

POST-DISASTER HOUSING THROUGH THE LENS OF LITIGATION: THE KATRINA HOUSING JUSTICE DOCKET

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ABSTRACT

This Article discusses post-disaster housing rights violations and corresponding litigation following the 2005 Gulf Coast hurricanes. The Introduction offers a brief reflection, at the ten-year anniversary of Hurricanes Katrina and Rita, on post-disaster work at the Law Clinic of Loyola University New Orleans College of Law. It also presents a synopsis of post-disaster housing data with a focus on race and poverty. Part II discusses the Katrina Housing Justice Docket (Housing Docket)—my compilation of seminal lawsuits related to post-disaster housing rights litigation focused on the Greater New Orleans area and the State of Louisiana. Deconstructing the Housing Docket provides a means for understanding where and how the post-disaster housing rights of low-income people were disputed. My primary goal in writing this Article is to offer a road map of legal contestations to others engaged in post-disaster lawyering for vulnerable populations. My hope is that by building this record, we will also build more collective knowledge to achieve justice-oriented outcomes post-disaster.

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1. See Email from Bill Quigley, Professor of Law, Loyola Univ. New Orleans Coll. of Law, to author (Feb. 13, 2007, 11:02 am) (on file with author) (“sketching draft of Katrina Social Justice Legal Docket” and thanking Audrey Stewart and Mary Howell); see also John Tye & Morgan Williams, *Networks and Norms: Social Justice Lawyering and Social Capital in Post-Katrina New Orleans*, 44 HARV. C.R.-C.L. L. REV. 255 (2009) (using the 2008 Post-Katrina New Orleans Social Justice Docket to explore the tension between impact litigation and community lawyering among social justice lawyers and to discuss the importance of different types of social capital to plaintiffs in these suits).

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I. INTRODUCTION

A. LOYOLA LAW CLINIC & POST DISASTER WORK

Soon after Hurricanes Katrina and Rita, I began working with the Loyola Katrina Clinic, serving low-income people in post-disaster civil matters. The issues, and resulting cases, swiftly arrived in vast numbers for the next several years: contractor fraud (including problems with the Road Home Program) barriers to accessing FEMA funds and safe trailers, wrongful home demolitions, evictions, and disputes with insurance companies.² In 2009, the Katrina Clinic transitioned into the Community Justice clinic section that I now teach. It continues to serve low-income people on a variety of civil legal issues with a focus on housing matters. After Hurricane Sandy, our clinic received many inquiries of assistance from advocates and lawyers. This Article presents a road map that I wish I could have provided them to give a sense of the issues our community faced, which disputes were brought to court, and outcomes of litigation efforts.

2. See Davida Finger et al., *Engaging the Legal Academy in Disaster Response*, 10 SEATTLE J. FOR SOC. JUST. 211, 217–20 (2011) (describing the problems that gave rise to the litigation reflected in the Housing Docket).

When I started working on post-disaster cases, colleagues advised me to expect disaster-related lawyering work to last at least ten years. That prediction has, in part, proved to be true. Post-disaster cases stretched on during the past decade. The clinic students I taught in the 2014–15 academic year worked on cases that began soon after Hurricane Katrina. If anything, the prediction underestimated the duration of post-disaster lawyering work. In the upcoming 2015–16 academic year, our law clinic will continue to work on such cases, as will other lawyers and advocates, related to post-disaster issues. The emotional impact of the hurricanes and the ways the broken recovery devastated individuals, families, and our communities, will remain with us for years to come.

The next sub-section summarizes key data points ten years after the 2005 hurricanes. This data is a useful starting place for understanding the post-disaster housing landscape.

B. BACKGROUND: POST-DISASTER HOUSING BY THE NUMBERS

The literature is replete with documentation of the ways that post-disaster shelter and housing became precious commodities that would not be equally shared by all.³ As the years moved forward and disaster funds were spent it became increasingly clear that some would be left behind—both by neglect and by

3. See, e.g., Davida Finger, *Stranded and Squandered: Lost on the Road Home*, 7 SEATTLE J. FOR SOC. JUST. 59 (2008) [hereinafter Finger, *Stranded*] (exploring the challenges faced by homeowners seeking to navigate the Road Home Program in order to obtain money to repair their damaged homes); Harold A. McDougall, *Hurricane Katrina: A Story of Race, Poverty, and Environmental Injustice*, 51 HOW. L.J. 533 (2008) (adopting an environmental perspective to examine why Hurricane Katrina was so devastating and proposing community-oriented solutions to address the environmental and racial injustice the storm left behind); Joanne M. Nigg et al., *Hurricane Katrina and the Flooding of New Orleans: Emergent Issues in Sheltering and Temporary Housing*, 604 ANNALS AM. ACAD. POL. & SOC. SCI. 113 (2006) (discussing the contrast between the planned use of short-term housing and the realities created by the massive two-wave evacuation of New Orleans); William P. Quigley, *Boating Out of New Orleans, Who Was Left Behind in Katrina and Who Is Being Left Behind Now?*, 40 CLEARINGHOUSE REV. 149 (2006) (describing the author's evacuation experience and reflecting on the racial disparities the evacuation and reopening of New Orleans revealed); William P. Quigley, *Obstacle to Opportunity: Housing that Working and Poor People Can Afford in New Orleans Since Katrina*, 42 WAKE FOREST L. REV. 393 (2007) (describing the limited availability of affordable housing as New Orleans began to rebuild); William P. Quigley, *Thirteen Ways of Looking at Katrina: Human and Civil Rights Left Behind Again*, 81 TUL. L. REV. 955 (2007) [hereinafter Quigley, *Thirteen*] (using a civil and human rights lens to argue that the left behind when Katrina struck—mostly poor and black—were being left behind in a recovery that privileged property and profit).

design. Indeed, the city's racial demographics have been altered, perhaps permanently. New Orleans became a predominantly African-American city toward the end of the twentieth century; Hurricane Katrina dramatically changed that composition.⁴ Richard Campanella, an expert on the historical geography of New Orleans, explained:

Katrina's flood shattered the centuries-old geographies of African-American New Orleanians. Nearly all of their population of 324,000 dispersed nationwide after the excruciating debacle that started with the hurricanes' strike on August 29, 2005, deteriorated immeasurably with the federal levee failures, and ended when the last stranded residents were evacuated in early September. Approximately 221,000 black New Orleanians—more than two-thirds—lived in areas that were deeply and persistently flooded. . . . The demographic shift will affect New Orleans' culture, economics, and politics.⁵

A review of post-disaster housing data at the ten-year hurricane anniversaries demonstrates that African-American New Orleanians lost more access to safe and affordable housing than did white New Orleanians. Looking at renters, the data itself tells a story by demonstrating specific ways that African-Americans and low-income people are most burdened by post-disaster failures.

- The majority of renters in the Greater New Orleans area are African-American.⁶

4. In 1977, New Orleans became majority African-American for the first time since the 1830s. RICHARD CAMPANELLA, *GEOGRAPHIES OF NEW ORLEANS* 23 (2006). In 2005, the New Orleans population was 455,000. Michelle Krupa, *Census Estimate Shows Strong Population Growth in Orleans, St. Bernard Parishes*, *TIMES-PICAYUNE* (New Orleans) (March 23, 2010, 9:39 PM), http://www.nola.com/politics/index.ssf/2010/03/census_estimate_shows_strong_p.html. In 2014, the population was 384,000. *Total Population by Parish for the New Orleans Metro*, DATA CTR. (Mar. 26, 2015), <http://www.datacenterresearch.org/data-resources/population-by-parish/>. There are 99,650 fewer African-Americans in 2015 than in 2000 compared to only 11,000 fewer whites. NIHAL SHRINATH ET AL., DATA CTR., *WHO LIVES IN NEW ORLEANS AND METRO PARISHES NOW?* 1 (2014), https://gnocdc.s3.amazonaws.com/reports/TheDataCenter_WhoLivesInNewOrleansAndMetroParishesNow.pdf.

5. RICHARD CAMPANELLA, *BIENVILLE'S DILEMMA: A HISTORICAL GEOGRAPHY OF NEW ORLEANS* 183–84 (2008) (footnotes omitted).

6. *American Fact Finder*, U.S. CENSUS BUREAU, <http://factfinder.census.gov/face/nav/jsf/pages/searchresults.xhtml> (last visited December 16, 2015) (enter "Demographic Characteristics for Occupied Housing Units in "topic or table name"; enter "Orleans Parish, Louisiana" in "state, county, or place"; select "Go"; select

- In 2005, most of the 5,146 occupied public housing apartments in the Greater New Orleans area belonged to African-Americans.⁷ Most of these were demolished, leaving just 1,925 public housing apartments available for low-income people.⁸ The number of remaining apartments is less than half of the number promised pre-demolition,⁹ with fewer than half of the remaining units set at rents that are affordable to those who lived in public housing pre-hurricane.¹⁰
- The number of housing vouchers in use in Orleans Parish tripled from 2000–2010, and vouchers became the primary means for post-disaster housing.¹¹
- Over ninety percent of subsidized housing voucher users are African-American.¹² Rental discrimination is a “real and persistent barrier to voucher user’s access to housing opportunity.”¹³
- Over the last decade, rent in New Orleans has increased thirty-three percent for one-bedroom apartments and forty-one percent for two-bedroom apartments.¹⁴ The majority of New Orleanians, fifty-

“2014 ACS 1-year Estimates”) (using the data from the American Community Survey to estimate that 33.1% of renters in New Orleans are white and 61.7% of renters in New Orleans are African-American).

7. Bill Quigley, *New Orleans Katrina Pain Index at 10: Who Was Left Behind*, HUFFINGTON POST (July 20, 2015, 8:45 AM), http://www.huffingtonpost.com/bill-quigley/new-orleans-katrina-pain_b_7831870.html [hereinafter Quigley, *Pain Index*] (noting that thousands of other public housing apartments that were scheduled for renewal or maintenance would have gone to a primarily African-American population).

8. *Id.*

9. Katy Reckdahl, *10 Years After Hurricane Katrina New Orleans Public Housing Still in Limbo*, NEXT CITY (June 15, 2015), <https://nextcity.org/features/view/10-years-after-katrina-new-orleans-public-housing-still-in-limbo-iberville>.

10. Quigley, *Pain Index*, *supra* note 7.

11. STACY SEICSHNAYDRE & RYAN C. ALBRIGHT, DATA CTR., EXPANDING CHOICE AND OPPORTUNITY IN THE HOUSING CHOICE VOUCHER PROGRAM 1 (2015).

12. *Id.* at 4.

13. *Id.*

14. In 2005, a one-bedroom was \$578 and a two-bedroom was \$676. Fair Market Rents for the Housing Choice Voucher Program and Moderate Rehabilitation Single Room Occupancy Program; Fiscal Year 2005, 70 Fed. Reg. 9,778, 9,800 (Feb. 28, 2005). In 2015, it is \$767 for a one-bedroom and \$950 for a two-bedroom. Final Fair Market Rents for the Housing Choice Voucher Program and Moderate Rehabilitation Single Room Occupancy Program Fiscal Year 2015, 79 Fed. Reg. 59,786, 59,809 (Oct. 3, 2014). Notably, these price increases far outpace those experienced by renters

five percent, rent.¹⁵ Of these renters, at least thirty-seven percent spend over fifty percent of their monthly income on rent.¹⁶

- At least 50,000 units in the Greater New Orleans area, seventy-eight percent of the rental stock, require major repairs.¹⁷

These numbers, taken alone, do not explain the past decade of intense disagreement over how to fulfill (and expand) post-disaster housing rights. Analysis of the cases in the Housing Docket reveals a different dimension of the post-disaster housing justice struggles in the New Orleans region.

II. THE KATRINA HOUSING JUSTICE DOCKET

I selected twenty-five cases to include in the Housing Docket.¹⁸ The Housing Docket presents a snapshot of struggles over post-disaster housing issues in Louisiana. By describing contestations that reached the courts, I hope that the Housing Docket might contribute to new understandings of post-disaster housing.¹⁹ I discuss the cases and results generally and do not

nationwide. SHRINATH ET AL. *supra* note 4, at 16 (“From 2004 to 2013, monthly rent plus utilities rose from \$698 to \$925 in New Orleans, a 33 percent increase. Meanwhile, median gross rents increased 20 percent metro-wide compared to only 6 percent nationwide.”).

15. Quigley, *Pain Index*, *supra* note 7.

16. *Id.*

17. *Id.*

18. Three areas connected to post-disaster housing that presented significant issues are not discussed in this Article: contractor fraud, insurance disputes, and succession/title issues. See *supra* note 2, at 218–19 (discussing contractor fraud and insurance disputes); Sandie McCarthy-Brown & Susan L. Waysdorf, *Katrina Disaster Family Law: The Impact of Hurricane Katrina on Families and Family Law*, 42 IND. L. REV. 721, 739–40 (2009) (discussing the problem of clearing title for damaged homes that had been passed down through generations without formal succession proceedings).

19. Over the last decade, there has been an ever-widening justice gap in our community, exacerbated by post-disaster issues. Even with the work of dedicated legal advocates, this is the stark reality of economic inequality and access to justice barriers in our country. See John Ballard et al., *Natural Disasters, Access to Justice, and Legal Services*, 17 CUNY L. REV. (2013) (describing the response of the New York Legal Assistance Group to legal needs created by Superstorm Sandy); Davida Finger, *50 Years After the “War on Poverty”: Evaluating the Justice Gap in the Post-Disaster Context*, 34 B.C. J.L. & SOC. JUST. 267 (2014) (examining access to justice issues in the context of the lack of legal resources available to low-income individuals after Hurricanes Katrina and Rita); Thomas Maligno & Benjamin Rajotte, *Trial by Water: Reflections on Superstorm Sandy*, 26 FORDHAM ENVTL. L. REV. 345 (2015) (reflecting on the development of the Disaster Law Program at Touro Law Center in

focus on the specifics of court judgments, consent decrees, or out-of-court settlements. Instead, I categorize the Housing Docket cases by describing the narrative of the issues people faced and summarizing the demands of the people bringing the lawsuits.

A. INTRODUCTION TO THE HOUSING DOCKET

Peoples' stories fuel the practice of law, even as the twists and turns of the legal system obfuscate them.²⁰ The meta-perspective on stories in the lawyering context—which stories become legal cases, which stories we believe we are compelled to tell through legal processes—is its own compelling narrative. Stories serve to help us “create knowledge, reinforce knowledge, and change existing knowledge and beliefs,”²¹ and my hope is that this review of the post-disaster narrative will do the same.

The body of litigation discussed here conveys themes of post-disaster struggles—those issues of discord where individuals and groups were able to access lawyers and courts. Confronting issues of post-disaster housing justice through this lens can help to better understand the debates and dissonance surrounding rebuilding. Expanding the data-centered discourse on post-disaster housing recognizes peoples' organizing efforts, including through litigation, as valuable contributions from this post-disaster decade.²²

One useful document that guided my work in assembling the Housing Docket was the *How the Work Emerged* document,²³

response to Superstorm Sandy); Katy Reckdahl, *The Justice Gap*, SHELTER FORCE (Aug. 24, 2015), http://www.shelterforce.org/article/4226/the_justice_gap/ (arguing, on the basis of the post-Katrina experience, for increased funding for legal services in the aftermath of disaster).

20. For a brief reflection on the role of storytelling in law, see Ruth Anne Robbins, *An Introduction to Applied Legal Storytelling and to This Symposium*, 14 LEGAL WRITING 3 (2008).

21. *Id.* at 7.

22. For discussion of social movements in post-Katrina New Orleans, see Rachel E. Luft, *Beyond Disaster Exceptionalism: Social Movement Developments in New Orleans after Hurricane Katrina*, 61 AM. Q. 499, 515 (2009); Jordan Flaherty, *A Movement Lab in New Orleans*, NATION (Aug. 13, 2015), <http://www.thenation.com/article/a-movement-lab-in-new-orleans/>.

23. Unfortunately, for crediting purposes, the document is un-authored and undated. Marc Moreau, former director of Southeast Louisiana Legal Services, circulated an email in an attempt to find the author of the document without any response from the group of advocates who received the email. Email from Marc Moreau to author and others (2009) (on file with author).

which is appended to this Article.²⁴ Advocates assembled this graphic in the aftermath of the hurricanes. With the glut of post-disaster analyses available, I selected this particular document because it uniquely demonstrates the waves of case types that flooded the community after the hurricanes. Drafted in 2009, the document does not attempt to calculate the total number of individual cases in dispute and, instead, presents a visual overview of post-disaster housing issues. It chronicles advocates' understandings of the vast post-disaster stories and experiences people shared. I also appreciate the idealism conveyed; by projecting a future of "sustainable communities," the document presents a hopeful expression of the post-disaster landscape that might eventually be built from the wreckage—an appropriate goal, albeit one that is still unmet.

B. THE HOUSING DOCKET

I grouped the twenty-five housing docket cases into four categories according to peoples' demands for: (1) no evictions from post-disaster housing; (2) non-discrimination in spending and policies for post-disaster housing; (3) continued disaster assistance; and (4) preservation of property.

No eviction cases: *Smith v. Boissiere*²⁵ and *Sylvester v. Boissiere*;²⁶ *Powell v. Maison Inn St. Charles*²⁷ and *Jung v.*

24. See Appendix I.

25. Petition for Injunctive and Declaratory Relief, *Smith v. Boissiere*, No. 2005-12029 (La. Civ. Dist. Ct. Orleans Parish Oct. 24, 2005) (alleging that holding eviction hearings outside of Orleans Parish due to closure of the courthouses in New Orleans violated the United States Constitution, the Louisiana Constitution, and the Louisiana Code of Civil Procedure). The court ordered all eviction hearings to be held in Orleans Parish at locations to be determined by the First and Second City Courts. *Smith v. Boissiere*, No. 2005-12029 (La. Civ. Dist. Ct. Orleans Parish Nov. 3, 2005).

26. Complaint, *Sylvester v. Boissiere*, No. 05-5527 (E.D. La. Nov. 14, 2005), 2005 WL 3720537 (alleging that serving eviction notices by "tacking" them to the unit's door, a procedure allowed under Louisiana law, violated due process when the tenants had been evacuated due to Hurricane Katrina). The parties reached a temporary agreement requiring landlords to mail notifications to evacuated residents using addresses provided by FEMA. *Sylvester v. Boissiere*, No. 05-5527 (E.D. La. Nov. 22, 2005), *modified*, No. 05-5527 (E.D. La. Dec. 8, 2005), *and vacated*, No. 05-5527 (E.D. La. May 18, 2006).

27. Motion for Temporary Restraining Order and Preliminary and Permanent Injunctive and Declaratory Relief, and Memorandum in Support, *Powell v. Maison Inn St. Charles*, No. 2006-00190 (La. Civ. Dist. Ct. Orleans Parish Jan. 7, 2006). The court enjoined the hotel from evicting any evacuee residing there as a result of the hotel's participation in FEMA's Short-Term Lodging Program. *Powell v. Maison Inn St. Charles*, No. 2006-00190 (La. Civ. Dist. Ct. Orleans Parish signed Jan. 7, 2006).

Federal Emergency Management Agency (FEMA);²⁸ *McWaters v. FEMA*;²⁹ and *Twitty v. City of Gretna*.³⁰

Non-discrimination cases: Administrative Complaint to the Office of Community Development and the Louisiana Recovery Authority;³¹ *Greater New Orleans Fair Housing Action Center v. United States Department of Housing and Urban Development*;³²

and filed Jan. 31, 2006). The parties later entered into an undisclosed settlement. Joint Motion to Dismiss, *Powell v. Maison Inn St. Charles*, No. 2006-00190 (La. Civ. Dist. Ct. Orleans Parish Nov. 28, 2006).

28. Motion for Temporary Restraining Order and Preliminary Injunction, *Jung v. Fed. Emergency Mgmt. Agency*, No. 06-0947 (E.D. La. Feb. 24, 2006), 2006 WL 679290 (seeking to suspend eviction of evacuees housed on a cruise ship). The court denied plaintiff's request for a temporary restraining order barring the evictions. *Jung v. Fed. Emergency Mgmt. Agency*, No. 06-0947 (E.D. La. Mar. 3, 2006), *judgment finalized*, No. 06-0947 (E.D. La. July 18, 2006).

29. Complaint—Class Action for Injunctive and Declaratory Relief, *McWaters v. Fed. Emergency Mgmt. Agency*, 408 F. Supp. 2d 221 (E.D. La. 2005) (No. 05-5488), 2005 WL 3038551 (alleging that FEMA's practices in distributing housing assistance violated the Due Process Clause and the Stafford Act). The court ultimately enjoined FEMA from requiring applicants for housing assistance to complete SBA loan applications and from implying that such applications were required and required that FEMA provide at least two weeks following a denial of continuing assistance before terminating participation in a housing program. *McWaters v. Fed. Emergency Mgmt. Agency*, 408 F. Supp. 2d 221 (E.D. La. 2005), *modified*, 408 F. Supp. 2d 221 (E.D. La. 2006), *and confirmed*, 436 F. Supp. 2d 802 (E.D. La. 2006), *and class certified*, 237 F.R.D. 155 (E.D. La. 2006), *and judgment finalized*, No. 05-5488 (E.D. La. Aug. 10, 2006).

30. Action for Injunction, *Twitty v. City of Gretna*, No. 07-1198 (E.D. La. Mar. 7, 2007), 2007 WL 1132313 (seeking an injunction preventing the city from removing FEMA trailers from properties where residents had no other available housing). The city settled with the plaintiff, agreeing to allow her to keep her FEMA trailer on her property until she received Road Home funds. Stipulation & Order of Dismissal, *Twitty v. City of Gretna*, No. 07-1198 (E.D. La. Aug. 24, 2007); *see Twitty v. City of Gretna*, No. 07-1198 (E.D. La. Aug. 28, 2007) (finalizing judgment).

31. Admin. Complaint to U.S. Dep't of Hous. & Urban Dev. et al. (June 20, 2006) (seeking additional information and transparency regarding the plans to spend the community block grant intended for disaster recovery to ensure that, as the law required, 50% of the grant was spent to benefit low- and moderate-income people) (on file with the author); Reply to Answer to Admin. Complaint to U.S. Dep't of Hous. & Urban Dev. et al. (Nov. 8, 2006) (on file with author).

32. Complaint for Declaratory and Injunctive Relief, *Greater New Orleans Fair Hous. Action Ctr. v. U.S. Dept. of Hous. & Urban Dev.*, 723 F. Supp. 2d 1 (D.D.C. 2010) (No. 08-1938), 2008 WL 5242538 (alleging that the Road Home formula that calculated awards based on the pre-storm value of the home rather than repair costs had a disparate impact upon African-American homeowners). The district court denied plaintiffs' request for retroactive modification of previous awards, *Greater New Orleans Fair Hous. Action Ctr. v. U.S. Dep't of Hous. & Urban Dev.*, 723 F. Supp. 2d 1 (D.D.C. 2010), *aff'd*, 639 F.3d 1078 (D.C. Cir. 2011), but granted a second request enjoining Road Home from applying the contested formula to prospective awards, *Greater New Orleans Fair Hous. Action Ctr. v. U.S. Dep't of Hous. & Urban*

*Greater New Orleans Fair Housing Action Center v. St. Bernard Parish*³³ and *United States v. St. Bernard Parish*³⁴ and *NOLA Capital Group v. St. Bernard Parish*;³⁵ *Stroebel v. Rainwater*;³⁶ *Massey v. ICF Emergency Management Services, Inc.*;³⁷ and *Grobby*

Dev., 723 F. Supp. 2d 11 (D.D.C. 2010), *rev'd*, 639 F.3d 1078 (D.C. Cir. 2011). The Court of Appeals ultimately found that the housing advocates' argument was unlikely to prevail on the merits. *Fair Hous. Action Ctr.*, 639 F.3d at 1085–88. Following settlement, the case was dismissed. Notice of Dismissal, *Fair Hous. Action Ctr.*, No. 08-1938 (D.D.C. July 8, 2011) (voluntarily dismissing the case as a result of a settlement agreement granting relief to affected homeowners).

33. Complaint for Injunctive Relief, Declaratory Judgment, and Remedial Relief, *Greater New Orleans Fair Hous. Action Ctr. v. St. Bernard Parish*, 648 F. Supp. 2d 805 (E.D. La. 2009) (No. 06-7185) (alleging that a parish ordinance prohibiting rental of single family homes to tenants who were not blood relatives of the landlord was discriminatory in purpose and effect); Complaint, *Greater New Orleans Fair Hous. Action Ctr. v. St. Bernard Parish*, No. 11-cv-858 (E.D. La. Apr. 14, 2011) (alleging discriminatory denial of building permits for multifamily housing as well as interference with the construction of such housing). The district court repeatedly ruled against the parish in these matters. See Kate Scott & Marlene Theberge, *The Greater New Orleans Fair Housing Action Center: Promoting Fair Housing Choice in Southeast Louisiana Through Education, Investigation, and Enforcement*, 22 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 103, 104–06 (2014). The most recent round of litigation challenged as racially discriminatory an ordinance requiring prospective landlords to obtain a “permissive use permit.” Complaint, *Greater New Orleans Fair Hous. Action Ctr. v. St. Bernard Parish*, No. 12-322 (E.D. La. Jan. 31, 2012); see *infra* note 35.

34. Complaint, *United States v. St. Bernard Parish*, No. 12-321 (E.D. La. Jan. 31, 2012) (challenging as racially discriminatory an ordinance requiring prospective landlords to obtain a “permissive use permit”); see *infra* note 35.

35. *NOLA Capital Grp. v. St. Bernard Parish*, No. 12-325 (E.D. La. Jan. 31, 2012) (challenging as racially discriminatory an ordinance requiring prospective landlords to obtain a “permissive use permit”). This case was consolidated with *United States v. St. Bernard Parish* and *Greater New Orleans Fair Housing Action Center v. St. Bernard Parish*; the cases were dismissed when the parties reached a compromise. *United States v. St. Bernard Parish*, Nos. 12-321, 12-322, 12-325 (E.D. La. May 10, 2013); see Marlene Theberge, *Fair Housing Center Announces \$900,000 Settlement Agreement with St. Bernard Parish*, GREATER NEW ORLEANS FAIR HOUS. ACTION CTR. (May 10, 2013), <http://www.gnofairhousing.org/2013/05/10/fair-housing-center-announces-900000-settlement-agreement-with-st-bernard-parish-pleased-with-settlement-between-united-states-and-parish/>.

36. Plaintiff's Original Complaint Declaratory, Injunctive Relief, Specific Performance and Damages, *Stroebel v. Rainwater*, 742 F. Supp. 2d 870 (E.D. La. 2010) (No. 10-691) (challenging amount of Road Home grant for a damaged home). The court dismissed the case on Eleventh Amendment immunity grounds. *Stroebel*, 742 F. Supp. 2d 870.

37. A Class Action Petition for Preliminary and Permanent Injunction and For Damages, *Massey v. ICF Emergency Mgmt. Servs., LLC*, No. 556097 (La. 19th Jud. Dist. Ct., June 13, 2007) (suing the contractor hired by the state to manage the Road Home Program for allegedly mishandling grant applications), *removed*, No. 07-462 (M.D. La. June 28, 2007), and *dismissed*, No. 07-462 (M.D. La. July 25, 2007).

v. Davis.³⁸

Continued assistance cases: *ACORN v. FEMA*;³⁹ *Ridgely v. FEMA*;⁴⁰ *Cummings v. Paulison*;⁴¹ *In re FEMA Trailer Formaldehyde Products Liability Litigation*;⁴² and *Brou v.*

38. Class Complaint for Declaratory and Injunctive Relief, *Groby v. Davis*, 575 F. Supp. 2d 762 (E.D. La. 2008) (No. 08-1524), 2008 WL 2062757 (alleging that provision in Road Home agreement waiving right of judicial review of the grant amount violated the First Amendment right of access to the courts). The court dismissed for lack of standing. *Groby*, 575 F. Supp. 2d 762.

39. Complaint for Declaratory and Injunctive Relief, Ass'n of Cmty. Orgs. for Reform Now, Inc. (ACORN) v. Fed. Emergency Mgmt. Agency, 463 F. Supp. 2d 26 (D.D.C. 2006), 2006 WL 2558747 (alleging that FEMA's termination of benefits with adequate explanation violated the Due Process Clause and the Administrative Procedures Act). See *ACORN*, 463 F. Supp. 2d 26 (granting preliminary injunction requiring FEMA to provide evacuees with more detailed statements regarding their eligibility for housing assistance and to restore terminated benefits until explanations and appeals were provided), *stayed in part*, No. 06-5403, 2006 WL 3847841 (D.C. Cir. Dec. 22, 2006) (staying portions of district court order requiring continued and retroactive payments), *and dismissed as moot*, No. 06-5403 (D.C. Cir. Apr. 30, 2007) (dismissing due to voluntary dismissal of district court action since affected households that could be located had received the detailed explanation and an opportunity to appeal). See also *ACORN v. FEMA*, PUBLIC CITIZEN, <http://www.citizen.org/litigation/forms/cases/getlinkforcase.cfm?cID=226> (last visited Oct. 31, 2015) (describing procedural history of the case).

40. Complaint—Class Action, *Ridgely v. Fed. Emergency Mgmt. Agency*, No. 07-2146 (E.D. La. Apr. 19, 2007), 2007 WL 4599268 (alleging that termination of rental assistance payments violated the Due Process Clause and procedural violations in the process for determining additional awards). The district court granted the plaintiffs' request for a preliminary injunction. *Ridgely v. Fed. Emergency Mgmt. Agency*, No. 07-2146, 2007 WL 1728724 (E.D. La. June 13, 2007), *vacated*, 512 F.3d 727 (5th Cir. 2008).

41. Complaint for Declaratory and Injunctive Relief, *Cummins v. Paulison*, No. 08-1196 (D.D.C. July 14, 2008) (alleging that FEMA unlawfully terminated rental assistance from Hurricane Katrina and Hurricane Rita evacuees). The plaintiffs voluntarily dismissed the case. Notice of Voluntary Dismissal with Prejudice Pursuant to Rule 41(a)(1)(i) of the Federal Rules of Civil Procedure, *Cummins v. Paulison*, No. 08-1196 (D.D.C. Feb. 20, 2009).

42. Original Brief of Appellant, *In re FEMA Trailer Formaldehyde Prods. Liab. Litig.*, 713 F.3d 807 (5th Cir. 2013) (No. 12-30635) (arguing that FEMA was liable under the FTCA for failing to remove individuals from hazardous trailers, failing to warn plaintiffs of the dangers of the trailers, and failing to offer other safe housing as required by the Stafford Act). Claims against FEMA were ultimately dismissed under the FTCA. See *In re FEMA Trailer Formaldehyde Products Liability Litigation*, 646 F.3d 185 (5th Cir. 2011) (affirming dismissal on statute of limitations grounds), *and* 668 F.3d 281 (5th Cir. 2012) (affirming dismissal of claims made by Alabama and Mississippi plaintiffs), *and* 713 F.3d 807 (5th Cir. 2013) (per curiam) (affirming dismissal of claims made by Louisiana plaintiffs). The Supreme Court later abrogated the statute of limitations holding. *United States v. Kwai Fun Wong*, 135 S. Ct. 1625 (2015).

FEMA.⁴³

Preservation cases: *Anderson v. Jackson*;⁴⁴ *Allen v. Housing Authority of New Orleans (HANO)*;⁴⁵ and *Morris v. Council of City of New Orleans*;⁴⁶ *Kirk v. City of New Orleans*⁴⁷ and associated cases; and *Joshua v. City of New Orleans*⁴⁸ and *Voight v. City of New Orleans*.⁴⁹

43. Class Action Complaint, *Brou v. Fed. Emergency Mgmt. Agency*, No. 06-0838 (E.D. La. Feb. 17, 2006) (seeking an injunction requiring FEMA to provide trailers accessible to evacuees with disabilities).

44. Complaint, *Anderson v. Jackson*, No. 06-3298 (E.D. La. June 27, 2006) (alleging that failure to reopen undamaged public housing and plan to demolish existing public housing violated the Fair Housing Act, Due Process Clause, and constituted constructive eviction). See *Anderson v. Jackson*, No. 06-3298 (Sept. 18, 2007) (granting class certification on issue of provision of vouchers that did not include coverage for utilities), *vacated sub nom. Anderson v. U.S. Dep't of Hous. & Urban Dev.*, 554 F.3d 525 (5th Cir. 2008), *renewed motion for class certification denied sub nom. Anderson v. Donovan*, No. 06-3298, 2011 WL 798118 (E.D. La. Feb. 28, 2011) (denying class certification on remaining claim because plaintiffs failed to show that the named plaintiffs were representative), *and dismissed*, No. 06-3298 (E.D. La. Dec. 13, 2012) (dismissing case following settlement).

45. *Allen v. Hous. Auth. of New Orleans*, No. 2007-15799 (La. Civ. Dist. Ct. Orleans Parish Dec. 14, 2007) (approving a consent order halting demolition of public housing until the City Council approved); see William Quigley & Sara H. Godchaux, *Locked Out and Torn Down: Public Housing Post-Hurricane Katrina*, BILL QUIGLEY: SOC. JUST. ADVOC. (June 8, 2015), <https://billquigley.wordpress.com/2015/06/08/locked-out-and-torn-down-public-housing-post-katrina-by-bill-quigley-and-sara-h-godchaux/>. The court subsequently granted plaintiffs' motion for a voluntary dismissal. *Allen v. Hous. Auth. of New Orleans*, No. 2007-15799 (La. Civ. Dist. Ct. Orleans Parish May 7, 2008).

46. Petition for a Writ of Mandamus, Injunctive and Declaratory Relief Declaring the Demolition Decisions of the New Orleans City Council Meeting of December 20, 2007 Null and Void, *Morris v. Council of City of New Orleans*, No. 2008-1696 (La. Civ. Dist. Ct. Orleans Parish Feb. 15, 2008) (challenging procedures used by the City Council to approve demolition of public housing projects).

47. Petition for Temporary Restraining Order and Preliminary and Permanent Injunctive and Declaratory Relief, *Kirk v. City of New Orleans*, No. 2005-13471 (La. Civ. Dist. Ct., Orleans Parish, Dec. 28, 2005) (seeking to halt demolition of private homes until notice could be provided), *removed*, No. 06-0024 (E.D. La. Jan. 4, 2006). The parties entered into a consent decree requiring notice by mail, publication, and website at least 30 days before a scheduled demolition. *Kirk v. City of New Orleans*, No. 06-0024 (E.D. La. Jan. 13, 2006).

48. Original Class Action Complaint, Petition for Temporary Restraining Order and Preliminary and Permanent Injunctive and Declaratory Relief, and For Damages for the Representative Plaintiffs, *Joshua v. City of New Orleans*, No. 07-4205 (E.D. La. Aug. 20, 2007) (seeking to halt demolition of structurally sound homes until hearings could be provided). The case was dismissed following a settlement among the parties. *Joshua v. City of New Orleans*, No. 07-4205 (E.D. La. May 25, 2011).

49. Petition for Damages for Wrongful Destruction of Property, *Voight v. City of New Orleans*, No. 2008-7161 (La. Civ. Dist. Ct. Orleans Parish July 10, 2008). This

III. POST-DISASTER HOUSING

A. DEMAND TO STOP EVICTIONS FROM DISASTER HOUSING

In the immediate aftermath of the hurricanes, property owners began to evict New Orleans renters before the ground was even dry, and before residents had meaningful opportunities to return home, salvage possessions, and contact property owners.⁵⁰ Meanwhile, New Orleans courts were shuttered and displaced to Gonzales, Louisiana, nearly sixty miles away from New Orleans city center.⁵¹ Even when residents were able to find out about pending eviction proceedings, access to the court in Gonzales was an enormous hurdle for displaced tenants given displacement and lack of transportation.⁵²

Moreover, eviction notices were placed on hurricane-damaged properties using the Louisiana “tacking” provision, which allows eviction notice to be given by tacking a notice to the rental unit’s door.⁵³ For displaced renters, it was absurd to think that this procedure could amount to reasonable notice.

For poor and working class people, this was an especially untenable situation. Bill Quigley, lead attorney on the cases that

case was part of a large collection of cases in which the plaintiffs’ houses were wrongfully condemned and demolished by the city. In the case of Voight, the court awarded him \$30,000 in damages after finding that the city mistakenly evaluated damages to the house at 100% and thereby abused its discretion by demolishing the entire house rather than the ungutted garage that was apparently the condemned portion. *Voight v. City of New Orleans*, No. 2008-7161 (La. Civ. Dist. Ct. Orleans Parish Dec. 12, 2014).

50. Petition for Injunctive and Declaratory Relief at 1–3, *Smith v. Boissiere*, No. 2005-12029 (La. Civ. Dist. Ct. Orleans Parish Oct. 24, 2005) (“Renters in New Orleans cannot fairly and legally be required to travel 58 miles in order to defend their continued possession of their property.”).

51. *See id.*; *see supra* notes 25–26.

52. Allison Plyler, *Facts for Features: Katrina Impact*, DATA CTR. (Aug. 28, 2015), <http://www.datacenterresearch.org/data-resources/katrina/facts-for-impact/> (“The storm displaced more than a million people in the Gulf Coast region. Many people returned home within days, but up to 600,000 households were still displaced a month later. At their peak, hurricane evacuee shelters housed 273,000 people and, later, FEMA trailers housed at least 114,000 households.”)

53. LA. CODE CIV. PROC. ANN. art. 4703 (1998) (“If the premises are abandoned or closed, or if the whereabouts of the lessee or occupant is unknown, all notices, process, pleadings, and orders required to be delivered or served on the lessee or occupant under this Title may be attached to a door of the premises, and this shall have the same effect as delivery to, or personal service on, the lessee or occupant.”); *Sylvester v. Boissiere*, No. 05-5527, 2006 WL 901754, at *1 (E.D. La. Apr. 4, 2006) (granting apartment owners the right to intervene in the action to halt “tacking” while residents were still forcibly displaced).

challenged these eviction practices, explained:

Fully armed National Guard troops refuse to allow over ten thousand people to even visit their property in the Lower Ninth Ward neighborhood. Despite the fact that people cannot come back, tens of thousands of people face eviction from their homes. A local judge told me that their court expects to process a thousand evictions a day for weeks.⁵⁴

Reflecting on the situation, Quigley wrote, “Renters in New Orleans are returning to find their furniture on the street and strangers living in their apartments at higher rents despite an order by the Governor that no one can be evicted before October 25. Rent[s] in the dry areas have doubled and tripled”⁵⁵

Renters able to bring their complaints to court achieved some immediate resolution because the courts required that eviction hearings be moved back to New Orleans.⁵⁶ Courts also prohibited tacking practices by ordering property owners to mail eviction notices to renters’ current addresses and stay evictions until forty-five days after the mailing of that notice.⁵⁷

Still, efforts to evict continued—well before alternate housing was secured. Price gouging proved to be an escalating problem.⁵⁸ Property owners began to “cut[] ties with federally subsidized programs” in order to maximize profit from rental units.⁵⁹ Quigley commented on the successful court cases, noting that “while these challenges temporarily alleviated some situations, the court cases did not address fundamental problems with the landlord-tenant scheme that followed the storms.”⁶⁰ Policy recommendations made by local advocates included

54. Bill Quigley, *Why Are They Making New Orleans a Ghost Town?*, MOTHER JONES (Oct. 31, 2005, 4:00 AM), <http://www.motherjones.com/politics/2005/10/why-are-they-making-new-orleans-ghost-town>.

55. Bill Quigley, *New Orleans: Leaving the Poor Behind Again!*, COUNTERPUNCH (Oct. 11, 2005), <http://www.counterpunch.org/2005/10/11/new-orleans-leaving-the-poor-behind-again/>.

56. *Smith v. Boissiere*, No. 2005-12029 (La. Civ. Dist. Ct. Orleans Parish Oct. 24, 2005).

57. *Sylvester v. Boissiere*, No. 05-5527, slip op. at 2 (E.D. La. Nov. 22, 2005). Note that addresses were provided by the Federal Emergency Management Agency. *Id.* at 1–2.

58. See Joel Roberts, *Post-Katrina Price Gouging?*, CBS NEWS (Apr. 18, 2006, 10:58 PM), <http://www.cbsnews.com/news/post-katrina-price-gouging/>.

59. See *id.*

60. APPLSEED, NEW ORLEANS CITY REPORT 92 (2012), http://www.appleseednet.org/wp-content/uploads/2012/05/katrina-Project_New-Orleans-City-Report.pdf.

“institut[ing] some form of temporary rent control.”⁶¹ According to these advocates:

When cities face a disaster on such a massive scale, they should be ready to implement temporary restrictions and laws aimed at controlling the housing market. The mixture of sharply increasing rents, displaced tenants, and units damaged by the storms created a quagmire of legal headaches for landlords and tenants alike and made recovery difficult.⁶²

FEMA utilized hotel rooms, cruise ships, and travel trailers as post-disaster short-term housing for displaced persons.⁶³ According to FEMA, approximately 50,000 hurricane evacuees remained in hotels and motels awaiting alternative housing options by late November 2005.⁶⁴

Even where renters were eventually able to obtain housing assistance through FEMA, they were still vulnerable to eviction efforts.⁶⁵ Eventually ceding to the demands of private property owners, FEMA chose not to recertify tens of thousands of evacuees for continued FEMA disaster housing in hotels and motels and announced that the program would discontinue in early January 2006.⁶⁶ As a result, FEMA allowed evictions from these short-term housing sources before reliable permanent housing was in place for evacuees.⁶⁷

61. See APPLESEED, *supra* 60, at 92–93, http://www.appleseednetwork.org/wp-content/uploads/2012/05/katrina-Project_New-Orleans-City-Report.pdf.

62. *Id.*

63. See generally RICHARD SKINNER, DEP'T OF HOMELAND SEC., REP. NO. GC-HQ-06-11, MANAGEMENT ADVISORY REPORT OF CRUISE SHIPS FOR HURRICANE KATRINA EVACUEES (2006), https://www.oig.dhs.gov/assets/Mgmt/2006/OIG_GC-HQ-06-11_Feb06.pdf (describing the use of cruise ships to house evacuees as well as returning city workers); *FEMA's Dirty Little Secret: A Rare Look Inside the Renaissance Village Trailer Park, Home to Over 2,000 Hurricane Katrina Evacuees*, DEMOCRACY NOW (Apr. 6, 2006), http://www.democracynow.org/2006/4/24/femas_dirty_little_secret_a_rare (describing a FEMA trailer park); Spencer S. Hsu, *FEMA Tells 150,000 in Hotels to Exit in 15 Days*, WASH. POST (Nov. 16, 2005), <http://www.washingtonpost.com/wp-dyn/content/article/2005/11/15/AR2005111501704.html> (describing the FEMA hotel program).

64. Fed. Emergency Mgmt. Agency, *FEMA Extends Deadline for Evacuees*, FEMA (Nov. 22, 2005), <http://www.fema.gov/news-release/2005/11/22/fema-extends-deadline-evacuees>.

65. See, e.g., Complaint at 3–4, *Powell v. Maison Inn St. Charles*, No. 2006-00190 (La. Civ. Dist. Ct. Orleans Parish Jan. 7, 2006); see *supra* note 63.

66. See Fed. Emergency Mgmt. Agency, *supra* note 64.

67. See *id.*; Hsu, *supra* note 63.

A class action case, *McWaters v. FEMA*, challenged the closure of FEMA's hotel and motel program as disaster housing and documented the lack of options for alternative, suitable housing for those residing in hotels and motels.⁶⁸ The case resulted in a court order requiring FEMA to continue its short-term lodging program for all evacuees nationwide until February or March 2006 depending on the location.⁶⁹ In reaching the decision, the federal judge referred to the agency as "numbingly insensitive" and "unduly callous."⁷⁰

As the program expiration dates drew near, affected people explained to the court that adequate FEMA assistance had not arrived for alternate housing nor had FEMA trailers arrived.⁷¹ By then, the return of the tourist industry was a factor, because hotels were accepting reservations.⁷² With the first post-hurricane Mardi Gras celebration looming at the end of the month, it was estimated that 12,000 homeless families were evicted from hotels prior to and when the *McWaters* order expired.⁷³

At around the same time, in *Powell v. Quality Inn Maison St. Charles*, a Louisiana civil judge temporarily restrained a private hotel owner in New Orleans from evicting approximately 100 FEMA disaster housing program residents, declaring the hotel owner's action "shockingly unconscionable."⁷⁴ Those living in the Quality Inn hotel reported that they received eviction notices even as the *McWaters* case was being finalized to extend the deadline for hotel and motel residents receiving FEMA assistance

68. *McWaters v. Fed. Emergency Mgmt. Agency*, 408 F. Supp. 2d 221, 226–28, 234 (E.D. La. 2005).

69. *Id.* at 239–40.

70. *Id.* at 233, 235.

71. P.J. Huffstutter, *Judge Lets FEMA Evict 12,000 Families in Hotels*, L.A. TIMES (Feb. 14, 2006), <http://articles.latimes.com/2006/feb/14/nation/na-hotel14> (quoting William Quigley, Director of the Gillis Long Poverty Law Center in New Orleans); *FEMA Fails Katrina Evacuees on Housing: Hotel Evictions Continue, Promises of Trailers and Rental Assistance Unmet*, DEMOCRACY NOW (Feb. 16, 2006), http://www.democracynow.org/2006/2/16/fema_fails_katrina_evacuees_on_housing [hereinafter *FEMA Fails*] (quoting Tracie Washington, a New Orleans attorney representing evacuees facing eviction from hotels).

72. *FEMA Deadline Changes Causing Headache for Hoteliers, Evacuees*, ACCESSWDUN (Jan. 9, 2006, 5:35 AM), <http://accesswdun.com/article/2006/1/131934>.

73. See Huffstutter, *supra* note 71; *FEMA Fails*, *supra* note 71.

74. *Powell v. Maison Inn St. Charles*, No. 2006-00190, slip op. at 2 (La. Civ. Dist. Ct. Orleans Parish signed Jan. 7, 2006 and filed Jan. 31, 2006); see *supra* note 27.

to stay there.⁷⁵ Law students volunteering with the Student Hurricane Network tried to help residents negotiate with management.⁷⁶ In *Jung v. FEMA*, evacuees unsuccessfully filed suit to try to prevent their mass eviction from cruise ship housing that was utilized as emergency housing.⁷⁷

Those who eventually obtained travel trailers from FEMA that were placed on private property were similarly vulnerable to eviction even before rebuilding funds had been received.⁷⁸ Local municipalities around the Greater New Orleans area preferred that front yards be cleared of FEMA trailers long before those still living in the trailers had other housing options.⁷⁹ In *Twitty v. City of Gretna*, Ms. Twitty requested that the court order the City of Gretna allow continued placement of the FEMA trailer located on her own property because she had not yet received rebuilding funds and thus, had been unable to pay for repairing the hurricane-damaged parts of her home.⁸⁰ While the case

75. *Judge Blocks Eviction of Katrina Survivors*, NBC NEWS (Jan. 9, 2006), <http://www.nbcnews.com/id/10754992/#.VfTSSp1Viko>.

76. See STUDENT HURRICANE NETWORK, LAW STUDENTS WORKING WITHIN THE POST-KATRINA LEGAL LANDSCAPE: THE STUDENT HURRICANE NETWORK ANNUAL REPORT, OCTOBER 2005–OCTOBER 2006, at 20 (Laila Hlass et al. eds., 2006), <http://hurricanearchive.org/archive/files/14fb2a1d2a672d14fb2a1d2a6b10.pdf>; see also Finger, *supra* note 2, at 216 (discussing the interaction between the Katrina Clinic at Loyola University New Orleans College of Law and the Student Hurricane Network).

77. Motion for Temporary Restraining Order and Preliminary Injunction, *Jung v. Fed. Emergency Mgmt. Agency*, No. 06-0947 (E.D. La. Feb. 24, 2006), 2006 WL 679290 (seeking to suspend eviction of evacuees housed on a cruise ship); *Jung v. Fed. Emergency Mgmt. Agency*, No. 06-0947 (E.D. La. Mar. 3, 2006) (denying temporary restraining order); *Jung v. Fed. Emergency Mgmt. Agency*, No. 06-0947 (E.D. La. July 18, 2006) (entering judgment for the defendants); see also Fed. Emergency Mgmt. Agency, *Cruise Ships Leaving New Orleans March 1*, FEMA (Feb. 24, 2006), <http://www.fema.gov/news-release/2006/02/24/cruise-ships-leaving-new-orleans-march-1>.

78. See, e.g., Complaint at 1, 3, *Twitty v. Gretna City*, No. 07-01198 (E.D. La. Mar. 7, 2007).

79. See Michelle Krupa, *Residents of 218 FEMA Trailers in New Orleans May Face Stiff Fines*, TIMES-PICAYUNE (New Orleans) (Jan. 5, 2011, 5:53 AM, updated, Jan. 5, 2011, 10:02 PM), http://www.nola.com/politics/index.ssf/2011/01/residents_of_218_fema_trailers.html; Richard Rainey, *Jeff to File Lawsuits over 600 Trailers*, NOLA.COM/TIMES-PICAYUNE (Apr. 15, 2008, 9:45 PM, updated, Apr. 16, 2008, 7:43 AM), http://www.nola.com/news/index.ssf/2008/04/jeff_parish_to_target_600_rema.html; Mark Waller, *Tough Issues as Jefferson Parish Tries to Remove the Remaining Handful of FEMA Trailers*, NOLA.COM/TIMES-PICAYUNE (July 30, 2009, 6:31 PM, updated, Oct. 15, 2009, 12:20 AM), http://www.nola.com/news/index.ssf/2009/07/tough_issues_as_jefferson_pari.html

80. Complaint at 3, *Twitty v. Gretna City*, No. 07-01198 (E.D. La. Mar. 7, 2007).

eventually settled in favor of Ms. Twitty allowing her the time needed for rebuilding after receipt of rebuilding funds,⁸¹ this was not necessarily so for many who required more time to complete rebuilding or secure other housing before FEMA trailers were removed.

B. NON-DISCRIMINATION WITH SPENDING AND POLICIES FOR POST-DISASTER HOUSING

The demand for access to, and equitable spending of, disaster funds for low-income people was a frequent refrain. Disaster scholar Vincanne Adams noted that what is surprising in the debates over federal disaster relief is how those debates “are not muted by larger concerns over the most efficient and effective ways to distribute such relief.”⁸² Indeed, the post-disaster decade in Louisiana demonstrated a number of ways in which flawed distribution schemes plagued disaster relief.

A 2006 Administrative Complaint regarding the State of Louisiana’s spending of federal Community Development Block Grant (CDBG) funds lodged objections regarding an initial distribution of \$10.4 billion appropriated for hurricane recovery in Louisiana.⁸³ The complaint was filed on behalf of “low and moderate income families of Louisiana . . . to make certain that . . . [those] families suffering hurricane and flood damage in Louisiana receive their fair share of the public resources.”⁸⁴ Because the allocation of CDBG funds required that at least fifty percent of expenditures benefit low- and moderate-income persons, the complaint objected to the lack of planning for how CDBG funds would be disbursed in ways likely to benefit this group (such as rebuilding rental housing) as well as the absence of any associated reporting requirements.⁸⁵ The complaint specifically requested that HUD require Louisiana to (1) set performance standards to ensure that fifty percent of the CDBG funds benefited the targeted income groups; (2) establish reporting procedures; (3) promote access among low- and

81. Stipulation and Order of Dismissal, *Twitty v. City of Gretna*, No. 07-01198, (E.D. La. Aug. 24, 2007); *see supra* note 30.

82. VINCANNE ADAMS, *MARKET OF SORROW, LABORS OF FAITH* 13 (2013).

83. Admin. Complaint to U.S. Dep’t of Hous. & Urban Dev. et al. (June 20, 2006) [hereinafter Admin. Complaint] (on file with the author); Reply to the Answer to Admin. Complaint to U.S. Dep’t of Hous. & Urban Dev. et al. (Nov. 8, 2006) (on file with author).

84. Admin. Complaint, *supra* note 83, at 1.

85. *Id.* at 3, 5–7.

moderate-income families to programs funded by the grant; and (4) “set up procedures to allow an immediate freeze of all expenditures to people who are not low and moderate income if it looks at any point like more than fifty percent of the proceeds of the program are not going to low and moderate income persons so that the program can be re-formulated at that point to comply with the requirements of law.”⁸⁶

These concerns foreshadowed the broad range of serious problems that would accompany disaster fund spending and Louisiana’s eventual privatization of the Road Home Program to disburse rebuilding funds.⁸⁷ By November 2008, the *Greater New Orleans Fair Housing Action Center v. United States Department of Housing and Urban Development* lawsuit, filed on behalf of 20,000 African-American homeowners, detailed the specific ways that Louisiana’s Road Home Program discriminated against African-Americans.⁸⁸ As explained by the Greater New Orleans Fair Housing Action Center:

86. Admin. Complaint, *supra* note 83, at 11.

87. See *The Road Home Program Overview*, ROAD HOME, <https://www.road2la.org/> (last visited Dec. 16, 2015); see generally Finger, *Stranded*, *supra* note 3 (describing the structure of the Road Home Program as well as many of the problems with the program).

88. See Complaint for Declaratory and Injunctive Relief, at 1–2, 11–14, *Greater New Orleans Fair Hous. Action Ctr. v. U.S. Dept. of Hous. & Urban Dev.*, 723 F. Supp. 2d 1 (D.D.C. 2010) (No. 08-1938), 2008 WL 5242538; see also *Greater New Orleans Fair Hous. Action Ctr. v. U.S. Dep’t of Hous. & Urban Dev.*, 639 F.3d 1078, 1080–83 (D.C. Cir. 2011) (considering the ways in which the Road Home Program may have had a disparate impact on African-American homeowners); Notice of Dismissal, *Greater New Orleans Fair Hous. Action Ctr. v. U.S. Dept. of Hous. & Urban Dev.*, No. 08-1938 (D.D.C. July 8, 2011) (voluntarily dismissing the case as a result of a settlement agreement granting relief to the affected homeowners); *HUD and Louisiana Announce Settlement Agreement to End Legal Challenge to Road Home Program*, U.S. DEP’T HOUS. & URB. DEV. (July 6, 2011), http://portal.hud.gov/hudportal/HUD?src=/press/press_releases_media_advisories/2011/HUDNo.11-138 [hereinafter *HUD and Louisiana Announce*] (describing the final settlement between HUD, Louisiana, and some of the affected homeowners). Louisiana initially designated \$11 billion of block grant funds for the Road Home Program. Complaint for Declaratory and Injunctive Relief, *supra*, at 9. The Louisiana Recovery Authority (LRA), in consultation with HUD, developed the program, and the LRA, though private contractors, administered it. See Finger, *Stranded*, *supra* note 3, at 63–68. The Road Home Program was the largest housing recovery program in the United States to date. Hannah Adams, *Federal Judge Rules that Road Home Program is Likely Discriminatory; New Orleans City Council Adopts Resolution Urging State to Take Appropriate Action*, GREATER NEW ORLEANS FAIR HOUSING ACTION CTR. (Aug. 16, 2010), <http://www.gnofairhousing.org/2010/08/16/federal-judge-rules-that-road-home-program-is-likely-discriminatory-new-orleans-city-council-adopts-resolution-urging-state-to-take-appropriate-action/>.

Grant awards are based on the lower of two values: the pre-storm value of the home, or the cost of damage. Home values in most predominantly African-American neighborhoods are lower than the values of similar homes in white neighborhoods. As a result, the grants for African-American homeowners are more likely to be based upon the pre-storm value of their homes, leaving them without enough money to rebuild. In contrast, white homeowners are more likely to receive grants based on the actual cost of repairs.⁸⁹

In 2011, the case was settled.⁹⁰ The government agencies agreed to the following terms: (1) all eligible low- and moderate-income homeowners would receive supplemental grant awards totaling \$473 million based upon the estimated cost of damage to their homes, rather than the original grants based merely upon the much lower pre-storm market value of their homes;⁹¹ (2) supplemental rebuilding grants, at an estimated value of over \$60 million, would be paid to several thousand homeowners whose initial grant awards were based on the pre-storm market value of their homes and who were unable to rebuild their homes;⁹² and (3) thousands of homeowners whose grants were based on the pre-storm value would be given additional time to rebuild their homes without the fear of penalty or foreclosure by the State of Louisiana.⁹³

Amidst a public outcry regarding the slow pace of the Road Home Program, errors in the program's award of grants, and broken appeal system once an appeal process was eventually instituted,⁹⁴ several other lawsuits were filed. One lawsuit addressed the program's slow pace, requesting that a judge appoint a special master to oversee the program and order

89. *Fact Sheet*, GREATER NEW ORLEANS FAIR HOUSING ACTION CTR. (Nov. 12, 2008), http://www.gnofairhousing.org/wp-content/uploads/2012/02/11-12-08_RoadHomeLawsuitFactsheet.pdf; *see also* Complaint for Declaratory and Injunctive Relief, *supra* note 88, at 10–14 (describing the program rules and their effect on both the class and individual plaintiffs).

90. *See HUD and Louisiana Announce*, *supra* note 88; Notice of Dismissal, *supra* note 88 (voluntarily dismissing the case as a result of a settlement agreement).

91. *See Settlement Agreement*, U.S. DEP'T HOUS. & URB. DEV. 1–2, <http://portal.hud.gov/hudportal/documents/huddoc?id=RoadHomeSettlement.pdf> (last visited Oct. 26, 2015). The majority of these awards had already been paid by 2011 as a result of an earlier settlement agreement in 2009.

92. *See Settlement Agreement*, *supra* note 91, at 2; *HUD and Louisiana Announce*, *supra* note 88.

93. *See id.* at 2; *HUD and Louisiana Announce*, *supra* note 88.

94. On the problems with Road Home, *see* Finger, *Stranded*, *supra* note 3.

implementation of twenty-one measures to help homeowners access funds in what had proved to be an inordinately slow process.⁹⁵ Another sought to void the attorney fee recovery provision that Road Home grant recipients were required to sign as a condition of receiving the grant and which had, according to the suit, stifled litigation over grant disputes.⁹⁶ A third suit contested the practice of drive-by inspections of damaged property in order to assess damage.⁹⁷

The post-disaster period also saw significant civil rights litigation challenging discriminatory policies that thwarted housing rights at a time when vulnerable people needed broader house rights and not fewer opportunities. *Greater New Orleans Fair Housing Action Center v. St. Bernard Parish*⁹⁸ and *United States v. St. Bernard Parish*⁹⁹ forced St. Bernard Parish, located on the eastern outskirts of New Orleans, to account for systemic race discrimination in violation of the Fair Housing Act. The first lawsuit alleged that the permissive-use-permit process adopted by the parish in 2007 was racially discriminatory.¹⁰⁰ The suit

95. Memorandum in Support of Rule to Show Cause Why Preliminary Injunction Should Not be Issued and Motion to Appoint Special Master at 8–11, *Massey v. ICF Emergency Mgmt. Servs., LLC*, No. 556097 (La. 19th Jud. Dist. Ct. June 13, 2007); *see supra* note 37.

96. Class Complaint for Declaratory and Injunctive Relief, *Groby v. Davis*, 575 F. Supp. 2d 762 (E.D. La. 2008) (No. 08-1524), 2008 WL 2062757; *see supra* note 38.

97. Plaintiffs' Original Complaint Declaratory, Injunctive Relief, Specific Performance and Damages at 4, *Stroebel v. Rainwater*, 742 F. Supp. 2d 870 (E.D. La. 2010) (No. 10-691); *see supra* note 36.

98. Complaint, *Greater New Orleans Fair Hous. Action Ctr. v. St. Bernard Parish*, No. 12-322 (E.D. La. Jan. 31, 2012); *see also* *NOLA Capital Grp. v. St. Bernard Parish*, No. 12-325 (E.D. La. Jan. 31, 2012) (challenging as racially discriminatory an ordinance requiring prospective landlords to obtain a “permissive use permit”).

99. Complaint, *United States v. St. Bernard Parish*, No. 12-321, (E.D. La. Jan. 31, 2012); *see supra* notes 33–35 (discussing consolidation).

100. Complaint, *supra* note 98, at 12–26. That case was brought after an earlier 2006 challenge to a St. Bernard Parish ordinance that restricted the rental of single-family residences to those related by blood to the owner of the property. Complaint for Injunctive Relief, Declaratory Judgment, and Remedial Relief, *Greater New Orleans Fair Hous. Action Ctr. v. St. Bernard Parish*, 648 F. Supp. 2d 805 (E.D. La. 2009) (No. 06-7185). At the time, the parish was “overwhelmingly Caucasian.” *Greater New Orleans Fair Hous. Action Ctr. v. St. Bernard Parish*, 641 F. Supp. 2d 563, 569 (E.D. La. 2009). While the parish entered into a consent decree to resolve the lawsuit, both the parish and the parish council were eventually held in contempt of court numerous times for violating that 2008 Consent Order, including enacting two multi-family construction moratoria in violation of the Fair Housing Act. *Id.* at 566–78 (enjoining enforcement of the moratoria); *Fair Hous. Action Ctr.*, 648 F. Supp. 2d at 821 (holding the parish in contempt).

brought by the U.S. government alleged that the rental practices of the parish over a seven-year period were also racially discriminatory.¹⁰¹ Both lawsuits settled. GNOFHAC's settlement with the parish had an estimated value of \$2.5 million, while settlement of the federal government's suit forced fair housing training, establishment of a fair housing office, engagement in affirmative marketing to both developers and renters, and creation of a rental land grant program.¹⁰²

As discriminatory spending and policies were being challenged, people continued to make demands for post-disaster housing.

C. DEMAND FOR CONTINUED DISASTER HOUSING ASSISTANCE

Litigation against FEMA demonstrated the agency's inability to effectively communicate with those who received assistance. One common result of communication failures was the premature and wrongful termination from disaster housing assistance programs.¹⁰³ FEMA's own internal audits eventually confirmed a wide range of significant problems with the post-Katrina housing response.¹⁰⁴

The 2006 *ACORN v. FEMA* class action case argued that FEMA's failure to provide adequate notice before terminating individuals who had been provided with short-term housing was a flawed procedure.¹⁰⁵ Because FEMA did not provide adequate individualized explanations of the reasons evacuees were ineligible for long-term housing, evacuees could not submit meaningful appeals to contest the agency's decisions.¹⁰⁶ The district court enjoined FEMA from terminating households' short-

101. Complaint, *supra* note 98, at 3–11.

102. *St. Bernard Parish, Louisiana Agrees to \$2.5 Million Settlement to Resolve Housing Discrimination Lawsuits*, U.S. DEP'T JUST. (May 10, 2013), <http://www.justice.gov/opa/pr/st-bernard-parish-louisiana-agrees-25-million-settle-ntto-resolve-housing-discrimination>; Theberge, *supra* note 35.

103. See, e.g., CHARLIE MARTEL, S. PRT. 111-7, FAR FROM HOME: DEFICIENCIES IN FEDERAL DISASTER HOUSING ASSISTANCE AFTER HURRICANE KATRINA AND RITA AND RECOMMENDATIONS FOR IMPROVEMENT 104–05 (2009), <http://www.gpo.gov/fdsys/pkg/CPRT-111SPRT47251/pdf/CPRT-111SPRT47251.pdf>

104. See generally *id.*

105. Complaint for Declaratory and Injunctive Relief at 5–7, 11, *Ass'n of Cmty. Orgs. for Reform Now, Inc. (ACORN) v. Fed. Emergency Mgmt. Agency*, 463 F. Supp. 2d 26 (D.D.C. 2006) (No. 06-1521), 2006 WL 2558747; see *supra* note 39.

106. See *id.* at 6–11.

term housing benefits.¹⁰⁷ The agency was ordered to provide more detailed explanations for the denials of eligibility of long-term housing along with instructions on how those ineligibility determinations could be cured or appealed.¹⁰⁸ Finally, FEMA was also ordered to restore short-term housing benefits to evacuees while those improved notices were forthcoming and pay for the short-term benefits evacuees would have received during the time that the preliminary injunction motion was pending.¹⁰⁹

The 2008 *Ridgely v. FEMA* class action case again raised claims regarding the agency's notice deficiencies.¹¹⁰ The *Ridgely* complaint alleged that FEMA: (1) denied applications for continued rent assistance through notices that contained confusing codes without understandable explanations; (2) operated an unresponsive system with the botched implementation precluding effective challenges to FEMA's decision making prior to the loss of FEMA assistance; and (3) failed to publish eligibility standards.¹¹¹ The district court enjoined FEMA from terminating or discontinuing assistance without providing advance written notice of the reasons for the discontinuance and without providing a written decision on any appeal.¹¹² The court also required the agency to provide recipients with written notice that assistance would be reinstated upon request until the agency provided adequate written notice of reasons for termination, an opportunity for a hearing, and a written appeal decision.¹¹³ After the Fifth Circuit overturned the injunction and remanded the case,¹¹⁴ the parties reached a \$2.65

107. *Ass'n of Cmty. Orgs. for Reform Now, Inc. v. Fed. Emergency Mgmt. Agency*, 463 F. Supp. 2d 26, 33–37 (D.D.C. 2006), *stayed in part*, No. 06-5403, 2006 WL 3847841 (D.C. Cir. Dec. 22, 2006) (staying portions of district court order requiring continued and retroactive payments), *and dismissed as moot*, No. 06-5403 (D.C. Cir. Apr. 30, 2007).

108. *Id.* at 37.

109. *Id.*

110. Complaint at 17–19, *Ridgely v. Fed. Emergency Mgmt. Agency*, No. 07-2146, (E.D. La. April 17, 2007), 2007 WL 4599268; *see supra* note 40.

111. Complaint, *supra* note 110, at 12–22.

112. *Ridgely v. Fed. Emergency Mgmt. Agency*, No. 07-2146, 2007 WL 1728724, at *4, *7–8 (E.D. La. June 13, 2007), *vacated*, 512 F.3d 727 (5th Cir. 2008). The Fifth Circuit vacated the district court's opinion, finding that whether FEMA created a property interest in continued rent assistance is a fact-intensive question that could not be decided for the first time on appeal on the basis of the limiting factual record developed by the district court. *Ridgely v. Fed. Emergency Mgmt. Agency*, 512 F.3d 727, 740 (5th Cir. 2008).

113. *Ridgely*, 2007 WL 1728724, at *4, *7–8.

114. *Ridgely*, 512 F.3d 727.

million settlement on behalf for the impacted class members.¹¹⁵

The 2008 multi-plaintiff suit, *Cummins v. Paulison*, once again raised claims about improper termination of FEMA benefits when individuals received notices of an arbitrary cut off date to benefits.¹¹⁶ In the summer of 2007, the President determined that disaster-housing assistance would be transitioned from administration under FEMA to the Department of Housing and Urban Affairs (HUD) as part of a new program to address continuing housing needs under the Disaster Housing Assistance Program (DHAP).¹¹⁷ Around that same time, FEMA, in deciding which households were eligible for DHAP, issued letters informing plaintiffs (and likely many others) that they were “no longer eligible for rental assistance because the Agency concluded that each plaintiff had not been ‘receiving [such] assistance as of February 28, 2007.’”¹¹⁸ The named plaintiffs voluntarily dismissed the suit after a settlement reinstated housing benefits.¹¹⁹ Because the case was not a class action suit, it is unknown how many households lost benefits due to this notice error when the program was transitioned to HUD.

Finally, it was not just the procedural aspects of providing post-disaster housing and grant assistance that were plagued by

115. *Ridgley v. Fed. Emergency Mgmt. Agency*, No. 07-2146, 2010 WL 5140833, at *3 (E.D. La. Dec. 13, 2010). In a similar case, victims of Hurricane Dolly argued that vague and undisclosed FEMA regulations arbitrarily deprived low-income homeowners in the Rio Grande valley of access to rebuilding funds. Complaint for Injunctive Relief, *La Union del Pueblo Entero, Inc. v. Fed. Emergency Mgmt. Agency*, No. B-08-487 (S.D. Tex. May 13, 2009), 2008 WL 5242607. Although the plaintiffs won a preliminary injunction ordering FEMA to “issue Rules and Regulations that outline definite and ascertainable criteria, standards, and procedures for determining eligibility for relief assistance,” *La Union del Pueblo Entero v. Fed. Emergency Mgmt. Agency*, No. B-08-487, 2009 WL 1346030, at *10 (S.D. Tex. May 13, 2009), the Fifth Circuit, as it had in *Ridgley*, vacated the injunction, *La Union Del Pueblo Entero v. Fed. Emergency Mgmt. Agency*, 608 F.3d 217 (5th Cir. 2010). On remand, the district court granted partial summary judgment for the plaintiffs, finding that FEMA had used an unpublished definition of “deferred maintenance” in violation of the notice-and-comment requirements of the APA. *La Union del Pueblo Entero v. Fed. Emergency Mgmt. Agency*, No. 08-CV-487, 2015 WL 6605023, at *20 (S.D. Tex. Sept. 30, 2015).

116. Complaint for Declaratory and Injunctive Relief at 2, 10–13, *Cummins v. Paulson*, No. 08-1196 (D.D.C. July 14, 2008); *see supra* note 41.

117. Notice, 72 Fed. Reg. 47060 (Aug. 22, 2007).

118. Complaint for Declaratory and Injunctive Relief, *supra* note 116, at 2 (quoting letters Plaintiffs received from FEMA).

119. Notice of Voluntary Dismissal with Prejudice Pursuant to Rule 41(a)(1)(i) of the Federal Rules of Civil Procedure, *Cummins v. Paulison*, No. 08-1196 (D.D.C. Feb. 20, 2009).

troubling practices. Perhaps the best-publicized case of the problems encountered with FEMA is the *In re FEMA Trailer Formaldehyde Products Liability* litigation.¹²⁰ This was a class action lawsuit against manufacturers of the travel trailers and mobile homes used as FEMA emergency housing.¹²¹ While FEMA was ultimately dismissed from the case¹²² and a settlement was reached with the manufacturers,¹²³ the dangerously high levels of formaldehyde documented in the emergency housing FEMA provided¹²⁴ demonstrate the vulnerability of disaster survivors struggling to access post-disaster shelter.

FEMA's inability to meet accessibility needs was an issue as well. In *Brou v. FEMA*, disabled evacuees challenged the agency's provision of temporary housing that lacked accessibility features.¹²⁵ In response, FEMA agreed to adhere to a timeline for providing trailers with accessibility modifications, and to ensure that at least five percent of trailers located inside group trailer sites were accessible.¹²⁶

120. See, e.g., *In re FEMA Trailer Formaldehyde Products Liab. Litig.*, No. MDL 07-1873, 2009 WL 2599195, at *1 (E.D. La. Aug. 21, 2009), *aff'd*, 646 F.3d 185 (5th Cir. 2011), *abrogated by* 135 S. Ct. 1625 (2015); Olympia Duhart, *Improving the Odds of Government Accountability in the Disaster-Prone Era: Using the 9/11 Fund Factors to Remedy the Problem of Toxic Katrina Trailers*, 24 J. LAND USE & ENVTL. L. 253, 260–68 (2009) (describing the effects of living in the trailers and the early stages of the litigation); see *supra* note 42.

121. *In re FEMA Trailer*, 2009 WL 2599195, at *1.

122. See *In re FEMA Trailer Formaldehyde Products Liab. Litig.*, 646 F.3d 185 (5th Cir. 2011) (affirming dismissal on statute of limitations grounds), *and* 668 F.3d 281 (5th Cir. 2012) (affirming dismissal of claims made by Alabama and Mississippi plaintiffs), *and* 713 F.3d 807 (5th Cir. 2013) (per curiam) (affirming dismissal of claims made by Louisiana plaintiffs).

123. *In re FEMA Trailer Formaldehyde Products Liability Litigation*, MDL No. 2:07-MD-1873, 2012 WL 4513344 (E.D. La. Sept. 27, 2012) (approving the settlement agreement); see also Rita Ann Cicero, *Settlement Approved in 'Toxic Trailer' Cases*, THOMSON REUTERS: KNOWLEDGE EFFECT (Oct. 15, 2012), <http://blog.thomsonreuters.com/index.php/settlement-approved-in-toxic-trailer-cases/> (describing the details of the settlement with the trailer manufacturers).

124. See CTRS. FOR DISEASE CONTROL & PREVENTION, FINAL REPORT ON FORMALDEHYDE LEVELS IN FEMA-SUPPLIED TRAVEL TRAILERS, PARK MODELS, AND MODEL HOMES 13–14 (2008), <http://www.cdc.gov/nceh/ehhe/trailerstudy/pdfs/femafinalreport.pdf> (concluding that “[t]he average level of formaldehyde in all trailers was . . . higher than U.S. background levels, and occupant health could be affected at the levels recorded in many trailers”).

125. Complaint at 2–3, 12, 15–25, *Brou v. Fed. Emergency Mgmt. Agency*, No. 06-0838 (E.D. La. Feb. 17, 2006); see *supra* note 43.

126. Settlement Agreement at 1–15, *Brou v. Fed. Emergency Mgmt. Agency*, No. 06-0838 (E.D. La. Aug. 16, 2006).

A sad postscript is the government's recoupment of disaster funding. Issues of grant recoupment—the government's demand that post-disaster grant funding be returned—became a problematic and persistent theme in the latter part of the post-disaster decade.

With the Road Home Program, homeowners became vulnerable to the state's demand for return of grant funds starting in 2013 when the state notified approximately 50,000 grant recipients that funds must be returned due to what the state deemed to be non-compliance with the program's terms.¹²⁷ Homeowners subject to recoupment were caught in a mix of changing rules, grant delays, and uncertainty on many aspects of fund use when the collection efforts began.¹²⁸

With FEMA, the 2008 *Ridgely* case surfaced the problems with FEMA's system of recoupment. In the summer of 2011, just half a year after the *Ridgely* case had settled, FEMA sent out over 80,000 new recoupment notices to people who had allegedly received too much housing assistance from the agency.¹²⁹ With advocacy and attention to the issue, toward the end of 2011, Congress enacted the Disaster Assistance Recoupment Fairness Act (DARFA), under which grant recipients who were subject to recoupment could request debt waiver.¹³⁰ Approximately 20,000 of just the initial batch of waiver notice letters came back to the agency as undeliverable.¹³¹ Given that FEMA gave recipients only a sixty-day window within which to respond, many thousands of low-income people were never able to take advantage of the waiver program.¹³² Thus, FEMA recoupment cases are part of the seemingly never-ending and unresolved legacy of the hurricanes; the Law Clinic still receives phone calls with questions about these matters.

127. Robert McClendon, *32,000 Homeowners Remain in Road Home Limbo*, NOLA.COM/TIMES-PICAYUNE (July 16, 2014, 11:15 PM, updated July 17, 2014, 12:04 PM), http://www.nola.com/politics/index.ssf/2014/07/32000_homeowners_remain_in_road_home.html; see David Hammer, *Letters Demand Homeowners Pay Back Thousands in Road Home Funds*, WWLTV.COM (July 23, 2013, 8:41 PM), <http://www.wwltv.com/story/news/local/investigations/david-hammer/2014/09/04/14600524/>.

128. See McClendon, *supra* note 127.

129. Davida Finger, *FEMA's Post-disaster Grant Recoupment: Hurricane Survivors Still Struggling Seven Years Later*, CLEARINGHOUSE REV., July/Aug. 2012, at 175, 175 [hereinafter Finger, *Recoupment*].

130. Disaster Assistance Recoupment Fairness Act of 2011, Pub. L. No. 112-74, § 565, 125 Stat 786, 982.

131. Finger, *Recoupment*, *supra* note 129, at 178.

132. *Id.* at 177–78.

D. DEMAND FOR PRESERVATION OF PROPERTY

Demolition of existing structures, including those that were completely rebuilt or in the process of being rebuilt, was a prevalent post-disaster theme.¹³³ This was the case for both private and public housing.

First, the demolition of *private* homes, as those homes were being rebuilt or were slated for rebuilding, was incredibly burdensome.¹³⁴ Just months after the hurricanes, with plans about redevelopment still abundantly unclear, the City of New Orleans's efforts to bulldoze homes without meaningful notice to owners presented an extraordinarily difficult situation.¹³⁵ When the city began its program of home demolition, indicating its intention to do so with a red sticker affixed to the home, many property owners were still displaced.¹³⁶ In *Kirk v. City of New Orleans*, the plaintiffs won a major victory when the court ordered that the city must provide notice to homeowners before their homes could be destroyed through demolition.¹³⁷ Following *Kirk*, two cases, federal and state respectively, continued the struggle against demolition of private homes while rebuilding efforts were underway: *Joshua v. City of New Orleans*,¹³⁸ and *Voight v. City of New Orleans*,¹³⁹ both of which eventually reached monetary settlements.¹⁴⁰

133. See generally Davida Finger, *Post-Hurricane Housing Demolition in the City of New Orleans*, 53 LOY. L. REV. 891 (2007) [hereinafter Finger, *Demolition*]; Davida Finger, *Public Housing in New Orleans Post Katrina: The Struggle for Housing as a Human Right*, 38 REV. BLACK POL. ECON. 327 (2011); John A. Lovett, *Tragedy or Triumph in Post-Katrina New Orleans? Reflections on Possession, Dispossession, Demographic Change, and Affordable Housing*, 40 FORDHAM URB. L.J. 22 (2013); Quigley & Godchaux, *supra* note 45.

134. See generally Finger, *Demolition*, *supra* note 133.

135. *Id.* at 892–94.

136. See Brian Dakss, *Flap Over Razing New Orleans Homes*, CBS NEWS (Dec. 24, 2005, 10:26 PM), <http://www.cbsnews.com/news/flap-over-razing-new-orleans-homes/>.

137. *Kirk v. City of New Orleans*, No. 06-0024 (E.D. La. Jan. 13, 2006) (approving a consent decree requiring notice by mail, publication, and website at least thirty days before a scheduled demolition); see *supra* note 47.

138. Original Class Action Complaint, Petition for Temporary Restraining Order and Preliminary and Permanent Injunction and Declaratory Relief, and for Damages for the Representative Plaintiffs at 2–3, 36–37, *Joshua v. City of New Orleans*, No. 07-4205 (E.D. La. Aug. 20, 2007); see *supra* note 48.

139. Petition for Damages for Wrongful Destruction of Property, *Voight v. City of New Orleans*, No. 2008-7161 (La. Civ. Dist. Ct. Orleans Parish July 10, 2008); see *supra* note 49.

140. See *Joshua v. City of New Orleans*, No. 07-4205 (E.D. La. May 25, 2011); *Voight v. City of New Orleans*, No. 2008-7161 (La. Civ. Dist. Ct. Orleans Parish Dec. 14, 2014).

Turning next to public housing, *Anderson v Jackson*¹⁴¹ was a class action case brought on behalf of over 5,000 families who wished to return home to public housing in New Orleans and to prevent the government from demolishing 5,000 affordable public housing units. The plaintiffs, pre-hurricane public housing residents, claimed that HUD failed to reopen undamaged homes and to repair the affordable homes that could have been repaired.¹⁴² The court denied class action certification and rejected the challenge; although the suit progressed on issues related to voucher usage, the public housing units at issue were demolished.¹⁴³

Before the demolitions occurred, opponents to the demolition of public housing challenged the procedures used to approve the demolition.¹⁴⁴ Initially, the demolition was slated to happen without a public hearing process.¹⁴⁵ Community organizers, tenant leaders, and public housing residents mobilized a campaign to oppose the demolition of affordable units without the promise of one-for-one replacement.¹⁴⁶

*Allen v. Housing Authority of New Orleans*¹⁴⁷ successfully enjoined the demolition. Then, after the City Council vote in favor of the demolition, another lawsuit, *Morris v. Council of City of New Orleans*¹⁴⁸ challenged the City Council's process and the

141. Class Action Complaint for Declaratory Relief, Injunctive Relief, and Damages at 2, 22–25, *Anderson v. Jackson*, No. 06-3298 (E.D. La. June 27, 2006); see *supra* note 44.

142. Class Action Complaint for Declaratory Relief, Injunctive Relief, and Damages, *supra* note 141, at 2.

143. *Anderson v. Jackson*, No. 06-3298 (Sept. 18, 2007) (granting class certification on issue of provision of vouchers that did not include coverage for utilities), *vacated sub nom. Anderson v. U.S. Dep't of Hous. & Urban Dev.*, 554 F.3d 525 (5th Cir. 2008), *renewed motion for class certification denied sub nom. Anderson v. Donovan*, No. 06-3298, 2011 WL 798118 (E.D. La. Feb. 28, 2011) (denying class certification on remaining claim because plaintiffs failed to show that the named plaintiffs were representative), *and dismissed*, No. 06-3298 (E.D. La. Dec. 13, 2012) (dismissing case following settlement); Jordan Flaherty, *Floodlines: Preserving Public Housing in New Orleans*, RACE, POVERTY, & ENV'T, Fall 2010, at 61, 65, <http://reimagineerpe.org/files/Flaherty.17-2.pdf>.

144. Quigley & Godchaux, *supra* note 45.

145. *Id.*

146. *Id.*

147. *Allen v. Hous. Auth. of New Orleans*, No. 2007-15799 (La. Civ. Dist. Ct. Orleans Parish Dec. 14, 2007) (approving a consent order halting demolition of public housing until the City Council approved); see *supra* note 45.

148. Petition for a Writ of Mandamus and Injunctive and Declaratory Relief Declaring the Demolition Decisions of the New Orleans City Council Meeting of December 20, 2007 Null and Void at 1–3, *Morris v. Council of City of New Orleans*,

public hearing procedures where the approval vote was taken. The city council chambers, where the demolition decision was made, became the site of a tense confrontation between the council and members of the public, many of whom were former public housing residents locked out of the meeting.¹⁴⁹ Ultimately, the challengers lost the legal case, and the demolitions proceeded. While the *Anderson* case failed to preserve the bulk of the public housing units it aimed to protect, it brought increased attention to the issue.¹⁵⁰ Attorney Judy Brown, one of the lead attorneys on the case explained:

[W]e were trying to ensure that the community had a voice. We lost the lawsuit but the community involved impacted the discourse. There were a lot of other things that came out of making sure to get other voices involved in the process and in representing people who hadn't given up. We listened to our clients to what they wanted and were accountable to the people.¹⁵¹

This reflection about community lawyering is an important post-disaster message. Enabling the community to have a role, where it would otherwise not, is a victory unto itself.¹⁵²

IV. CONCLUSION

Through my representation of low-income clients, I have learned about the brokenness of this country's government agencies and the non-profit industry's disaster support networks. Where low income people were deprioritized, it is important to recognize who was able to capitalize and benefit on our community's catastrophe. This idea of "disaster capitalism" or "orchestrated raids on the public sphere in the wake of catastrophic events, combined with the treatment of disasters as

No. 2008-1696 (La. Civ. Dist. Ct. Orleans Parish Feb. 15, 2008) (challenging procedures used by the City Council to approve demolition of public housing projects); *see supra* note 46

149. Quigley & Godchaux, *supra* note 45.

150. *See, e.g.*, Reckdahl, *supra* note 9.

151. Interview with Judith Brown Dianis, Co-Dir., Advancement Project (August 28, 2015).

152. There are many hundreds of articles on the topic of community lawyering. For a curated sample, see Meena Jagannath et al., Bertha Social Justice Institute, *Movement Lawyering Reading Guide*, BILL QUIGLEY: SOC. JUST. ADVOC. (Apr. 3, 2013), <https://billquigley.wordpress.com/2013/08/13/social-justice-lawyering-reading-list/>.

exciting market opportunities,”¹⁵³ is perhaps one of the hardest lessons learned. That some strategically amassed huge profits from the hurricanes, often in ways legitimized by law and enabled by policies, while others lost everything and have been unable to recover during the past decade, is an avoidable tragedy.

Representing our community members through this post-disaster period has been an honor for me; it has also been compelling, challenging, confusing, and heart wrenching. The people I have represented have taught me more than I ever could have imagined about being a human being and a servant lawyer. I remember the first client I represented through the Katrina Clinic, Mr. T. Even after his leg was amputated due to illness, he continued to visit his property and work on his own house, tools in hand as he labored, hobbling through the construction site that was once his family home. The Road Home Program rebuilding funds did not arrive in time for him to see his home rebuilt. I remember him. At the ten-year hurricane anniversary mark, as I review data reports on housing recovery and changed demographics, I know that Mr. T is one of the many people lost forever in this sea of numbers.

My hope is that by reflecting on our experience on the Gulf Coast, by documenting the post-disaster themes discussed here, this writing might in some small way contribute to a different post-disaster story—one that ends with improved outcomes for post-disaster justice.

153. NAOMI KLEIN, *SHOCK DOCTRINE* 6 (2008); *see also* ADAMS, *supra* 82, at 7 (describing Klein’s formulation of “disaster capitalism” as “profit from human tragedy, turning sorrows into opportunities for capital investment”).

V. APPENDIX I

