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# Exiling the Poor: The Clash of Redevelopment and Fair Housing in Post-Katrina New Orleans

JUDITH BROWNE-DIANIS AND ANITA SINHA\*

## INTRODUCTION

“Katrina was a tragedy, but its aftermath presents the most exciting urban opportunity since San Francisco in 1906. Pioneers, please apply.”<sup>1</sup>

Hurricane Katrina caused a crisis of a magnitude never before seen on U.S. soil. With thousands dead and hundreds of thousands displaced,<sup>2</sup> policymakers swiftly presented the tragedy as an opportunity for New Orleans. However, the critical inquiries are: an opportunity for whom?; and what is the government’s responsibility to ensure that low-income residents are afforded a viable right to return?

Prior to Hurricane Katrina, New Orleans was a city mired in inequitable opportunities. The city had one of the highest levels of income inequality in the United States,<sup>3</sup> and the stark disparities in economic and social opportunities were demarcated along racial lines. According to a 2000 report, 88% of those living in subsidized housing

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1. James K. Glassman, *Back to the Future*, WALL ST. J., Jan. 12, 2006, available at <http://opinionjournal.com/cc/?id=110007798>.

2. Rebecca Eaton, *Escape Denied: The Gretna Bridge and the Government’s Armed Blockade in the Wake of Katrina*, 13 TEX. WESLEYAN L. REV. 127, 128-29 (2006).

3. *Id.* at 132.

in New Orleans were African American,<sup>4</sup> and 56.5% of all African Americans were of very low income, compared to 30.9% of Whites.<sup>5</sup> The city's public infrastructure was in dire need of reform, as the schools, hospitals, and housing accessible to low-income residents – predominately people of color – were notoriously underperforming.<sup>6</sup>

Pre-Katrina New Orleans was a prime example of structural racism – how institutional mechanisms cause racial exclusion.<sup>7</sup> The consequence of this structural racism was exposed as the world watched the botched evacuation, relief, and recovery efforts. The television images confirmed what the post-Katrina studies found: the hurricane had “a substantial disproportionate impact on African Americans and people with fewer resources.”<sup>8</sup> There was a direct relationship between social stratification and hurricane evacuation, as “income-level, age, access to information, access to private transportation, physical mobility and health, . . . occupations[,] . . . and . . . social networks outside of the city” impacted evacuation strategies and subsequent experiences of displacement.<sup>9</sup> Furthermore, the devastation traced long-

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4. Andrew A. Beveridge, Ph.D., *The Impact on Low-Income African Americans of the Planned Demolition of Public Housing in New Orleans, Louisiana and the Redevelopment of the Sites*, June 13, 2007, at 7 (on file with authors).

5. *Id.* at 9.

6. NAOMI KLEIN, *THE SHOCK DOCTRINE: THE RISE OF DISASTER CAPITALISM* 407-08 (2007).

7. See Peter Edelman, *Where Race Meets Class: The 21st Century Civil Rights Agenda*, 12 GEO. J. ON POVERTY L. & POL'Y 1, 1 (2005) (“[S]tructural racism . . . [is] the racially disparate outcomes that occur in schooling, employment, housing, the criminal justice system, and elsewhere, and that, among other things, exacerbate the disproportionate poverty experienced by people of color.”); Scott C. Idleman, *Multiculturalism and the Future of Tribal Sovereignty*, 35 COLUM. HUM. RTS. L. REV. 589, 595 (2004) (“[T]he notion of institutionally imbedded or structural racism . . . [is] the idea that seemingly neutral policies or practices, and even entire institutions or systems, might be designed in ways that naturally and effectively (though perhaps unintentionally) disadvantage certain groups.”); Penda D. Hair, *Louder Than Words: Lawyers, Communities and the Struggle for Justice*, at 9, n.3 (March 2001), available at <http://advancementproject.org/publications/community-lawyering.php> (“[S]tructural exclusion refers to subtle and overt forms of racial disadvantage and prejudice including market political and social mechanisms. . . .”); see also Andrew Grant-Thomas & John A. Powell, *Toward a Structural Racism Framework*, Poverty & Race Research Action Council (Nov./Dec. 2006), available at [http://www.prrac.org/full\\_text.php?text\\_id=1095&item\\_id=10188&newsletter\\_id=90&header=Symposium:%20Structural%20Racism](http://www.prrac.org/full_text.php?text_id=1095&item_id=10188&newsletter_id=90&header=Symposium:%20Structural%20Racism) (“[S]tructural racism . . . emphasizes the powerful impact of inter-institutional dynamics, institutional resource inequities, and historical legacies on racial inequalities today.”).

8. John Logan, *The Impact of Katrina: Race and Class in Storm-Damaged Neighborhoods*, BROWN UNIV., at 14, <http://www.s4.brown.edu/Katrina/report.pdf> (last visited Mar. 24, 2008); see also Sherrie Armstrong Tomlinson, *No New Orleanians Left Behind: An Examination of the Disparate Impact of Hurricane Katrina on Minorities*, 38 CONN. L. REV. 1153 (2006).

9. See Eaton, *supra* note 2, at 133 (quoting Elizabeth Fussell, *Leaving New Orleans: Social Stratification, Networks, and Hurricane Evacuation*, SOC. SCI. RES. COUNCIL, Sept. 26, 2005). When Katrina hit New Orleans, approximately 28% of the residents lived below the poverty level, almost 12% were over the age of 65, and about 27% had a car. *Id.* at 132. While the

standing disparities in neighborhood investments that disadvantaged Black and poor communities.<sup>10</sup> As a result, a staggering number of those displaced from Orleans Parish – approximately 272,000 people or 73% of all those displaced in the parish – were African American.<sup>11</sup>

The hurricane did in fact present an opportunity – a chance to create a city of equitable opportunity. But the redevelopment plans devised after Katrina have maintained the status quo and have cut off opportunities for thousands of families to return. Statements of the city's elite foreshadowed these plans. Within days of Hurricane Katrina, prominent New Orleans business leaders invited Mayor C. Ray Nagin to a meeting to plan for New Orleans' future. Among those leaders was James Reiss, an influential business leader and chairman of the city's Regional Transit Authority, who reportedly stated that New Orleans needed better services and fewer poor people. Reiss explained, "[t]hose who want to see this city rebuilt want to see it done in a completely different way: demographically, geographically and politically. I'm not just speaking for myself here. The way we've been living is not going to happen again, or we're out."<sup>12</sup>

Similar statements made by government officials followed. Congressman Richard Baker proclaimed, "[w]e finally cleaned up public housing in New Orleans. We couldn't do it, but God did."<sup>13</sup> Likewise, former New Orleans City Council President Oliver Thomas acknowledged that he was addressing African Americans when he said that New Orleans did not need "soap opera watchers" to return to the

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residents in the damaged areas were 75% Black and 29.2% poor, in the undamaged areas they were 46.2% Black and 24.7% poor. See Logan, *supra* note 8, at 7.

10. See Logan, *supra* note 8, at 14.

11. Letter from the Greater New Orleans Fair Housing Action Center to Ainars Rodins, Department of Housing and Urban Development, *RE: New Orleans Housing Authority's Applications for the Demolition or Disposition of Units in New Orleans*, Sept. 12, 2007 [hereinafter Letter to Ainars Rodins] (on file with authors).

12. Christopher Cooper, *Old Line Families Escape Worst of Flood and Plot the Future*, WALL ST. J., Sept. 8, 2005, available at <http://www.commondreams.org/headlines05/0908-09.htm>.

13. Charles Babington, *Some GOP Legislators Hit Jarring Notes in Addressing Katrina*, WASH. POST, Sept. 10, 2005, at A04. See also Eaton, *supra* note 2, at 136 (citing Barbara Bush, after touring the Houston Astrodome that temporarily housed thousands of Katrina evacuees, as stating "So many of the people here, you know, were underprivileged anyway, so this is working very well for them;" Former House Majority Leader Tom Delay, comparing temporary housing at the Astrodome to camp, as asking a group of boys, "Now tell me the truth, boys, is this kind of fun?"; Former Secretary of Education as admitting that post-Katrina New Orleans was on his mind when he said, "If you wanted to reduce crime . . . you could abort every [B]lack baby in this country and your crime rate would go down.").

city.<sup>14</sup> And the Secretary of the U.S. Department of Housing and Urban Development (HUD), who is charged with providing affordable housing to and promoting economic development for disadvantaged communities, stated that New Orleans “is not going to be as [B]lack as it was for a long time, if ever again.”<sup>15</sup>

Staying true to these statements, New Orleans’ post-Katrina redevelopment plans have effectively prohibited the return of low-income communities of color. From health care to education to housing, these families have found institutional barriers that prohibit their return. As of July 2007, four out of seven general hospitals remained closed, and the city had only two-thirds of its pre-Katrina hospital bed capacity.<sup>16</sup> After Hurricane Katrina, the government permanently closed Charity Hospital,<sup>17</sup> where prior to the hurricane nearly three-quarters of the patients were African American and 85% had income levels below \$20,000.<sup>18</sup> The education system has been dismantled since the hurricane, with most of the public schools replaced by charter schools with selective admission policies and enrollment caps to the exclusion of thousands of children – predominately low-income children of color.<sup>19</sup>

The affordable housing plan for New Orleans most starkly demonstrates that the city’s redevelopment plan depends on exiling poor

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14. Thomas, who is Black, said “I’m saying these things to motivate my people.” Eric Berger, *New Orleans Says it Won’t Give Free Ride*, HOUS. CHRON., Feb. 22, 2006, available at <http://www.chron.com/dispatch/story.mpl/front/3676263.html>.

15. Becky Brown et al., *Hurricane Rita: The Aftermath; Population Shift*, HOUS. CHRON., Sept. 29, 2005, at B1.

16. See Leslie Eaton, *For New Orleans, Reviving Health Care System Will Set City’s Future*, N.Y. TIMES, July 23, 2007, [http://www.nytimes.com/2007/07/23/us/24cnd-orleans.html?\\_r=1&hp&oref=slogin](http://www.nytimes.com/2007/07/23/us/24cnd-orleans.html?_r=1&hp&oref=slogin) [hereinafter Eaton, *For New Orleans*] (“Only one of the city’s seven general hospitals is operating at its pre-Katrina level; two more are partly open, and four remain closed. The number of hospital beds in New Orleans has dropped by two-thirds.”); see also Leslie Eaton, *New Orleans Recovery is Slowed by Closed Hospitals*, N.Y. TIMES, July 24, 2007, <http://www.nytimes.com/2007/07/24/us/24orleans.html?pagewanted=1&n=Top/News/Health/Diseases,%20Conditions,%20and%20Health%20Topics/Doctors> (“Of all the factors blocking the economic revival of New Orleans, the shattered health care system may be the most important . . .”).

17. See Eaton, *For New Orleans*, *supra* note 16.

18. Marcheta Gillam et al., *After Katrina: Rebuilding a Healthy New Orleans*, NEW ORLEANS HEALTH DISPARITIES INITIATIVE, May 2007, at 44, available at [http://www.prrac.org/pdf/rebuild\\_healthy\\_nola.pdf](http://www.prrac.org/pdf/rebuild_healthy_nola.pdf). The Secretary of the U.S. Department of Health and Human Services described New Orleans’ health care system “as a two-tier system: private care for people with insurance and the Charity hospital system for people with no coverage.” *Id.* at 51.

19. See Bill Quigley, *Experimenting on Someone Else’s Children: Fighting for the Right to Learn in New Orleans*, COUNTERPUNCH, Aug. 6, 2007, <http://www.counterpunch.org/quigley08062007.html>.

people of color.<sup>20</sup> The city's already-shrinking affordable housing stock<sup>21</sup> took a huge hit by Hurricane Katrina and the breach of New Orleans' levees. Of the city's 142,000 units that were damaged or lost in New Orleans due to Katrina, 112,000 – 79% – were affordable to low-income housing.<sup>22</sup> Most of these units have not been repaired or replaced, nor are there any plans to do so.<sup>23</sup> In fact, the post-Katrina redevelopment plan is to limit the construction of affordable housing. While 53.5% of New Orleans pre-Katrina residents were renters,<sup>24</sup> virtually none of the post-hurricane housing finance programs are geared toward rehabilitation of rental property. Instead, the main, multi-billion dollar program – the “Road Home Program” – assists primarily homeowners,<sup>25</sup> with no provision to assist renters directly.<sup>26</sup> After Katrina, local governments in the greater New Orleans area in-

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20. Shaila Dewan, *Road to New Life After Katrina is Closed to Many*, N.Y. TIMES, July 12, 2007, available at [http://www.nytimes.com/2007/07/12/us/nationalspecial/12exile.html?\\_r=1&adxnnl=1&oref=slogin&adxnnlx=1203208035-KdNjKx2tvuDIwwkKVQfEw](http://www.nytimes.com/2007/07/12/us/nationalspecial/12exile.html?_r=1&adxnnl=1&oref=slogin&adxnnlx=1203208035-KdNjKx2tvuDIwwkKVQfEw).

21. According to an analysis done by HUD, during the 1990s, the rental market lost almost 18,000 rental units, and more than 10,000 of these units were located in New Orleans. See Beveridge, *supra* note 4, at 7.

22. National Low Income Housing Coalition, *NLIHC Estimates 71% of Units Lost in Gulf Coast Were Low Income*, Sept. 20, 2005, available at [http://www.nlihc.org/detail/article.cfm?article\\_id=2670&id=48](http://www.nlihc.org/detail/article.cfm?article_id=2670&id=48); see also Deon Roberts, *Unaffordable Problem: N.O. Needs 30,000 Low-Income Rental Units*, NEW ORLEANS CITY BUS., Dec. 4, 2006, available at <http://www.neworleanscitybusiness.com/viewStory.cfm?recID=17465> (reporting that the Louisiana Hurricane Housing Task Force in December 2006 stated that there is an “urgent need” for 45,000 affordable rental units in Louisiana, 30,000 in New Orleans alone).

23. See Annie Clark & Kalima Rose, *Bringing Louisiana Renters Home: An Evaluation of the 2006-2007 Gulf Opportunity Zone Rental Housing Restoration Program*, POLICYLINK, June 2007, at 16, [www.policylink.org/documents/LRHHC.pdf](http://www.policylink.org/documents/LRHHC.pdf) (reporting that Louisiana's plan for repairing rental homes damaged or destroyed will replace only one-fifth of this housing).

24. See Greater New Orleans Community Data Center, *Metro New Orleans Fair Market Rent History*, [http://www.gnocdc.org/reports/fair\\_market\\_rents.html](http://www.gnocdc.org/reports/fair_market_rents.html) (last visited Mar. 23, 2008).

25. The Road Home Small Rental Property Owners program has promised conditional awards for the rehabilitation of 9,975 “affordable” rental units. See *The Road Home*, <http://www.road2la.org/rental/> (last visited Mar. 23, 2008). There are two major problems with the program. First, rents are based on the Area Median Income (AMI), with “affordable” defined as affordable to households with as much as 80% AMI. See *The Road Home*, *Frequent Questions*, <http://www.road2la.org/rental/faqs.htm#gp4> (last visited Mar. 23, 2008). Second, the program only provides conditional partial loan forgiveness (and only after a specified period of years if the property owner complies with all aspects of the program), and the property owner must secure funding for repairs on their own. *Id.*

26. See Posting of Rachel Jordan to No Road Home, A Human Rights Weblog of the Unitarian Universalist Service Committee, <http://www.uusc.org/blog/2007/09/no-road-home.html> (Sept. 26, 2007, 14:30 EST) (“The Road Home Program is meant to help mostly homeowners, leaving renters to fend for themselves. This is particularly unhelpful for a city like New Orleans, where more than half of residents rented before the storm.”) The Program did issue an “Action Taken in Response to Public Comment” in April 2006 in a stated effort to establish a first-time home owners program to assist low to moderate income renters, see <http://web.archive.org/web/20061018161533/http://www.lra.louisiana.gov/assets/april26/ResponsetoPubComRH42606.pdf>, but no such program was ever created.

roduced ordinances specifically designed to inhibit the development of affordable housing<sup>27</sup> and limit access to existing properties on the basis of race.<sup>28</sup> Additionally, the City of New Orleans pursued an aggressive demolition program primarily applied to low-income neighborhoods.<sup>29</sup>

With a dearth of affordable housing, post-Katrina rental rates are at least 40% higher than pre-storm rates.<sup>30</sup> About one-third of New Orleans' pre-Katrina residents, predominantly those in need of affordable housing, remain in temporary housing scattered across the country.<sup>31</sup> The number of those homeless in New Orleans has doubled since the storm, to approximately 12,000.<sup>32</sup> These statistics show that the post-Katrina redevelopment plan clearly has not fixed the inequities that pre-existed the storm, but instead has wiped out the infrastructure that would allow low-income communities of color to return. As Naomi Klein observed of the government's actions after the hurricane: "New Orleans' public sphere was not being rebuilt, it was being erased, with the storm used as the excuse."<sup>33</sup>

This article will examine the government's post-Katrina actions with respect to New Orleans public housing. Most of the city's public housing has been kept shut since the hurricane, and an imperative to integrate the housing is being used to justify a plan to demolish most

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27. Elected officials in both Orleans and Tammany Parishes promoted efforts to restrict construction or redevelopment of multi-family housing. See knowledgeplex.com, <http://www.knowledgeplex.com/news/76901.html> (last visited Feb. 15, 2008); see also NOLA.com, *Zoning Commission Recommendation Would Block Apartment Complex*, [http://www.nola.com/newslogs/tpupdates/index.ssf?mtlogs/nola\\_tupdates/archives/2006\\_11\\_27.html#208752](http://www.nola.com/newslogs/tpupdates/index.ssf?mtlogs/nola_tupdates/archives/2006_11_27.html#208752) (last visited Feb. 15, 2008).

28. St. Bernard Parish, for example, passed an ordinance requiring property owners to rent only to blood relatives, and because parish property is overwhelmingly owned by Whites, the law would effectively prohibit African Americans from renting property. See Press Release, Lawyer's Comm. for Civil Rights Under Law, *Fair Housing Advocates Seek to Halt Discriminatory Zoning Rule* (Nov. 2, 2006), available at <http://www.lawyerscomm.org/2005website/publications/press/press110206.html> [hereinafter Fair Housing Advocates].

29. The addresses listed for demolition in the Good Neighbor Plan, now referred to as "Imminent Health Threats Properties," are overwhelmingly in lower-income neighborhoods of color. See City of New Orleans, <http://cityofno.com/portal.aspx?tabid=118> and <http://cityofno.com/portal.aspx?tabid=120> (last visited Feb. 15, 2008).

30. Amy Liu & Allison Plyer, *The New Orleans Index: A Review of Key Indicators of Recovery Two Years After Katrina*, THE NEW ORLEANS INDEX, at 6, <http://www.gnocdc.org/NOLAIndex/ESNOLAIndexAug07.pdf> (last visited Mar. 23, 2008).

31. According to November 2007 statistics based on households actively receiving mail, New Orleans population reached about seventy percent its pre-Katrina level. See Greater New Orleans Community Data Center, November 2007 New Orleans Population Growth May Have Begun to Slow, Jan. 15, 2008, <http://www.gnocdc.org/media/GNOCDCJan15-08.pdf>.

32. Brad Heath, *Katrina's Wrath Lingers for New Orleans' Poor*, USA TODAY, Dec. 13, 2007, available at [http://www.usatoday.com/news/nation/2007-12-13-katrinapoor\\_N.htm](http://www.usatoday.com/news/nation/2007-12-13-katrinapoor_N.htm).

33. KLEIN, *supra* note 6, at 415.

public housing and replace the razed units with far fewer public housing homes. This article will discuss how the post-Katrina plan for public housing in New Orleans constitutes an eradication of the buildings and families who lived in them, demonstrating that the “opportunity” created by the storm is not for the city’s low-income residents of color. It also addresses how the government’s plans for New Orleans’ public housing violate Title VIII of the Civil Rights Act of 1968 – the Fair Housing Act. The prolonged and likely permanent displacement of thousands of public housing families, despite the laws that should have provided for their right to return home, provides a solemn, stark lesson that housing advocates must heed. That these homes have not been saved serves as a call to take back the Fair Housing Act from the government agents and policymakers who have skewed the statute’s purpose to provide housing opportunities for protected groups for whom the housing market does not provide genuinely open housing.

Part I outlines the post-Katrina policies regarding New Orleans’ public housing. Part II examines the legal standards of the Fair Housing Act that required HUD and the Housing Authority of New Orleans (HANO) to take into account both the discriminatory effect of its actions on African Americans and the dearth of housing opportunities for this population. Part III demonstrates the inability of the New Orleans private housing market to provide housing opportunities to displaced residents, and highlights generally the shortfall of vouchers insofar as providing actual housing choices. Part IV urges that the lessons from the post-Katrina New Orleans public housing travesty be utilized to revitalize the core purpose of the Fair Housing Act – to ensure housing opportunities to communities that face discrimination in the market. Finally, this article, in telling the tragic story of New Orleans public housing after Hurricane Katrina, calls for a reconceptualization of fair housing policy so that policies intended to benefit poor families are not employed to the detriment of African-American families and their communities.

## I. NEW ORLEANS PUBLIC HOUSING: A HUMAN-MADE DISASTER

### A. HUD, Not the Hurricane, Destroyed Public Housing

Prior to Hurricane Katrina, HUD recognized that “[t]he need for additional public and affordable housing in the New Orleans commu-



nity is at crisis proportions.”<sup>34</sup> But HUD’s actions betrayed its own assessment. In 1996, there were more than 13,500 public housing units in New Orleans. At the time of Hurricane Katrina’s landfall, there were only 5,146 families living in public housing,<sup>35</sup> all of whom were African American.<sup>36</sup> Two thousand additional units were kept vacant for years, purportedly awaiting demolition,<sup>37</sup> while the demand for public housing greatly outstripped supply with more people on waiting lists for public housing and rental assistance than in public housing or receiving rental assistance.<sup>38</sup> Despite the significant need for affordable housing in the years preceding Hurricane Katrina, HUD and HANO were downsizing the city’s low-income population by shrinking the public housing stock.

After Hurricane Katrina, Congress directed HUD to preserve, to the extent possible, all public housing in areas affected by the storm.<sup>39</sup> According to HUD’s own post-Katrina assessments of the public housing stock in New Orleans, many units could have been preserved with some repairs.<sup>40</sup> But instead of reopening these units, HUD and HANO shut down most of the city’s public housing, securing some developments with fences and razor wire, and installing shutters over the windows and doors of others.<sup>41</sup> Despite Congress’ mandate, HUD

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34. U.S. Dep’t of Hous. and Urban Dev., PHA Plans: Annual Plan for Fiscal Year 2003, at 6, available at <http://www.hud.gov/offices/pih/pha/approved/pdf/02/la001v03.pdf>.

35. Housing Authority of New Orleans Post-Katrina Frequently Asked Questions, <http://www.HANO.org/FAQ072006.pdf> (last visited Mar. 23, 2008).

36. *Id.*

37. In 2002, HUD placed HANO in receivership. As a result, through its management team, HUD is responsible for managing the day-to-day operations of the housing authority, including HANO’s redevelopment plans. This Article, therefore, will make reference to HUD and HANO and HUD only interchangeably.

38. More than 16,000 families that applied for public housing were placed on a waiting list, and many additional families were not even able to get placed on the waiting list at all. And when the waiting list for Section 8 vouchers was opened in 2001, HANO received 19,000 applications and then closed the list to new applicants. *HANO Annual Plan for Fiscal Year Beginning 10/2003*, at 7-9, available at <http://www.hud.gov/offices/pih/pha/approved/pdf/03/la001v01.pdf>.

39. Act of Dec. 30, 2005, Pub. L. No. 109-148; 119 Stat. 2781 (2006).

40. Housing Authority of New Orleans Post-Katrina Frequently Asked Questions, *Exhibit B in Senate Banking Committee Testimony*, available at <http://www.hano.org>, Apr. 2006. (on file with authors). Even in the cases of those units with some severe damage, the presence of damage often was restricted to first floors, not upper floors where the flooding did not reach. See Bill Sasser, *Locking Out New Orleans’ Poor*, SALON.COM, June 12, 2006, [http://www.salon.com/news/feature/2006/06/12/nola\\_housing/index\\_np.html](http://www.salon.com/news/feature/2006/06/12/nola_housing/index_np.html).

41. See Susan Saulny, *Residents Clamoring to Come Home to New Orleans Projects*, N.Y. TIMES, June 6, 2006, at A14; Anne Rochell Konigsmark, *New Orleans Public-Housing Plan Set*, USA TODAY, June 14, 2006, at 3A; Robert Little, *Barred From Coming Home: New Orleans Poor Are Shut Out of Public Housing*, BALT. SUN, Feb. 19, 2006, at 1A.

failed to perform even basic maintenance to many units that suffered little or no damage.<sup>42</sup>

Meanwhile, public housing residents expected to return home with the city's other residents when the mandatory evacuation was lifted six weeks after Katrina struck. Instead, they found themselves shut out of their homes and scattered across the country. As displaced persons, many encountered stigmatization and discrimination. Many were unable to find employment in their new cities, and the Bureau of Labor Statistics estimated that the unemployment rate for Hurricane Katrina evacuees who remained displaced was triple that of those who had returned.<sup>43</sup> Most were falling deeper into poverty as they struggled to pay utilities and other expenses they did not have prior to the storm. In addition to the trauma they underwent in the days and weeks after Katrina, displaced residents suffered – and many continue to endure – the strain of displacement.<sup>44</sup>

With more than 4,000 habitable public housing units sitting vacant and families remaining desperate and displaced, the government finally began unveiling its plan for New Orleans' public housing. In April 2006, HUD characterized one of the developments, C.J. Peete, which had sustained minimal interior damage and little overall damage, as “a prime location for retail and residential development.”<sup>45</sup> Redevelopment plans for the Treme District, a historically Black neighborhood, were revealed with the announcement of a \$130-million movie studio that was going to be built on land abutting the Lafitte public housing development.<sup>46</sup> Then on June 14, 2006, HUD Secretary Alphonso Jackson announced a plan to demolish four of New Orleans' largest developments – C.J. Peete, Lafitte, B.W.

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42. In fact, after Hurricane Katrina HANO laid off a number of staff. Ed Anderson, *HANO Letting 113 Staffers Go*, *TIMES-PICAYUNE*, July 20, 2006, at 1.

43. See Katy Reckdahl, *Razing a Community: Second in a two-part series*, *GAMBIT WKLY*, Oct. 31, 2006, available at [http://www.bestofneworleans.com/dispatch/2006-10-31/news\\_feat.php](http://www.bestofneworleans.com/dispatch/2006-10-31/news_feat.php); see also Dewan, *supra* note 20, at 5 (reporting that according to a February 2007 survey, one-third of Katrina evacuees living in Houston were still looking for work).

44. For a thorough discussion of the deleterious impact of displacement and community dismemberment, see MINDY THOMPSON FULLILOVE, *ROOT SHOCK: HOW TEARING UP CITY NEIGHBORHOODS HURTS AMERICA, AND WHAT WE CAN DO ABOUT IT* (2004).

45. *HANO Preliminary Recovery Plan, C.J. Peete Housing Development* (Apr. 24, 2006) (on file with authors).

46. Deon Roberts, *Plans to build \$130M Movie Studio Near New Orleans Housing Development Irks Residents*, *NEW ORLEANS CITYBUS.*, May 23, 2006, available at [http://findarticles.com/p/articles/mi\\_qn4200/is\\_20060523/ai\\_n16410315](http://findarticles.com/p/articles/mi_qn4200/is_20060523/ai_n16410315).

Cooper, and St. Bernard – with more than 5,000 units among them.<sup>47</sup> The plan proposes the largest demolition in the city’s history,<sup>48</sup> destroying more than 70% of New Orleans public housing stock.<sup>49</sup>

HUD’s plan was predicated on the fact that the housing developments were perched on prime real estate that would be central to New Orleans’ redevelopment – as long as poor people were no longer living there. Public housing had become fodder for the economic revival of the city.

## B. The Demolition of New Orleans Public Housing Presented an Opportunity, But Not for the Displaced Families

HUD rationalized its decision to raze thousands of public housing units by claiming that the buildings had sustained significant damage,<sup>50</sup> contradicting its prior assessments that some of these units suffered only minor water damage and many could be habitable again once repaired. However, an inspection of the buildings by John E. Fernandez from the Massachusetts Institute of Technology found no structural or nonstructural damage to reasonably warrant demolition. Professor Fernandez concluded: “[j]ustifications for demolition on the grounds that these buildings can no longer function as safe and humane housing for the people of New Orleans are not credible.”<sup>51</sup>

HUD offered another reason for its plan: Hurricane Katrina provided an opportunity to build better housing than “massive, stacked housing projects.”<sup>52</sup> However, HUD’s assertion that the construction of the buildings warrants destruction was suspect:

[HUD’s] argument seems strangely disingenuous in New Orleans . . . . Built at the height of the New Deal, [New Orleans’] public

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47. See Press Release, HUD Outlines Aggressive Plan to Bring Families Back to New Orleans’ Public Housing (June 14, 2006), available at <http://www.hud.gov/news/release.cfm?content=pr06-066.cfm>.

48. Susan Saulny, *5,000 Public Housing Units in New Orleans Are to Be Razed*, N.Y. TIMES, June 15, 2006, at A1, available at <http://www.nytimes.com/2006/06/15/us/15housing.html?ex=1308024000&en=7e1599e4112fed5d&ei=5088&partner=rssnyt&>.

49. See Beveridge, *supra* note 4, at 16. In the wake of HUD’s June 14, 2006, Advancement Project along with co-counsel Bill Quigley, Tracie Washington, Judson Mitchell, and Jenner & Block filed a lawsuit, *Anderson v. Jackson*, No. 06-3298, slip op. (E.D. La. Dec. 14, 2007), on behalf of displaced public housing residents against HUD and HANO.

50. Gwen Filosa, *Four N.O. Housing Developments Will Be Demolished*, TIMES-PICAYUNE, June 15, 2006, available at <http://www.nola.com/news/t-p/frontpage/index.ssf?/base/news-5/1150356990188590.xml&coll=1>.

51. Expert Report of John Emmanuel Fernandez, Professor, Massachusetts Institute of Technology, at 5 (on file with authors).

52. Alphonso Jackson, *Post-Katrina Progress Housing to Help End Suffering*, WASH. TIMES, Dec. 27, 2007, at A15.

housing projects have little in common with the dehumanizing superblocks and grim plazas that have long been an emblem of urban poverty. Modestly scaled, they include some of the best public housing built in the United States.<sup>53</sup>

In the continuation of its demolition-as-opportunity argument, HUD claimed that razing the units will “give thousands of families a fresh start.”<sup>54</sup> But this notion is premised upon a wholesale denial of neighborhood history and social networks, rendering “the vague notion of a ‘fresh start’ [an invocation] to justify erasing entire communities.”<sup>55</sup>

Official statements and the plan for New Orleans’ public housing reveal that the real opportunity being pursued is a new city for the rich and middle class. Soon after Hurricane Katrina, HUD Secretary Alphonso Jackson stated that New Orleans “is not going to be as [B]lack as it was for a long time, if ever again.”<sup>56</sup> Secretary Jackson’s statement was far from an innocent observation – it foreshadowed the plans for the city’s public housing that he allegedly has been central in orchestrating. The news, for example, later reported plans to build a “state-of-the-art golf complex suitable to host PGA Tour events” nearby the St. Bernard housing development.<sup>57</sup> A few months later, the Federal Bureau of Investigations and the HUD Inspector General launched an investigation into whether Secretary Jackson secured a non-competitive bid contract at HANO “for a golfing buddy and social friend.”<sup>58</sup> They are also investigating the circumstances surrounding the contract awarded to one of the St. Bernard developers to which the Secretary has financial ties.<sup>59</sup>

On September 21, 2007, HUD approved the demolition of most of New Orleans’ public housing and replaced the razed units with far fewer public housing units.<sup>60</sup> According to the disposition plan, the

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53. See Nicolai Ouroussoff, *All Fall Down*, N.Y. TIMES, Nov. 19, 2006, § 4, at 1.

54. See Jackson, *supra* note 52.

55. Nicolai Ouroussoff, *High Noon in New Orleans: The Bulldozers Are Ready*, N.Y. TIMES, Dec. 19, 2007, § 4, at 1.

56. Becky Brown et al., *Hurricane Rita: The Aftermath; Population Shift*, HOUS. CHRON., Sept. 29, 2005, at B1.

57. Frank Donze, *Fertile Ground*, TIMES-PICAYUNE, June 6, 2007, at 1.

58. Edward T. Pound, *Katrina Aftermath: Questionable Contracts*, NAT’L J., Oct. 4, 2007, available at <http://news.nationaljournal.com/articles/071004nj2.htm>.

59. *Id.* See also Edward T. Pound, *HUD Probe Heats Up*, NAT’L J., Dec. 14, 2007, available at <http://news.nationaljournal.com/articles/071214nj1.htm>.

60. Letter from Ainars Rodins, Director, U.S. Department of Housing and Urban Development, to Karen Cato-Turner, Executive Administrator, Housing Authority of New Orleans (Sept. 21, 2007) (on file with authors).

St. Bernard development, which consisted of 1,400 public housing units, will be replaced with 595 total units, of which only 160, or 11% of the original number of units, will be public housing units; at the C.J. Peete development, 723 public housing units will be replaced with 410 total units, of which 154, or 21% of the original number of units, will be public housing units; and at the B.W. Cooper development, 1,546 public housing units will be replaced by 410 total units, of which only 154, or 10% of the original number of units, will be public housing units.<sup>61</sup> As a result, a total of 3,201 units of housing available to very low-income families will be lost.

The redevelopment of public housing in New Orleans serves a broader vision of the city's post-Katrina redevelopment plan. It accommodates a desire to increase New Orleans' tax base by creating new commercial space at each of the public housing developments, and it meets the needs of the elite who wanted to change the demographics of New Orleans by displacing thousands of low-income, African-American families. However, as the next Section will demonstrate, the protections and mandates of the Fair Housing Act should have prevented HUD and HANO from using Hurricane Katrina as an excuse to wipe out New Orleans' public housing and exile the families who lived there prior to the storm.

## II. THE FAIR HOUSING ACT

Congress passed Title VIII of the Civil Rights Act of 1968, known as the Fair Housing Act,<sup>62</sup> one week after the assassination of Dr. Martin Luther King, Jr., and after five successive summers of racial unrest in cities across the United States.<sup>63</sup> The purpose of the legislation was to facilitate a truly open society, as it declared that the policy of the United States is to provide, within constitutional limitations, for

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61. Bill Quigley, *Why is HUD Using Tens of Millions in Katrina Money to Bulldoze 4,534 Public Housing Apartments in New Orleans When it Costs Less to Repair and Open Them up?: A Tale of Two Sisters*, COUNTERPUNCH, Dec. 29, 2006, <http://www.counterpunch.org/quigley12292006.html>.

62. Civil Rights Act of 1968, Pub. L. No. 90-284, Title VIII, § 801, 82 Stat. 81 (1968) (amended 1988).

63. John O. Calmore, *Race/ism Lost and Found: The Fair Housing Act at Thirty*, 52 U. MIAMI L. REV. 1067, 1069 (1998). See also Brian Patrick Larkin, Note, *The Forty-Year "First Step": The Fair Housing Act as an Incomplete Tool for Suburban Integration*, 107 COLUM. L. REV. 1617, 1620-24 (2007). The circumstances in which the Fair Housing Act was passed are relevant insofar as they explain the limited legislative history that accompanies the Act.

fair housing throughout the nation.<sup>64</sup> The statute not only prohibits racial discrimination in almost all sectors of housing, it also requires all federal agencies to administer housing programs “in a manner affirmatively to further” fair housing.<sup>65</sup>

This Section will demonstrate how HUD’s and HANO’s post-Katrina policies concerning public housing in New Orleans violate the Fair Housing Act.<sup>66</sup> HUD’s and HANO’s actions and redevelopment plans have had a discriminatory effect on, and have severely limited housing opportunities for, public housing residents, all of whom are African American. HUD’s plan for redevelopment of public housing in New Orleans is, in fact, no different than the “Negro removal” cases of the 1950s and 1960s, where African-American communities were removed in the name of urban revitalization.<sup>67</sup> The plan blatantly violates the core purpose of the Fair Housing Act, as it limits housing opportunities for African Americans by reducing units available to public housing families with no concrete plan for opening opportunities for these families in other areas of New Orleans. The plan effectively excludes low-income, African-American families from post-Katrina New Orleans.

#### A. Discrimination Claims Under Section 3604: Disparate Impact and Disparate Treatment

Section 3604 of the Fair Housing Act provides that it is unlawful to “make unavailable or deny” housing “because of race.”<sup>68</sup> Discrimination under the Fair Housing Act may be proven by showing either disparate impact or disparate treatment.<sup>69</sup> It is well established that it

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64. Calmore, *supra* note 63. When the Fair Housing Act was initially passed, the protected classes were race, color, national origin, and religion. Congress extended the Act’s protection to sex, handicap, and familial status in the Fair Housing Act Amendments of 1988, Pub. L. No. 100-430, 102 Stat. 1620 (1988).

65. Florence Roisman, *Keeping the Promise: Ending Racial Discrimination and Segregation in Federally Funded Housing*, 48 *How. L.J.* 913, 914 (2005). Roisman notes that “[t]he 1988 Fair Housing Amendments Act substantially strengthened the 1968 Act, and various housing and community development statutes later explicitly extended the ‘affirmatively to further’ and related obligations to public housing authorities and other agencies.” *Id.*

66. In addition to claims under the Fair Housing Act, public housing residents have additional protections under the U.S. Housing Act of 1937, 42 U.S.C. § 1437p, the Equal Protection Clause and Due Process Clauses of the U.S. Constitution, and the International law embodied in the U.N. Guiding Principles on Internally Displaced Persons.

67. See generally Rigel C. Oliveri, *Is Acquisition Everything? Protecting the Rights of Occupants Under the Fair Housing Act*, 43 *HARV. C.R.-C.L. L. REV.* 1, 61 n.294 (2008).

68. 42 U.S.C. § 3604(a) (1968).

69. See, e.g., *Harris v. Itzhaki*, 183 F.3d 1043, 1051 (9th Cir. 1999) (“A plaintiff can establish a FHA discrimination claim under a theory of disparate treatment or disparate impact.”); Simms

is not necessary to show discriminatory intent to prove a claim under Section 3604 – “[e]ffect, not motivation, is the touchstone” under the Fair Housing Act.<sup>70</sup> In the case of the closure and redevelopment of New Orleans’ public housing after Hurricane Katrina, HUD’s and HANO’s actions have demonstrated both discriminatory effect and intent.

## 1. Disparate Impact

Disparate impact is a critical method of proving housing discrimination as, “the arbitrary quality of thoughtlessness can be as disastrous and unfair to private rights and the public interest as the perversity of a willful scheme.”<sup>71</sup> A *prima facie* case of disparate impact under Section 3604 of the Fair Housing Act must demonstrate that the policy, procedure, or practice will have or has had a significant discriminatory effect on a protected group.<sup>72</sup> Such a case may be

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v. First Gibraltar Bank, 83 F.2d 1546, 1555-56 (5th Cir. 1996) (holding that plaintiff can establish fair housing violation with evidence of discriminatory intent or discriminatory effects); Doe v. City of Butler, 892 F.2d 315, 323 (3d Cir. 1989) (ruling that *prima facie* cases under Title VIII can be brought with a showing of discriminatory treatment or discriminatory effect alone, without intent); Arthur v. City of Toledo, 782 F.2d 565, 574-75 (6th Cir. 1986) (finding that facially neutral housing decisions can still have discriminatory effects); Phillips v. Hunter Trails Cmty. Ass’n, 685 F.2d 184, 189-90 (7th Cir. 1982) (observing that some fair housing violations arise from discrete transactions and others have broader context, “when a facially neutral policy or action has an unequal impact on different subgroups in the housing market”). See also Robert G. Schwemm, *Housing Discrimination Law and Litigation* § 10.1 (June 2007) (In the absence of an authoritative Supreme Court ruling on § 3604, lower courts have adopted the Title VII employment discrimination standard that discrimination may be proven by a showing of disparate impact or disparate treatment.).

70. Smith v. Anchor Bldg. Corp., 536 F.2d 231, 233 (8th Cir. 1976); accord *Huntington Branch, NAACP v. Town of Huntington*, 844 F.2d 926, 934-36 (2d Cir. 1988) (applying Title VII analysis to Title VIII and ruling that plaintiff need not make any showing of discriminatory intent for a disparate impact claim); *Metro. Hous. Corp. v. Arlington Heights (Arlington Heights II)*, 558 F.2d 1283, 1290 (7th Cir. 1977) (“We therefore hold that at least under some circumstances a violation of section 3604(a) can be established by a showing of discriminatory effect without a showing of discriminatory intent.”); *U.S. v. City of Black Jack*, 508 F.2d 1179, 1185 (8th Cir. 1974) (“The plaintiff need make no showing whatsoever that the action resulting in racial discrimination in housing was racially motivated”). See generally Robert G. Schwemm, *Housing Discrimination Law and Litigation* § 10.4 (June 2006).

71. *City of Black Jack*, 508 F.2d at 1185 (quoting *Hobson v. Hansen*, 269 F. Supp. 401, 497 (D.D.C. 1967), *aff’d sub nom. Smuck v. Hobson*, 132 U.S. App. D.C. 372, 408 F.2d 175 (1969) (en banc)).

72. See, e.g., *Simms*, 83 F.3d at 1555 (“The relevant question in a discriminatory effects claim against a private defendant . . . is whether a policy, procedure, or practice specifically identified by the plaintiff has a significantly greater discriminatory impact on members of a protected class.”); *Williams v. Matthews Co.*, 499 F.2d 819, 826 (“where a Negro buyer meets the objective requirements of a real estate developer so that a sale would in all likelihood have been consummated were he [W]hite and statistics show that all of a substantial number of lots in the development have been sold only to [W]hites, a *prima facie* inference of discrimination arises as a matter of law”); *Huntington*, 844 F.2d at 934-36 (agreeing that *prima facie* case is established by

made by proving either: (1) the ultimate effect of the housing decision may be racially discriminatory because it tends to exclude a protected group; or (2) the immediate effect of the housing decision has “a greater adverse impact on one racial group than on another.”<sup>73</sup>

The effect analysis simply looks at whether a decision results in, or can be predicted to result in, a disparate impact on a protected class. For example, in a case where Black residents sued the town of Clarkton, North Carolina, for blocking the construction of public housing units, the Fourth Circuit found that the town’s actions violated Section 3604:

The undisputed statistical picture leaves no doubt that the [B]lack population of Bladen County was adversely affected by the termination of the housing project, as it is that population most in need of new construction to replace substandard housing, and it is the one with the highest percentage of presumptively eligible applicants.<sup>74</sup>

Disparate impact is also established under Section 3604 where the ultimate effect of a decision is to prevent a protected group from residing in a city. In *Rizzo I*, the court found a Fair Housing Act violation when an urban renewal plan effectively removed a substantial number of African Americans from the city.<sup>75</sup> Similarly, a challenge to a city’s failure to provide replacement housing to low-income residents displaced by freeway construction was found to have a disparate impact in violation of the Fair Housing Act:

The ultimate effect of frustrating the [developments] is to prevent low income minority displacees from continuing to reside in [the city]. If affordable housing is not made available in [the city] by the

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showing that challenged practice of defendant effectively results in racial discrimination); *Rizzo II*, 564 F.2d at 148 (“[D]iscriminatory effect alone will, if proved, establish a Title VII *prima facie* case.”).

73. *Arlington Heights II*, 558 F.2d at 1290 (ruling that disproportionate, but not predominate, effect on racial minorities was unclear evidence of discriminatory effect).

74. *Smith v. Town of Clarkton*, 682 F.2d 1055, 1065 (4th Cir. 1982). See also *Charleston Hous. Auth. v. U.S. Dept. of Agriculture*, 419 F.3d 729 740-41 (8th Cir. 2005) (holding that effects analysis looks at whether “the objected-to action results in, or can be predicted to result in, a disparate impact upon a protected class compared to a relevant population as a whole”); *Oti Kaga, Inc. v. South Dakota Hous. Dev. Auth.*, 342 F.3d 871, 883-84 (8th Cir. 2003) (plaintiffs “must show a facially neutral policy has a significant adverse impact on members of a protected minority group”).

75. See *Rizzo II*, 564 F.2d at 149 (“Whereas originally almost 45% of the families living in the Whitman project area were [B]lack, by the time urban renewal clearance was completed and the surrounding blocks reconstructed, virtually no [B]lack families were to be found in the area.”); *Keith v. Volpe (Volpe I)*, 618 F. Supp. 1132, 1151 (C.D. Cal. 1985) (finding that apparent outcome of denying affordable housing developments was racially discriminatory where lack of new housing would not only prevent non-resident minorities from moving to the city, but would result in expulsion of current residents who were soon to be displaced).



time they are displaced, they will have to move out of [the city] altogether.<sup>76</sup>

In the case of post-Katrina New Orleans, HUD's demolition and redevelopment plans have the effect of permanently displacing a significant number of African-American families from the city. HUD reopened only 1,700 units of public housing, thus significantly reducing housing opportunities for both the almost 3,500 families that still remain displaced and others in need of housing. The critical shortage of affordable housing in New Orleans, with no plan for substantial replacement, exacerbates the discriminatory effect of HUD's actions.<sup>77</sup> HUD's plans for public housing in post-Katrina New Orleans have disproportionately impacted African Americans, and the Fair Housing Act requires the government and public housing authorities (PHAs) to take this impact into account when rendering its decisions. By not doing so, HUD has unlawfully denied thousands of families the right to return and to participate in the redevelopment of their city.

In the case of an immediate effect analysis, the benchmark Fair Housing Act cases have held that when the group affected by an adverse housing decision consists largely of minorities, the decision necessarily has an adverse impact. In *Rizzo I*, 95% of the group affected by the city's failure to construct low-income housing was African American, and the court held that the city had violated the Fair Housing Act.<sup>78</sup> *Arlington Heights II* established that the strength of a disparate impact showing is directly proportionate to what percentage of the group is part of a protected class. Specifically, the court found that "the argument for racial discrimination [in that case, 40%] is . . .

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76. *Volpe I*, 618 F. Supp. at 1151, *aff'd*, 858 F.2d 467.

77. See *infra* Section III.A. In general, at the end of 2006, less than one third of African-American residents had returned to Orleans Parish. Press Release, National Fair Housing Alliance, "Still No Home for the Holidays" for Katrina Survivors, (Dec. 22, 2006) at 5, available at [www.fhco.org/NEWS-NAFH%20No%20Hm%20for%20Katrina%20Victims-resource\\_26986181982853585808.pdf](http://www.fhco.org/NEWS-NAFH%20No%20Hm%20for%20Katrina%20Victims-resource_26986181982853585808.pdf).

78. See *Residents Advisory Bd. v. Rizzo (Rizzo I)*, 425 F. Supp. 987, 1018 (E.D. Pa. 1976) (finding that prevention of affordable housing projects had an adverse impact on African-American residents of Philadelphia where developments would have been "a unique opportunity for these Blacks living in racially impacted areas of Philadelphia to live in an integrated, non-racially impacted neighborhood"); See also *Smith v. Town of Clarkton*, 682 F.2d 1055, 1065 (4th Cir. 1982) ("The undisputed statistical picture leaves no doubt that the [B]lack population of Bladen County was adversely affected by the termination of the housing project, as it is that population most in need of new construction to replace substandard housing, and it is the one with the highest percentage of presumptively eligible applicants.").

not as strong as it would be if all or most of the group adversely affected were nonwhite.”<sup>79</sup>

Some courts, however, have held that a *prima facie* disparate impact case under Section 3604 requires a showing of a statistical disparity between the protected group impacted and a non-protected group.<sup>80</sup> But by requiring a non-protected comparison group, these courts are applying a disparate treatment comparison analysis, not an effects test. Further, courts that have found no discrimination simply because the group impacted is comprised solely of members of a protected class have turned the Fair Housing Act on its head. Indeed, this reading of Section 3604 fails to recognize that the effect of discriminatory housing practices may be the elimination of a non-protected group with which to show a statistical disparity. Take for example a jurisdiction where there has been thirty years of segregated housing patterns due to zoning, redlining, and racial steering. The ultimate effect of decades of such discriminatory housing practices is that the residents of the area are all African American. It is antithetical to an anti-discrimination statute to thereafter deny that a discriminatory practice violates Section 3604 because the impacted community is now all Black.

In New Orleans, the 5,146 families living in public housing prior to Hurricane Katrina were all African American.<sup>81</sup> Structural racism and the long legacy of discrimination in this country had much, if not all, to do with this fact.<sup>82</sup> The Fair Housing Act must be interpreted to recognize the direct relationship between historical housing discrimination against African Americans and the fact that the immediate effect of a policy has a disparate impact on a group that is entirely African American. HUD’s demolition and disposition plan impacts thousands of African American families, and it thereby necessarily

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79. *Arlington Heights II*, 558 F.2d at 1291.

80. See, e.g., *Stout v. Baxter Healthcare Corp.*, 282 F.3d 856, 860 (5th Cir. 2002) (“Ordinarily, a *prima facie* disparate impact case requires a showing of a substantial statistical disparity between protected and non-protected [individuals]”); *Darst-Webbe Tenant Assn. Bd. v. St. Louis Hous. Auth.*, 299 F. Supp.2d 952, 957 (E.D. Mo. 2004) (“[T]here is no basis for the Court to find either disparate impact or purposeful discrimination because the Plaintiffs in this case cannot be shown to have been treated differently than any other group of similarly situated persons.”); *Bryant Woods Inn v. Howard County*, 911 F.Supp. 918, 939 (D. Md. 1996) (“[W]here only one group or class of persons is affected by a particular decision, there is no disparity in treatment between groups and no ‘disparate impact.’”).

81. New Orleans Housing Authority Residents Characteristics Report 2005-06, <http://pic.hud.gov/pic/RCRPublic/rcrha.asp> (last visited Mar. 4, 2008).

82. See text accompanying *supra* notes 7 and 34-38.

has an adverse impact in violation of Section 3604 of the Fair Housing Act.

## 2. Disparate Treatment

Disparate treatment, or discriminatory intent, occurs when a housing practice is motivated by considerations of race, color, religion, sex, handicap, familial status, and national origin (*i.e.*, one of the protected classes).<sup>83</sup> Discrimination based on intentional consideration of any of these factors is illegal, even if the practice was not motivated by personal prejudice or racial animus.<sup>84</sup> In determining whether official action was taken with discriminatory intent, courts apply the standard used in the Equal Protection context.<sup>85</sup>

Evidence of discriminatory motive may be either direct or circumstantial.<sup>86</sup> Direct evidence is defined as evidence that “proves the existence of the fact in issue without inference or presumption.”<sup>87</sup> The Supreme Court in *Arlington Heights* held that in the absence of direct evidence, discriminatory intent may be proven by the following circumstantial evidence: (1) historical background of the challenged decision; (2) specific sequence of events leading up to the decision; (3) any procedural and substantive departures from the norm; and (4) legislative or administrative history of the decision.<sup>88</sup>

In the case of the closure of public housing in New Orleans, there is both direct and circumstantial evidence of discriminatory motive. Shortly after Hurricane Katrina, HUD Secretary Alphonso Jackson stated that New Orleans “is not going to be as [B]lack as it was for a long time, if ever again.”<sup>89</sup> He further stated that “[o]nly the best residents should return.” Secretary Jackson, who is Black, acknowl-

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83. Robert G. Schwemm, HOUSING DISCRIMINATION LAW AND LITIGATION §10.2 (June 2007).

84. *Id.*

85. See *U.S. v. Birmingham*, 727 F.2d 560, 565-66 (6th Cir. 1984), *cert. denied*, 469 U.S. 821 (1984) (affirming trial court’s judgment that city acted with racially discriminatory intent in violation of the Fair Housing Act when it blocked the construction of low-income housing).

86. Schwemm, *supra* note 83.

87. *Id.* (internal brackets omitted), *quoting* BLACK’S LAW DICTIONARY 413-14 (5th ed. 1981).

88. *Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 266-68 (1997). The determination of disparate treatment under Section 3604 “demands a sensitive inquiry into such circumstantial and direct evidence of intent as may be available.” *Id.* at 266. See also *Hanson v. Veterans Admin.*, 800 F.2d 1381, 1388 (5th Cir. 1986) (weighing circumstantial evidence proffered by the plaintiffs to show defendants’ discriminatory intent against defendants’ rebuttal evidence).

89. Lori Rodriguez et al., *Hurricane Rita: The Aftermath/Population Shift*, HOUS. CHRON., Sept. 29, 2005, at B1.

edged this comment's racially suggestive nature by telling a White reporter, "[i]f you said this, they would say you were racist."<sup>90</sup> These statements, made by the person responsible for ensuring equal housing opportunities, are direct evidence of discrimination. While there may be no animus, Secretary Jackson's statements suggest that HUD planned not only to abdicate its duty to ensure open housing choice, but also sought to exclude residents who were not the "best."

The circumstantial evidence of discriminatory motive is ample. Soon after Hurricane Katrina, an influential business person, the then-president of New Orleans' City Council, and a Louisiana Congress member all made statements to suggest that New Orleans is better off if residents such as public housing families do not return.<sup>91</sup> These statements were followed by plans to replace the majority of the city's public housing with commercial development<sup>92</sup> and to turn neighborhoods devastated by the storm into green space.<sup>93</sup> Thousands of families remained displaced and tens of thousands more were in desperate need of affordable housing in New Orleans when HUD approved a demolition and disposition plan to raze habitable public housing units and replace them with a tiny fraction of the original number of homes available to very low-income residents.

## B. Section 3608: Affirmatively Furthering Fair Housing

Under Section 3608 of the Fair Housing Act, the federal government has a duty to "further fair housing."<sup>94</sup> Section 3608 imposes an affirmative obligation, in that it requires HUD to do "more . . . than simply to refrain from discriminating itself or from purposely aiding the discrimination of others."<sup>95</sup> Section 3608's intent is to see "the end[ ] of discrimination as a means toward truly opening the nation's housing stock to persons of every race and creed."<sup>96</sup> Indeed, courts have held that the duty to affirmatively further fair housing requires HUD to consider:

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90. Bill Walsh, *Only 'Best Residents' to be Allowed Back in St. Thomas Complex*, TIMES-PICAYUNE, Apr. 24, 2006, at 1.

91. See *supra* text accompanying notes 12-14.

92. See *supra* text accompanying notes 45-46, 57.

93. See Robin Pogrebin, *Rebuilding New Orleans, Post-Katrina Style*, N.Y. TIMES, Nov. 6, 2007, § E, at 1.

94. 42 U.S.C. § 3608(d) (1968).

95. NAACP v. HUD, 817 F.2d 149, 154 (1st Cir. 1987).

96. Florence Roisman, *Mandates Unsatisfied: The Low Income Housing Tax Credit Program and the Civil Rights Laws*, 52 U. MIAMI L. REV. 1011, 1028 (1998).

[T]he effect of its actions on the racial and socioeconomic composition of the surrounding area . . . [T]he need for such consideration itself implies, at a minimum an obligation to assess negatively those aspects of a proposed cause of action that would further limit the supply of genuinely open housing. . . .<sup>97</sup>

The duty to affirmatively further fair housing has been characterized by some as having dual objectives – countering discrimination and furthering integration in the housing market.<sup>98</sup> Others, however, question the integration goal of the Fair Housing Act,<sup>99</sup> and suggest that even if the Act contains dual goals, the anti-discrimination purpose should take precedent.<sup>100</sup> The latter position is supported by *Shannon v. HUD*, where the Third Circuit clarified the government’s duties under Section 3608:

We [are not] suggesting that desegregation of housing is the only goal of the national housing policy. There will be instances where a pressing case may be made for the rebuilding of a racial ghetto. We hold only that the agency’s judgment must be an informed one; one which weighs the alternatives and finds that the need for physical rehabilitation or additional minority housing at a site in question clearly outweighs the disadvantage of increasing or perpetuating racial concentration.<sup>101</sup>

Cases where courts have found a violation of HUD’s obligation to further fair housing have in all instances involved agency practices that have created and maintained racially segregated public housing developments, including tenant assignments and selective enforcement of regulations.<sup>102</sup> The remedy tailored for such violations has

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97. *Project B.A.S.I.C. v. Kemp*, 776 F. Supp. 637, 642 (D.R.I. 1991), *overturned on other grounds* by *Project B.A.S.I.C. v. Kemp*, 947 F.2d 11 (1st Cir. 1991). See also *NAACP v. HUD*, 817 F.2d 149, 156 (1st Cir. 1987) (stating that § 3608 imposes, “at a minimum, an obligation to assess negatively those aspects of a proposed course of action that would further limit the supply of genuinely open housing and to assess positively those aspects of a proposed course of action that would increase the supply”); *Rizzo I*, 425 F. Supp. at 1015 (discussing Congressional intent in enacting the Fair Housing Act and obliging HUD to take affirmative action to provide for desegregated and fair housing).

98. Roisman, *supra* note 96, at 1027.

99. Michael R. Tein, *The Devaluation of Nonwhite Community in Remedies for Subsidized Housing Discrimination*, 140 U. PA. L. REV. 1463, 1467 (1992) (“The ‘anti-discrimination’ goal is explicit in the Act; the ‘integration’ goal has been read into it, largely through reference to the legislative history.”).

100. *Id.* at 1470 (“If the subsidized housing stage is to be shared by both ‘anti-discrimination’ and ‘integration,’ the second goal must yield the spotlight to the first should they conflict.”).

101. *Shannon v. HUD*, 436 F.2d 809, 822 (3d Cir. 1970), *quoted in* Ngai Pindell, *Is There Hope for HOPE VI?: Community Economic Development and Localism*, 35 CONN. L. REV. 385, 427-28 (2003).

102. See, e.g., *Thompson v. HUD*, 2006 U.S. Dist. LEXIS 9416 \*7 (D. Md. Jan. 10, 2006) (finding HUD liable for failing to promote desegregation by basing public housing decisions on

been court-ordered desegregation. This, however, has created a “remedial structure that privileges integration over anti-discrimination,”<sup>103</sup> a schema that has significant limitations. First, desegregation of public housing has become virtually synonymous with deconcentration of poverty, which in turn has led to a massive reduction of public housing. As a result, scores of African-American families have been displaced by redeveloped, integrated housing sites. The goal of desegregation is subsequently undermined as displaced families are simply forced into other segregated neighborhoods as a result of discrimination in private housing markets and HUD’s failure to provide assistance to families pursuing such choices.

Second, an integration approach to the redevelopment of public housing does not account for the importance of community – relationships “solidified by ties providing a feeling of collective identity, self-awareness, and affiliation.”<sup>104</sup> In fact, “[i]t is usually at the expense of community that [B]lacks improve their housing package in integrated settings dominated by [W]hites.”<sup>105</sup> Third, the focus on desegregation and then limited integration ignores the option of nonsegregation, which confers the right of people to remain in their neighborhood. Non-segregation interprets fair housing not as forced relocation but as neighborhood enrichment so as to create spatial equality.<sup>106</sup>

Interpreting Section 3608 of the Fair Housing Act to be solely – or even predominantly – an integration mandate facilitated the travesty in New Orleans by legitimating the mass displacement of low-income, African-American families. The plans pursued by HUD after Hurricane Katrina suggest that this cookie-cutter approach to fair

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small and discrete, rather than regional, geographic considerations); *Young v. Pierce*, 628 F. Supp. 1037, 1047 (E.D. Tex. 1985) (holding HUD liable for violating the Fair Housing Act and other civil rights laws where HUD had willfully ignored ongoing segregation in projects it was funding and failed to keep records or take action to enforce the laws); *Walker v. U.S. Dep’t of Hous. & Urban Dev.*, 734 F. Supp. 1231, 1232 (N.D. Tex 1989), *rev’d in part and vacated in part*, *Walker v. U.S. Dep’t of Hous. & Urban Dev.*, 912 F.2d 819, 820 (5th Cir. 1990) (finding that HUD stalled major housing revitalization plan in a discriminatory manner by withdrawing funding); *Trafficante v. Metro. Life Ins.*, 409 U.S. 205 (1972) (granting standing to private residents to sue landlord for housing discrimination because HUD lacks enforcement power and has limited resources to manage all fair housing nationwide); *Gautreaux v. Chicago Hous. Auth.*, 296 F. Supp. 907 (N.D. Ill. 1969) (agreeing with plaintiffs that local housing authority discriminated in tenant assignments and site selections, perpetuating segregation).

103. Tein, *supra* note 99, at 1471-72.

104. John O. Calmore, *The Urban Crisis: The Kerner Commission Report Revisted, Spatial Equality and the Kerner Commission Report: A Back-To-The-Future Essay*, 71 N.C. L. REV. 1487, 1501 (1993).

105. *Id.* at 1505.

106. *Id.* at 1492, 1498.

housing has gone too far and is applied without regard to the end result. There is no question that HUD's plan to demolish a majority of New Orleans' public housing and provide a fraction of replacement units limits the supply of affordable housing in post-Katrina New Orleans.<sup>107</sup> HUD's plan not only limits housing choice for displaced public housing residents in New Orleans, it effectively denies their right to return at all.

The Fair Housing Act should not stand for the proposition that HUD's duty under Section 3608 begins and ends with "deconcentrating" poverty, or that demolishing public housing structures and replacing them with mixed-income developments with far fewer housing units for low-income families affirmatively furthers fair housing. Desegregation was never meant to be a proxy for restricting housing opportunities for African Americans in New Orleans or anywhere else.<sup>108</sup> The government has used its obligations under Section 3608 to serve as "as political cover for . . . massive reductions in the number of housing units subsidized for community's poorest residents . . . [and] massive reductions in poor African Americans in a post-Katrina New Orleans."<sup>109</sup>

HUD's desegregation justification cannot hide the fact that its plan in New Orleans and in cities across the country to drastically reduce the supply of affordable housing is unlawful under the Fair Housing Act. In developing and approving its plan for New Orleans' public housing, HUD should have considered discriminatory statements indicating a desire to maintain displacement, city plans that exclude low-income African Americans in exchange for wealthier, Whites and commercial development plans suited for them, discrimination in the local housing market, and the lack of affordable housing opportunities. As discussed in Part III, the dearth of affordable housing in the private market coupled with discrimination in post-Katrina New Orleans and nationally demonstrate that the government cannot fulfill its obligation to affirmatively further fair housing by reducing the number of public housing units and not accounting for market forces that deny housing opportunities for African Americans.

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107. See *supra* text accompanying note 61.

108. See Florence Wagman Roisman, *Affirmatively Furthering Fair Housing in Regional Housing Markets: The Baltimore Fair Public Housing Desegregation Litigation*, 42 WAKE FOREST L. REV. 333, 343 (2007).

109. 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, 1272 (2007).

### III. A HOUSING MARKET OF LIMITED OPPORTUNITIES

In New Orleans and in cities across the United States, HUD has substituted actual housing opportunities with rental vouchers for a bulk of public housing families, who invariably are displaced permanently by HUD's deconcentration policies. Indeed, vouchers are proscribed by statute to provide housing opportunities for public housing residents when demolition is approved. The U.S. Housing Act of 1937 requires that before HUD can approve a demolition/disposition application, the PHA must ensure that each displaced resident is offered comparable housing.<sup>110</sup> The statute permits the PHA to provide comparable housing through tenant-based vouchers. However, the law requires families to have successfully relocated into such housing before the PHA is deemed to have satisfied its comparable housing mandate.<sup>111</sup> In New Orleans and nationally, vouchers have not translated into housing opportunities for African Americans.

#### A. The Non-Viability of Rental Vouchers in New Orleans

In post-Katrina New Orleans, there is a severe shortage of housing and, thus, vouchers are not a viable option for public housing families seeking to return to the city. Returning families and reconstruction workers have been competing for the very limited supply of available housing.<sup>112</sup> Rents in Orleans Parish have escalated to rates 45% higher than pre-Katrina rates.<sup>113</sup>

Availability of affordable housing in New Orleans continues to be severely limited. While HUD increased the value of vouchers to try to meet the post-Katrina skyrocketing rents, there is still a shortage of housing to accommodate the need. Additionally, vouchers do not cover the exorbitant security deposits and utility payments residents are expected to pay. The forecast for an increased supply of afforda-

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110. 42 U.S.C. § 1437p(a)(4)(C) (1998).

111. 42 U.S.C. § 1437p(a)(4)(A)(iii)(aa).

112. On August 5, 2006, HANO itself stated: "The unprecedented level of devastation wrought by Katrina has created a serious shortage of available housing throughout Orleans Parish. Many of the smaller Section 8 landlords lost units that will probably not return to the market any time soon. Also there was severe damage to multi-family units in the New Orleans area – putting an even bigger strain on the housing supply. . . These conditions are adversely affecting the rental housing market and will drastically affect HANO clients' ability to return to the City of New Orleans." Housing Authority of New Orleans, Response to Congressional Follow-Up Questions (Aug. 5, 2006) (on file with authors).

113. *Gulf Coast Housing Recovery Act of 2007 Before the S. Comm. on Banking, Housing, and Urban Affairs*, 110th Cong. 7 (2007) (statement of Amy Liu, Deputy Director, Metropolitan Policy Program, The Brookings Institute), available at [http://banking.senate.gov/\\_files/liu.pdf](http://banking.senate.gov/_files/liu.pdf).



ble housing is grim – two years after Katrina, the Greater New Orleans Fair Action Housing Center stated that “[t]here are scarce affordable housing units available or coming on line in the New Orleans area due to local governmental efforts to curtail the development of affordable housing.”<sup>114</sup> Some public housing residents who have returned to New Orleans have become part of the city’s homeless population, which has doubled since the hurricane to over 12,000.<sup>115</sup>

In addition to actual supply, housing opportunities in New Orleans and its suburbs are curtailed by discrimination against African-American renters. A study entitled *No Home for the Holidays* reported that Black displaced residents seeking housing encountered discrimination in 66% of their attempts to locate housing.<sup>116</sup> An audit of the New Orleans metro area rental market for housing discrimination based on race found discrimination against African Americans in 57.5% of transactions.<sup>117</sup> Such stark data means that discrimination, combined with other barriers to housing in the New Orleans Metro area for tenants requiring federal and other subsidies, creates “barriers to housing” that are “nearly insurmountable.”<sup>118</sup>

Moreover, discrimination against African Americans in the parishes surrounding New Orleans is significant, rendering their housing choices in the neighborhoods just outside New Orleans similarly restrictive. Jefferson Parish has been described as “Louisiana’s most notoriously racist parish.”<sup>119</sup> After Hurricane Katrina, St. Bernard Parish passed an ordinance requiring property owners to rent only to blood relatives, and because parish property is overwhelmingly owned by Whites, the law effectively prohibited African Americans from renting property.<sup>120</sup>

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114. See Letter to Ainars Rodins, *supra* note 11.

115. See John Moreno Gonzales, *Homeless on the Rise in New Orleans*, BOSTON GLOBE, Aug. 19, 2007, available at [http://www.boston.com/news/nation/articles/2007/08/19/homeless\\_on\\_the\\_rise\\_in\\_new\\_orleans/](http://www.boston.com/news/nation/articles/2007/08/19/homeless_on_the_rise_in_new_orleans/) (According to the New Orleans Police Department spokesperson, this surge in homelessness is “draining resources.”). See also Bill Sasser, *Surge in Homelessness Hits New Orleans*, THE CHRISTIAN SCI. MONITOR, Mar. 28, 2007, available at <http://www.csmonitor.com/2007/0328/p03s03-ussc.html>.

116. *Gulf Coast Housing Recovery Act of 2007 Before the S. Comm. on Banking, Housing, and Urban Affairs*, 110th Cong. 7 (2007) (statement of James Perry, Executive Director, Greater New Orleans Fair Housing Action Center and President, Louisiana Housing Alliance on behalf of The National Low Income Housing Coalition), available at [http://banking.senate.gov/\\_files/perry.pdf](http://banking.senate.gov/_files/perry.pdf).

117. *Id.* at 7.

118. Beveridge, *supra* note 4, at 12.

119. Eaton, *supra* note 2, at 134.

120. See Fair Housing Advocates, *supra* note 28.

The dearth of affordable housing coupled with discrimination against African Americans renders vouchers an utterly inadequate way to provide housing opportunities in New Orleans for displaced public housing residents. As such, HUD's and HANO's compliance with the Fair Housing Act depended upon providing hard housing units by either opening shuttered public housing apartments or creating new housing.

## B. A National Crisis of Genuine Housing Choice

Nationally, and outside the context of crises like Hurricane Katrina, vouchers have proven to be a very limited method of providing housing choice. One of the reasons vouchers tend to be ineffective is simply because there is more demand for affordable housing than there is supply. In 1999, there was a 1.8 million gap between the available rental units affordable to households with incomes under seventy percent of area median and the demand for these units.<sup>121</sup> Absent government intervention, the market simply cannot meet the demand for affordable housing.

HUD has acknowledged this reality. In *Thompson v. HUD*, where the court held that Section 3608 required HUD to actively promote regional housing opportunities for the Baltimore region's low-income families living in federally-assisted housing, HUD recognized that one of the "lessons learned" from its HOPE VI program<sup>122</sup> is that housing vouchers are "not viable housing options" in tight housing markets.<sup>123</sup> In the HOPE VI program, during the years 1993 through 1999 only 11.4% of 22,500 displaced public housing residents were

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121. Note, *When Hope Falls Short: HOPE VI, Accountability, and the Privatization of Public Housing*, 116 HARV. L. REV. 1477, 1488 (2003).

122. With the deterioration of public housing and the dwindling of federal financial support for HUD, Congress created HOPE VI, a program that promotes private sector participation in public housing financing and development. See *id.* at 1478-79. A 1993 annual appropriations act established HOPE VI, and in 1998 "Congress permanently authorized HOPE VI as Section 24 of the Housing Act of 1937" with the enactment of QHWRA [the Quality Housing and Work Responsibility Act]. Pindell, *supra* note 101, at 390-91. The program has been described as "almost the only active part of public housing today." Florence Wagman Roisman, *Keeping the Promise: Ending Racial Discrimination and Segregation in Federally Funded Housing*, 48 HOW. L.J. 913, 922 (2005).

123. *Thompson v. HUD*, 348 F. Supp. 2d 398 (D. Md. 2005). HUD has recognized in its "Best Practices" guide that "[i]n tight housing markets, or where there is a deficit in available housing relative to demand, HOPE VI grantees should pursue a replacement housing strategy that relies more heavily on hard public housing units." *HOPE VI Best Practices and Lessons Learned 1992-2002*, published by HUD (June 14, 2002) (on file with authors).

slated to reoccupy HOPE VI sites,<sup>124</sup> leaving the rest to fend for themselves in the private market:

Residents identify numerous barriers to successful use of vouchers, including costly credit checks and security deposits; limited search time due to voucher expiration dates and employment; personal problems such as relatives with criminal backgrounds; discrimination based on race, status as a public housing resident or use of a voucher; and competition for units in better neighborhoods. Many residents report that PHA-sponsored relocation counselors pressure them to move to neighborhoods they consider as bad as the ones they are leaving.<sup>125</sup>

Indeed, discrimination in the housing market nationwide is pervasive. The use of tenant selection criteria such as employment or income requirements bar many residents from using vouchers.<sup>126</sup> Whether latent or covert, discrimination in the rental market exists today. The 2000 Housing Discrimination Study “showed continuing, substantial discrimination” against Blacks and Latinos in the rental of housing,<sup>127</sup> and in rental tests conducted by HUD in 2000, Whites were favored over Blacks 21.6% of the time and over Latinos 25.7% of the time.<sup>128</sup> HUD’s studies “show that the rate of illegal race and national origin discrimination in housing rental has remained virtually constant over the past three decades.”<sup>129</sup>

In the case of New Orleans as well as nationwide, the mere issuance of vouchers to public housing residents displaced by HUD’s redevelopment plans cannot meet HUD’s obligation to affirmatively further fair housing, because vouchers simply do not offer the housing opportunities the statute was intended to create for African Americans.

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124. Note, *supra* note 121, at 1490.

125. *Id.* at 1490-91; *see also* Pindell, *supra* note 101, at 406 (“[V]oucher recipients have been frustrated by obstacles to obtaining their choice in housing . . . rais[ing] the issue of resegregation . . .”).

126. *See, e.g.*, Walker v. HUD, No. 3:85-CV-1210-R, WL 33177466, at \*31 (N.D. Tex. Oct. 6, 1997).

127. Roisman, *supra* note 65, at 916.

128. Robert G. Schwemm, *Housing Rights Article: Why Do Landlords Still Discriminate (And What Can Be Done About It?)*, 40 T. MARSHALL L. REV. 455, 456-57 (2007).

129. *Id.* at 458.

#### IV. TOWARD A RECONCEPTUALIZATION OF FAIR HOUSING

Segregation and racial discrimination in the U.S. housing market continue to be widespread problems despite the enactment of the Fair Housing Act. HUD's lackadaisical enforcement of the Fair Housing Act in combination with its wholesale dismantling of the country's public housing system without securing a safety net for low-income families has restricted housing opportunities for poor families of color. The hypocrisies of the government's interpretation of its fair housing duties are most readily apparent in its plans for New Orleans' public housing after Hurricane Katrina, where thousands of public housing families have been excluded from their homes and the city, and will remain displaced for a long time, if not forever, while HUD moves forward with a plan to create "better" housing.

The case of New Orleans highlights a series of points that warrant serious consideration. First, a policy should not be deemed to affirmatively further fair housing if its effect is to destroy families and communities of color. Second, a determination of whether a plan furthers fair housing must include an analysis of where residents who cannot return to the redeveloped site can reside. This analysis should include any evidence of discrimination in the relevant housing market. It should also consider other evidence of a jurisdiction's actions that limit housing opportunities for people of color, including development plans that depend upon removal and displacement of low-income communities of color. (Can a PGA Tour appropriate golf course and a multi-million dollar movie studio exist in the sixth poorest city in America?) Third, affirmatively furthering fair housing must include a plan beyond merely issuing vouchers in light of an insufficient affordable housing stock and discriminatory rental practices against African Americans in the housing market.

Dispersing and displacing low-income African Americans in the name of fair housing is not what the Fair Housing Act stands for. To think otherwise presupposes that the only way to promote the revitalization of communities is if fewer African Americans, or people of color, live in a neighborhood. While integration is one way to effectuate fair housing, the government has operated as if it is the only way, and as a result has undermined the core purpose of the Fair Housing Act. To permit the wholesale removal of communities of color under the guise of fair housing abdicates any governmental responsibility for

ending structural racism. It permits the dispersal of families of color as a quick fix, and ignores the more complex issues of markets and governments that act inefficiently, and inequitably, in instances where people of color are in the majority. Fair housing policies should not be fashioned as a mandate to deconcentrate and “integrate” at all costs, but must also include reform directed toward community development in depressed, Black neighborhoods.

### CONCLUSION

The fate of New Orleans’ public housing after Hurricane Katrina demonstrates that the integration imperative that has been read into the Fair Housing Act must be revisited and revised. In this sense, post-Katrina New Orleans provides an opportunity, but not in the manner in which the government has pursued. It is an opportunity to recapture the meaning of fair housing to include community restoration, community enrichment, and spatial equality. If fair housing had been understood to encompass these principles in the aftermath of Hurricane Katrina, the fate of New Orleans’ public housing would have been very different. Instead of habitable housing left boarded up and slated for demolition while a plan is devised to drastically reduce the number of public housing available in the city, units would have been brought back online, families would have returned from displacement, and social services and other community betterment initiatives would have been devised with the input and participation of public housing residents.

The story of New Orleans public housing should be of concern to all Americans. In the name of a disaster, should the government be permitted to seize the moment to exclude those persons who are seen in some quarters to be “unwanted?” Even more disconcerting, should the goal of integration be used to dismantle communities of color and their voting power, not only to move them elsewhere within their city but to move them to other parts of the country altogether? The government’s obligation to affirmatively further fair housing should ensure housing opportunities through mechanisms that are appropriate to the circumstances. In the case of New Orleans, these powers were used to deliver another blow to the families most devastated by Hurricane Katrina.