

G R E A T E R
N E W O R L E A N S



**FAIR
HOUSING
ACTION CENTER**

*Celebrating 10 years
of fighting housing
discrimination*

Draft Congressional Testimony (Housing Subcommittee on Housing and Equal Opportunity): 2-28-06

James Perry, Executive Director
Greater New Orleans Fair Housing Action Center

Introduction

Good afternoon, my name is James Perry, I am executive director of the Greater New Orleans Fair Housing Action Center (FHAC). Chairman Ney, Ranking Member Waters, and members of the Committee, I would like to thank you for inviting me to speak with you today about fair housing issues facing New Orleans.

FHAC is an 11-year-old private, non-profit civil rights organization established to eradicate housing discrimination throughout the greater New Orleans area. FHAC promotes fair competition and equal opportunity in rental, sales, home lending, and provision of housing-insurance. FHAC 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.

FHAC is the only full service fair housing center in the state of Louisiana. This means that we are the only group in the state of Louisiana that does both enforcement and outreach about housing discrimination laws.

Status of fair housing in Louisiana

On January 13th, I was privileged to address this subcommittee in New Orleans, Louisiana. At that hearing I gave an overview of some of the many cases and typical fair housing cases that have been considered by our agency in the wake of Hurricane Katrina. Today I will give a similar overview and discuss our Internet advertising cases in more detail.

Since Hurricanes Katrina and Rita, FHAC has received a record number of calls about discriminatory treatment in housing. Complainants and independent investigation have uncovered the following:

- Some landlords have represented to black home seekers that vacant livable units were unavailable or unlivable while advising white home seekers that the units were available and livable;
- Black home seekers have been charged more rent and higher deposits than their White counterparts;
- Rental agents have failed to return messages to African-American home seekers while returning the calls of their white counterparts;
- Rental agents offered special inducements like lower security deposits to white home seekers, while refusing to offer the same to their black counterparts;

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- People with mobility impairments have complained that there are few accessible housing units available;
- In December, we were forced to file a lawsuit against the City of Denham Springs after the city applied its zoning code in a manner that discriminated against a group home for displaced New Orleanians with mental disabilities. At the public hearing on the issue, neighbors made numerous statements indicating that their resistance to the group home was based upon false stereotypes and misconceptions about people with mental disabilities.
- Additionally, we filed a complaint against the Housing Authority of New Orleans (HANO) after learning that the few available public housing units in the City located at the redeveloped St. Thomas housing project were actually being leased to the housing authority's employees, rather than to returning mostly African-American St. Thomas residents. This is 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.
- A huge issue is the not in my backyard sentiment, or "NIMBYism," espoused by many people in and around New Orleans. One St. Rose resident remarked: "My concern was strangers coming into my neighborhood that I knew nothing about. . . I don't want my neighborhood ruined because theirs is." NIMBYism has prevented FEMA from locating thousands of trailers on sites in and around the city of New Orleans. That is, thousands of displaced New Orleanians can't come home because some people say simply: not in my backyard. Our office is closely monitoring the issue.

These examples alone indicate that housing discrimination is a huge problem in the aftermath of Hurricanes Katrina and Rita. The issue is further pressed by the fact that FHAC is the single organization with the sole goal of assisting members of all protected classes in the entire state of Louisiana. That said, our organization has struggled to meet the need. Our entire staff evacuated because of the hurricane and every single staff member's home was made unlivable by the storm. Additionally, we were not funded by HUD's fair housing initiatives program, a program that has been the base of our funding for most our 11 year existence.

Our survival is due to the tenacity of the remaining 2 people on staff (General Counsel, M. Lucia Blacksher and myself), program and financial support from the National Fair Housing Alliance, program and financial support from the Washington D.C. Equal rights Center, program support from the Lawyer's Committee for Civil Rights, and financial support from Fannie Mae, Freddie Mac and numerous individual donors.

Internet Advertising Cases

While each one of the previously mentioned cases are important, perhaps the most concerning issue we have confronted since the hurricanes is the matter of discriminatory Internet advertising. In early December, I received information from an evacuee concerned about several advertisements she noticed on katrinahousing.org. In a matter of minutes, a print out of the ads was faxed to me. At first glance, I didn't believe them. When I conferred with Lucia Blacksher our staff attorney, she thought surely the ads must be a hoax. We read the ads together in awe:

- "I would love to house a single mom with one child, not racist but white only"
- "Not to sound racist but because we want to make things more understandable for our younger child we would like to house white children"
- "Provider would provide room and board for \$400, prefers 2 White females."
- "Prefer white Catholic family, children welcome;" and
- "Room available to single white mother with child or younger to middle aged white couple."

We immediately sought to determine the authenticity of the advertisements. We logged onto katrinahousing.org and searched for housing in the state of Louisiana. Instantly 5 discriminatory advertisements popped up... “We are [a] white couple and prefer a white family due to the neighborhood we live in.” I spent the better part of that day searching Katrinahousing.org and several other websites, only to find that the advertisements were not the exception, but rather, the norm.

After only cursory research, we found illegal discriminatory housing ads littering five different websites purporting to assist Katrina and Rita evacuees: Katrinahousing.org, Katrinahome.com, Nolahousing.org, Dhronline.com and Relief.welcomewagon.com. I was further disappointed to find that one of the websites publishing discriminatory advertisements, Dhronline.org, is a FEMA sponsored website. As on January 13th, I have submitted to you again, 28 pages of demonstrating the nature and extent of the discriminatory advertisements. You will note that they discriminate against African-Americans, whites, Latinos, Asian-Americans, non-Christians, families with children and other protected groups (see Attached).

On December 23rd, with assistance from the Lawyer’s Committee for Civil Rights and the Relman Law firm, we filed complaints against the five websites using the United States Division of Housing and Urban Development’s administrative complaint process.

While none of the cases have settled, many of the sites of removed the discriminatory advertisements. Some have put forth some mechanism designed to limit or prevent such advertisements.

Our major concern in the cases, however, is that some of the respondent websites have purported that they have no liability for having carried the discriminatory advertisements. This is in spite of clear language from the federal Fair Housing Act of 1968 as amended in 1988, and subsequent case law upholding the Act’s advertising provision. The applicable language states:

It shall be unlawful to make, print, or **publish**, or cause to be made, printed, or **published** any **notice, statement, or advertisement**, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, handicap, familial status, or national origin, or an intention to make any such preference, limitation, or discrimination.

Some respondents have raised the Communications Decency Act (CDA) as a defense to the claim.

In researching, the issue, I have found that it is not unique to discriminatory advertising for websites assisting Hurricane evacuees. Craigslis.com was sued only weeks ago by the Chicago Lawyer’s Committee for publishing housing advertisements that discriminated against families with children. In 2003 The Justice Department negotiated a favorable settlement in a discriminatory advertising case against thesublet.com. The Fair Housing Council of San Fernando Valley and Fair Housing Council of San Diego are currently litigating against roommates.com. Further, there is a significant listing of complaints, which have been filed with HUD. In most of the cases, the website provider has sought to use the CDA as a stamp of approval for running ads that say no Blacks, no Latinos, or no kids etc.

The rise in these cases, likely comes because of the rise of the use of the internet in housing searches by consumers. According to American Home Guides, “the Internet has actually surpassed newspapers in the ability to bring home buyers to sales offices.” In fact, American Home Guides estimates that “75 percent of potential homebuyers first turn to the Internet for housing information.” (http://www.americanhomeguides.com/membership/importance_of_adv.html).

So what exactly is the effect of the CDA? Well it does limit liability of Internet providers that publish *defamatory* or *obscene* speech because of the actions of another. However, the CDA is not meant to affect discriminatory housing advertisements because discriminatory advertising is distinctly different from defamation or obscenity. Never the less, to the extent that the Act has been or might be misinterpreted to bar fair housing claims, it must be made clear that the CDA does not allow Internet providers to publish discriminatory advertisements. I implore members of this committee and congress in general to amend the CDA and state clearly that nothing in the CDA limits the effect of the federal Fair Housing Act or any similar state fair housing law.

Members, if these same advertisements were placed in the Washington Post, New York Times or any newspaper in your respective jurisdictions, there would be no question of liability – legal or otherwise. The clear and unambiguous treatment of such print ads by the law has made discriminatory race and national origin advertising a rarity. Only occasionally, centers like ours must take action regarding ads that discriminate against families with children. But simply because these ads are on the Internet, housing websites think they can say: no blacks, no Latinos, Christians only or no kids. It's wrong and illegal. We need your leadership in bringing clarity to the issue.

I would ask the committee to note that there may be support for amending the CDA in the real estate sales industry. Some states have sought to self-police the issue. The Texas Real Estate Commission, for example, has decided that for their members, Internet advertising and statements will be held to the same or a similar standard as that of print advertising, thus banning discriminatory Internet advertising.

Members, crucial to the rebuilding process in Louisiana and Mississippi is that all evacuees must have proper and equal access to housing. After the Hurricanes, evacuees like me, were failed by our phones, print media and had little access to local radio and television. We exchanged information via Internet. Imagine how many evacuees after having their homes destroyed by one of the Hurricanes and running into numerous frustrations in dealing with local and federal government were failed yet again in their attempts to find basic housing just because of the color of their skin, just because they had a child, just because of their national origin or because of their religion. It is un-American.

Recommendations and Action Items

Members, in response to fair housing issues arising as a result of Hurricane Katrina, problems of housing discrimination generally and the general need for housing on the Gulf Coast, I submit the following recommendations.

- Federal, state and local government officials must strongly and publicly condemn housing discrimination and make fair housing a priority in appropriate program activities.
- Amend the Communications Decency Act to state clearly that it does not limit any claim arising under the federal Fair Housing Act or similar state fair housing statutes.
- Design and facilitate a right of residents to return to their homes and neighborhoods and contribute to the rebuilding process, consistent with the United Nations Guiding Principles on Internal Displacement.
- Facilitate the right to return of New Orleans residents by prohibiting discrimination on the basis of the use of a housing subsidy or voucher. Many families seeking to return may be forced to rely on housing vouchers to be able to afford housing in the private market. Policies that excluded renters with housing subsidies were pervasive in the New Orleans housing market before Katrina and will inhibit the return of residents if allowed to continue.
- As all Gulf Coast cities, counties and parishes rebuild and create housing opportunities, per

the guidelines of the CDBG program, each municipality and state should affirmatively further fair housing by making it a basic component of every program it institutes. The redevelopment of communities should be integrated in terms of race, national origin, and economic class. The municipalities and states should expressly be required to utilize a portion of the CDBG funds for education and enforcement of fair housing laws.

- Transfer the housing related components of the rebuilding process from FEMA and SBA to HUD.
- Local fair housing organizations in Louisiana and Mississippi should receive additional funding from HUD and other entities for their education and enforcement programs.
- All new development receiving federal money should be required to have a mixed-income component.
- HUD and FEMA should be pushed to immediately raise their respective fair market rent amounts to meet the needs of evacuees competing for housing in hurricane-affected areas where housing is most scarce.
- FEMA must make fair housing a component of the relief it is offering. Its trailer parks must not perpetuate residential segregation. Further, it should refrain from supporting websites that engage in illegal advertising. FEMA is not exempt from federal, state or local fair housing laws.
- The Red Cross, United Way, and other charitable organizations must ensure that their programs are administered without regard to race, religion, national origin, etc. These charities are not exempt from federal and local fair housing laws. The housing placement offered must not perpetuate segregation.
- HUD should fund a national enforcement testing project to uncover the nature and extent of housing discrimination against people displaced by the recent hurricanes and people rebuilding in the Gulf Coast region and to identify predatory lending and home repair scams.
- Support federal funding of emergency and long term housing needs consistent with the recommendations of the National Policy and Advocacy Council on Homelessness.
- FEMA should create an anti-displacement policy ensuring that its efforts to create short-term housing do not result in evictions of other residents, resulting in the creation of new homeless populations.
- Support evacuees and advocates in their efforts to require FEMA to make it easier to apply for temporary housing assistance and to provide immediately more transitional.
- Renters should be able to return to those homes and resume their rental payments in accordance with their existing leases.
- Residents without leases, or those who are renewing their leases, should be protected from rental increases that exceed 10 percent of their previous rental amount.
- Make use of existing housing units in the private market before relying on mobile homes.
- Create an inventory of blighted, HUD and government owned properties located in neighborhoods that were not affected by flooding. Considering that non-flooded neighborhoods already have utilities and other infrastructure not yet available in flooded areas, plan and implement incentives for currently blighted properties to be placed in commerce.
- Look at strategies for acquisition of blighted properties to be renovated for workforce housing, affordable rental housing, and homeownership.
- Use the rebuilding effort as a means of creating wealth and building the assets of New Orleans residents through homeownership opportunities, training in the building trades, and small business development.
- The Housing Authority of New Orleans (HANO) should immediately establish the right of every former HANO-assisted public housing or voucher resident to return to New Orleans to a unit that is affordable, and inform every displaced HANO-assisted tenant of this right.

- The physical condition of all public housing units should be determined: habitable, needs minor rehabilitation, needs more substantial rehabilitation, or must be demolished. This information must be made public immediately.
- HANO tenants should be permitted to have temporary guests and to temporarily overcrowd without penalty, especially for those guests without affordable housing who are disabled or seeking work.
- HANO should not demolish any structurally sound buildings in any publicly subsidized developments just for the purpose of facilitating redevelopment until this immediate housing crisis is resolved.
- If units were partially destroyed, allow tenants to decide whether to terminate the lease or to accept a transfer to another HANO property while the unit is being repaired. Make all repairs to public housing units that were only partially destroyed within 90 days.
- Provide Section 8 vouchers to public housing residents whose units were destroyed and assist them in locating alternative temporary housing while their units are being repaired.
- Implement a tracking system to ensure that HANO continues to communicate with public housing and voucher residents about the housing and moving resources available to them both in the short term and after any redevelopment activities are completed. Few residents will be able to take advantage of redevelopment if HANO has no way to contact them. This could include providing a means for HANO residents to ask questions of an ombudsperson, as well as to update their contact information and check their waiting list status, etc.
- Once buildings or developments are identified as uninhabitable, make non-negotiable the participation of former public housing residents in the planning and implementation of any redevelopment plans. Make training and employment of former public housing residents in redevelopment activities a condition of funding and contracting.
- Support the increase of voucher payments up to 150% of fair market rents or higher when necessary to assist lower income households to compete for scarce, more expensive housing. Residents on fixed incomes would have to spend nearly all of their income on rent to pay the difference between their voucher payments and the actual rental costs in the post-Katrina rental environment. Currently residents participating in the Katrina housing voucher program (KDHAP) are reportedly capped at 100% of the fair market rents set prior to Katrina. Even residents using vouchers prior to Katrina were able to request payments of 110% of fair market rents.
- Provide housing counseling assistance for families with vouchers who need help finding affordable housing near jobs, schools, and services.
- Oppose efforts to siphon off existing voucher funds to pay for redevelopment of public housing. Vouchers may be one of the few means to provide housing to public housing residents waiting for public housing units to be redeveloped.¹⁷
- Provide incentives to suburban jurisdictions that accept former New Orleans public housing residents using vouchers. Support the portability of voucher use between parishes.
- Prevent the exodus of landlords from the Section 8 programs by paying fair rental amounts to landlords whose properties are currently habitable.
- Create an inventory of low income tax credit properties, which are unable to deny housing to families on the basis of their use of a housing voucher.
- Assist the right to return of the City's workforce by supporting proper notice with regard to eviction proceedings. Proper notice must consist of a minimum of notice by mail. Tacking notice should be the notice of absolute last resort.
- Extend the mortgage forbearance period, provision of design and technical assistance to homeowners, and provision of financial assistance to homeowners to facilitate their right to

return.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "James H. Perry", with a large, sweeping flourish extending to the right.

James H. Perry
Executive Director

(Enc.)