



GREATER NEW ORLEANS
**FAIR HOUSING
ACTION CENTER**

Testimony of James Perry

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Committee on the Judiciary

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Introduction

Chairman Nadler, Ranking Member Sensenbrenner, and members of the Committee, thank you for the opportunity to testify regarding fair housing and the 5th Anniversary of Hurricane Katrina. My name is James Perry. I serve as Executive Director of the Greater New Orleans Fair Housing Action Center (GNOFHAC). GNOFHAC is a private, non-profit civil rights organization established in 1995 to eradicate housing discrimination in the greater New Orleans area. Through education, investigation, and enforcement activities, GNOFHAC promotes equal opportunity in all housing transactions, including rental, sales, lending, and insurance.

GNOFHAC is dedicated to fighting housing discrimination not only because it is illegal, but also because it is a divisive force that perpetuates poverty, segregation, ignorance, fear, and hatred. I also serve as President of the Louisiana Housing Alliance, a statewide coalition of housing advocates, non-profit housing providers, homeless service providers, advocacy organizations and

local housing coalitions. We work to insure adequate affordable and low-income housing opportunities in Louisiana.

August 29, 2010 will be the fifth anniversary of Hurricane Katrina. Five years ago, America's Gulf Coast was decimated by the Hurricane and hundreds of thousands of residents were displaced. Each day since August 29th, Gulf Coast residents have struggled to rebuild and reclaim their lives. Regretfully, people with disabilities, families with children, low-income families and people of color have been confronted with shocking barriers that have slowed and in some cases, completely thwarted their recovery.

Many of us are familiar with the typical stories of landlords, realtors and lenders engaging in individual acts of discrimination. While these problems certainly persist along America's Gulf Coast, a disconcerting trend has developed. The most egregious cases of discrimination have been perpetrated by government actors entrusted to serve the very communities that they have discriminated against. From Louisiana's HUD approved discriminatory Road Home program to St. Bernard Parish's rental ordinance essentially banning black renters and on to FEMA's disaster resource website featuring discriminatory housing advertisements, government policies and actions have stunted recovery for scores of thousands of Gulf Coast residents.

Road Home Program

In the days and weeks after Hurricane Katrina, it became painfully obvious that the insurance industry was going to fall woefully short of its responsibility to homeowners. As a result, the Road Home program was created to assist Louisiana homeowners affected by Hurricanes Katrina or Rita in rebuilding their homes.¹ Congress allocated more than \$11 billion in Community Development Block Grant funding to the program.² Since the program's inception, nearly 230,000 people have applied for assistance.³ The CDBG program funding required that the Road Home Program not only refrain from discrimination, but go a step further by affirmatively furthering fair housing.

Regrettably, racial disparities in the Road Home program have caused the program to fail thousands of New Orleans African-American homeowners in their efforts to rebuild their homes. Rather than a Road Home, many black homeowners have found a road leading to despair, inequity and discrimination.

The program's failure relates to a fundamental flaw in its design: the United States Department of Housing and Urban Development (HUD) and the Louisiana Recovery Authority (LRA) created a recovery program that links housing assistance to the depressed values of black families' pre-storm segregated housing. Under the terms of the Road Home Program, rebuilding grants are calculated based on the lower of two figures: the pre-storm market value of the home,

¹ <http://www.road2la.org/about-us/default.htm>

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http://news.newamericamedia.org/news/view_article.html?article_id=0b4e1e46b8868c4509e51ca73f380c

b7

³ <http://www.road2la.org/default.htm>

or the cost to repair the storm damage to the home.⁴ Homes in New Orleans' black neighborhoods are generally worth less than homes in white neighborhoods. This is largely due to decades of racial discrimination in the Louisiana housing market that has caused and reinforced segregation in residential housing.

In fact, in 2007, my office was able to locate two homes that were essentially identical. Both homes had 4 bedrooms and 2 baths. Both homes were brick construction and flooded with six feet of water in Hurricane Katrina. The only substantial difference is that the home in the white neighborhood was worth approximately \$150,000 while the home in the black neighborhood was worth approximately \$90,000. The estimated repair cost for each of the homes was more than \$200,000 respectively. The home in the white neighborhood received \$150,000 in assistance while the assistance to the black homeowner was only \$90,000. Amazingly, even though these homeowners had identical homes and identical Katrina damage, the white homeowner received a full \$60,000 more than the black homeowner.

Unfortunately this fact pattern is not unique. We estimate that more than 20,000 black New Orleanians received inequitable grant payments under the flawed and discriminatory Road Home formula. Even the former Executive Director of the LRA, Paul Rainwater, agreed that African-Americans were more likely to get payouts based on depressed home values. He attested so at an August 2009 field hearing of the Subcommittee on Housing and Community Opportunity of the House Committee on Financial Services. The data supports his conclusion. An analysis of Road Home grants from 2008 shows that homeowners in the Lower Ninth Ward,

⁴ Louisiana Recovery Authority, Substantial Changes & Clarifications to Action Plan Amendment No. 1 for FY 2006 CDBG Disaster Recovery Funds 9-10, 17-20, available at <http://www.doa.la.gov/cdbg/dr/plans/Amend1-RoadHomeClarification-Approved.pdf>.

a predominantly black neighborhood, faced shortfalls of over \$75,000 between the available rebuilding resources and the cost of rebuilding each home. At the same time, homeowners in Lakeview—a predominantly white neighborhood—faced shortfalls of only \$44,000 per home.⁵

The bottom-line is that the Road Home program relies on a discriminatory formula that leaves black homeowners with a mere fraction of the funds needed to rebuild their homes. The program, by design, fails New Orleans black homeowners. In 2008, after attempts at negotiating a solution to the discriminatory program failed, the Greater New Orleans Fair Housing Action Center, in partnership with the National Fair Housing Alliance and five named plaintiffs, filed a class action lawsuit against the LRA and HUD over the Road Home Program.⁶ We are represented by the Cohen, Milstein, Sellers and Toll law firm, the NAACP Legal Defense Fund and the Wilmer Hale law firm. The lawsuit alleges that the Road Home Program violates both the Fair Housing Act of 1968 and the Housing and Community Development Act of 1974 (HCDA). The Fair Housing Act requires housing programs to produce equitable results, regardless of their intent.⁷ And both the Fair Housing Act and the HCDA require HUD and the LRA to “affirmatively further fair housing.”⁸ This means much more than simply refraining from active discrimination in housing programs. HUD and the Louisiana Recovery Authority cannot use

⁵ Kalima Rose, Annie Clark, & Dominique Duval-Diop, A Long Way Home: The State of Housing Recovery in Louisiana 2008, at 47, available at <http://www.policylink.info/threeyearslater/>

⁶ Greater New Orleans Fair Hous. Action Ctr. v. HUD, No. 08-cv-01938 (D.D.C. filed Nov. 12, 2008), available at http://www.naacpldf.org/content/pdf/housing_discrimination/road_home_complaint.pdf

⁷ 42 U.S.C. §§ 3604(a), 3605(a).

⁸ 42 U.S.C. §§ 3608(d), 3608(e)(5), 5304(b)(2).

federal redevelopment funds to perpetuate existing inequalities, and they must affirmatively advance fair housing principles.

As a result of the lawsuit, LRA created the Additional Compensation Grant program, which provided more funding to low income homeowners. This helped to reduce inequities in the program. However, we estimate that 10,000 homeowners remain harmed by the discriminatory Road Home formula.

I am not at liberty to discuss our pending litigation in great detail. But, it is appropriate to note that in a recent opinion, United States District Court Judge Henry Kennedy made the following comments:

[HUD and the State of Louisiana] offered no legitimate reason for taking pre-storm home values into account in calculating [...] awards. The Court does not take lightly that some African-American homeowners received lower awards than they would have if their homes were in predominantly white neighborhoods. [I]t is regrettable that this effort to [rebuild the city] appears to have proceeded in a manner that disadvantaged African-American homeowners who wish to repair their homes.

Despite the court's other reservations about the case, Judge Kennedy determined the substantial statistical and anecdotal evidence showed that Plaintiffs would likely be able to prove that HUD and LRA have designed and implemented a racially discriminatory program. The court's ruling demonstrates that HUD's repeated assertions that the program is not discriminatory are wrong. In spite of this, HUD and LRA have refused to remedy the problem on their own.

Confronted with HUD's racially discriminatory actions, I respectfully request that the members of this committee intervene by contacting Secretary Donovan and urging him to come

up with a remedy that eliminates discrimination in the Road Home program. Until and unless this happens, the program will remain a road to nowhere.

Discrimination by municipalities and government agencies that receive CDBG and other federal funding

Consistent with the failures of the Road Home program, other government bodies have engaged in discrimination post-Katrina, in spite of their obligation to not merely refrain from discrimination, but to affirmatively further fair housing.

FEMA Allows Discriminatory Advertisements on Housing Website it Controls

In the Fall of 2005, the Greater New Orleans Fair Housing Action Center uncovered nearly 1,000 discriminatory internet advertisements on several websites established to assist Katrina evacuees. The most egregious advertisements were listed on Katrinahousing.org. The site featured ads with comments like, “not racist, but whites only,” “prefers 2 white females,” “prefer white Catholic family, children welcome,” and “not to sound racist but because we want to make things more understandable for our younger child we would like to house white children.”⁹

One of the sites featuring discriminatory advertisements was Dhronline.com. The site was established by FEMA in partnership with the University of Florida to provide housing assistance to evacuees. When notified about the advertisements, FEMA refused to remove them from the site and argued that it was immune from the Fair Housing Act. In fact, FEMA was likely in full violation of the Act.

Denham Springs Eviction of Residents with Mental Disabilities

In December of 2005, after public meetings where residents made negative racial comments and comments about people with disabilities, The City of Denham Springs, sought to

⁹ <http://www.gnofairhousing.org/news.html>

evict New Orleans evacuees with mental illnesses from a group home established to serve the evacuees.¹⁰ Relying on the federal Fair Housing Act and the Americans with Disabilities Act, the Greater New Orleans Fair Housing Action Center filed suit on behalf of the Options Foundation, Inc. As a result of the lawsuit, Denham Springs was enjoined from evicting the evacuees.¹¹ Denham Springs' action not only violated the federal Fair Housing Act, but also demonstrated a failure to affirmatively further fair housing.

St. Bernard Parish Blood Relative Ordinance

In the Fall of 2006, St. Bernard Parish passed an ordinance making it illegal to rent single-family homes to people not related to the owner.¹² 93% of homeowners in St. Bernard are white.¹³ As a result, few if any minorities were able to rent housing in St. Bernard. The Greater New Orleans Fair Housing Action Center sued the St. Bernard Parish Council to force them to overturn the ordinance.¹⁴ The litigation resulted in the successful reversal of the ordinance. The ordinance was illegal discrimination under the federal Fair Housing Act and certainly failed to affirmatively further fair housing.

Housing Authority of New Orleans Denies Residents

Since 2002, the Housing Authority of New Orleans (HANO) has been operating under HUD receivership. As a result, HUD manages and controls the Housing Authority. In 2006, the Greater New Orleans Fair Housing Action Center filed a complaint against HANO after learning that the few available public housing units in the City located at the redeveloped St. Thomas

¹⁰ <http://www.gnofairhousing.org/news.html>

¹¹ <http://www.gnofairhousing.org/news.html>

¹² <http://www.gnofairhousing.org/news.html>

¹³ <http://www.gnofairhousing.org/news.html>

¹⁴ <http://www.gnofairhousing.org/news.html#rescind>

housing development were actually occupied by the housing authority's employees, rather than returning mostly African-American St. Thomas residents.¹⁵ This was despite a conciliation agreement between the HUD, HANO, and former St. Thomas residents requiring that a preference be given to former residents of the development. In that case, HANO, essentially synonymous with HUD, was found liable for housing discrimination and forced to allow the residents to occupy St. Thomas.¹⁶

St. Bernard Parish Multi-Family Housing Ban

In 2008, St. Bernard Parish, after public meetings where officials and the citizenry vocalised racialized fears about affordable rental housing, passed an ordinance banning the construction of affordable rental housing in the Parish. After failed negotiation attempts, the Greater New Orleans Fair Housing Action Center and Provident Housing (a reputable housing developer) filed suit against the Parish alleging a violation of the federal Fair Housing Act and a violation of the terms of a prior consent decree from the 2006 blood relative ordinance. The Parish fought the suit vigorously and was held in contempt of court four separate times. The Greater New Orleans Fair Housing Action Center was victorious and the Parish was forced to overturn the ordinance and grant a permit to Provident Housing to begin construction of an affordable housing development in the Parish's borders.

Jefferson Parish discriminatory zoning efforts

Jefferson Parish likely engaged in discriminatory zoning efforts when it made it impossible for the Volunteers of America to build a Low Income Housing Tax Credit financed

¹⁵ <http://www.gnofairhousing.org/news.html>

¹⁶ <http://www.gnofairhousing.org/news.html>

apartment complex to replace an elderly living complex destroyed by Katrina. The would-be occupants of the new complex were low-income elderly New Orleanians, most of whom were African-American. After public meetings where residents and elected officials raised racialized concerns about the development's future residents, the Parish passed a resolution expressly requesting that no LIHTC developments be constructed on the Westbank of Jefferson Parish, the proposed Volunteers of America site location. The Parish subsequently engaged in a land-use study at the site of the proposed development, perfectly timed to kill the project. The project is now dead and the low-income elderly, mostly African-American residents, for whom the project was intended, have been left without an affordable housing option. During the same period, the Parish approved and championed a high-end, market rate, multi-family complex for elderly citizens. The actions taken by the Parish certainly demonstrate a failure to affirmatively further fair housing. In fact, they likely constitute illegal discrimination under the federal Fair Housing Act.

Kenner City Multi-family Housing Moratorium

In 2008, Kenner City, located in Jefferson Parish, passed a moratorium on the construction of any multi-family housing in the City.¹⁷ The ordinance prevented any LIHTC construction in the City. Conversation regarding the ordinance came up after residents raised concerns about a storm damaged apartment complex that housed mostly Latinos and families with children. The moratorium on multi-family housing was likely illegal discrimination under the federal Fair Housing Act.

Eastern New Orleans Proposed Multi-family Housing Moratorium

¹⁷ <http://www.gnofairhousing.org/news.html>

In 2007, New Orleans' District E City Council member sought to prohibit the construction or renovation of any multi-family housing with two or more units in her district.¹⁸ The District housed a large portion of the City's affordable rental housing. African-Americans, people with disabilities and families with children comprised a large portion of the people who relied on apartment housing in New Orleans East. After aggressive advocacy by numerous local organizations, the proposed ban was withdrawn prior to being voted on by the Orleans City Council. The proposal, however, demonstrates discriminatory intent by the Council member.

Louisiana Building Code

The State of Louisiana, post-Hurricane Katrina, adopted a new building code but removed all provisions that would have forced developers to build multi-family units in a manner that was accessible for people with physical disabilities. Under the federal Fair Housing Act, all rental housing with four or more units built after March of 1991 must be physically accessible to people with disabilities. Many developers assume that by complying with state and local building codes, they have satisfied the Fair Housing Act requirements. Regretfully, the gutting of safe harbors from Louisiana's building codes led numerous developers to build inaccessible multi-family housing that violates the Fair Housing Act. A 2009 study by the Greater New Orleans Fair Housing Action Center found that every one of the 22 complexes investigated failed to meet the accessibility standards of the Fair Housing Act.¹⁹ While the State's liability is unclear, it is clear that removing fair housing provisions from the State building code is a failure to affirmatively further fair housing.

¹⁸ <http://www.gnofairhousing.org/news.html>

¹⁹ <http://www.gnofairhousing.org/pdfs/AccessDenied2009.pdf>

Conclusion

These examples are a mere sampling of post-Hurricane discrimination by government entities that benefit from CDBG funding. When considered with the previously demonstrated racially discriminatory formula used by the State of Louisiana to determine Road Home homeownership grant amounts, it is clear that CDBG funding is not being used in a manner that affirmatively furthers fair housing. In fact, many entities have been found liable for violating federal fair housing laws.

This is exacerbated by the fact that the state of Louisiana and nearly all municipalities have failed to engage in any fair housing related activities. None of the entities have supported any fair housing related activities, trainings, workshops, events, enforcement or fair housing organizations.

In 30 days, Americans will refocus their attention on America's Gulf Coast by commemorating the fifth anniversary of Hurricane Katrina. What will become painfully clear is that the rebuilding in New Orleans and surrounding Gulf Coast communities remains incomplete. And consistently the failures in rebuilding coalesce around families with children, low-income residents, people with disabilities and people of color. Each of these groups has been systematically failed by government policies and rebuilding programs beset with racial disparities and discriminatory framework.

As Congress considers the future of fair housing in America, I urge members to look at the discriminatory housing failures of local, state and federal government and promulgate legislation that adds new protections to the federal Fair Housing Act and provides real penalties for government bodies that receive federal funding but fail to affirmatively further fair housing.

Recommendations

- Congress should require HUD to recalculate Road Home grants so that funding is distributed in a non-discriminatory manner.
- Congress should require communities that receive federal funding to have building codes that are fair housing safe harbors.
- Congress should limit CDBG funding for communities that resist reasonable efforts to create affordable housing.
- Congress should provide \$50 million of funding to the Fair Housing Initiatives Program at HUD.
- Congress should approve the Housing Fairness Act.
- Congress should better regulate HUD's management of local housing authorities.
- Congress should immediately strengthen the affirmatively further fair housing regulations and laws so that municipalities can be penalized for failing to affirmatively further fair housing.
- Congress should immediately strengthen CDBG requirements so that municipalities found liable for illegal housing discrimination will be forced to forfeit CDBG and other federal funding.
- Congress should strengthen HUD's ability to enforce fair housing related CDBG regulations.
- Congress should require HUD to strengthen its enforcement of CDBG related fair housing laws.
- Congress should require HUD to strengthen its enforcement of fair housing laws against government agencies.
- Congress should require municipalities to engage in activities that further fair housing.

- Congress should require CDBG grantees to fund private fair housing enforcement non-profits.
- Congress should require all staff of all municipalities that will manage CDBG funding to participate in fair housing law trainings.