

JULY 29, 2010

HOUSE OF REPRESENTATIVES COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON THE CONSTITUTION,
CIVIL RIGHTS AND CIVIL LIBERTIES

“PROTECTING THE AMERICAN DREAM: ADVANCING AND IMPROVING
THE FAIR HOUSING ACT ON THE 5 YEAR ANNIVERSARY OF
HURRICANE KATRINA”

TESTIMONY OF
REILLY MORSE, CO-DIRECTOR OF HOUSING POLICY
MISSISSIPPI CENTER FOR JUSTICE

Good afternoon, I am Reilly Morse, co-director of housing policy in the Gulf Coast Office of the Mississippi Center for Justice. I thank Chairman Nadler, Ranking Member Sensenbrenner, and the members of the subcommittee for holding this hearing to examine the Fair Housing Act in the context of Hurricane Katrina.

The Mississippi Center for Justice (“MCJ”) is a nonpartisan, nonprofit, civil rights legal organization that was founded in 2003. It was formed to provide a home-grown means to advance racial and economic justice in Mississippi. In 2005, MCJ became the Deep South affiliate of the Lawyers’ Committee for Civil Rights Under Law (“Lawyer’s Committee”), a national civil rights legal organization formed in 1963 to remedy racial discrimination. Shortly after Hurricane Katrina, MCJ opened a Katrina Recovery office in Biloxi, where we joined forces with the Lawyers’ Committee and attorneys and law students from across the nation to provide free legal representation, impact litigation, and policy advocacy for storm victims, particularly low income and minority populations.¹

I am a third-generation Gulfport, Mississippi lawyer. After Katrina destroyed my office, and displaced innumerable relatives and friends, I joined MCJ to provide legal assistance for others to move towards recovery. Over the past five years, our organization, in collaboration with the Fair Housing Project of the Lawyers Committee, led by Joe Rich, has conducted scores of free legal clinics with hundreds of pro bono attorneys and law students to provide assistance to thousands of displaced residents in the aftermath of Hurricane Katrina. In addition, MCJ served as local counsel in federal class action litigation, including *Brou v. FEMA*, which resulted in a consent judgment that increased access to temporary housing such as FEMA trailers for persons with disabilities.

¹ MCJ’s early experience in partnership with the Lawyers’ Committee for Civil Rights Under Law, is described in Jonathan P. Hooks, Trisha B. Miller, *The Continuing Storm: How Disaster Recovery Excludes Those Most in Need*, 43 California Western Law Review 21 (Fall 2006).

Over the past two years I have testified five times before Congress on housing issues relating to the U. S. Department of Housing and Urban Development and the Federal Emergency Management Agency. I also have testified before the National Commission on Fair Housing and Equal Opportunity in the summer of 2008 in preparation for its major report in December 2008 entitled, "*The Future of Fair Housing.*" Barbara Arnwine, Executive Director of the Lawyers' Committee and Dean Okianer Christian Dark have already provided testimony on this important study and its recommendations. I also authored an environmental justice report and several Katrina housing progress reports, including one released today, "Hurricane Katrina: How Will Mississippi Turn the Corner?"

BACKGROUND AND CONTEXT

Over 40 years ago, Congress passed Title VIII of the Civil Rights Act, the Fair Housing Act, which now prohibits discrimination in public and private housing markets based upon race, color, national origin, religion, sex, disability or familial status. "The Future of Fair Housing" report, which draws on extensive investigations of the current state of fair housing, concludes that "despite strong legislation, past and ongoing discriminatory practices in the nation's housing and lending markets continue to produce levels of residential segregation that result in significant disparities between minority and non-minority households, in access to good jobs, quality education, homeownership attainment and asset accumulation."

A 2001 report from the Brookings Institute suggested that, while there remain a large number of hyper-segregated metropolitan areas, residential racial segregation in 272 areas has declined over the decade between 1990 and 2000, primarily by the integration of formerly all white census tracts. However, segregation levels rose in 19 metropolitan areas, including the Biloxi - Gulfport area, my home region.

Coastal Mississippi's hurricane devastation unfolded across a landscape that reflects its classic Southern patterns of settlement. A 19th century railway connecting New Orleans to Mobile laid down a racial dividing line. To the south, white beach-front residential areas were established, while black communities arose to the north. The area is served by a federal highway, U.S. Highway 90, built during the Depression with bridges crossing St. Louis Bay and Back Bay of Biloxi. Highway 90 was reinforced against hurricane damage by a concrete seawall (1926-28) and a man-made sand beach, constructed with taxpayer dollars (1951). Segregation laws barring African Americans from using these beaches were overturned in 1968 after a nine-year campaign and litigation led by African American Biloxi physician Dr. Gilbert Mason for whom a portion of Highway 90 now is named.

Hurricane Katrina's tidal surge obliterated nearly all of Hancock County and the predominantly white 26-mile-long ribbon between the beach-front highway and the railroad tracks in Harrison County, including the building that housed my previous law office. The railroad track bed functioned as a levee in the middle part of the county, shielding older African American "back of town" communities from the surge but not the hurricane force winds. East

Biloxi, whose roots in the seafood industry produced an atypical racial and cultural combination, was attacked from two sides, however, as the surge encircled the peninsula from the beach front and the Back Bay of Biloxi. From there, the surge raced westward through a network of bayous, lakes, rivers, and canals where it collided with and overwhelmed hurricane rain-flows draining from African American communities like Forest Heights and Turkey Creek. Over in Jackson County, the city of Pascagoula, home to the Northrop Grumman shipyard, suffered widespread surge and wind damage, but the predominantly African American city of Moss Point, situated on relative high ground away from the shore, experienced heavy wind-storm damage.

“Hurricane Katrina was an equal opportunity destroyer” was a pet phrase used to deflect attention from the influence of racial discrimination upon the disparities in loss and recovery in the Gulf Region. While the winds, rain, and storm surge from Hurricanes Katrina and Rita may have attacked with random and blind fury, they struck a region where for generations whites attacked the housing and economic opportunities of African Americans through open and legally-sanctioned racism. After the passage of the Fair Housing Act, these embedded disparities were reinforced by less acute levels of discrimination in lending, insurance, and municipal services. If Hurricane Katrina was an equal opportunity destroyer, then we must ask ourselves whether our government has been an equal opportunity restorer? Or, to put it another way, has our federal disaster housing recovery effort “affirmatively furthered fair housing?”

In the case of Mississippi, the answer is no.

DISPARITIES IN DISASTER ASSISTANCE PROGRAM DESIGN

Hurricane Katrina “had a particularly devastating impact on low-wealth residents who lacked an economic safety net” but the disaster also “presented a unique opportunity to correct decades of inequitable development,” according to the Mississippi Governor’s Commission report, “Building Back Better Than Before.”² Sharing these concerns, Congress required the states to spend at least 50% of the \$11.5 billion in CDBG disaster recovery funds to benefit primarily persons of low and moderate income (LMI).³ The U. S. Department of Housing and Urban Development (HUD) adopted regulations implementing the LMI requirement.⁴ Yet Mississippi, with the nation’s largest per capita poverty population, was the only state to request and receive waivers from this requirement. Over the three years since the initial disaster aid was awarded, HUD carved \$4 billion out of the \$5.481 billion allocated to Mississippi for uses other

² Governor’s Commission on Recovery, Rebuilding, and Renewal, “After Katrina: Building Back Better Than Ever”, pp. 60-61.

³ Department of Defense Appropriations Act, 2006, Public Law 109-148, December 30, 2005, 119 Stat. 2680, 2780.

⁴ “[T]he aggregate use of CDBG Disaster Recovery funds shall principally benefit low and moderate income families in a manner that insures that at least 50% of the amount is expended for activities that benefit such persons.” U. S. Department of Housing and Urban Development, February 13, 2006, 71 FR at 7671.

than to assist LMI households.⁵ As a result, Mississippi now has turned its back on the opportunity to broadly uplift the housing conditions of its most vulnerable storm victims in favor of other priorities.⁶

Overall, 220,384 housing units received some damage from Hurricane Katrina, of which 101,893 dwellings (owner-occupied or rental) suffered major damage or were destroyed, and another 118,491 suffered lesser damage, according to inspections by FEMA in February, 2006.⁷ In its first application for CDBG funds, Mississippi Development Authority (“MDA”) wrote, “The sheer number of homes damaged or destroyed is one reason **the Governor considers the replacement of housing as a number one priority** in rebuilding the Mississippi Gulf Coast.”⁸ (emphasis added)

Public Law 109-148, the legislation which provided the bulk of Mississippi’s Katrina disaster assistance, prohibits the Secretary of HUD from waiving compliance with requirements relating to fair housing and non-discrimination.⁹ There are widely accepted correlations of lower income to race, sex, familial status and disability, some of which are mentioned in this testimony. By ignoring or underemphasizing the needs of low to moderate income individuals, Mississippi’s overall disaster recovery plan fails to affirmatively further fair housing.

When Mississippi designed its disaster assistance programs, it put insured homeowners with storm surge damage at the front of the line for the most generous grants, up to \$150,000. The criteria discriminated against black storm victims, who more likely than not were renters, or, if homeowners, more likely than not lacked insurance. Over \$1.4 billion in Phase I homeowners grants were paid to insured homeowners,¹⁰ but only \$387 million, or 27 percent, went to low and moderate income households.¹¹ Next in line for less generous grants, up to \$100,000, were surge-damaged lower-income homeowners who received about \$432 million. No funds were available for homeowners in segregated enclaves north of the railroad who received heavy wind damage but no storm surge. Today, nearly five years later, Mississippi Center for Justice has released a

⁵ In December, 2008, HUD rescinded waivers on economic development, infrastructure, and community revitalization programs totaling over \$1.2 billion, based upon the conclusion that the State’s performance on the remaining programs would enable it to meet the overall benefit requirement. 73 Federal Register 75733, December 12, 2008

⁶ “More Housing Woes for Mississippi,” New York Times editorial, September 27, 2007, http://www.nytimes.com/2007/09/27/opinion/27thur2.html?_r=1&ref=opinion&oref=slogin

⁷ Current Housing Unit Damage Estimates, February 12, 2006, FEMA and HUD.

⁸ Mississippi Development Authority Homeowner Assistance Program Partial Action Plan, September 11, 2006, p. 3.

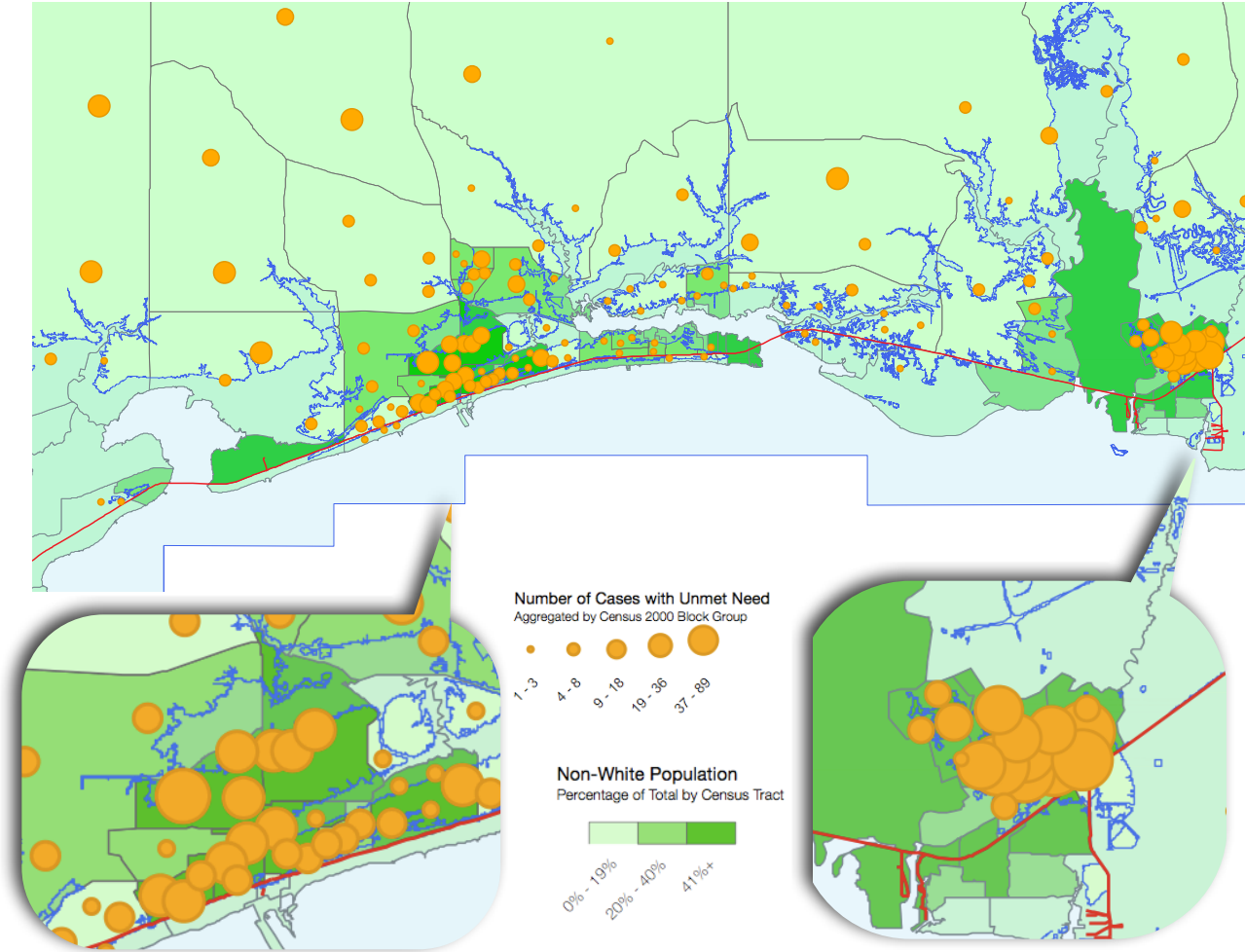
⁹ Department of Defense Appropriations Act, 109 Public Law 148, 119 Stat. at 2780.

¹⁰ Mississippi Federal Disaster Recovery Grant Reporting Summary for Quarter ending March 31, 2010, p. 1.

¹¹ Mississippi Federal Disaster Recovery Grant Reporting for Quarter ending March 31, 2010, p. 17.

report on housing challenges with a map of clusters of unmet need for housing repair in predominantly African American communities in Gulfport and Moss Point.¹²

Figure 1: Clusters of Wind Damaged Households in Non-White Populations



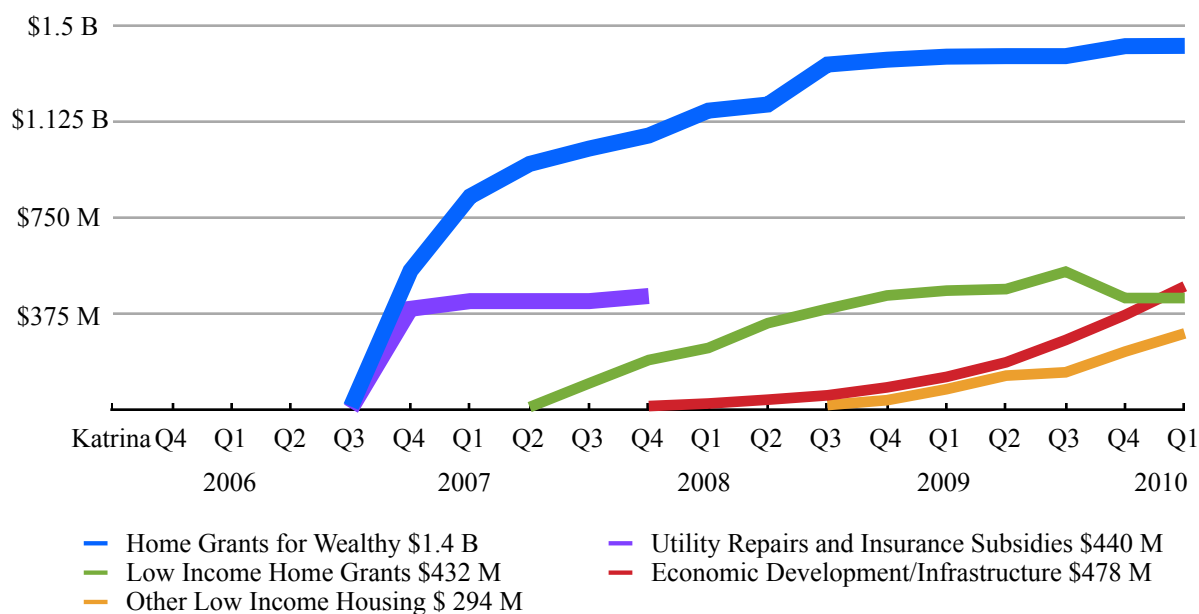
Source: GCCDS Maps derived from HRC data. See MCJ Report, pp. 4, 19.

From this information, it is estimated that, five years after Hurricane Katrina struck, there are twice as many non-white households in state case management programs with unmet repair needs as white households. This disparity exists uniquely in Mississippi which, alone among the Katrina-damaged states, chose to deny housing grant assistance to those with hurricane wind damage.

¹² "Hurricane Katrina: How Will Mississippi Turn the Corner?" Mississippi Center for Justice, July 29, 2010, p. 4; Appendix, Figure 2.

Mississippi's decision to spend less, later, and more slowly on rental housing meant that permanent rental housing solutions for displaced low-income renters, public housing tenants and former occupants of small rental housing were delayed for more than three years, even as close to \$2 billion was spent on homeowners and business interests, including utility repairs and insurance subsidies. See Figure 2.

Figure 2: Disparity and Delay in Spending



Source: Mississippi Disaster Recovery Grant Reports 2006-2010

African Americans in south Mississippi were twice as likely to be renters as whites, according to the 2000 census¹³ and had over twice as high a percentage of persons in poverty as whites.¹⁴ Taken together, lower-income renters, including public housing tenants were significantly more likely to be non-white than white in south Mississippi, and were disproportionately adversely affected by the three-year delays in restoring low-income and subsidized rental housing.

The 2000 Census population for persons with disabilities is 76,650 in the three coastal counties. In addition to being the state with the greatest poverty rate in the nation, Mississippi

¹³ U S Census 2000, H11A, B, Total Population in Occupied Housing Units By Tenure. For whites, the owner/renter ratio is 76% to 23%, while for blacks it is 51% to 49%.

¹⁴ U. S. Census 2000 P 159A, B, Census Summary File SF 3, Poverty Status in 1999 by Age. For whites the percentage in poverty was 10.3 percent, while for African Americans it was 27 percent.

has the largest per capita population of people with disabilities, the majority of whose incomes fall below the 80% area median income (AMI) category. Persons with disabilities tend to have less income because many are on fixed income, but most also have substantial disability-related expenses not borne by the non-disabled population on fixed income.¹⁵ These populations likewise were disproportionately adversely affected by the long delay in restoring low income and subsidized rental housing.

DIVERSION OF HOUSING RESOURCES TO OTHER USES USING INFLATED HOUSING PROGRAM FORECASTS

Two years after Katrina, despite Governor Barbour's assurance that replacement of housing would be the number one priority, Mississippi proposed to shift \$600 million out of its housing assistance program to fund a non-Katrina related expansion of the a state-owned port in Gulfport, Mississippi. Notably, this Port was worth only \$125 million at the time of the storm. It was insured for \$108 million, and had additional funds available from FEMA to cover uninsured losses. After this announcement, public pressure increased for the State to explain how much damage Mississippi's housing had experienced and how much housing would be rebuilt under the existing disaster programs.¹⁶ Before this could be resolved, Mississippi diverted another \$200 million in housing funds to Hancock County economic development and community revitalization.¹⁷

On January 25, 2008, Mississippi received approval from HUD Secretary Alphonso Jackson for the proposed diversion.¹⁸ Secretary Jackson took the unusual step of personally writing Governor Barbour about the approval to explain that he had "little discretion" in the matter, and to voice concerns that "this expansion does indeed divert emergency federal funding from other, more pressing recovery needs, most notably affordable housing."¹⁹

In testimony before the House Financial Services Committee on March 11, 2008, Secretary Jackson explained his position, stating "I don't think that everything has been provided to low and moderate income people that should be provided for housing or infrastructure, ... but

¹⁵ Statistical analysis supplied by Mississippi Coalition for Citizens With Disabilities and Living Independently For Everyone, two Mississippi non-profit disability rights organizations.

¹⁶ Editorial, Biloxi Sun Herald, "We Need Housing Numbers We Can Crunch With Confidence," December 19, 2007, p C-4.

¹⁷ MDA Hancock County Ground Zero Action Plan.

¹⁸ Mike Stuckey, "Feds OK Mississippi's Katrina Grant Diversion," January 25, 2008, <http://today.msnbc.msn.com/id/22805282/>

¹⁹ Letter from HUD Secretary Alphonso Jackson to Mississippi Governor Haley Barbour, January 25, 2008, attached as Exhibit "O."

had I had my druthers, I probably would have said, ‘Sir, I don’t think we should be using this money and I would not approve it, but I didn’t have that kind of authority.’”²⁰

In May 2008, Rep. Maxine Waters chaired an oversight hearing on disaster CDBG spending in the House Financial Services Subcommittee on Housing. At that hearing, Jack Norris, Mississippi Office of Recovery and Renewal, justified the diversion of housing funds on the basis that existing housing programs would produce more housing than the Mississippi coast had before Katrina. He also announced that the state was commissioning a study of housing damage and recovery.²¹ The study, known as the Mississippi Housing Data Project, was carried out jointly by the Compass Group, a Washington, D.C.-based research organization and South Mississippi Planning and Development District.²² The MDA’s 2008 forecasts to Congress for the affordable housing categories shown in Table 1 are more than double those of the MHDP. In other words, Mississippi overstated to Congress by over 15,700, or a factor of 2 how many housing units would be produced in aggregate by the state’s programs.²³

Table 1 : State Inflated Affordable Housing Production

	MDA 2008	MHDP	MHDP-MDA	%
small rental	7,500	4,181	-3,319	179%
LTWF housing	12,850	2,041	-10,809	630%
LIHTC*	5,283	3,775	-1,508	140%
public housing	3,200	3,077	-123	104%
total	28,833	13,074	-15,759	221%

Source: Norris testimony, p. 3; MHDP December 2009, pp. 5, 11, 20, 49. *Note: MHDP’s total of 5,059 LIHTC has been reduced by 1,284 units to eliminate double counting of public housing units partially financed by LIHTC. See MCJ Five Year Report, Appendix, Table 6.

This overstatement has direct adverse consequences for the protected populations still in need of permanent, decent, safe and affordable housing. The lowered housing production means fewer choices for these populations. It makes Mississippi’s ability to deliver on the remaining housing programs all the more critical. Unfortunately, three of the state’s key affordable housing programs are currently more than 2,500 housing units behind what MDHP forecast only six

²⁰ House Financial Services Committee, Oversight Hearing of the Department of Housing and Urban Development, March 11, 2008, examination by Rep. Capuano. http://www.house.gov/apps/list/hearing/financialsvcs_dem/hr031108.shtml

²¹ Testimony of Jack Norris, House Financial Services Subcommittee on Housing and Community Opportunity hearing, May 20, 2008, pp. 3-6, [http://financialservices.house.gov/hearing110/norris_-_ms_\(complete\).pdf](http://financialservices.house.gov/hearing110/norris_-_ms_(complete).pdf) A table with these predictions appears the Appendix to the MCJ Five Year housing report.

²² For the MHDP reports, see: <http://smpdd.com/data-center/mississippi-housing-data-project.html>

²³ See MCJ Five Year Report, pp. 10-11. Table 1.

months ago.²⁴ To meet its 2011 goal, the State's programs must produce over 5,200 more units in the next twelve months, which would be far higher than what the same programs produced in the past 21 months.²⁵

All told, well more than five thousand households continue to have unmet disaster housing needs of one type or another, using conservative estimates.²⁶ A significant portion of these families will not have their housing needs met, regardless of the programs that currently are behind schedule, because of Mississippi's diversion of homeowner assistance grant funds into non-Katrina port expansion. These households want their existing home repaired - they do not need what Mississippi's programs offer: a voucher, a cottage, or a new mortgage. This is particularly true for the clusters of unrepaired homeowners in predominantly African American neighborhoods in Gulfport and Moss Point, and similar communities. To solve this problem, Mississippi needs to redirect funds that were diverted into business development projects (many of which had alternative recovery and financing resources), back into finishing this homeowner population's recovery.

Mississippi Center for Justice and the Lawyers' Committee brought a legal challenge of HUD's decision to authorize the diversion of housing funds to Mississippi's non-Katrina related port expansion in December 2008. In January 2010, the District Court for the District of Columbia dismissed the action on threshold standing grounds, and it has been appealed to the Court of Appeals for the District of Columbia Circuit. In the order, Judge Robertson acknowledged that the Plaintiffs claims about the diversion may have merit as a matter of public policy.

“NIMBY”-ISM AND AFFIRMATIVELY FURTHERING FAIR HOUSING

Mississippi pinned significant hopes for recovery and expansion of the subsidized and public rental housing market upon the ability of developers to construct apartment complexes using low income housing tax credits. In fact the state forecast that over 5,200 tax credit financed rental units would be constructed. As of mid 2010, the actual number was 1,500 below predictions. While some developers who rebuilt on existing locations encountered no zoning or planning opposition, there arose a consistent pattern of opposition to subsidized rental housing in new locations, particularly in majority white areas, from local elected officials and neighborhood residents. In Gulfport, Mississippi, a succession of eight or more subsidized apartment complexes became entangled in controversy beginning in late 2007, and the Mississippi Center for Justice, working with the Lawyers' Committee presented public and private arguments in support of the permitting of these units. While some developers withdrew in face of strong

²⁴ See MCJ Five Year Report, p. 11, Table 2.

²⁵ *Id.* pp. 11-12, Table 3.

²⁶ When one includes closed files and persons who have fallen outside the case management system, the number could be more than 6,000. These estimates are based on interviews with housing resource center representatives, housing advocates, and independent research conducted by MCJ.

opposition, others challenged arbitrary denial of zoning and building permission, including Sandstone and Hillside Terrace. Public education efforts to overcome this NIMBYism, such as the “Warm Welcome Gulf Coast” campaign undertaken by Back Bay Mission, met with very limited success.

Housing activities that produce more racially integrated residential areas, for example, the construction of subsidized housing in areas outside existing segregated residential housing patterns, are one way to fulfill the Fair Housing Act’s requirement to affirmatively further fair housing. The “affirmatively furthering” mandate was one of the non-waivable requirements attached to Mississippi’s disaster CDBG appropriations. Unfortunately, despite Mississippi’s having made available federal disaster block grant funds to help complete tax credit developments, and despite the receipt by many local governments, including the city of Gulfport of disaster block grant down payment grants for homeowners, neither the State nor local governments met the letter or the spirit of the law when it came to permitting new construction of subsidized rentals. Instead, the State disclaimed any authority over local land use decisions, and local governments put up a succession of false claims about rental housing gluts, diminishment of adjacent property values, flooding and traffic problems, and a variety of other pretextual arguments. These problems reached a crisis for a developer working for Mississippi Regional Housing Authority VIII, Realtex, and the housing authority and the City of Gulfport entered into negotiations to enable some of the projects to be permitted after requests for investigation were made to HUD’s Fair Housing unit. In other jurisdictions, such as Waveland and Bay St. Louis, Mississippi Center for Justice challenged moratoria on new multifamily rentals, and persuaded local officials to let these moratoria expire without renewal. On balance, however, too little progress has occurred to desegregate south Mississippi using affordable rental housing.

Across coastal Mississippi, hundreds of households are currently housed in small, strong, modular shotgun houses, known as Mississippi cottages. These cottages were initially intended as a healthier and sturdier alternative form of temporary housing to the FEMA cottage, and were funded under a competitively awarded pilot program administered by FEMA. Local jurisdictions permitted these cottages to be placed on residential lots on a temporary basis. As the time for the cottage program drew to a close, Mississippi Emergency Management Agency (MEMA) decided to offer the cottages to current occupants and to eligible non-occupants on a sliding scale price. Local jurisdictions reacted negatively and enacted a series of exclusionary ordinances with difficult or impossible to meet requirements, intended to force the cottages out of their municipalities. The City of Gulfport, for example, enacted an ordinance that gave absolute veto power over the permanent placement of a cottage to anyone within 160 feet of the applicant. Mississippi Center for Justice obtained records of these objections through public records laws and documented that a number of applicants were vetoed by people more than 160 feet from the applicant’s residence, while others were turned down based upon prejudices against persons of lower-economic status, a common pretext used instead of racial discrimination. MCJ requested that HUD investigate alleged fair housing act violations by several jurisdictions and, as of this writing, foresees a successful conciliation in one city, while others were dismissed on

threshold grounds, including standing. Currently, hundreds of cottages sit idle in staging areas, with MEMA planning auctions of so-called surplus supplies, when the reality is that each of these cottages could serve as a safe and affordable housing option for south Mississippians in need, if local governments would remove discriminatory cottage restrictions.

HUD “STEPS UP” IN TEXAS

While Mississippi and Louisiana housing advocates struggled with the current HUD administration over a series of inherited problems with varying degrees of success, the agency made an important and laudable early intervention in Texas to assure that the Fair Housing Act values were built into the Hurricane Ike recovery plans. Texas Governor Perry submitted a disaster block grant action plan that would have delegated the program design to a council of local and regional governments in such a way as to sharply reduce recovery resources for the areas of greatest housing damage. Housing advocates in Texas raised challenges to the proposal and HUD, perhaps for the first time in its history, rejected outright a state’s disaster block grant housing program.

HUD cited as one area of concern Texas’s reliance upon an out-of-date analysis of impediments to fair housing that did not take into account the impediments spawned by the destruction of public and subsidized housing in coastal Texas communities. In the aftermath of widespread destruction of communities, and displacement and dispersal of populations, federal, state and local governments confront the question of whether to rebuild the pre-disaster pattern of residential housing, which frequently reflect the legacy of *de jure* racial discrimination, or to affirmatively move communities towards greater residential racial integration. HUD’s insistence upon a post-disaster analysis of impediments to fair housing was an important demand for Texas to deeply reassess its position and its obligations to increase housing opportunity for protected classes.

Another area of HUD concern was the risk that Texas’s proposed action plan would stray too far from core disaster recovery functions, including restoration of public and affordable housing and from the requirement to assist persons of low and moderate income. In settlement of an ensuing complaint by housing advocates against Texas under the Fair Housing Act, the State committed in a conciliation agreement to spend at least 55 percent of the funds on housing, and to spend at least 55 percent of the funds to benefit low and moderate income persons.²⁷ These and other vital protections were properly praised in the national media. A New York Times editorial concluded, “Thanks to tough bargaining by Secretary Donovan, hundreds of millions of dollars will be spent as Congress intended and fairness requires: helping to rebuild devastated communities and helping the most vulnerable residents rebuild their lives.”²⁸

²⁷ Texas Low Income Housing Information Service v. State of Texas, Case No. 06-10-0410-8 (Title VIII) -9 (Section 109) Conciliation Agreement, pp. 12-13.

²⁸ See “HUD Steps Up in Texas,” New York Times Editorial, June 13, 2010, <http://www.nytimes.com/2010/06/14/opinion/14mon3.html>

This deeper commitment to take affirmative steps to increase residential racial integration was missing at the early, critical stages of HUD's involvement in Mississippi and Louisiana's recovery from Hurricane Katrina. To pick one example, HUD's earlier approval of Mississippi's excessive requests for waivers of the low-moderate income requirement resulted in fewer block grant dollars being committed to restore critically needed housing for protected residents who are also predominantly of low and moderate income. Another example is Mississippi's failure to track race data on its first, largest, and most generous homeowner assistance program. Mississippi treated the requirement as optional and HUD did not insist that Mississippi do more.²⁹ As a result, HUD and other branches of the federal government lost the opportunity to determine if Mississippi's housing assistance programs were carried out in ways not only that did not discriminate, but also affirmatively advanced the goals of fair housing.

RECOMMENDATIONS

Mississippi Center for Justice joins in the recommendations previously put forward in the testimony of Barbara Arnwine, Executive Director of the Lawyers' Committee for Civil Rights Under Law. These recommendations include:

- endorsement of the interpretation of Section 804(b) claims of post-acquisition discrimination under *Block v. Frischolz and CCCI v. Modesto*;
- increased commitment of HUD to enforcement of Section 808 of the Fair Housing Act, as demonstrated in the *Westchester County* case, and to use the threat to cut off federal funds to coerce uncooperative local jurisdictions into compliance with the Fair Housing Act, as was done in the *St. Bernard Parish* litigation;
- more detailed and substantive guidance to recipients of federal housing assistance on the requirements to affirmatively further fair housing under the Fair Housing Act;
- enactment of an express private right of action and an administrative procedure to authorize private party claims based on Section 3608 against state and local entities for violation of the Fair Housing Act; and
- a systematic examination of the need for an amendment to the Fair Housing Act to prohibit discrimination based upon source of income.

²⁹ See 71 Federal Register 7666, at 7670. *Recordkeeping* "For fair housing and equal opportunity purposes, and as applicable, such records shall include data on the racial, ethnic, and gender characteristics of persons who are applicants for, participants in, or beneficiaries of the program." MCJ requested public records on these data and were told that MDA understood that HUD did not require record keeping on racial and ethnic characteristics, and so MDA failed to require applicants to report race and ethnicity. See transcript pp. 46-47 and letter from Melissa Medley to Reilly Morse, September 6, 2007, attached as Exhibit "H" to Morse testimony to House Financial Services Subcommittee on Housing hearing on May 8, 2008, "Emergency CDBG Funds in the Gulf Coast: Uses, Challenges and Lessons for the Future."

Thank you for the opportunity to testify.

Respectfully Yours,

A handwritten signature in cursive script that reads "Reilly Morse".

Reilly Morse
Co-Director of Housing Policy
Mississippi Center for Justice
974 Division Street
Biloxi, MS 39530
228-435-7284
rmorse@mscenterforjustice.org