. When considering middle-income neighborhoods at less than 20% poverty, the vast majority (72%) of low-income whites in the

---

119. *See* BERUBE & KATZ, *supra* note 3, at 5–7 (discussing the multiple human costs of concentrated poverty); *see also* Margery Austin Turner, *Limits on Housing and Neighborhood Choice: Discrimination and Segregation in U.S. Housing Markets*, 41 IND. L. REV. 797, 809–13 (2008) (discussing the ways in which housing segregation limits access to economic opportunity).

120. KHADDURI ET AL., *supra* note 50, at 3.

121. *Id.* (using figures from the 2000 Census).

122. *Id.*

123. *Id.* at 3–4.

124. *Id.* at 4.

125. FAIR HOUS. JUSTICE CTR., METRO NEW ORLEANS, *supra* note 118.

126. *See* DIANE L. HOUK ET AL., INCREASING ACCESS TO LOW-POVERTY AREAS BY CREATING MIXED-INCOME HOUSING app. A, at 82–83 (2007) (exhibiting that, in the United States as a whole, 36% of low-income white households had access to low-poverty neighborhoods, and only 9% of low-income blacks had the same access).

127. FAIR HOUS. JUSTICE CTR., POVERTY LEVELS REPORT: POPULATION BELOW POVERTY LEVEL BY RACE AND BY POVERTY CONCENTRATION OF AREA; LOUISIANA, ORLEANS PARISH (2010) [hereinafter FAIR HOUS. JUSTICE CTR., ORLEANS PARISH] (on file with author).

New Orleans metro area lived in these neighborhoods, compared with only 19% of low-income blacks.[128]

Despite the significant racial disparities with regard to access to middle-income neighborhoods throughout the metro area, low-income groups in general seemed to fare better in the New Orleans suburbs pre-Katrina than in the City of New Orleans.[129] For example, in urban Orleans Parish, only 12% of low-income blacks lived in middle-income neighborhoods with below 20% poverty.[130] On the other hand, in Jefferson Parish, the suburban parish adjacent to Orleans, 33% of low-income blacks lived in neighborhoods of less than 20% poverty.[131] In Saint Tammany Parish, across Lake Pontchartrain from Orleans, 63% of low-income blacks lived in these neighborhoods.[132] Low-income whites in suburban New Orleans had overwhelming access to middle-income neighborhoods; in Jefferson Parish, 80% of low-income whites lived in neighborhoods below 20% poverty and, in Saint Tammany Parish, a whopping 93% of low-income whites lived in these middle-income neighborhoods.[133]

Thus, although low-income blacks before Hurricane Katrina were more likely to have access to a middle-class neighborhood in suburban New Orleans than in Orleans Parish, they had far less access to middle-income neighborhoods throughout the metro area when compared with low-income whites. Given the concentration of government-assisted housing in high-poverty neighborhoods in the New Orleans metro area,[134] which exceeds national averages,[135] it appears that government-assisted housing programs in New Orleans have operated as engines of segregation and poverty concentration, rather than as gateways of opportunity for low-income blacks.

Although the cataloguing of the effects of segregation, both racial and socioeconomic, is beyond the scope of this Article, it is at least worth stating the assumption embedded here: the effects of segregation have not been

---

128. FAIR HOUS. JUSTICE CTR., METRO NEW ORLEANS, *supra* note 118.

129. Not surprisingly, the percentage of individuals living below the poverty line decreases outside of extreme-poverty neighborhoods in Orleans Parish from 54.6% to 21.6%. BERUBE & KATZ, *supra* note 3, at 4 tbl.2. When considering the metro area outside of Orleans Parish, the rate decreases to 13.1%. *Id.*

130. FAIR HOUS. JUSTICE CTR., ORLEANS PARISH, *supra* note 127.

131. FAIR HOUS. JUSTICE CTR., POVERTY LEVELS REPORT: POPULATION BELOW POVERTY LEVEL BY RACE AND BY POVERTY CONCENTRATION OF AREA; LOUISIANA, JEFFERSON PARISH (2010) [hereinafter FAIR HOUS. JUSTICE CTR., JEFFERSON PARISH] (on file with author).

132. FAIR HOUS. JUSTICE CTR., POVERTY LEVELS REPORT: POPULATION BELOW POVERTY LEVEL BY RACE AND BY POVERTY CONCENTRATION OF AREA; LOUISIANA, ST. TAMMANY PARISH (2010) [hereinafter FAIR HOUS. JUSTICE CTR., ST. TAMMANY PARISH] (on file with author).

133. FAIR HOUS. JUSTICE CTR., JEFFERSON PARISH; FAIR HOUS. JUSTICE CTR., ST. TAMMANY PARISH.

134. *See supra* Part III.A–D.

135. *See supra* Part III.A–D.

neutral. The concentration of low-income black children in high-poverty neighborhoods in New Orleans has had an impact on the life chances of these children. New Orleans blacks were "consistently far less likely than whites to complete secondary school" during the first half of the twentieth century and continuing through to the present, which has in turn diminished labor-market opportunities.[136] Blacks have largely occupied the low-skill, low-wage labor force in the New Orleans tourist-based economy,[137] which has made housing in communities of opportunity unaffordable for them, thus continuing the cycle of inequity in housing, education, and employment.

IV. THE OPPORTUNITY HURRICANE KATRINA PRESENTED TO REVERSE RACIALLY SEGREGATED HOUSING PATTERNS

In the aftermath of the devastation that cost lives and destroyed property across the metropolitan area, Hurricane Katrina presented New Orleans with an opportunity for a "do over" in at least one respect. For decades, New Orleans battled crushing poverty that fell disproportionately on its black population.[138] This multigenerational poverty thrived in highly racially segregated neighborhoods beset by low-performing schools, high crime rates, and limited access to healthy neighborhood amenities—that is, neighborhoods possessing few opportunities for their residents.[139] In the wake of the hurricane though, New Orleans was presented with an unprecedented level of federal resources that could be used to undo entrenched patterns of racial residential segregation and the poverty that inevitably accompanies segregation.[140]

---

136. Fussell, *supra* note 15, at 851; *see also* Mahoney, *supra* note 15, at 1271, 1278–79 (discussing the roles labor-market discrimination and the exodus of jobs from New Orleans played in creating joblessness among public-housing residents).

137. Fussell, *supra* note 15, at 851.

138. Xavier de Souza Briggs, *Entrenched Poverty, Social Mixing, and the "Geography of Opportunity": Lessons for Policy and Unanswered Questions*, 13 GEO. J. ON POVERTY L. & POL'Y 403, 406 (2006) ("Historically black neighborhoods with high rates of poverty concentration, having been isolated from economic opportunity for decades, were now isolated from critical aid and escape routes as the powerful storm gathered.").

139. The history of racial residential segregation in New Orleans is beyond the scope of this Article, but it has been thoroughly explored by Martha Mahoney and David D. Troutt. *See* Mahoney, *supra* note 15, at 1283–84 (describing the twenty-five-year long segregation in New Orleans public housing, which "increas[ed] residential segregation in the city"; noting the federal financing and underwriting of apartment and new home construction in white-only neighborhoods, which had a "profound ghettoizing effect on the modern city"; and describing market processes, such as housing discrimination and the loss of jobs, which helped perpetuate segregation); Troutt, *supra* note 67, at 1141 ("Race neutral land use regulation reproduced the patterns of racial inequality that slavery, Jim Crow, and segregation inscribed.").

140. *See* BERUBE & KATZ, *supra* note 3, at 2 (noting that, in the aftermath of Hurricane Katrina, "local and regional leaders will have an unprecedented opportunity to rebuild a New Orleans that is more inclusive, more sustainable, and more economically healthy than its predecessor").

In the early days of the post-Katrina recovery period, plans emerged that suggested that not all of New Orleans should be rebuilt. Property owners in certain low-lying neighborhoods were aghast at the notion that their communities might be designated as "green space" neighborhoods.[141] Presumably, these owners would be forced to sell their low-lying properties and relocate to higher ground.[142] Neighborhood groups targeted for "green spacing" quickly organized and fought the suggestion that not all property owners would be permitted to return and rebuild.[143] Rebuilding then ensued in single-family, owner-occupied neighborhoods in a highly decentralized, unregulated manner, and at varying rates and levels.[144]

The post-Katrina recovery story for rental housing is markedly different. Although representative governments of low-lying neighborhoods quickly understood that any suggestion of limiting the rebuilding of flood-damaged, single-family neighborhoods would constitute political suicide, the proposed use of a local government's regulatory power to "green space" multifamily-housing complexes seemed to garner valuable political capital for locally elected officials.[145]

V. DESPITE THE OPPORTUNITY TO DESEGREGATE, THE REGION APPEARS POISED TO RECREATE RACIALLY SEGREGATED HOUSING PATTERNS

As some commentators have stated, "[c]oncentrated poverty is not an inevitable phenomenon."[146] And yet, our segregated past, present, and future may be linked by the same enduring fears, policies, and customs. Without a better understanding of our history, we seem destined to repeat it. Because the

---

141. Michelle Krupa, *Many Areas Marked for Green Space After Hurricane Katrina Have Rebounded*, TIMES-PICAYUNE (New Orleans) (Aug. 23, 2010, 9:00 PM), www.nola.com/Katrina/index.ssf/2010/08/many_areas_marked_for_green_space_after_hurricane_katrina_have_rebounded.html.

142. *Id.*

143. *Id.*

144. *See* Matthew Scott, *After Katrina, the New Orleans Population Goes Upscale*, DAILY FIN. (Aug. 28, 2010, 10:10 AM), http://www.dailyfinance.com/story/post-katrina-demographic-shifts-could-boost-rebuilding-efforts-i/19609776/ (noting that more affluent residents were able to return to New Orleans and rebuild "in greater numbers than other population segments" and that those who were not financially stable were unable to rebuild as quickly).

145. *See, e.g.*, Ariella Cohen, *Complex Issue: Kenner Apartment Ban Angers Affordable-Housing Advocates*, NEW ORLEANS CITYBUSINESS (Apr. 12, 2008, 1:00 AM), http://neworleanscity business.com/blog/2008/04/12/complex-issue-kenner-apartment-ban-angers-affordablehousing-advocates-2/ (reporting that a multifamily-development ban in Kenner would keep a fifteen-acre demolished apartment-complex site "an open grassy field" for at least another year); Deon Roberts, *Roberts Opposes Blighted Apartment Rehab*, NEW ORLEANS CITYBUSINESS (May 29, 2007, 1:00 AM), http://neworleanscitybusiness.com/blog/2007/05/29/roberts-opposes-blighted-apartment-rehab/ [hereinafter Roberts, *Blighted Apartment Rehab*] (describing an elected official's desire to eliminate rental housing in Terrytown in favor of "green space").

146. BERUBE & KATZ, *supra* note 3, at 4.

"path of least resistance" has served as the operating principle for post-Katrina rebuilding decisions,[147] the region appears to be recreating its racially segregated housing patterns.

A. Anywhere-ists

The need for affordable workforce housing in the post-Katrina recovery period has been acute. HUD proposed to demolish 5000 units of public housing throughout the city without replacing them all in the redevelopment process.[148] The devastation of over 200,000 single-family homes and multifamily rentals, along with a large influx of recovery-related workers, created an enormous demand for rental housing.[149] Both median rents and median incomes increased. According to one study of the New Orleans metro area, the median gross rent rose 27%, from $676 in 2004 to $856 in 2007.[150] In Orleans Parish, median gross rents rose 44% over the same period.[151] Nationally, rents rose only 4% during this time.[152] Although median incomes also increased,[153] fewer workers earning less than $20,000 lived in the New Orleans area in 2007, while job vacancies remained high in occupations paying less than $20,000.[154] Further, the proportion of renters to homeowners in metro New Orleans fell from 39% to 34% between 2004 and 2007, suggesting that many displaced, low-income renters were unable to return home.[155]

---

147. *See infra* Part V.

148. *See* Leslie G. Fields, *One Heckuva Snafu: The Environmental Justice Implications of Katrina*, 33 HUM. RTS., Fall 2006, at 5, 5 ("[T]he Department of Housing and Urban Development—the Housing Authority of New Orleans is in receivership—plans to demolish 5,000 units, with no clear plan for bringing back the [black] families who once inhabited them."). For a separate discussion of the fair-housing issues surrounding the demolition of the "Big Four" public-housing developments in the City of New Orleans following Hurricane Katrina, see generally Seicshnaydre, *supra* note 60; *see also* Judith Browne-Dianis & Anita Sinha, *Exiling the Poor: The Clash of Redevelopment and Fair Housing in Post-Katrina New Orleans*, 51 HOW. L.J. 481, 505 (2008) (discussing the inadequacy of replacing public-housing units with vouchers in post-Katrina New Orleans and noting that "[t]he dearth of affordable housing coupled with discrimination against [blacks] renders vouchers an utterly inadequate way to provide housing opportunities in New Orleans for displaced public housing residents").

149. POLICYLINK, BRINGING LOUISIANA RENTERS HOME: AN EVALUATION OF THE 2006-2007 GULF OPPORTUNITY ZONE RENTAL HOUSING RESTORATION PROGRAM 7 (2007).

150. ALLISON PLYER ET AL., GREATER NEW ORLEANS CMTY. DATA CTR., CHANGES IN NEW ORLEANS METRO AREA HOUSING AFFORDABILITY: BASED ON 2004 AND 2007 AMERICAN COMMUNITY SURVEY DATA 11 (2009), *available at* http://www.gnocdc.org/Housing Affordability/ (follow "Download Full Report" hyperlink).

151. *Id.* at 12.

152. *Id.* at 11.

153. *Id.* at 10–11.

154. *Id.* at 10; *see also* BUREAU OF GOVERNMENTAL RESEARCH, THE HOUSE THAT UNCLE SAM BUILT: THE CONTINUED EXPANSION OF SUBSIDIZED HOUSING IN NEW ORLEANS 5 (2009) (noting higher housing prices post-Katrina as well as an increase in the region's median hourly wage, rising from $13.00 to $16.83 per hour).

155. PLYER ET AL., *supra* note 150, at 10.

Renters in post-Katrina New Orleans struggled more with affordability than renters nationwide, according to the 2007 American Community Survey Data. Although 49% of all renters nationally paid more than 30% of their income on housing prices—a figure that, according to standards used by HUD and others measuring housing-price burdens, indicates that prices were unaffordable[156]—54% of renters throughout the metropolitan New Orleans area paid unaffordable housing prices, and 60% of renters in Orleans Parish paid unaffordable housing prices.[157] With respect to suburban parishes, Saint Tammany Parish renters were particularly strained, with 61% paying unaffordable housing prices,[158] and Jefferson Parish renters were comparable to the national rate, with 51% of residents paying unaffordable rental-housing prices relative to income.[159] According to the Greater New Orleans Community Data Center, "[r]ental affordability is particularly critical in Orleans because 48 percent of households are renters, as compared with only 21 percent in Saint Tammany and 33 percent nationwide."[160]

Given the urgent need for rental housing following Katrina, advocates urged that a maximum number of rental units be developed as replacements for those that were lost. Despite this, only 27% of damaged rental units were slated for replacement with public dollars in the metro New Orleans area as of 2008.[161] Moreover, only 2600 units scheduled for replacement using public subsidies were open for occupancy statewide as of mid-2008.[162] When considering affordable units, only 17,112 of the 53,210 affordable rental units with severe

156. *Id.* at 3, 8–9. Although measuring housing affordability for residents already resettled in New Orleans is important and helpful, this indicator of affordability excludes households that have not been able to return to New Orleans or to afford the rental housing that is available, such as "displaced households priced out of the market, homeless families and those squatting in blighted buildings." *See id.* at 3. Housing prices include the cost of utilities. *Id.*

157. *Id.* at 8–9 (noting that the percentage of renters in the metropolitan area paying unaffordable housing prices in 2007 was up to 54%, six percentage points higher than the 2004 pre-Katrina rate of 48%). Notably, "no single minimum-wage earner working 40 hours a week, 52 weeks a year, earns enough to cover the cost of a modest rental anywhere in the country." JOINT CTR. FOR HOUS. STUDIES, *supra* note 103, at 2.

158. PLYER ET AL., *supra* note 150, at 10.

159. *Id.* at 9 fig.6.

160. *Id.* at 9.

161. KALIMA ROSE ET AL., POLICYLINK, A LONG WAY HOME: THE STATE OF HOUSING RECOVERY IN LOUISIANA 8 (2008), *available at* http://policylink.info/threeyearslater/equityatlas.pdf. For purposes of determining the level of rental housing likely to be replaced, this study considered units with funding allocations from government programs, including the Gulf Opportunity (GO) Zone LIHTC Program and Small Rental Property Program (SRPP), less than half of which represent units that are completed, are under construction, or have closed financing. *Id.* at 9. The authors did not include units scheduled for repair with private-insurance proceeds. *Id.*

162. *Id.* at 9.

or major damage (32%) were in the pipeline for replacement in metro New Orleans as of mid-2008.[163]

Projections concerning the location of these replacement rental units suggest that the "path of least resistance" has emerged as the operating principle for the location of government-assisted housing in post-Katrina New Orleans. As time passed, nearly all of the suburban parishes surrounding Orleans insisted that they had "enough" rental housing and did not need new development of such housing.[164] Yet, when individual parishes are examined, it appears that Orleans Parish, the parish with the highest proportion of rental housing prior to the storm,[165] had the highest percentage (33%) of rental housing scheduled to be replaced with public subsidies.[166] On the other hand, the predominately middle-class parishes with smaller proportions of rental units prior to the storm—Jefferson, Plaquemines, Saint Bernard, and Saint Tammany—had even lower projections for replacement of the rental housing they had lost.[167] For example, Jefferson Parish had 13,972 rental units damaged, but only 1840 (13%) scheduled for replacement with public subsidies.[168] Saint Bernard Parish had 5936 rental units damaged, but only 924 (16%) scheduled for replacement with public subsidies.[169] When the subset of affordable rental housing is examined, it appears that Orleans Parish was slated to replace 37% of its affordable units, with Jefferson and Saint Bernard only slated to replace 17% and 22% of their affordable units, respectively.[170] Stated another way, of

---

163. *Id.* at 17. For purposes of this calculation, data was derived using the five parishes of Jefferson, Orleans, Plaquemines, Saint Bernard, and Saint Tammany.

164. *See infra* Part V.B (discussing resistance against efforts to build rental housing). The demand for rental housing does not necessarily correspond to the demand for subsidized housing. *See* Katy Reckdahl, *Does New Orleans Have Too Much Subsidized Housing?*, TIMES-PICAYUNE (New Orleans), Oct. 11, 2009, at A-1 (noting a report commissioned by the Louisiana Housing Finance Agency that "projected a continuing, unmet demand for subsidized units through 2012").

165. According to the 2000 Census, over one-half (53.5%) of the occupied housing units in Orleans Parish were renter occupied, U.S. CENSUS BUREAU, QT-H2 TENURE, HOUSEHOLD SIZE, AND AGE OF HOUSEHOLDER: 2000 (ORLEANS PARISH, LOUISIANA) (2000), compared with a metro-area average of 38.2%, U.S. CENSUS BUREAU, QT-H2 TENURE, HOUSEHOLD SIZE, AND AGE OF HOUSEHOLDER: 2000 (NEW ORLEANS, LA MSA) (2000), and lower percentages in surrounding parishes—specifically, 36.1% in Jefferson, U.S. CENSUS BUREAU, QT-H2 TENURE, HOUSEHOLD SIZE, AND AGE OF HOUSEHOLDER: 2000 (JEFFERSON PARISH, LOUISIANA) (2000), 21.1% in Plaquemines, U.S. CENSUS BUREAU, QT-H2 TENURE, HOUSEHOLD SIZE, AND AGE OF HOUSEHOLDER: 2000 (PLAQUEMINES PARISH, LOUISIANA) (2000), 25.4% in Saint Bernard, U.S. CENSUS BUREAU, QT-H2 TENURE, HOUSEHOLD SIZE, AND AGE OF HOUSEHOLDER: 2000 (ST. BERNARD PARISH, LOUISIANA) (2000), and 19.5% in Saint Tammany, U.S. CENSUS BUREAU, QT-H2 TENURE, HOUSEHOLD SIZE, AND AGE OF HOUSEHOLDER: 2000 (ST. TAMMANY PARISH, LOUISIANA) (2000).

166. ROSE ET AL., *supra* note 161, at 9.

167. *Id.*

168. *Id.*

169. *Id.*

170. *Id.* at 17. Orleans Parish was slated to replace 14,004 affordable rental units out of 37,790 such units with severe or major damage; Jefferson Parish was slated to replace 1414

the 7474 affordable tax-credit units scheduled for replacement in the metro New Orleans area as of mid-2008, 6268, or 84%, were slated to be developed in Orleans Parish.[171] Thus, rather than using the recovery as an opportunity to correct historic, regional imbalances with regard to the proportion of rental to owner-occupied housing, poverty concentrations, or racial segregation, the region is poised to use the recovery as a means of accelerating these imbalances.

There is no question that the need for affordable housing in New Orleans following the storms was, and remains, enormous. Yet, the great need for low-income housing cannot continue to be used as a justification for the inequity and segregation that results from these programs.[172] As one circuit court stated, "The affirmative duty to consider the impact of publicly assisted housing programs on racial concentration and to act affirmatively to promote the policy of fair, integrated housing is not to be put aside whenever racial minorities are willing to accept segregated housing."[173] Typically, "[i]n order to get the affordability benefit of federal housing assistance, low-income Black families must accept a higher level of both substandard living conditions and racial inequality than exists for very low-income Black tenants not using HUD rental assistance. Low-income Whites do not have to make this trade-off."[174] Further, as those working for more equitable and inclusive communities have recognized, "[i]ncreasing the supply of affordable housing is essential to improving housing opportunity, but achieving racial equity will require more. To reach equity goals, affordable units must be spread across the region."[175]

---

affordable rental units out of 8515 such units with severe or major damage; and Saint Bernard Parish was slated to replace 869 affordable rental units out of 3935 such units with severe or major damage. *Id.*

171. *Id.* (reflecting activity in Jefferson, Orleans, Plaquemines, Saint Bernard, and Saint Tammany Parishes). Similarly, 7736 of the projected 9638 Small Rental program units, or 80%, were slated for development in Orleans Parish. *Id.*

172. Clients' Council v. Pierce, 711 F.2d 1406, 1423 (8th Cir. 1983) (rejecting HUD's argument that its continued funding of discriminatory housing practices was a necessary evil implicit in its efforts to provide low-income housing); United States *ex rel.* Anti-Discrimination Ctr. of Metro N.Y. v. Westchester County, 668 F. Supp. 2d 548, 564–65 (S.D.N.Y. 2009) ("As a matter of logic, providing more affordable housing for a low income racial minority will improve its housing stock but may do little to change any pattern of discrimination or segregation. Addressing that pattern would at a minimum necessitate an analysis of where the additional housing is placed."); *Gautreaux I*, 296 F. Supp. 907, 914 (N.D. Ill. 1969) (stating that the "praiseworthy and urgent goals of low cost housing" do not justify the "deliberate policy to separate the races") (citing Brown v. Bd. of Educ. of Topeka, 347 U.S. 483 (1954)), *aff'd*, 136 F.2d 306 (7th Cir. 1970).

173. Otero v. N.Y.C. Hous. Auth., 484 F.2d 1122, 1134 (2d Cir. 1973).

174. Julian & Daniel, *supra* note 47, at 6.

175. Angela Glover Blackwell & Judith Bell, *Equitable Development for a Stronger Nation: Lessons from the Field*, *in* THE GEOGRAPHY OF OPPORTUNITY: RACE AND HOUSING CHOICE IN METROPOLITAN AMERICA 289, 290 (Xavier de Souza Briggs ed., 2005).

B. Nowhere-ists

For decades, local governments and their constituents have sought veto power over the entry of nonhomogeneous groups and housing into their communities. For example, a 1924 ordinance that was later repealed

> [made] it unlawful for any white person to establish his home or residence in a negro community, or portion of the city inhabited principally by negroes, or for any negro to establish his home or residence in a white community, or portion of the city inhabited principally by white people, "*except on the written consent of a majority* of the persons of the opposite race inhabiting such community, or portion of the city to be affected."[176]

A councilman of Jefferson Parish stated in 2006, "With the number of jobs out there, nobody should be on public housing unless you're ignorant or lazy."[177] And in 2007, state legislation was proposed that provided that "[t]he [Louisiana Housing Finance Agency] shall have no authority to approve or allocate housing tax credits or to approve or implement any housing program within a parish *without the prior approval of the parish governing authority*."[178] This legislative initiative died on the vine, but it demonstrates the enduring quest to exclude subsidized housing by means of a local veto.[179]

In the uncertainty of the post-Katrina New Orleans rebuilding landscape, fear of neighborhood change has been palpable: "You hear people say we don't want any multifamily because there is a perception that (the buildings)

---

176. Tyler v. Harmon, 104 So. 200, 200, 203 (La. 1925) (emphasis added) (upholding a New Orleans ordinance that mandated segregation in residential neighborhoods absent neighborhood approval for an interracial population on the basis of the "separate but equal" doctrine announced in *Plessy v. Ferguson*). After a second appeal, the case was overturned under the authority of *Buchanan v. Warley*, 245 U.S. 60 (1917) (per curiam). Harmon v. Tyler, 273 U.S. 668 (1927). New Orleans passed its segregation ordinance pursuant to authority granted by the Louisiana legislature, which authorized segregation ordinances in 1912 and enacted bans on integration for municipalities of over 25,000 in 1924. *See Tyler*, 104 So. at 200–01.

177. Meghan Gordon, *Jefferson Opposes Adding Homes for Poor on West Bank*, TIMES-PICAYUNE (New Orleans), Oct. 19, 2006, at B-3 [hereinafter Gordon, *Jefferson Opposes*] (quoting Councilman Chris Roberts). Councilman Roberts reportedly clarified that he is sympathetic to people who cannot work because of disabilities. *Id.*

178. *See* H.R. 223, 2007th Leg., Reg. Sess. (La. 2007); *see also* Meghan Gordon, *Jefferson's Housing Restrictions Attacked*, TIMES-PICAYUNE (New Orleans), Feb. 17, 2007, at A-1 [hereinafter Gordon, *Housing Restrictions*].

179. For an exception to this quest, consider the Louisiana legislature's 2006 passage of the Inclusionary Zoning and Workforce Affordable Housing Act, sponsored by Cheryl Gray, to allow any municipality or parish with land-use and zoning ordinances or regulations to adopt ordinances for "inclusionary zoning to increase the availability of affordable dwelling units within the jurisdiction." 2006 La. Acts 2820 (codified at LA. REV. STAT. ANN. §§ 33:5001–5003 (2009)); *see also* H. Con. Res., 2007th Leg., Reg. Sess. (La. 2007) (providing a model ordinance for municipalities and parishes to use in providing for inclusionary zoning).

automatically translate to Section 8 tenants, crime or other problems."[180] Although Hurricane Katrina displaced households of all incomes, races, and ethnicities, census estimates indicated that 60% of those displaced in the New Orleans metro area were black.[181] In Orleans Parish, an estimated 73% of the population affected by the hurricane—or 272,000 people—were black.[182] Further, over one-half (52.8%) of those living in damaged areas were renters.[183] Thus, Hurricane Katrina displaced a substantial number of black renters—enough to threaten the segregated-housing patterns that existed before the storm.[184]

Suburban jurisdictions sought to avoid the "do over" opportunity that the storm presented, taking measures that reflected significant fear about the way in which their pre-Katrina demographics might be altered in the rebuilding effort.[185] For example, rather than merely banning new government-assisted housing, some jurisdictions have taken the additional precaution of banning all new rental housing.[186] Further, some jurisdictions have not only blocked new rental housing, but they have also taken steps to eliminate the rental housing that *pre-existed* Hurricane Katrina.[187]

The racial impact of zoning bans against rental and government-assisted housing that have proliferated in metropolitan New Orleans post-Katrina is revealed through litigation challenging the zoning bans.[188] With respect to bans on rental housing generally, black households in metropolitan New Orleans are twice as likely as white households to live in rental units.[189] Furthermore, an ordinance that excludes housing programs serving low-income

---

180. Cohen, *supra* note 145 (reporting the comments of Wendell Dufour, the Director of University of New Orleans's Division of Planning in the Center for Urban and Public Affairs).

181. Motion for Preliminary Injunction attach. 2, at 24, New Orleans Fair Hous. Action Ctr. v. St. Bernard Parish, 641 F. Supp. 2d 563 (E.D. La. 2009), ECF 6-2 [hereinafter Memo of Points & Auth.].

182. THOMAS GABE ET AL., CONG. RESEARCH SERV., RL33141, HURRICANE KATRINA: SOCIAL-DEMOGRAPHIC CHARACTERISTICS OF IMPACTED AREAS 16 (2005).

183. JOHN R. LOGAN, THE IMPACT OF KATRINA: RACE AND CLASS IN STORM-DAMAGED NEIGHBORHOODS 7 tbl.2, *available at* http://www.s4.brown.edu/katrina/report.pdf.

184. *See* Troutt, *supra* note 67, at 1143 (citing a Brookings Institution report and noting that 38 of 47 census tracts of "extreme poverty" as of 2000 were affected by the levee breaches of Hurricane Katrina).

185. *See infra* Part V.B.1–4.

186. *See infra* notes 231–34 and accompanying text.

187. *See infra* notes 209–10 and accompanying text.

188. *See, e.g.*, Greater New Orleans Fair Hous. Action Ctr. v. St. Bernard Parish, 641 F. Supp. 2d 563, 566, 578 (E.D. La. 2009) (finding that an ordinance that "placed a moratorium on the construction of all multi-family housing . . . for a period of twelve months or until the Council enacted certain zoning updates" had a discriminatory effect on blacks and, as such, violated the Fair Housing Act).

189. Bradford Declaration, *supra* note 108, at 3 ("51.70% of the [black] households within the New Orleans Metropolitan Area are renters while only 25.03% of the white households are renters.").

households—such as the LIHTC program and subsidy programs operated by HUD—excludes a disproportionate number of black households.[190] The racial disparities are augmented when families—households with at least two persons—are considered.[191] These disparities increase as income decreases.[192]

1. Terrytown

Terrytown, a small suburb of New Orleans that was created in 1960, is located on the West Bank of Jefferson Parish.[193] According to long-time residents, many families moved to Terrytown from New Orleans because they could not afford to buy a home in the city and because housing was more affordable on the West Bank.[194] These early residents searching for affordable housing on the West Bank, many with subsidies, were largely whites who were relocating from the Irish Channel neighborhood in New Orleans.[195] By 2000, however, Terrytown experienced a demographic shift, integrating to nearly 35% black,[196] up from nearly 20% in 1990,[197] only 5% in 1980,[198] and 0.35% in 1970.[199] As of 2000, Jefferson Parish as a whole had a population that was 22.9% black.[200]

Following Katrina, elected representatives of Terrytown joined the chorus of those opposing the use of recovery dollars to create replacement rental housing in their communities. On October 18, 2006, a Jefferson Parish councilman representing Terrytown sponsored a resolution expressing to agencies charged with overseeing the housing recovery that Jefferson Parish objected to any applications by developers to build apartment complexes or single-family

190. *Id.* at 3–4.

191. *Id.* at 3.

192. *Id.* at 4. These impacts were calculated using 2007 American Community Survey data compiled by the Census Bureau. *Id.* at 5, 10.

193. *See* Allen Powell II, *West Bank Community Holds Party to Mark 50 Years of Small-Town Living with Big-City Conveniences*, TIMES-PICAYUNE (New Orleans), Mar. 5, 2010, at A-1.

194. *Id.* (noting, also, that "[m]any of the original homeowners were veterans taking advantage of the GI Bill").

195. *Id.* In 1970, Gretna, which included Terrytown, was 75.5% white. BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, 1970 CENSUS OF POPULATION, CHARACTERISTICS OF THE POPULATION OF LOUISIANA 39 tbl.16 (1973).

196. U.S. CENSUS BUREAU, DP-1 PROFILE OF GENERAL DEMOGRAPHIC CHARACTERISTICS: 2000 (Terrytown) (2000).

197. U.S. CENSUS BUREAU, DP-1 GENERAL POPULATION AND HOUSING CHARACTERISTICS: 1990 (Terrytown) (1990).

198. BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, 1980 CENSUS OF POPULATION, GENERAL POPULATION CHARACTERISTICS OF LOUISIANA: 1980 tbl.14 (Terrytown) (1982).

199. BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, 1970 CENSUS OF POPULATION, GENERAL POPULATION CHARACTERISTICS OF LOUISIANA: 1970 8 tbl. (Terrytown) (1971).

200. U.S. CENSUS BUREAU, DP-1 PROFILE OF GENERAL CHARACTERISTICS: 2000 (Jefferson Parish) (2000).

homes in nearby Gretna or Terrytown using low-income tax credits.[201] Council members unanimously approved this district-specific measure without discussion.[202]

This kind of blanket opposition to tax-credit housing uses the low incomes of the residents as a proxy for the quality of the housing and the kind of neighbors the residents will make, rather than other factors such as design details, maintenance plans, and tenant screening.[203] Even groups that would likely pose the least threat, such as the displaced elderly, were unwelcome.[204] One of the applications pending at the time of the exclusionary resolution was a 200-unit building proposed by Volunteers of America for residents over the age of sixty-two.[205] This project would have replaced 199 flooded units of elderly housing formerly in eastern New Orleans.[206] After developers succeeded in obtaining $6.29 million in tax credits from the state despite the Parish's resolution, the Council imposed an eighteen-month land-use study that halted development while the Parish considered changing the site's zoning from multifamily to single-family residential.[207] This zoning change caused the nonprofit developer to abandon the project, resulting in the project's return to Orleans Parish, where it had been located prior to Katrina.[208]

In addition to blocking a new development, some Jefferson Parish officials and constituents did not support the restoration of certain hurricane-damaged apartment complexes and used the units' disrepair to oppose the creation of new subsidized developments.[209] One councilman's strategy was to allow apartments to deteriorate to the point that demolition was the only option.[210] In 2007, before the credit-market freeze, a Dallas developer expressed interest in

---

201. Gordon, *Jefferson Opposes*, *supra* note 177, at B-3.

202. *Id.*

203. Gordon, *Housing Restrictions*, *supra* note 178, at A-1.

204. *See* Meghan Gordon, *Terrytown Residents Resist Low-Income Housing*, TIMES-PICAYUNE (New Orleans), Nov. 2, 2006, at B-3 [hereinafter Gordon, *Terrytown Residents Resist*] (describing resistance to the development of a senior-citizen group home).

205. *Id.*

206. Meghan Gordon, *Nonprofit Drops Plan for Senior Housing*, TIMES-PICAYUNE (New Orleans) (Feb. 15, 2007), http://www.nola.com/news/t-p/frontpage/index.ssf?/base/news-7/117152645065700.xml&coll=1 [hereinafter Gordon, *Nonprofit Drops*].

207. Meghan Gordon, *Charity, Jeff Sued over Botched Sale*, TIMES-PICAYUNE (New Orleans), Feb. 22, 2007, at B-1; Gordon, *Nonprofit Drops*, *supra* note 206.

208. *See* Editorial, *Signs of Recovery*, TIMES-PICAYUNE (New Orleans), Apr. 2, 2010, at B-4.

209. *See, e.g.*, Gordon, *Housing Restrictions*, *supra* note 178, at A-1 (discussing the perspectives of some city officials on subsidized developments and multifamily housing); Deon Roberts, *Land Shortage Stifles for Large Apartment Development in New Orleans*, NEW ORLEANS CITYBUSINESS, May 15, 2006, at 7 [hereinafter Roberts, *Land Shortage*] (noting Councilman Chris Roberts's statement: "I think we have our fair share of multifamily housing already.").

210. Roberts, *Blighted Apartment Rehab*, *supra* note 145. Councilman Roberts is quoted as saying, "If they fall into further disrepair, that's only better. That only furthers our ability to get some of these rat holes torn down. I think it's all part of a strategic process." *Id.*

rehabilitating five existing complexes in various locations on the West Bank of Jefferson, totaling 1118 units.[211] However, one councilman remarked, "I would prefer some of the multifamily housing units be removed and replaced with green space or another form of housing."[212] It might appear counterintuitive for a local government to squelch private investment that could place damaged apartments back into commerce, especially when certain officials acknowledged "the difficulty Jefferson businesses . . . [had] filling jobs in the service sector and middle management."[213] But officials equated all multifamily housing with concentrated poverty and crime,[214] used the blight of hurricane-damaged apartments to oppose any new development, and focused on reducing the stock of multifamily housing below pre-Katrina levels.[215]

Constituents have been equally, if not more, concerned about the prospect of new affordable-housing options in their neighborhoods.[216] Concerns about socioeconomic and racial changes in neighborhoods appear to be intertwined. One prominent landowner in the district remarked, "I would say now we're just getting a disproportionate share of the lower-income families than we had before . . . . It's changing the whole complexion of the area."[217] A councilman from the West Bank of Jefferson Parish claimed that the area had its "fair share of multifamily housing already."[218] As of 2000, 47.1% of occupied units in

---

211. *Id.* In May 2007, this developer was already engaged in a $5.6 million rehabilitation of another such apartment complex, which was financed solely through private funds. *Id.*

212. *Id.*

213. Gordon, *Housing Restrictions*, *supra* note 178, at A-1.

214. Roberts, *Blighted Apartment Rehab*, *supra* note 145 (reporting Councilman Roberts's comment: "Our experience in Jefferson Parish clearly shows that clustered multifamily housing for the most part has not been managed properly, usually leads to blight, has a tremendous effect on school performance scores, crime and economic development."). Constituents are equally sour: "We don't need any more apartments, period, in Terrytown of any kind." *See* Gordon, *Housing Restrictions*, *supra* note 178 (reporting a comment of Hank Berchak, the president of the Terrytown Civic Association).

215. *See* Roberts, *Blighted Apartment Rehab*, *supra* note 145 (reporting a comment of Councilman Chris Roberts: "If I have my prerogative, any [apartment complexes] we can get our hands on to tear down, we're going to. Especially the ones that are blighted and a nuisance."); *see also* Roberts, *Land Shortage*, *supra* note 209, at 7 (discussing Roberts's interest in tearing down roughly 1500 apartment units within three complexes because of high crime and the landlord's failure to make repairs).

216. *See* Gordon, *Terrytown Residents Resist*, *supra* note 204, at B-3 (reporting that an "overflow crowd" of Terrytown residents rallied behind the efforts of Councilman Chris Roberts to stop new low-income housing in his district and noting that members of the crowd were "rolling their eyes and cackling" at a developer's responses regarding a senior-citizen housing proposal).

217. Meghan Gordon, *More Housing for Poor Opposed: Roberts Says Those from City Unwelcome*, TIMES-PICAYUNE (New Orleans), Oct. 19, 2006, *available at* 2006 WLNR 18151507.

218. Roberts, *Land Shortage*, *supra* note 209.

Terrytown were inhabited by renters, compared with 36.1% of occupied units in Jefferson Parish.[219]

2. Kenner

Founded in 1855 and classified as a city in 1952, the City of Kenner—located ten miles west of downtown New Orleans—is the oldest city in Jefferson Parish.[220] The City of Kenner projected a 2010 population of 66,652 based on U.S. Census estimates, down from 70,517 in 2000.[221] Between 1990 and 2000, the black, Hispanic, and Asian population grew to over 30%, from 29.9% to 38.9%.[222] The city acknowledges that, given recent trends, it is likely to become increasingly diverse: "Current trends suggest that Kenner will become less populated, older, and more ethnically and racially diverse over the next 15 to 20 years. What is likely is that the future population will hover somewhere close to existing levels, but increase slightly and continue to diversify."[223]

In mid-2007, the city of Kenner sought a moratorium on the development of new multifamily residential units, pending the completion of a land-use plan by the University of New Orleans (UNO).[224] Officials cited the "great impact" of multifamily development on "adjacent neighborhoods, public infrastructure, traffic density, [and] the demand for public services" as justifications.[225] Kenner's Mayor described multifamily residential housing as "the most volatile and the most humanly-dense of residential land uses," thus justifying a temporary halt in construction until a land-use plan could be prepared.[226] The passage of the construction moratorium was delayed until April 3, 2008, when the Kenner City Council unanimously approved a ban on the issuance of

---

219. U.S. CENSUS BUREAU, U.S. DEP'T OF COMMERCE, LOUISIANA: 2000, 2000 CENSUS OF POPULATION AND HOUSING tbl.11 (2002).

220. City of Kenner, *Government*, http://www.kenner.la.us/section_2.asp (last visited Mar. 17, 2011); City of Kenner, *Kenner Historical Time Line Highlights*, http://www.kenner.la.us/section_2_9.asp (last visited Mar. 17, 2011); *see also* BETSY SWANSON, HISTORIC JEFFERSON PARISH: FROM SHORE TO SHORE 109 (1975) ("Following the Civil War, immigrants from Germany, Ireland, Italy, and the islands of Sicily and Ustica, as well as a number of freed Negroes, settled in the community [of Kenner]."); HENRY J. THOEDE, HISTORY OF JEFFERSON PARISH AND ITS PEOPLE 117 (1976) ("The City of Kenner is the oldest in Jefferson Parrish.").

221. CITY OF KENNER ET AL., PATTERN FOR PROGRESS: CITY OF KENNER LAND USE PLAN 6, 8 (2008), *available at* http://www.kenner.la.us/images/planning/pl_pfp_plan.pdf.

222. *Id.* at 7.

223. *Id.* at 16.

224. Press Release, Office of the Mayor, City of Kenner, Moratorium Sought on Multi-Family Units (May 18, 2007), *available at* http://www.kenner.la.us/images/pr0518072.pdf; *see also* Mary Sparacello, *Multifamily housing faces halt; Kenner awaits land-use plan*, TIMES-PICAYUNE (New Orleans), June 6, 2007, at B-1 (noting that Kenner signed a $25,000 contract with UNO to conduct a post-Katrina update of a land use study begun in 2000 entitled "Pattern for Progress").

225. Press Release, Office of the Mayor, *supra* note 224.

226. *Id.*

permits for the construction of developments with five or more apartments, citing "an abundance of multi-family property in the City of Kenner."[227] Citizens likely supported this measure; as noted by one Kenner City Councilman, "this [multifamily housing] is something that our citizens have spoken out very strongly against."[228] As might be expected, several developments were in the planning stages at the time the Kenner City Council proposed and passed the moratorium.[229] Yet, the Kenner City Council insisted that the ban was not targeted at particular properties.[230]

The ban on new multifamily housing had the potential to eliminate rental units in Kenner that existed before Hurricane Katrina. In particular, before the storm, the Redwood Apartment complex in North Kenner consisted of 400 units and housed many low-income renters.[231] Despite the fact that this demolished development existed prior to Katrina, homeowners adjacent to the site approached the complex's redevelopment as if a change in the land's permissible use was being proposed.[232] Neighbors expressed concern about noise, traffic, safety, and inadequate infrastructure and sought a multifamily construction ban that would keep the site vacant.[233] Thus, the Kenner multifamily-housing moratorium adopted post-Katrina threatened to reduce the number of rental units that were available before the storm.[234]

---

227. Kenner, La., Ordinance No. 9662 (Apr. 3, 2008); *see also* Cohen, *supra* note 145 (discussing "[a] recently instated one-year moratorium on the construction of developments with five or more apartments").

228. Mary Sparacello, *Multifamily Construction Ban OK'd*, TIMES-PICAYUNE (New Orleans), Apr. 4, 2008, at B-1.

229. Cohen, *supra* note 145 (referring to concerns of investors that "[t]he ban already puts in limbo at least two developments in planning stages and threatens investment in future mixed-income projects").

230. Sparacello, *supra* note 228, at B-1 (reporting that Councilwoman Michele Branigan stated that the moratorium "is something that everybody in the city is concerned about, and it's not particular to one piece of property"). *But see* Cohen, *supra* note 145 (referring to comments of Kenner City Councilman Joe Stagni that "[t]he law is a response to [neighborhood] opposition" to the redevelopment of the Redwood Apartment complex specifically).

231. Cohen, *supra* note 145.

232. *Id.*

233. *Id.* When Kenner officials delayed the blanket ban on multifamily construction in June 2007, they opted instead to conduct "a study" of the 15 acres of vacant land that included the Redwood apartments. *See* Sparacello, *supra* note 228, at B-1. UNO conducted the study and recommended in early 2008 that the site be used for both residential and commercial development. *Id.*

234. As one constituent put it: "[t]he less apartments, the better." Cohen, *supra* note 145. *But see* Sparacello, *supra* note 228, at B-1 (noting that developments receiving approval prior to the ban's passage would proceed, including a complex in south Kenner that was in the process of being rebuilt).

Despite the Council's protestations that "an abundance" of rental housing existed in Kenner,[235] it was not necessarily affordable to its residents. In March 2008, less than a month before the multifamily-housing ban, thousands of people were reported to have lined up outside of the Kenner housing-authority office to apply for federal rental-assistance vouchers.[236] The question then became: did the City of Kenner pursue the multifamily housing ban *despite* the demonstrated need of its residents,[237] or did the "thousands" of needy residents create concern on the part of Kenner officials that action needed to be taken to prevent the influx of federal subsidies into the city?[238]

In 2000, renter-occupied housing comprised 39.2% of all occupied housing in Kenner, a figure slightly above the rate for Jefferson Parish as a whole, but nowhere near the proportion for Orleans Parish.[239] Also, this proportion of renter-occupied housing in Kenner decreased from 41% in 1990.[240] Although a study conducted by UNO ultimately found no shortage of multifamily housing within Kenner for existing residents, it did not recommend a complete ban.[241] Rather, the study recommended "high-density residential development" in parts of the city as well as mixed-use residential development on the Redwood Apartment complex site.[242] Further, the conclusion that there is no shortage of multifamily housing, which would warrant new construction, does not necessarily support a *reduction* in rental units.

---

235. *See* Cohen, *supra* note 145 (noting the comments of Councilman Joe Stagni and explaining that the UNO study of the site of the Redwood Apartment complex found "no shortage of multifamily housing in Kenner").

236. *Id.*

237. *Id.* (reporting comments of the commissioner of the Louisiana Housing Finance Agency, Mark Madderra, who stated, "There is clearly a significant demand for affordable housing in Kenner as evidenced by the long line of people who showed up to apply for affordable housing, and it concerns me that the government hasn't recognized that need").

238. *See supra* text accompanying note 225 (discussing Kenner officials' stated reasons for the ban).

239. *See* U.S. CENSUS BUREAU, QT-H2 TENURE, HOUSEHOLD SIZE, AND AGE OF HOUSEHOLDER: 2000 (KENNER CITY, LOUISIANA) (2000) [hereinafter U.S. CENSUS BUREAU, QT-H2 (KENNER CITY, LOUISIANA)]. Kenner reports that its dominant residential land-use is single-family residential, comprising 16,639 units or 83.4% of all residential units. CITY OF KENNER ET AL., *supra* note 221, at 10 tbl.4. Two-, three-, and four-unit buildings comprise 4285 units, or a total of 8.36% of all residential units. *Id.* Multifamily structures, consisting of more than four units, comprise a total of 6043 units, or 8.03% of all residential units. *Id.*

240. U.S. CENSUS BUREAU, QT-H2 (KENNER CITY, LOUISIANA), *supra* note 239.

241. *See* Cohen, *supra* note 145.

242. *Id.* At least one developer thought it odd that the moratorium would be placed on housing, rather than commercial development, given that the population has remained flat since the 1980s: "That's what the city of Kenner needs—it needs housing." Sparacello, *supra* note 228, at B-1 (reporting the comments of developer Henry Shane).

3. Saint Bernard Parish

Saint Bernard Parish is located five miles east of downtown New Orleans and was founded in 1807.[243] In 2000, the Saint Bernard Parish population consisted of 7.6% black persons and 88.3% white persons.[244] A thirty-foot tidal surge spawned by Hurricane Katrina damaged or destroyed *all* of the 26,000 homes in Saint Bernard Parish.[245] As of August 2008, 37,000 people had returned, representing only slightly more than one-half of the pre-Katrina population of 68,000.[246] In late 2008, Saint Bernard Parish's President invited the public to Saint Bernard Parish, making this pitch: "Displaced residents, visitors, *and new residents* are all welcomed to share in what has long been one of Louisiana's best kept secrets."[247] Despite the stated interest of the Parish in regrowing its population and rebuilding its housing stock and infrastructure, Saint Bernard Parish issued a number of restrictive-zoning ordinances that seem to undermine these goals.

In November 2005, during the immediate aftermath of the storm, the parish passed an ordinance establishing "a moratorium on the re-establishment and development of any multifamily dwellings in Saint Bernard Parish throughout the disaster recovery period."[248] The moratorium was designed so that only existing multifamily units were considered for redevelopment, and only if the Council's concerns were met with respect to "placement irregularities, over density problems and quality of life issues."[249] High density within the parish was considered more than "two eight-plex structures in a one block radius."[250]

After Katrina, other communities passed bans on rental housing, but Saint Bernard Parish took a more creative approach. On September 19, 2006, the Parish passed its infamous blood-relative ordinance.[251] This ordinance

---

243. Letter from Craig P. Taffaro, Jr., St. Bernard Parish President, *in* KATRINA: THREE YEARS LATER, HURRICANE RECOVERY PROGRESS REPORT FOR ST. BERNARD PARISH, LOUISIANA 8 (2008), *available at* http://www.sbpg.net/images/stories/sbpg3yr.pdf; ST. BERNARD PARISH .NET, *History*, http://stbernardparish.net/history.htm (last visited Mar. 17, 2011).

244. Bradford Declaration, supra note 108, at 7.

245. KATRINA: THREE YEARS LATER, HURRICANE RECOVERY PROGRESS REPORT FOR ST. BERNARD PARISH, LOUISIANA, *supra* note 243, at 2.

246. *Id.*

247. Letter from Craig P. Taffaro, Jr., *supra* note 243 (emphasis added).

248. Saint Bernard Parish, La., Ordinance SBPC #632-11-05 (Nov. 1, 2005).

249. *Id.*

250. *Id.*

251. *See* Saint Bernard Parish, La., Ordinance SBPC #670-09-06 (Sept. 19, 2006). The Saint Bernard Parish Council (SBPC) previously passed two ordinances restricting the rental of single-family homes. On March 7, 2006, the SBPC passed a measure that placed a moratorium on the rental of single-family homes "until such time as the post Katrina real estate market in St. Bernard Parish stabilizes." Saint Bernard Parish, La., Ordinance SBPC #643-03-06 § 1 (Mar. 7, 2006). The stated purpose of the ordinance was "to preserve the integrity of single family dwelling neighborhoods." Saint Bernard Parish, La., Ordinance SBPC #643-03-06. Subsequently, on July 6, 2006, the SBPC enacted an ordinance that required "[t]hat all single family dwellings to be used as rental property [obtain] a Conditional Use permit issued from the

prohibited the rental of single-family residences "by any person or group of persons, other than a family member(s) related by blood within the first, second or third direct ascending or descending generation(s), without first obtaining a Permissive Use Permit from the Saint Bernard Parish Council."[252] The ordinance went so far as to prohibit the "occupancy or use" of the single-family dwelling by anyone other than a blood relative.[253] The stated purpose of the ordinance was to encourage owners of single-family residences to return, rebuild their homes, and resume living in the parish, as well as "to maintain the integrity and stability of established neighborhoods as centers of family values and activities."[254] Violators, including both lessors and lessees, were subject to criminal and civil penalties consisting, in part, of various fines imposed for each day that the property was rented in violation of the ordinance.[255] Single-family property owners who were renting homes when the blood-relative ordinance passed were exempted from its coverage.[256] By restricting rentals in this way, the parish allowed rentals to "insiders," such as blood relatives of existing residents, but denied rentals to "outsiders."[257]

The Greater New Orleans Fair Housing Action Center (GNOFHAC) and a single-family homeowner challenged the blood-relative ordinance, alleging that the ordinance "was passed with the intent and has the effect of denying and otherwise making unavailable rental housing to non-white persons."[258] GNOFHAC also alleged that the blood relative ordinance, as part of a series of ordinances restricting the rental of single-family homes in Saint Bernard Parish, "perpetuates segregation by preserving the Parish as an overwhelmingly all-white enclave."[259] GNOFHAC also challenged the 2005 multifamily-housing moratorium on the same grounds, alleging intentional discrimination and arguing that the moratorium had the "effect of denying and making unavailable rental housing disproportionately needed by black and Hispanic persons."[260]

GNOFHAC cited evidence that the parish council's purpose in passing the blood-relative ordinance was to maintain the racial homogeneity of the parish. Contemporaneous statements, such as a comment of one Councilman that

---

Office of Community Development." Saint Bernard Parish, La., Ordinance SBPC #661-07-06 § 1 (July 6, 2006).

252. Saint Bernard Parish, La., Ordinance SBPC #670-09-06 § I.A. (Sept. 19, 2006).

253. *Id.*

254. *Id.*

255. *Id.* §§ I(F), I(I).

256. *Id.* § I(K).

257. *See* Troutt, *supra* note 67, at 1146 ("Suburban legal power is sometimes a tool, but more often a shield used to defend against outsiders.").

258. Amended Complaint for Injunctive Relief, Declaratory Judgment, and Remedial Relief para. 3, at 2, Greater New Orleans Fair Hous. Ctr. v. St. Bernard Parish, 641 F. Supp. 2d 563 (E.D. La. 2009) (Civ. Action No. 2:06-CV-07185) [hereinafter Amended Complaint].

259. *Id.*

260. *Id.* para. 4, at 2–3.

"[a]ll we're doing is saying we want to maintain the demographics," suggest this purpose.[261] Council chair Lynn Dean, who voted against the ordinance, put it more bluntly, stating that the ordinance was passed to "block the blacks from living in these areas."[262] The demographics are revealing. As of 2000, white families, who made up 88.3% of Saint Bernard's population, owned 93.2% of all owner-occupied houses in the parish.[263] Thus, regardless of the intent behind the blood-relative ordinance, its practical effect was to make single-family rentals unavailable to nonwhite persons. Further, GNOFHAC alleged that all of the Saint Bernard Parish ordinances were designed to make rental housing, which is disproportionately needed by blacks and Hispanics in the New Orleans metropolitan area, unavailable in Saint Bernard Parish.[264]

The parish sought to justify the blood-relative ordinance by claiming that it was necessary to preserve the parish's history of mostly owner-occupied neighborhoods.[265] GNOFHAC countered that the justification lacked any rational relationship to the actual effect of the ordinance, which was to "permit[] some rentals to a virtually all-white class of persons while denying rentals to virtually all minorities."[266]

The parties resolved the litigation challenging single- and multifamily-rental restrictions through a consent decree, which the district court signed in February 2008.[267] The consent decree granted the court continuing jurisdiction for a three-year period.[268] The parish agreed to drop the blood-relative ordinance and substitute an alternative procedure for approving certain rental transactions in the parish.[269] The parish also agreed to refrain from future discrimination on the basis of race or national origin.[270]

---

261. Memo of Points & Auth., *supra* note 181, at 13. Another councilman stated, "We don't want to change the aesthetics of a neighborhood." *Id.* (citing Michelle Chen, *Housing Watchdogs Call Post-Katrina Ordinance "Racist,"* THE NEW STANDARD, Oct. 6, 2006). Still another councilman who voted against the ordinance acknowledged that the fear of greater racial integration could be the driving force behind community support for the ordinance. *Id.*

262. Memo of Points & Auth., *supra* note 181, at 14 (quoting Chen, *supra* note 261).

263. Motion for Preliminary Injunction attach. 3, at 5–6, New Orleans Fair Hous. Action Ctr. v. St. Bernard Parish, 641 F. Supp. 2d 563 (E.D. La. 2009) (Civ. Action No. 2:06-CV-07185), ECF No. 6-3.

264. Amended Complaint, *supra* note 258, para. 14, at 5.

265. *Id.* para. 19, at 7.

266. *Id.* para. 21, at 8.

267. Consent Order at 5–8, 11, Greater New Orleans Fair Hous. Action Ctr. v. St. Bernard Parish, 641 F. Supp. 2d 563 (E.D. La. 2008) (Civ. Action No. 2:06-CV-07185).

268. *Id.* at 8. The parish had previously agreed through a stipulation entered in November 2006 to refrain from enforcing the blood-relative ordinance. Joint Stipulation at 1–2, Greater New Orleans Fair Hous. Action Ctr. v. St. Bernard Parish, 641 F. Supp. 2d 563 (E.D. La. 2009) (Civ. Action No. 06-7185). The parish rescinded the blood-relative ordinance in January 2007. Consent Order, *supra* note 267, at 4.

269. Consent Order, *supra* note 267, at 7.

270. *Id.* at 6–7.

Despite the consent decree issued earlier in the year, in September 2008, the parish resuscitated its multifamily-housing ban, placing a moratorium on "any housing developments with five (5) or more units" for as long as twelve months.[271] The ban prompted GNOFHAC and a housing developer to file a motion to enforce the consent decree.[272] The Dallas-based developer, Provident Realty Advisors, Inc., met with parish government officials about its proposed seventy-two-unit developments[273] and received preliminary assurances that the properties were properly zoned.[274] However, in response to public outcry incited by a newspaper editorial, the parish government withdrew its support for the developments and imposed the moratorium.[275] Although the parish claimed that a development moratorium was an accepted planning practice for a jurisdiction engaged in a comprehensive planning and zoning study, it did not ban commercial development or other residential development during that time.[276] Significantly, as noted by the court, "the type of housing restricted or forbidden is disproportionately utilized by African Americans."[277] Following an evidentiary hearing, the district court found that the September 2008 multifamily-housing ban violated the Fair Housing Act as well as the February 2008 consent order.[278] Specifically, the court held that the multifamily-housing ban was adopted with discriminatory intent and had a racially discriminatory impact.[279] The court later found Saint Bernard Parish in contempt for violating the February 2008 consent order.[280]

Even after a federal judge found that Saint Bernard Parish engaged in intentional race discrimination by enacting its multifamily-housing ban, the parish and its residents continued to wage a public-relations war against multifamily housing. The parish held a series of public hearings on the four

---

271. St. Bernard Parish, La., Ordinance SBPC #905-09-08 § 1 (Sept. 16, 2008).

272. Memorandum of Points and Authorities in Support of Motion to Enforce Consent Decree at 2, Greater New Orleans Fair Hous. Action Ctr. v. St. Bernard Parish, 641 F. Supp. 2d 563 (E.D. La. 2009) (Civ. Action No. 2:06-CV-07185).

273. Greater New Orleans Fair Hous. Action Ctr. v. St. Bernard Parish, 641 F. Supp. 2d 563, 566, 570 (E.D. La. 2009). The Provident development proposed for Saint Bernard Parish consists of four mixed-income rental-apartment complexes of seventy-two units each. *Id.* at 566. Thirty percent of the units would rent at fair-market rates, 50% would be rented to those at 60% of Area Median Income (AMI), and 20% would be rented to those at 30% of AMI. *Id.*

274. *Id.* at 570.

275. *Id.* at 572–73.

276. Opinion Regarding Multifamily Fair Housing Discrimination Claim for St. Bernard Parish Government at 8, 10, Greater New Orleans Fair Hous. Action Ctr. v. St. Bernard Parish, 641 F. Supp. 2d 563 (E.D. La. 2009) (Civ. Action No. 2:06-CV-07185).

277. *Greater New Orleans Fair Hous. Action Ctr.*, 641 F. Supp. 2d at 570 (crediting the testimony of the plaintiff's expert, Dr. Calvin Bradford).

278. *Id.* at 565, 569, 577–78.

279. *Id.*

280. Greater New Orleans Fair Hous. Action Ctr. v. St. Bernard Parish, No. 2:06-CV-07158, 2009 WL 2177241, at *1 (E.D. La. July 22, 2009).

proposed seventy-two-unit developments.[281] Along with ongoing concerns about ghetto living, gang banging, drug dealing, and drive-by shootings,[282] the opposition increasingly emphasized that there was a sufficient supply of affordable rental-housing, and that allowing low-income tax-credit housing to be built in the parish would result in an over-supply of such housing and a decline in property values.[283] The parish asked the state agency that awarded the low-income housing tax credits, which were vital to the developments, to withdraw the award.[284]

In addition to scheduling public hearings about the development, Saint Bernard Parish engaged in a variety of overt and covert measures designed to block the developments, causing the district court to enter two subsequent contempt orders. The parish denied the developer's application to re-subdivide the plats for the development, prompting the developer to file a motion seeking to hold the parish in contempt of the court's prior orders.[285] In August 2009, after an evidentiary hearing, the court granted the requested motion and required the parish to consider the re-subdivision applications at the next planning-commission hearing.[286]

Eight days later, the parish persisted in its refusal to re-subdivide the plats and the planning commission essentially refused to consider the court's August 2009 order, stating that "the Judge doesn't say what's a major or a minor

---

281. Chris Kirkham, *Housing Debate in St. Bernard Reflects Post-Katrina Landscape*, TIMES-PICAYUNE (New Orleans), July 19, 2009, at A-1 [hereinafter Kirkham, *Housing Debate*]. The meetings are described as follows:

> For nearly three months, the meetings about the mixed-income apartment complexes slated for Chalmette have drawn standing-room-only crowds to the St. Bernard Parish government complex. A steady stream of speakers walk up to the microphone, each voicing unbending opposition to the complexes they say will send the parish's real estate market into a tailspin . . . .

Id.

282. *Greater New Orleans Fair Hous. Action Ctr.*, 2009 WL 2969502, at *4.

283. Kirkham, *Housing Debate*, *supra* note 281, at A-1; *see also*, Chris Kirkham, *Housing Ban Lands Parish in Court Again*, TIMES-PICAYUNE (New Orleans), Dec. 28, 2008, at B-1 (reporting Councilman Wayne J. Landry as saying, "It's going to create the density of rental spaces too close, which is exactly the opposite of what the rental ordinance is trying to do. We didn't want to have that concentrated density, and now we're going to go and put 280 units in four locations?").

284. Kirkham, *Housing Debate*, *supra* note 281, at A-1.

285. Motion for Contempt at 1, Greater New Orleans Fair Hous. Action Ctr. v. St. Bernard Parish, 641 F. Supp. 2d 563 (E.D. La. 2009) (Civ. Action No. 2:06-cv-07185).

286. Greater New Orleans Fair Hous. Action Ctr. v. St. Bernard Parish, 648 F. Supp. 2d 805, 821 (E.D. La. 2009). In a detailed opinion finding the parish in contempt, the court noted that, although the planning-commission staff had initially recommended approval of the plan to re-subdivide the plats as a minor subdivision, the planning commission abruptly recast the application as one for a major re-subdivision, was influenced by a racially charged public hearing, and engaged in procedural delays and referrals between the parish council and planning commission. *Id.* at 810–13.

subdivision in St. Bernard Parish."[287] The developer filed another motion for contempt.[288] Following an evidentiary hearing, the court partially granted the motion.[289] It deemed the re-subdivision applications approved and set deadlines for other building permit-related decisions, communications, and approvals on parking, landscaping, drainage, and fire.[290] In its third finding of contempt, the court noted, "Defendants may disagree with this Court's prior orders, but under our system of laws, they must abide by those prior orders unless and until the Court of Appeals takes a different view. Defendants are not free to defy this Court simply because they think they know better."[291] Regarding the parish's dilatory efforts, the court stated, "This Court has repeatedly found the stated justifications given by these officials to be unsound, contrived, pretextual and racially discriminatory."[292] As this Article goes to print, despite the filing of two additional contempt motions and a motion for a temporary restraining order,[293] it appears that construction has

287. Motion for Contempt, Injunctive Relief, and Sanctions at 1, Greater New Orleans Fair Hous. Action Ctr. v. St. Bernard Parish, No. 2:06-cv-07185, 2009 WL 2969502 (E.D. La. Sept. 11, 2009).

288. *Id.*

289. *Greater New Orleans Fair Hous. Action Ctr.*, 2009 WL 2969502, at *1.

290. *Id.* at *4–7.

291. *Id.* at *2.

292. *Id.* at *4.

293. *See* Plaintiffs' Motion for Temporary Restraining Order, Greater New Orleans Fair Hous. Action Ctr. v. St. Bernard Parish, No. 2:06-CV-07185 (E.D. La. Mar. 2, 2011). Plaintiffs filed a fourth motion for contempt over the September 15, 2009 passage of an additional ordinance that, if passed by voters, would ban all multifamily housing developments with more than six units. Plaintiff GNOFHAC's Motion for Contempt at 1, Greater New Orleans Fair Hous. Action Ctr. v. St. Bernard Parish, No. 2:06-CV-07185 (E.D. La. Oct. 13, 2009); Chris Kirkman, *St. Bernard Backtracking on Apartments*, TIMES-PICAYUNE (New Orleans), Oct. 22, 2009, at A-1. Before the court could decide that motion, the parish rescinded the ordinance, purportedly under pressure from the federal government related to the parish's continued receipt of community development block grant funding. Defendant's Notice to Court at 1, Greater New Orleans Fair Hous. Action Ctr. v. St. Bernard Parish, No. 2:06-CV-07185 (E.D. La. Nov. 4, 2009). The plaintiffs filed a fifth contempt motion in January 2011 based on the failure of the parish to renew building permits for the development because of zoning changes that would prohibit the proposed multifamily housing. Plaintiffs' Motion for Contempt at 1, Greater New Orleans Fair Hous. Action Ctr. v. St. Bernard Parish, No. 2:06-CV-07185 (E.D. La. Jan. 14, 2010); *see also* Benjamin Alexander-Bloch, *St. Bernard Parish Approves Mixed-Income Development*, TIMES-PICAYUNE (New Orleans) (Feb. 7, 2011, 2:04 PM), http://blog.nola.com/politics/print.html?entry=/2011/02/st_bernard_parish_approves_mix.html (noting that this was "the fifth contempt of court motion filed against the parish"). Again, HUD intervened, filing its own fair-housing complaint, which "jeopardize[d] about $91 million in federal funding already committed to parish projects." Alexander-Bloch, *supra*. HUD began an investigation into the parish's amended zoning ordinance "that eliminated multifamily housing as a permitted use in five zoning areas where it previously was allowed." *Id.* Again the parish relented, agreeing to allow the project to go forward. *Id.* ("Parish councilmen said in order not to jeopardize the $91 million they would have to let the development go forward and work with HUD on its broader zoning concerns.").

finally proceeded on the developer's multifamily-housing development in Saint Bernard Parish.[294] Citing ongoing harassment and interferences, however, the court has retained jurisdiction of the matter until the end of 2011.[295]

As of 2000, about 25% of all occupied units in Saint Bernard Parish were renter-occupied, which is half the amount of rental units that existed in neighboring Orleans Parish.[296] The barriers to entry erected by the Saint Bernard Parish Council were likely not designed merely to preserve the racial and socioeconomic homogeneity that pre-existed Katrina, but also to reduce the relatively low number of ethnic minorities in the parish. Before Katrina, the black population was heavily concentrated in a neighborhood called Village Square.[297] Village Square is a neighborhood within Saint Bernard Parish that was considered blighted prior to Hurricane Katrina.[298] This five-block area of approximately 700 apartments started out as rental housing for working-class families in the 1970s, but when a local plant closed in the early 1980s, demand decreased, the apartments fell into disrepair, and the area became associated with crime and drug activity.[299] In 2004, the U.S. Department of Justice filed a federal fair-housing action based on its own investigation of 120 apartments, alleging that property owners steered blacks toward and whites away from the Village Square neighborhood on the basis of race.[300]

The fact that the parish acted within three months of Katrina to prevent the redevelopment of multifamily housing in Saint Bernard Parish prevented Village Square residents from returning to Village Square and, thus, to the parish. GNOFHAC alleged that, although Saint Bernard Parish officials issued permits for the redevelopment of existing multifamily units in other areas of the parish, they did not issue permits for the redevelopment of any multifamily

---

294. *See* Monica Hernandez, *St. Bernard Neighbors Say New Construction is Destroying Wetlands*, WWLTV.COM (Feb. 18, 2011) ("After two years of heated protests against mixed-income apartments, St. Bernard Parish issued a building permit this month for the four complexes.").

295. *See* Order and Reasons at 4, Greater New Orleans Fair Hous. Action Ctr. v. St. Bernard Parish, No. 2:06-cv-07185 (E.D. La. Feb. 28, 2011) [hereinafter Order and Reasons] (modifying the consent decree to retain jurisdiction until the end of 2011, citing Saint Bernard Parish's efforts to "derail" construction of multifamily housing in the parish).

296. *See supra* note 165.

297. Memo of Points & Auth., *supra* note 181, at 4.

298. Richard Slawsky, *St. Bernard Parish Housing Authority Would Work to Clean up Slums*, NEW ORLEANS CITYBUSINESS, June 20, 2005, at 13; *see also* Memo of Points & Auth., *supra* note 181, at 6 (reporting that the parish council created a committee in February 2005 "to explore ways to expropriate Village Square, bulldoze the buildings, and expel residents").

299. Slawsky, *supra* note 298, at 13.

300. *See* Memo of Points & Auth., *supra* note 181, at 4 & n.1.

units in Village Square.[301] In September 2006, the parish formally designated Village Square as a mitigation area, which would result in it being converted to green space.[302] Further, the 2006 Saint Bernard Parish ordinances restricting rentals of single-family dwellings would have prevented Village Square residents from renting single-family homes as an alternative to multifamily housing in the parish.[303] It is difficult to imagine a more effective strategy for preventing the return of blacks who rented housing in Saint Bernard Parish pre-Katrina and ensuring that no new black renters would be able to migrate there.

Indeed, the fact that the Village Square site is designated as a low-income census tract paved the way for the parish to obtain $6 million in community development block grant money for redevelopment purposes.[304] The availability of federal money to counteract blight in Village Square creates an ironic scenario in which the parish may use the low incomes of former residents to obtain federal dollars for redevelopment activity as it simultaneously takes extraordinary measures to close off all points of reentry to its former low-income black residents.

To the extent that Saint Bernard Parish is considered the next rung on the "housing ladder" for low-income blacks looking for less-segregated housing conditions and neighborhoods in which to raise their families because of affordable, median housing prices,[305] it is troubling that the parish—clearly

---

301. Amended Complaint, *supra* note 258, paras. 27–33, at 9–11; *see also id.* para. 35, at 12 (stating that the parish council denied the plaintiff's—Wallace Rodrigue's— formal application to renovate his own property in September 2006—nine months after he submitted his application—citing the moratorium and the parish's plans to "mitigate" the Village Square area); Memo of Points & Auth., *supra* note 181, at 14–15 (discussing evidence that race of neighborhood residents prior to the storm influenced decisions on permit applications for multifamily housing).

302. Amended Complaint, *supra* note 258, para. 32, at 11. Given that the mitigation program's purpose is to limit the redevelopment of flood-prone areas, it is notable that the most flood-prone areas of Saint Bernard were located outside of Village Square in predominantly white neighborhoods. Memo of Points & Auth., *supra* note 181, at 15.

303. *See supra* notes 248–56 and accompanying text.

304. Chris Kirkham, *St. Bernard is Back to Square One on Complex*, TIMES-PICAYUNE (New Orleans), May 25, 2009, at A-1 ("Because the area is designated as a low-income census tract, a $58 million hospital investment in the area could generate more than $6 million in additional revenue to use for construction of a medical office building on the site . . . ."). Various plans have been proposed for the use of the $6 million in Community Development Block Grant (CDBG) money made available because of the low incomes of displaced Village Square residents. *See id.* In addition to the hospital plan, the parish also negotiated with a private developer who would purchase individual tracts within Village Square from property owners; the parish would use hazard-mitigation funds from the Federal Emergency Management Agency and CDBG funds to assist with acquisition costs for use of the land as green space. *Id.*

305. *See* Expert Report at 9, Greater New Orleans Fair Hous. Action Ctr. v. St. Bernard Parish, 641 F. Supp. 2d 563 (E.D. La. 2009) (Civ. Action No. 2:06-CV-07185) (reporting that redevelopment planners in Saint Bernard Parish post-Katrina were worried about keeping housing affordable).

eager to grow its population—is directing so much energy toward denying entry to those in arguably the same circumstances as those entering the parish decades ago. Indeed, between 1960 and the 1980s, whites who had occupied legally segregated housing projects sought to escape desegregation in favor of "affordable-living alternatives in working-class suburbs" such as Saint Bernard Parish.[306] These white families, in search of "better school districts, safety, suburban life-styles, less congestion, and lower costs of living"[307] were permitted to use their housing mobility to improve the socioeconomic position of their families and, thus, future generations.[308] It is unlikely that these white individuals, some of them former public-housing residents, faced the same kind of mobility barriers that black public-housing residents experienced in the post-Katrina period.[309]

4. New Orleans East

New Orleans East is an Orleans Parish suburb that has experienced substantial racial and demographic shifts since 1980.[310] Most of the neighborhoods within New Orleans East were developed in the 1960s and 1970s.[311] At that time, the area was occupied mostly by whites.[312] In the 1980s, the Oil Bust severely reduced demand for apartment units in the area, which paved the way for lower-income families to move into previously middle-class apartment complexes.[313] The increasing number of low-income families, most of them black, moving into the area sparked a massive white exodus in the late 1980s and early 1990s.[314] By 2005, New Orleans East was a predominantly black suburb,[315] with some exclusive neighborhoods occupied by upper-income black families.[316] At the time of this writing, New Orleans

306. Richard Campanella, *An Ethnic Geography of New Orleans*, 94 J. AM. HIST. 704, 710 (2007). Saint Bernard Parish also welcomed whites from the bordering New Orleans ninth ward neighborhood who wished to escape school desegregation in the 1960s. *See* Katy Reckdahl, *Fifty Years Later, Students Recall Integrating New Orleans Public Schools*, TIMES-PICAYUNE (New Orleans) (Nov. 13, 2010), http://www.nola.com/politics/index.ssf/2010/11/fifty_years_later_students_rec.html (describing the efforts of Saint Bernard Parish segregationist leader, Leander Perez, to recruit white New Orleans parents to send their children to all-white Saint Bernard Parish schools in the early 1960s).

307. Campanella, *supra* note 306, at 710.

308. *Id.* at 709–10.

309. *See* Mahoney, *supra* note 15, at 1282–83 ("White mobility brought gradual racial transition in the projects as whites stopped moving in; however, this means that the racial transition was at least strongly affected by greater white opportunity within the private market.").

310. *See* Campanella, *supra* note 306, at 710.

311. *Id.*

312. *Id.*

313. *See id.*; Fussell, *supra* note 15, at 851 (discussing the Oil Bust).

314. *See* Campanella, *supra* note 306, at 710.

315. *See* U.S. CENSUS BUREAU, 2005–2009 AMERICAN COMMUNITY SURVEY 5-YEAR ESTIMATES (ORLEANS PARISH, LOUISIANA) (listing the racial composition of Orleans Parish).

316. LOGAN, *supra* note 183, at 13.

East has failed to reopen its hospital or regain significant commercial and retail services.[317]

Prior to Katrina, residents in New Orleans East organized to oppose the development of new affordable apartments in the area, arguing that they had more than their fair share of such housing.[318] It was perhaps not surprising that proposals for affordable housing after Katrina sparked the same kind of opposition.[319] For example, residents opposed the development of thirty-eight single-family homes designed to provide affordable "work force" housing under a lease-purchase arrangement near the upscale Lake Carmel subdivision.[320] Residents also opposed a multifamily complex near the gated community of Eastover.[321] Pursuant to state legislation enacted in 2008, the Eastern New Orleans Neighborhood Advisory Commission, "a board comprising representatives of various homeowners associations," is allowed "30 days to review projects in the area before the city makes zoning changes or issue[s] building permits."[322]

5. Consequences of Exclusionary Zoning: Tax-Credit Market Freeze

Given that a significant portion of hurricane-recovery assistance has come in the form of LIHTC housing,[323] local officials' rejection of this assistance has certainly obstructed hurricane recovery in metro New Orleans.[324] The fact that

---

317. Bruce Nolan, *Mystery of the East*, TIMES-PICAYUNE (New Orleans), Dec. 12, 2010, at A-1.

318. David Hammer, *Homeowners, Legislators Battle Eastern New Orleans Apartments*, TIMES-PICAYUNE (New Orleans) (Jan. 22, 2009, 10:33 PM), http://www.nola.com/news/index.ssf/2009/01/homeowners_legislators_battle.html; *see* Elie, *supra* note 64, at A-9 (describing a perceived "overabundance of apartment complexes" and a reported "800 units of Section 8 housing" in eastern New Orleans).

319. *See* Bruce Eggler, *Housing Proposal Opposed, Blocked*, TIMES-PICAYUNE (New Orleans), Mar. 26, 2009, at B-1.

320. *Id.* ("[R]esidents [are] fearful the development would threaten their property values and quality of life.").

321. *See* Elie, *supra* note 64, at A-1.

322. David Hammer, *Apartment Plans for East N.O. Opposed*, TIMES-PICAYUNE (New Orleans), Jan. 23, 2009, at A-1.

323. *See* BUREAU OF GOVERNMENTAL RESEARCH, *supra* note 154, at 3 (noting that low-income housing tax credits are among the three types of financial assistance Congress provided to address rental housing issues); Gordon, *Terrytown Residents Resist*, *supra* note 204, at B-3 ("As part of the Gulf Opportunity Zone Act, Congress approved giving $57 million annually for three years in tax credits to private businesses who restock Louisiana's hurricane-ravaged housing supply.").

324. *See* Order and Reasons, *supra* note 295, at 4 (finding that the harassment and interference of Saint Bernard Parish with respect to the construction of affordable housing "has placed [the developer] at risk of losing the federal tax credits that finance its construction project."). For example, Mark Madderra, the chairman of the Louisiana Housing Finance Agency's multifamily-housing committee, remarked that "the actions [of Jefferson Parish Councilman Chris Roberts] block the only major program Congress has made available to restore the region's multifamily housing." Gordon, *Housing Restrictions*, *supra* note 178, at A-1. Also,

the bottom dropped out of the tax-credit market during the economic downturn of fall 2008 also jeopardized the use of tax credits that had not yet been placed in service.[325] Local governments in metro New Orleans cannot be blamed for the tax-credit market freeze, but the delays occasioned by their rejection of tax-credit projects likely compounded its negative impact.[326] It is certainly true that the availability of land has also limited where new multifamily housing can be developed in metropolitan New Orleans.[327] But, despite geographic limitations on growth, there was no shortage of interest prior to the tax-credit market freeze among out-of-state developers with regard to applying for federal tax credits to finance the development of multifamily housing in the area.[328]

6. Highest Opportunity Neighborhoods in the Region: Open and Affordable?

Despite the region's challenges in attempting to recover from Hurricane Katrina, two metropolitan New Orleans area locales have recently managed to make a "top 100" list of best places to live in the United States.[329] RelocateAmerica, an online-marketing service for real-estate professionals, conducts an annual review of data concerning education, economy, local leadership, parks, recreation, and housing.[330] It also considers nominations from residents and local businesses.[331] In 2009, RelocateAmerica selected Metairie, in Jefferson Parish, and Mandeville,[332] in Saint Tammany Parish, as

---

Ernest Johnson, president of the Louisiana NAACP, reportedly "sees [exclusionary actions in Terrytown] as a deliberate barrier to affordable housing that will choke the region's housing recovery when Jefferson is otherwise well-situated to step in for more devastated areas." *Id.*

325. *See* BUREAU OF GOVERNMENTAL RESEARCH, *supra* note 154 (explaining that a weak economy negatively affects tax-credit developments); ROSE ET AL., *supra* note 161, at 6 ("The national economic downturn means fewer investors in Low Income Housing Tax Credits, jeopardizing the financing for as many as 4,600 of the planned 13,100 units of multifamily rental housing in southern Louisiana.").

326. *See supra* text accompanying notes 201, 281–84; *see also* ROSE ET AL., *supra* note 161, at 7 (noting the detrimental effects of "changing rules and arbitrary practices").

327. Roberts, *Land Shortage*, *supra* note 209, at 7 ("Despite Katrina's widespread destruction, there is scant land in or near New Orleans to build large apartment complexes.").

328. *Id.* ("M[etairie apartment] broker Larry Schedler answers 15 to 20 calls every day, most from out-of-towners interested in buying land in New Orleans where they can build large apartment complexes.").

329. *See Relocate-America's 2009 Top 100 Places to Live*, RELOCATEAMERICA, http://www.relocateamerica.com/top-100-cities/2009/ (last visited Mar. 17, 2011).

330. *About RelocateAmerica*, RELOCATEAMERICA, http://www.relocateamerica.com/about/ (last visited Mar. 17, 2011).

331. *Id.*

332. According to Mandeville's marketing material posted on the RelocateAmerica website, the city

> enjoys a lifestyle that is quite different from New Orleans, its South Shore neighbor. . . . Mandeville residents have a common goal: to work hard, and support their families to the best of their ability. Our unemployment rate is extremely low, and

among the "top 100 places to live" in the nation.[333] Most interesting about these selections is that these are not communities that have implemented sweeping housing moratoria post-Katrina relating to multifamily or rental housing.[334] The question arises: why are the communities that have been designated among the highest-opportunity communities in the region not slated for any affordable-housing development?[335]

As if to make the fair-housing argument while also highlighting the impact of exclusionary land-use policies, Jefferson Parish has recently launched the "Jefferson Parish: Opportunity Lives Here" public-relations campaign.[336] This campaign consists of television and magazine advertisements, social-networking sites, and other promotions.[337] The campaign is a cooperative venture of the Jefferson Parish Government, the Jefferson Parish Sheriff's Office, the Jefferson Parish Public School System, and the Jefferson Parish Economic Development Commission.[338] These entities have agreed to

---

> our population continues to grow. Mandeville is the most desired city to live within the fastest growing parish in the State of Louisiana.

Mandeville, Louisiana Real Estate & Relocation Guide, RELOCATEAMERICA, http://www.relocateamerica.com/louisiana/cities/mandeville (last visited Mar. 17, 2011).

333. *Relocate-America's 2009 Top 100 Places to Live*, *supra* note 329. Earlier in the 1970s, during a period of middle-class exodus and white flight from the City of New Orleans, Metairie was described as "the finest and largest residential area in Jefferson Parish and it boast[ed] of many beautiful and prosperous shopping centers." *See* THOEDE, *supra* note 220, at 120. Sheryll Cashin describes these areas as "favored quarters." Sheryll D. Cashin, *Localism, Self-Interest, and the Tyranny of the Favored Quarter: Addressing the Barriers to New Regionalism*, 88 GEO. L.J. 1985, 1987 (2000) [hereinafter Cashin, *Localism*] ("In most American metropolitan regions there are high-growth, developing suburbs that typically represent about a quarter of the entire regional population but that also tend to capture the largest share of the region's public infrastructure investments and job growth.").

334. Roberts, *Land Shortage*, *supra* note 209, at 7 ("Mike Sevante, St. Tammany Parish council administrator, said the parish has no moratoriums specifically prohibiting multifamily housing, although other types of construction are on hold due to traffic and drainage concerns."). *But see* Cindy Chang, *Updated Zoning Rules Passed*, TIMES-PICAYUNE (New Orleans), Oct. 26, 2007, at B-1 (explaining that, following a December 2006 moratorium on multifamily housing in one historic district within Mandeville, the Mandeville City Council adopted restrictions on multifamily-housing developments in certain parts of the district, though it permitted mixed-use multifamily developments).

335. Notably, "[s]eventy-five percent of [the] housing market [in Mandeville] consists of single family homes in nicely landscaped, upscale neighborhoods. The other 25% is a mixture of condos, newly constructed apartments and three prestigious retirement communities." *Mandeville, Louisiana Real Estate & Relocation Guide*, *supra* note 332. Moreover, "affluent, job-rich suburban communities typically are devoid of affordable housing. And this exclusion of low-income people, . . . whom other communities must house, is a critical component of their fiscal and economic success." CASHIN, *supra* note 113, at 185.

336. *See* Jefferson Parish Quality of Life Coalition, *Jefferson Parish: Opportunity Lives Here - Ad Campaign* (2010), http://www.opportunityliveshere.com/ad-campaign.html.

337. *See id.*

338. Jefferson Parish Quality of Life Coalition, *Jefferson Parish: Opportunity Lives Here - Partners* (2010), http://www.opportunityliveshere.com/partners.html.

cooperate to address "quality of life" issues in the parish, including through "strike forces" that will provide "strategic detailed solutions."[339]

VI. WHAT CAN POST-KATRINA NEW ORLEANS TEACH US ABOUT NECESSARY FAIR-HOUSING REFORM?

A. Government-Assisted Housing Programs Cannot Follow the "Path of Least Resistance" and Comply with Fair-Housing Law

The post-Katrina rebuilding experience with respect to rental housing has revealed that the "path of least resistance" has been an abysmal failure. This laissez-faire approach has helped illustrate the way in which private-market forces and government interventions frequently conspire to create, maintain, and reinforce entrenched racial residential segregation.[340]

As Orleans Parish sought to deconcentrate poverty following Katrina, in part through the demolition of thousands of units of public housing that would not all be rebuilt, surrounding parishes took steps to counteract these deconcentration measures. The first neighborhoods in which government-assisted housing was proposed outside of Orleans post-Katrina were those historically considered to be the most affordable for individuals seeking to make upward moves.[341] In other words, communities such as Terrytown, Saint Bernard, and parts of Kenner and New Orleans East might be considered the next rung on the housing ladder for those wishing to leave high-poverty neighborhoods and locate in working- or middle-class communities. Low-income and working-class white families exercised these housing choices when many of these communities were established.[342] U.S. Census data reflect that, at least in Kenner, New Orleans East, and Terrytown, black families had already begun to make these moves in the 1980s and 1990s.[343] Despite its affordability, Saint Bernard remained overwhelmingly white outside of the Village Square area, which could be attributable to private-market discrimination and limited rental housing.[344] These communities took decisive action to exclude new rental and government

339. *Id.*

340. *See supra* Part V.

341. *See supra* text accompanying notes 129–33 (explaining how the suburban areas outside Orleans Parish provided better opportunities for low-income wage earners to live in middle-income neighborhoods pre-Katrina); *supra* text accompanying notes 164–71 (discussing the proportion of rental units slated to be replaced in areas surrounding Orleans Parish).

342. *See, e.g.*, *supra* text accompanying notes 193–95 (discussing the reason many people originally settled in Terrytown in Jefferson Parish).

343. *See supra* text accompanying 195–200 (describing the demographic movement in Terrytown); *supra* text accompanying 222–23 (describing the demographic movement in Kenner); *supra* text accompanying 310–16 (describing the demographic movement in New Orleans East).

344. *See supra* text accompanying notes 296–304.

housing after Katrina and sought to reverse any demographic shifts that occurred prior to the storm.[345]

On the other hand, several socioeconomically and racially homogeneous communities, nationally recognized for their desirability, and arguably less affordable or accessible to families seeking to escape concentrated poverty and racial segregation—such as neighborhoods in Metairie and Mandeville—did not make similar efforts.[346] This implies that housing subsidies were perhaps not promoted in these communities, thus explaining the deafening silence with respect to exclusionary-zoning activity.

Government-assisted housing programs will continue to perpetuate segregation and poverty concentration if the "path of least resistance" continues to govern location decisions. The "government must not only avoid building in segregated neighborhoods but also must avoid building in neighborhoods that are in the process of resegregation."[347] The irony is that, aside from the initial intervention to provide the housing subsidy, the federal government yields to a highly decentralized, laissez-faire scheme with regard to where the subsidy will be utilized.[348] This is not to suggest that federal housing programs are not heavily burdened by substantial reporting requirements, myriad and conflicting regulations, and byzantine organizational structures.[349] Rather, none of the bureaucracy has ensured that consumers who use government subsidies have greater access to high-quality housing and greater neighborhood choice than those who do not.[350]

B. Government-Assisted Housing Must be Distributed and Managed on a Regional Basis to Comply with the Anti-Segregation Mandates of Fair Housing Law

Despite legal precedents recognizing the national policy of "balanced and dispersed public housing,"[351] and prohibitions against discrimination and segregation in the nation's housing programs, neighborhoods in post-Katrina New Orleans have strived to exercise veto power over assisted housing whenever and wherever possible.[352] The racial veto, although illegal, has

345. *See supra* Part V.B (discussing exclusionary efforts that area governments took).

346. *See supra* text accompanying notes 329–35.

347. Orfield, *supra* note 51, at 1797 (stating that fair-housing law "makes clear that siting housing in racially concentrated or resegregating areas is generally prohibited").

348. *See* FREEMAN, *supra* note 100, at 3–4 (noting how states disburse federal housing subsidies in ways that serve their own local housing goals).

349. *See, e.g.*, Bill Barrow, *Bureaucracy Snags Housing Program, Auditor Says*, TIMES-PICAYUNE (New Orleans) (Mar. 10, 2009), http://www.nola.com/news/t-p/capital/index.ssf?/base/news-6/1236662529238440.xml&coll=1 (noting that a housing plan financed with federal dollars was delayed because it was "snarled in bureaucratic problems").

350. *See supra* Part III.D.

351. Crow v. Brown, 332 F. Supp. 382, 390 (N.D. Ga. 1971).

352. *See supra* Part V.B.1–4. These neighborhoods are not likely dissimilar to other neighborhoods throughout the nation. *See* Harold A. McDougall, *From Litigation to Legislation*

enduring force when a neighborhood perceives that its identity, quality of life, and values are at stake.[353] Elected officials will gamble with scarce resources and risk costly enforcement actions to implement the racial veto.[354]

At times, the veto finds expression in more neutral terms.[355] David Troutt describes this phenomenon as "legal localism," which he contends is the post-war successor to de jure segregation and consists of "substituting economic proxies for race which could withstand constitutional challenge."[356] To be sure, race-neutral justifications are often pretexts for racial discrimination,[357] and race-based intent claims have had some success in challenging post-Katrina exclusionary-zoning practices.[358] The Fair Housing Act also allows individuals to bring disparate-impact claims to challenge neutral rules that have the effect of disproportionately excluding blacks from neighborhoods of opportunity.[359] In addition, when the proper record is

---

in Exclusionary Zoning Law, 22 HARV. C.R.-C.L. L. REV. 623, 624 (1987) ("[State l]egislators . . . must reckon with voters who favor exclusionary zoning for its putative fiscal advantages and environmental benefits, and who see it as a useful device for maintaining social and racial homogeneity." (internal citations omitted)).

353. *See supra* notes 25–26 and accompanying text.

354. *See* McDougall, *supra* note 352, at 624–25 (describing the political pressures that drive elected officials toward the racial veto); *see also* Alexander-Bloch, *supra* note 293 (describing the running cost of the exclusionary-zoning litigation brought against Saint Bernard Parish as including $1.5 million in attorney and settlement fees in addition to the parish's own attorney fees).

355. *See* Troutt, *supra* note 67, at 1149 ("The power to exclude categories of uses associated with urban problems . . . preclude[s] strict scrutiny, and allows the proliferation of racial proxies under the guise of rational planning and community self-determination."). Troutt suggests economic rationalism as an explanation for persistent racial segregation: "economic segregation *appears* rational under a system that discriminates on the objective basis of land use categories, wealth maximization considerations, and parental preferences about child welfare rather than immutable characteristics like race." *Id.* at 1161.

356. *Id.* at 1158 (discussing a series of 1970s decisions from which "a jurisprudential edifice was erected that would define insiders from outsiders, draw economic meaning from jurisdictional lines, empower suburbs against the cities from which they came, and limit their responsibilities even to their regional neighbors").

357. *See, e.g.*, *supra* text accompanying notes 248–66 (discussing Saint Bernard Parish's controversial blood-relative ordinance); *see also* Arlington Heights v. Metro. Hous. Dev. Corp., 429 U.S. 252, 266–68 (1977) (discussing the circumstantial and direct evidence that bears on whether a zoning decision was undertaken with a discriminatory purpose, including its disparate impact on certain races, "[t]he historical background of the decision," "[t]he specific sequence of events leading up to the challenged decision," "[d]epartures from the normal procedural sequence," "substantive departures," and "legislative or administrative history").

358. *See supra* notes 265–80, 287–95 and accompanying text.

359. *See, e.g.*, Huntington Branch NAACP v. Town of Huntington, 844 F.2d 926, 928 (2d Cir. 1988) (deciding whether a zoning ordinance that "restrict[ed] private multi-family housing projects to a largely minority 'urban renewal area'" violated the Fair Housing Act), *aff'd*, 488 U.S. 15 (1988); Metro. Hous. Dev. Corp. v. Vill. of Arlington Heights, 558 F.2d 1283, 1285 (7th Cir. 1977) (finding that the defendant village had a statutory obligation under the Fair Housing Act "to refrain from zoning polices that effectively foreclose the construction of any low-cost housing" in a certain area). For a discussion of the ways in which litigants, courts, and

presented, courts have imposed a more demanding vision of HUD's affirmative duty and have required HUD to "consider regional approaches" to delivering housing opportunity to black households.[360] At the state level, the Supreme Court of New Jersey established "the Mount Laurel doctrine," interpreting the state constitution to require individual municipalities to provide their fair share of low- and moderate-income housing in the region.[361] Nevertheless, although litigation is vitally important as a tool for eliminating illegal discrimination and segregation, alone it is an inefficient and impracticable means of eliminating segregation throughout the nation's housing programs.[362]

Many commentators who have studied the phenomenon of "localism"[363] as it is practiced throughout the country have embraced regionalism as the tonic,[364] and it has been said that New Orleans could benefit from a

---

commentators blend the intent- and effects-based liability standards in civil rights cases with the result of undermining the disparate-impact theory, see Stacy E. Seicshnaydre, *Is the Road to Disparate Impact Paved with Good Intentions?: Stuck on State of Mind in Antidiscrimination Law*, 42 WAKE FOREST L. REV. 1141 (2007).

360. *See* Thompson v. U.S. Dep't of Hous. & Urban Dev., 348 F. Supp. 2d 398, 463 (D. Md. 2005) ("It is high time that HUD live up to its statutory mandate to consider the effect of its policies on the racial and socio-economic composition of the surrounding area and thus consider regional approaches to promoting fair housing opportunities for [black] public housing residents . . . .").

361. S. Burlington Cnty. NAACP v. Twp. of Mount Laurel, 336 A.2d 713, 728–32 (N.J. 1975); *see also* Bernard K. Ham, *Exclusionary Zoning and Racial Segregation: A Reconsideration of the Mount Laurel Doctrine*, 7 SETON HALL CONST. L.J. 577, 580 (1997) ("The Mount Laurel doctrine . . . has come to signify the judiciary's efforts to desegregate New Jersey's suburban communities, which have existed as enclaves for the wealthy white population.").

362. *See* Ham, *supra* note 361, at 580–81 ("A recent empirical study concluded that the Mount Laurel mandate has failed to achieve its goals" that include "producing more affordable housing for the poor and . . . [the] implicit goal of ameliorating the racial residential segregation in New Jersey."); McDougall, *supra* note 352, at 661. McDougall considers the Mount Laurel litigation and explains that

> [c]ourts are still ill-equipped to operate as "super zoning boards" for any length of time. This does not mean that they must stand aloof. Judicial intervention in support of, or in advance of, legislation making exclusionary zoning more difficult, more costly and more susceptible to public inquiry is essential to progress in addressing this social problem. Court disapproval of existing zoning arrangements, prescription of broad outlines of future land-use policy, and the formulation of specific, developer-oriented relief are legitimate, necessary catalysts to action by the legislature.

Id.

363. *See, e.g.*, Cashin, *Localism*, *supra* note 333, at 1990 ("A system that enables a privileged minority to garner a majority of scarce public resources for development while exporting much of the cost of its high-end development to other communities calls into question the normative justifications for localism.").

364. *See* MYRON ORFIELD, AMERICAN METROPOLITICS: THE NEW SUBURBAN REALITY 153 (2002) (arguing that "*all regional communities* benefit from regional reform"); DAVID RUSK, INSIDE GAME OUTSIDE GAME: WINNING STRATEGIES FOR SAVING URBAN AMERICA 147 (1999) (noting that many communities use regional methods to "help dissolve concentrations of poverty"

particularly stiff dose.[365] For example, the author has advocated a regional approach in the distribution of affordable-housing resources in New Orleans following Katrina, particularly in the wake of the massive demolition of public housing conducted under the auspices of poverty deconcentration.[366] Given that the New Orleans area has, by necessity, entered a period of unprecedented innovation and reform, the notion of putting aside old, more localist approaches in favor of regionalist ones is not unthinkable.

Although regional governance is by no means the norm, there are a variety of models.[367] For example, the Commonwealth of Massachusetts enacted a law that establishes "a state-level housing appeals board with the authority to overturn local decisions that reject affordable housing projects or impose conditions on them that make them economically infeasible."[368] Other regions,

---

and "reduce fiscal disparities"); *see also* GERRIT KNAAP ET AL., ZONING AS A BARRIER TO MULTIFAMILY HOUSING DEVELOPMENT 70 (2007) ("Although the evidence is limited, it appears as though state and regional oversight can serve to reduce barriers to multifamily housing development."); Peter W. Salsich, Jr., *Thinking Regionally About Affordable Housing and Neighborhood Development*, 28 STETSON L. REV. 577, 580 (1999) ("[A] regional approach offers the best hope for success in recreating sustainable neighborhoods."); Troutt, *supra* note 67, at 1173 (advocating for "equitable regionalism" with interlocal cooperation mandated by state law and including "a more even distribution of state resources across municipal populations, the transformation of marginal areas into more integrated communities and the reduction of significant disparities in the provision of public and private services among localities"). *But see* Aaron J. Saiger, *Local Government Without Tiebout*, 41 URB. LAW. 93 (2009) (arguing against supplanting local government with state or regional government and instead proposing a redistricting approach to prevent inequities in the distribution of public goods resulting from "Tiebout sorting," "because local boundaries would react to the development of enclaves of wealth or poverty, existing residents would be substantially less able to choose, permanently, the characteristics of their neighbors").

365. Troutt, *supra* note 67, at 1173 ("A region like the New Orleans metropolitan area is better served by a top-down, compulsory state legislation requiring parishes within the region to provide for [matters with regional implications], through their planning regulation with elected regional commission authority over compliance.").

366. *See* Seicshnaydre, *supra* note 60, at 1266–68, 1274.

367. *See* STUART MECK ET AL., REGIONAL APPROACHES TO AFFORDABLE HOUSING 189–96 (2003) (detailing proposed elements for a model program of regional approaches to affordable housing); McDougall, *supra* note 352, at 635–50 (discussing strengths and weaknesses of legislative initiatives promoting affordable housing in California, Massachusetts, New Jersey, and Oregon); Florence Wagman Roisman, *Opening the Suburbs to Racial Integration: Lessons for the 21st Century*, 23 W. NEW ENG. L. REV. 65, 68–72 (2001) [hereinafter Roisman, *Opening the Suburbs*] (discussing state and local laws designed to address economic exclusion in suburban areas).

368. KNAAP ET AL., *supra* note 364, at 25. One commentator notes that, "[w]hile this [Massachusetts] law . . . has had some success in getting otherwise intractable local governments to approve affordable projects, it does not address the larger issue of increasing the supply of *all* housing, in particular, multifamily housing, whether or not it is for low- and moderate-income households." *Id.* Moreover, with regard to racial implications of the Massachusetts plan, one scholar contends that "economic remedies cannot be used to solve racial problems" and that the Massachusetts statute, to the extent that the beneficiaries are moderate-income whites, "is likely to exacerbate racial segregation." Roisman, *supra* note 367, at 72, 84.

like Minneapolis and Saint Paul, Minnesota, and Portland, Oregon, require that local housing plans be subject to review by a regional-planning agency, making it "more difficult for jurisdictions to use zoning to intentionally limit multifamily development."[369] Others argue that zoning can be part of the solution, typically through inclusionary zoning codes requiring that a percentage of all new units developed be set aside as affordable.[370] In California, state law mandates that local governments include a housing element in their comprehensive plans, which address affordable housing and explain "how the jurisdiction will meet its share of the regional housing need."[371] Regional approaches should include counseling affordable-housing consumers about the availability of housing in low-poverty neighborhoods or in neighborhoods in which their race does not predominate.[372]

As demonstrated by the proposals to site many of the post-Katrina replacement rental units in already affordable, racially integrating suburbs, which generated exclusionary-zoning responses, there may be common benefit to a fair-share approach.[373] As noted by Myron Orfield, suburbs are not monolithic in the opportunities and services they are able to offer relative to

---

369. KNAAP ET AL., *supra* note 364, at 39, 45–46 (explaining that in Oregon, "[a]ll local governments devise and enact zoning codes that must comply with both regional and state requirements and plans. These requirements include density and housing mix targets that encourage the development of multifamily housing").

370. *See, e.g.*, *id.* at 52 (noting that in Sacramento, stakeholders recognized zoning as a barrier to achieving affordable housing, "but recognized that zoning is also an important part of the solution"); *see also* METRO. POLICY PROGRAM, BROOKINGS INST., NEW ORLEANS AFTER THE STORM: LESSONS FROM THE PAST, A PLAN FOR THE FUTURE 32 (2005), *available at* http://www.brookings.edu/~/media/Files/rc/reports/2005/10metropolitanpolicy_fixauthorname/20051012_NewOrleans.pdf ("In preparation for the coming surge of housing construction, the federal government should mandate that city-wide inclusionary zoning be adopted as a prerequisite for the release of housing funds."). For a description of the first mandatory inclusionary-zoning scheme in the United States, located in Montgomery County, Maryland, see *History of the Moderately Priced Dwelling Unit (MPDU) Program in Montgomery County, Maryland*, http://www.montgomerycountymd.gov/dhctmpl.asp?url=/content/dhca/housing/housing_P/Summary_and_History.asp (last edited Apr. 22, 2005).

371. KNAAP ET AL., *supra* note 364, at 52.

372. For a discussion of housing-mobility counseling programs, including recommendations to maximize the effectiveness of these programs, see Xavier de Souza Briggs & Margery Austin Turner, *Assisted Housing Mobility and the Success of Low-Income Minority Families: Lessons for Policy, Practice, and Future Research*, 1 NW. J.L. & SOC. POL'Y 25, 38, 58–61 (2006).

373. Some commentators recommend that fair-share proposals should focus on zoning for apartments rather than for government-sponsored affordable housing to avoid the stigma associated with government housing. *See, e.g.*, Paul Boudreaux, *An Individual Preference Approach to Suburban Racial Desegregation*, 27 FORDHAM URB. L.J. 533, 561–62 (1999). The post-Katrina rebuilding experience suggests, however, that local governments and their constituents tend to conflate the two and see zoning bans on apartments as the first line of defense against government-assisted housing. *See supra* text accompanying notes 185–87, 209–19.

the tax burdens they impose.[374] As regionalists point out, "[t]he leapfrogging of consumer investment into 'favored quarters' leaves behind more and more moderate- and middle-income suburban dwellers with increased taxes for fewer services."[375] Older suburbs, such as Kenner and Terrytown, and inner cities, such as New Orleans, can form strategic alliances to ensure that both the rehabilitation and new construction of affordable housing does not become concentrated in particular places.[376] These alliances dedicated to largely regional approaches could render the region more competitive than sister regions who cling to localism.[377]

C. To Comply with Fair Housing Anti-Segregation Mandates, HUD Must Target Its Intervention in the Housing Market to Ensure that Federal Programs Create Housing Choices in Areas of High Opportunity

Despite the appeal of regionalism, New Orleans illustrates that there is no "silver bullet" to quelling resistance to siting government-assisted housing in communities of opportunity.[378] Simply requiring that suburban parishes accept their fair share of affordable housing fails to address the potential for concentrations of affordable units within those parishes, as the discussion of Jefferson Parish's Terrytown and Saint Bernard Parish's Village Square reveals.[379] Even when affordable units are created in otherwise-unaffordable neighborhoods of opportunity, the units are often *not* inhabited by low-income residents of urban areas such that residential segregation is ameliorated.[380]

---

374. ORFIELD, *supra* note 364, at 28–31; *see also* Turner, *supra* note 119, at 810 ("Although many minorities have gained access to suburban residential communities, these are often not the suburban jurisdictions that offer the most promising job opportunities.").

375. Troutt, *supra* note 67, at 1168.

376. *See, e.g.*, ORFIELD, *supra* note 364, at 164–65; *cf.* CASHIN, *supra* note 113, at 309 (discussing how a coalition of mayors and various organizations in the Twin Cities of Minnesota became strong supporters of a fair-share affordable-housing bill when they realized that their communities already had more than their fair share of such housing).

377. *See* Troutt, *supra* note 67, at 1169 ("Metropolitan areas that continue to embrace localism at the expense of shared regional responsibilities tend to be less competitive in attracting economic development, keeping businesses and jobs, and maintaining a deep and talented labor pool.").

378. *See* MECK ET AL., *supra* note 367, at 187 ("[T]here is no one best way to address the provision of affordable housing in the United States on a regional or multijurisdictional basis.").

379. *See supra* text accompanying notes 193–219, 296–300; *see also* Roisman, *Opening the Suburbs*, *supra* note 367, at 74 (discussing the concern that, even if suburbs accept low-income housing, they will create enclaves for this housing, thus continuing the segregation and isolation of low-income housing).

380. Florence Wagman Roisman, *The Role of the State, the Necessity of Race-Conscious Remedies, and Other Lessons from the* Mount Laurel *Study*, 27 SETON HALL L. REV. 1386, 1388 (1997) (discussing initiatives arising from New Jersey Supreme Court decisions requiring housing to be built for a range of income groups in municipalities throughout the state [the Mount Laurel litigation], and noting that "[o]f the *Mount Laurel* units amenable to study, '81 percent of all suburban . . . units are occupied by white households, [while] 85 percent of all urban . . . units are occupied by black or Latino households," (second, third, and fourth alterations in original

And, as some planning experts suggest, "local governments are fully capable of developing new barriers if existing forms are curtailed or removed."[381] Quite rightly, scholars who have studied "the pervasiveness of the residential segregated housing patterns" recommend a "multifaceted approach."[382]

Any multifaceted approach raises the question of what role the nation's lead housing agency must play in opening housing markets to affordable housing.[383] How can HUD ensure that its intervention in the housing market helps increase opportunity, rather than build on historic, residential racial segregation? Furthermore, how can HUD guarantee that the "path of least resistance" does not continue to govern the siting of government-assisted housing, in which the local racial veto all too easily finds expression in either explicit or coded

---

(quoting NAOMI BAILIN WISH & STEPHEN EISDORFER, CTR. FOR PUB. SERV., SETON HALL UNIV., THE IMPACT OF THE MOUNT LAUREL INITIATIVES: AN ANALYSIS OF THE CHARACTERISTICS OF APPLICANTS AND OCCUPANTS 70 (1996))); *see also* Roisman, *Opening the Suburbs*, *supra* note 367, at 72 ("[I]nitiatives [directed at economic segregation] have not ameliorated and indeed may have exacerbated racial inequality and segregation.").

381. KNAAP ET AL., *supra* note 364; *see also* McDougall, *supra* note 352, at 637 (discussing the ability of a municipality in New Jersey to meet its fair-share requirements for affordable housing by transferring up to 50% of its obligation to another municipality pursuant to a "regional contribution agreement" (internal quotation marks omitted)); Roisman, *Opening the Suburbs*, *supra* note 367, at 77 (discussing the use of local preferences to ensure that affordable housing built in suburbs "will go to whites"). To discourage this, one commentator recommends "continuous monitoring of housing prices, rents, starts, household incomes, and housing affordability measures" to inform policy and to prohibit new barriers to multifamily housing from being erected. KNAAP ET AL., *supra* note 364.

382. Charles E. Daye, *Whither "Fair" Housing: Meditations on Wrong Paradigms, Ambivalent Answers, and a Legislative Proposal*, 3 WASH. U. J.L. & POL'Y 241, 266, 271 (2000); *see* Myron Orfield, *Land Use and Housing Policies to Reduce Concentrated Poverty and Racial Segregation*, 33 FORDHAM URB. L.J. 877, 926–30 (2006) (discussing case studies that "illustrate the value of proactive, multifaceted efforts to promote stable integration"); *see also* Henry Korman, *Underwriting for Fair Housing? Achieving Civil Rights Goals in Affordable Housing Programs*, 14 J. AFFORDABLE HOUS. & COMMUNITY DEV. L. 292, 314 (2005) (discussing a proposal to "make fair housing visible in the affordable housing real estate transaction by placing an assessment of civil rights risk on the same plane as an evaluation of financial risk"). For a description of a multifaceted approach at the state level, see McDougall, *supra* note 352, at 662 ("Legislatures should amend their states' zoning enabling acts to prohibit exclusionary zoning, establish regulatory and adjudicatory administrative agencies to oversee the municipalities' compliance with the law, and allocate resources to facilitate the development of housing affordable to low- and moderate-income persons.").

383. For a potential answer to this question, see Peter W. Salsich, *Toward a Policy of Heterogeneity: Overcoming a Long History of Socioeconomic Segregation in Housing*, 42 WAKE FOREST L. REV. 459, 465 (2007) (recommending "that Congress enact legislation to authorize planning support for state and regional affordable housing initiatives and a federal override of local zoning laws when necessary to enable affordable housing developments receiving federal and state financial assistance to be scattered throughout residential neighborhoods"); *see also* JOINT CTR. FOR HOUS. STUDIES, *supra* note 103, at 22 ("[E]fforts must continue to eliminate land use policies that limit development of affordable, higher-density rental housing in resource-rich suburban communities. Although regulatory reform is difficult to achieve, national housing policy must confront political opposition head on.").

terms? The legislative history of the Fair Housing Act suggests that HUD's affirmative duty to further fair housing was viewed as a "way of buttressing existing legal resources in order to mount a stronger attack on 'the widespread problem of segregation in public housing.'"[384] If this is so, then a more vigorous enforcement mechanism must be enacted to fulfill this vision, such as a private right of action to enforce HUD's affirmative duty, to ensure that "HUD use[s] its grant programs to assist in ending discrimination and segregation, to the point where the supply of genuinely open housing increases."[385]

To fulfill its affirmative duty, HUD cannot continue to work in isolation. The National Commission on Fair Housing and Equal Opportunity convened hearings in five major U.S. cities in 2008 and issued a report with recommendations for "creating and sustaining stable, diverse, inclusive neighborhoods across America."[386] The bipartisan Commission recommended the revival of the President's Fair Housing Council—a creature of Executive Order designed to coordinate fair-housing policy and practice across federal agencies.[387] The Fair Housing Council "encourages a federal fair housing review for major programs in all federal agencies, so that these programs are consciously aligned to support, not undermine, fair housing goals."[388] The Commission also recommended that "the federal agencies participating in the Council expressly require collaboration between their grantees at the metropolitan and regional level[s] to support fair housing goals."[389]

HUD has begun to take some positive steps toward fulfilling its affirmative mandate to further fair housing, which is an encouraging sign.[390] Yet, as the nowhere-ist discussion above demonstrates, a municipality will refuse to accept its fair share of affordable housing unless all of its *other* federal funding

---

384. ROBERT G. SCHWEMM, HOUSING DISCRIMINATION: LAW AND LITIGATION § 21:1, at 21-5 (2007) (quoting Client's Council v. Pierce, 711 F.2d 1406, 1425 (8th Cir. 1983)).

385. NAACP v. Sec'y of Hous. & Urban Dev., 817 F.2d 149, 154–55 (1st Cir. 1987). A private right of action could be created by amending the Fair Housing Act, 42 U.S.C. §§ 3601–3619 (2006), to include within the definition of "discriminatory housing practice" the affirmative duty to further fair housing. *See id.* § 3602(f) (defining "discriminatory housing practice" for the purposes of the Act); *id.* § 3608(e)(5) (describing the Secretary of HUD's duties to further the policies of fair housing laid out in the Act).

386. NATIONAL COMMISSION REPORT, *supra* note 44. Former HUD Secretaries Henry Cisneros and Jack Kemp chaired this bipartisan commission that included representatives of industry groups, academia, and government. *See id.* at i.

387. *Id.* at 51–52. At most, the Council met once and has essentially remained dormant since its creation. *Id.* at 51.

388. *Id.* at 51.

389. *Id.* at 52.

390. HUD's 2011 program initiatives, such as the Transforming Rental Assistance Initiative, Sustainable Communities Initiative, and Choice Neighborhoods Initiative, are all promising signs that HUD may act more affirmatively to fulfill its fair-housing obligations in the future. *See* U.S. DEP'T OF HOUS. & URBAN DEV., HUD STRATEGIC PLAN FY 2010–2015 23, 38–39 (2010) (discussing HUD initiatives and programs).

is conditioned on this acceptance.[391] Since the storm, HUD has allocated over $18 million in community development block grant funding alone to Jefferson Parish, which includes Metairie, and over $3 million to Saint Tammany Parish, which includes Mandeville.[392] Rather than continuing to provide housing funds that will be used at the local level to perpetuate segregation and poverty concentration, in violation of fair-housing law, HUD, in partnership with other federal agencies, can condition the full range of federal community-development and infrastructure funding on compliance with the fair-housing policies HUD has adopted on paper, but has failed to implement in practice.[393]

---

391. *See supra* text accompanying note 293 (discussing Saint Bernard Parish's refusal to comply with federal court orders, but nevertheless showing its willingness to allow government housing to proceed upon HUD's threat to withhold other federal funding). The National Commission on Fair Housing and Equal Opportunity also recommends conditioning community-development funding on "fair housing performance goals" set at the state and regional levels, with housing programs "redirected to support a share of regional opportunity goals." NATIONAL COMMISSION REPORT, *supra* note 44.

392. *See* U.S. DEP'T OF HOUS. & URBAN DEV., COMMUNITY PLANNING AND DEVELOPMENT PROGRAM FORMULA ALLOCATIONS FY 2006, http://www.hud.gov/offices/cpd/about/budget/budget06/index.cfm (follow the "Louisiana" hyperlink); U.S. DEP'T OF HOUS. & URBAN DEV., COMMUNITY PLANNING AND DEVELOPMENT PROGRAM FORMULA ALLOCATIONS FY 2007, http://www.hud.gov/offices/cpd/about/budget/budget07/index.cfm (follow the "Louisiana" hyperlink); U.S. DEP'T OF HOUS. & URBAN DEV., COMMUNITY PLANNING AND DEVELOPMENT PROGRAM FORMULA ALLOCATIONS FY 2008, http://www.hud.gov/offices/cpd/about/budget/budget08/index.cfm (follow the "Louisiana" hyperlink); U.S. DEP'T OF HOUS. & URBAN DEV., COMMUNITY PLANNING AND DEVELOPMENT PROGRAM FORMULA ALLOCATIONS FY 2009, http://www.hud.gov/offices/cpd/about/budget/budget09/index.cfm (follow the "Louisiana" hyperlink); U.S. DEP'T OF HOUS. & URBAN DEV., COMMUNITY PLANNING AND DEVELOPMENT PROGRAM FORMULA ALLOCATIONS FY 2010, http://www.hud.gov/offices/cpd/about/budget/budget10/index.cfm (follow the "Louisiana" hyperlink). Saint Bernard Parish does not receive an individual allocation of CDBG funding, but reportedly has over $90 million in federal funds currently committed to projects in the parish. *See supra* note 293.

393. Advocacy efforts to enforce HUD's affirmative duties relating to the community development block grant program are beyond the scope of this Article, but generally, receipt of these funds is conditioned on a community's certification that it will further fair housing. United States *ex rel.* Anti-Discrimination Ctr. of Metro N.Y., Inc., v. Westchester Cnty., 668 F. Supp. 2d 548, 551, 569 (S.D.N.Y. 2009) (noting the obligation to affirmatively further fair housing and finding violations of the False Claims Act in the county's failure to do so despite its certification that it did). The certification requires the jurisdiction to "conduct an [analysis of impediments], take appropriate actions in response, and to document its analysis and actions." *Id.* at 569. The Greater New Orleans Fair Housing Action Center has filed HUD complaints against both Jefferson Parish and the State of Louisiana alleging violations of the Fair Housing Act, Title VI of the Civil Rights Act of 1964, and the Housing and Community Development Act of 1974 based on what it describes as unsatisfactory certifications that the jurisdictions will further fair housing in their housing- and community-development programs. Housing Discrimination Complaint Against Jefferson Parish, Louisiana, at 2–3 (on file with author); Housing Discrimination Complaint Against the State of Louisiana, at 2–3 (on file with author).

VII. CONCLUSION

Where should government-assisted housing be located? Rather than "anywhere" or "nowhere," it should be located "everywhere." If government-assisted housing existed everywhere, then it would not need to be concentrated in any particular place.

Ultimately, federal intervention in the housing market must encompass more than providing a subsidy. It must open neighborhoods not already open, make affordable what is not already affordable, enable housing subsidies to act as gateways to educational and employment opportunity, and inform families historically excluded from housing markets about their choices.[394] Most importantly, HUD cannot reward exclusionary jurisdictions by continuing to fund them.[395] Any federal housing interventions that are not so designed will almost certainly exacerbate existing racial segregation and poverty concentration, as they have done for decades, and—as post-Katrina New Orleans illustrates—as they will continue to do, again and again and again.

394. *See* Orfield, *supra* note 51, at 1798. Orfield explains that "stable, residentially restrictive neighborhoods and cities should be targets of affordable housing activity." *Id.* He argues that "[a]iming tax credits at the places to which people with the most residential choices are attracted is a good strategy for integration, as it cuts off their avoidance." *Id.*

395. Daye, *supra* note 382, at 271 ("[T]he federal government should not provide funding to a governmental body that acts to undermine . . . non-exclusionary housing, which is perhaps the lynchpin of school desegregation, improved job opportunities, and an improved living environment for minority and lower-income families.").