

Statement by
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Before the House Financial Services Committee
The Fair Housing Act: Reviewing Efforts to Eliminate Discrimination and Promote Opportunity in Housing

April 2, 2019

Good morning, my name is Cashauna Hill and I am the executive director of the Greater New Orleans Fair Housing Action Center. I first want to thank Chairwoman Maxine Waters for the opportunity to address the Committee and review GNO Fair Housing's efforts to live up to the mandate of the Fair Housing Act. I am immensely grateful for your consistent support and advocacy on behalf of those most impacted by housing segregation and discrimination. We have particularly appreciated your commitment to south Louisiana's recovery following Hurricane Katrina. I would also like to thank Ranking Member McHenry and the members of the Committee for welcoming all us here today to discuss full and effective enforcement of the Fair Housing Act.

The Fair Housing Action Center is a non-profit, civil rights organization established in 1995 to eradicate housing discrimination and segregation. We are based in New Orleans and serve the entire state of Louisiana as the only full-service fair housing advocacy group in the jurisdiction. GNO Fair Housing's work includes education, investigation, enforcement, and policy advocacy activities. We are dedicated to fighting housing discrimination because it is an illegal and divisive force that perpetuates poverty and segregation, and limits access to opportunity.

Fair Housing Act Enforcement and the Fair Housing Initiatives Program (FHIP)
I want to begin with a story of one of our clients to emphasize the real-life impacts of the protections afforded by the Fair Housing Act. In 2014, a nursing student named Marilyn¹ lived in New Orleans and was celebrating Christmas with her three-year-old son. Marilyn invited her ex — the father of her son — over to help decorate the tree and to visit their child; however, he became violent when she refused his advances. He choked Marilyn and threw her into a mirror. A neighbor heard the commotion and called the police. When she returned the next day after being treated for her injuries at a local hospital, the property manager told Marilyn she had to move out because of the complex's "zero tolerance" policy on domestic violence. Because Louisiana's landlord-tenant laws allow evictions with only five days' notice, Marilyn had only a few days to find a new apartment, and when she did, it was more expensive and much

¹ Marilyn's name has been changed to protect her confidentiality.

further from her job and her son's school. She was forced to move to a neighborhood in which she felt less safe, and one night after working a shift at her second job, she was robbed at gunpoint in the parking lot of the new apartment complex.

Marilyn eventually made her way to the Fair Housing Action Center, where our attorneys — partially funded through HUD's Fair Housing Initiatives Program (FHIP) — were able to take her case at no cost. Under the Federal Violence Against Women Act, Marilyn would have been protected had she lived in HUD-subsidized housing. But because she did not have a Housing Choice Voucher or other subsidy, there were no federal or state protections explicitly ensuring that she was not punished for the actions of her abuser. Instead, the Fair Housing Action Center made use of a 2013 HUD rule and legal theory upheld by Supreme Court known as Disparate Impact. That theory holds that some policies that seem neutral — like the complex's "zero tolerance" policy — can unfairly exclude certain groups of people. In this case, the policy had a disparate impact on women, who are most likely to be victims in domestic violence cases.

Marilyn's case eventually settled, but not before she became an advocate for changes to protect other women in similar situations. Due to her efforts, together with GNO Fair Housing's policy staff, the Louisiana Legislature passed new protections for survivors of domestic violence in 2015. Months after its passage, that law prevented the eviction of a recently assaulted pregnant woman and continues to assist survivors across our state.

I share this story because chronic underfunding and delays in administration are jeopardizing our ability to enforce the Fair Housing Act. None of our work to support Marilyn would have been possible without the FHIP program. It was first authorized under President Reagan and supports local efforts to educate the public about fair housing rights and conduct enforcement of the Fair Housing Act. Not only does FHIP provide vital services to the public and the housing industry, but it also saves money by vetting complaints through fair housing organizations, before they reach HUD and state agencies. According to the National Fair Housing Alliance, over 70% of complaints that are vetted by FHIP agencies result in conciliation or a cause finding, compared to just 31% of non-FHIP referred complaints.

The Greater New Orleans Fair Housing Action Center has been highly successful in leveraging FHIP funding to support our clients, but insufficient federal appropriations have eroded fair housing organizations' ability to retain experienced staff and have left over a dozen states without a non-governmental full-service fair housing group. We know the lack of funding significantly impacts our geographic reach because when we have conducted testing in underserved areas or those that are not covered by a fair housing center, we have found alarming rates of discrimination. Testing is a type of undercover investigation in which equally qualified trained investigators, or "testers," mystery shop for housing. The testers' experiences are then compared to understand if some testers are treated differently based on a trait protected by the Fair Housing Act.

As an example, we received a grant to support testing in Jackson, Mississippi in 2016, where no other fair housing group was providing that service. It took significant staff time and resources to recruit and train local testers and to travel between Jackson and New Orleans. When the investigation was complete, we found that black testers faced discriminatory treatment 52% of the time in the Jackson rental market. There are instances of discrimination like this that regularly go unchallenged because FHIP does not currently support enough fair housing centers across the country.

Flat funding of FHIP, along with dramatic decreases in staffing at HUD's Office of Fair Housing and Equal Opportunity, have significantly increased delays in processing cases and impeded enforcement of the Fair Housing Act. FHEO is responsible for administering FHIP; an administrative complaint process through which victims of housing discrimination can access justice without having to seek expensive legal counsel; and it oversees the compliance of HUD's own programs with the Fair Housing Act itself. Regrettably, FHEO has long experienced a shortage in its staff. Chronic understaffing at FHEO has consequences for the quality of services and justice that victims of housing discrimination can achieve.

According to HUD regulations, filed complaints must be investigated within 100 days. When a case investigation goes past 100 days it is considered an "aged" case. In 2017, HUD had 895 cases that became aged during that same year, and it had 941 cases that were already considered aged at the beginning of the fiscal year. During the same time periods, Fair Housing Assistance Program (FHAP) agencies had 3,994 cases that became aged and 1,393 cases that were already considered aged at the beginning of the fiscal year. Practically, what this means for groups like the Fair Housing Action Center is a delay in making victims of discrimination whole, and a delay in correction of housing providers' discriminatory behavior.

As FHEO's staffing has decreased, HUD has become increasingly reliant on FHAP agencies to process filed cases, placing the burden of its understaffing on state and local agencies, at the same time that funding for the FHAP program has decreased. Understaffing at FHEO has also contributed to serious delays in publication of the FHIP Notice of Funding Availability, causing serious funding gaps and delays in the continuation of existing 3-year enforcement grants that FHIP recipients have already planned for. Funding delays make it very difficult for local fair housing centers to retain highly trained staff and continue to offer the services necessary to serve the public. The Housing Fairness Act's goals of authorizing additional FHIP funds and increasing testing efforts nationwide, as well as the Restoring Fair Housing Protections Act's provisions to ensure accurate and accessible tracking of complaints moving through the HUD process, would go a long way toward filling gaps in fair housing enforcement. Increased enforcement by the federal government would send a powerful message about this country's commitment to fulfilling the promise of the Fair Housing Act and ensuring that everyone has equal access to the American Dream.

Affirmatively Furthering Fair Housing

As the Committee is aware, the Fair Housing Act was not implemented solely to prevent individual acts of discrimination, but also to address historic patterns of segregation. These residential patterns are deep, entrenched, and were initiated by government actions that explicitly supported segregation, such as redlining, exclusionary zoning, and restrictive covenants. For many years, scores of research and data have noted the connection between government-sponsored segregation and lack of access to opportunity. In 1968, for example, the Kerner Commission report diagnosed federal housing policy as a driver of the hopelessness and desperation in neighborhoods of color at the time.

The Fair Housing Act, passed shortly after the Kerner report's release, was birthed out of this context and includes an explicit call to undo the harm caused by segregationist policies. The Act mandates that governments must administer their programs and activities in a manner that affirmatively furthers fair housing (AFFH). With the exception of HUD Secretary George Romney's Open Communities campaign in 1970, the AFFH mandate remained largely unenforced until HUD's 2015 AFFH rule.

The 2015 AFFH rule made the law's text real by ensuring that local recipients of federal housing and community development dollars engage in a thorough assessment of existing residential living patterns and set measurable goals for moving toward equitable and integrated communities. This practice is essential, because segregation remains an enormous challenge in most communities and because an overwhelming number of studies show that where you live determines how you live. As an example from New Orleans, in two census tracts a few miles apart, life expectancies in the two neighborhoods differ by more than 25 years. The census tract where the average resident lives to be 88, is more than 90% white. The census tract where the average resident only lives to be 62, is more than 90% black.

New Orleans had the distinction of being in the first cohort of jurisdictions required to submit a new fair housing plan under the AFFH rule. Local leaders relished the opportunity and implemented a collaborative, community-driven process unlike anything New Orleans had ever done before. New Orleans' Assessment of Fair Housing (AFH) was a partnership with the local housing authority, involved the participation of community groups often left out of previous processes, and collected preferences and ideas from hundreds of residents. New Orleans' AFH was the first submitted under the new rule and has since been lifted up as a model for the nation.

GNO Fair Housing, with support from philanthropic partners, led the community engagement process for New Orleans' AFH. The transparent, collaborative planning process resulted in unprecedented community engagement that produced comprehensive policy recommendations that provide a clear path forward. Among the recommendations included in the report are data-driven solutions addressing transit funding and access; fair housing education and outreach efforts; the placement of affordable housing; gentrification and displacement; support for fair housing enforcement; and limiting and addressing exposure to environmental toxins.

GNO Fair Housing has supported and participated in successful AFH plans not only in New Orleans, but in various suburban communities across south Louisiana, including a consortium of Jefferson Parish, the City of Kenner, and St. Charles Parish, as well as in St. Tammany Parish. In these jurisdictions, HUD's interactive data and mapping tool provided invaluable data to local leaders and spurred new conversations about policies and practices.

Unfortunately, the rest of the jurisdictions in Louisiana and those around the country will not have the benefit of this process, due to suspension of the AFFH rule. Local jurisdictions are again left with little information or guidance about how to fulfill their obligation to affirmatively further fair housing. HUD has instead directed jurisdictions to undertake the previous Analysis of Impediments (AI) process, despite the fact that a 2010 Government Accountability Office (GAO) report found the process vague and ineffective.² Previous New Orleans AIs are an excellent example of fair housing plans that fall far short of the standard put forth in the Fair Housing Act. The most recent 2010 AI completely fails to assess local government's role in perpetuating segregation and does not include discussion of any goals to overcome these barriers. The 2016 AFH specifically acknowledges this failure, stating, "The goals in the 2010 Analysis of Impediments were not specific enough to guide targeted action to further fair housing. As a consequence, segregation and concentrated poverty areas appear to have become more concentrated, and some neighborhoods have remained the same." Without the tools of the AFFH rule, jurisdictions may face a similar fate, repeating past mistakes and failing to address and overcome legacies of generational poverty. We strongly encourage the reinstatement of the AFFH rule and the passage of the Restoring Fair Housing Protections Act to ensure all local jurisdictions have access to the Assessment of Fair Housing process.

Equitable Recovery from Disasters

Nowhere is the focus on affirmatively furthering fair housing more important than after life-altering disasters that change the face of entire cities and regions. Before passage of the Fair Housing Act, many communities across the country were planned and built with the same set of segregationist real estate and development practices. We've since outlawed many of those practices, but in very few places have we gone back and examined how to undo their harm and reimagine our communities as places where all children grow up with the same opportunities regardless of their race or zip code.

In the New Orleans area, the development patterns of the region before Hurricane Katrina were the product of redlining maps, highway projects built through black neighborhoods, and later, the white flight that followed the integration of schools. The levee failures and flood that followed Hurricane Katrina was one of the worst

² HUD Needs to Enhance Its Requirements and Oversight of Jurisdictions' Fair Housing Plans, GAO, published September 14, 2010. Retrieved from: www.gao.gov/products/GAO-10-905.

tragedies in modern history, but it also offered New Orleans an unusual chance to reimagine how to redesign a city and region to be open to all, and to use federal recovery dollars in a way that ensured equitable recovery and housing choice. Unfortunately, the opposite occurred. As we near 15 years of recovery, New Orleans is still missing nearly 100,000 African American residents who have not returned and the City is now more racially segregated than before the storm. Instead of affirmatively furthering fair housing, policymakers made decisions that further entrenched segregation and poverty.

After Hurricane Katrina, the Housing Authority of New Orleans (HANO)—with permission from HUD and the New Orleans City Council—demolished over 5,000 units of public housing, including many units that were not badly damaged. Another 800 units of smaller scattered-site housing owned by HANO were also taken offline. Under the auspices of deconcentrating poverty, former public housing residents were offered portable Housing Choice Vouchers. But with no citywide comprehensive plan to rebuild or rehab rental housing, 50% of which had been damaged or destroyed, voucher holders were left to compete for the limited remaining supply of rental units and, as low-income individuals, were pushed to the geographic margins of the market.

Public housing before the storm suffered from chronic funding shortfalls, fueling maintenance and repair issues, but the vast majority of public housing residents lived in the urban core of the city, close to jobs and public transit. Today, 90% of HANO's clients receive vouchers because only a fraction of the public housing units has been rebuilt. Of New Orleans' nearly 18,000 voucher households, half have been pushed out of the urban core, across the Mississippi River or canals, to neighborhoods where buses only show up every hour and travel time to hospitality jobs in the French Quarter can be at least as long. Children wait outside in pre-dawn darkness to commute up to three hours round trip to schools across town. On the margins of the city, some individual census tracts contain as many as 800 voucher households, all within a couple dozen square blocks. The data makes it clear that post-Katrina public housing policy did not deconcentrate poverty. Instead, it displaced thousands, fractured support networks, and then reconcentrated low-income households in areas further from jobs, transit, high-performing schools, and other resources.

After the storm, African American renters without vouchers encountered other problems. As they sought to return to the metro area, they also had to contend with neighboring local governments taking actions designed to remind them they were not welcome. These communities, which had previously provided working-class whites with an affordable suburban housing alternative, as well as an exit strategy to avoid school integration, took great lengths to ban or restrict rental housing in the years following Hurricane Katrina. In Jefferson Parish, the Council passed a resolution in 2006 objecting to any developments funded by low-income housing tax credits and then specifically changed the zoning on a property to kill the replacement of 200 apartments. In 2007, the City of Kenner passed a moratorium on all multi-family construction. Perhaps the best-known example of exclusionary housing practices following Hurricane Katrina is St. Bernard Parish's 2006 "blood relative" ordinance,

which prohibited the rental of residences unless to a blood relative.³ At the time the parish enacted the law, 93 percent of parish homeowners were white⁴, which meant the ordinance, in effect, prohibited the rental of housing to non-whites. The Greater New Orleans Fair Housing Action Center brought a suit against the parish to stop implementation of the ordinance, and after a federal judge ruled the ordinance a violation of the Fair Housing Act, the parish was forced to repeal the law. The Parish Council then adopted a ban on the building of all multi-family housing, which, after litigation, was also struck down as an unlawful violation of the Fair Housing Act. However, the Parish consistently defied the federal court's order and conciliation agreements until 2014, when a final settlement was reached.

An additional high-profile example of recovery gone wrong was the federally funded, state-administered Road Home rebuilding program. Homeowners were offered rebuilding grants determined by the lesser of either pre-storm value of their damaged home, or the cost to rebuild. As a result, homeowners in segregated white neighborhoods, which had higher pre-storm values, received higher grant awards than homeowners in predominantly African American neighborhoods. This was true even when the homes were of similar size and age, and the repair costs were similar. In 2008, the Greater New Orleans Fair Housing Action Center led a lawsuit against HUD and the State of Louisiana alleging that the rebuilding grant formula was discriminatory, and had the effect of reinforcing historic patterns of segregation and disinvestment.⁵ HUD agreed to a \$62 million settlement in 2011, but by that time many African American homeowners had already made their decisions not to return based on the lower award amounts offered.⁶

It's worth noting that neither the St. Bernard Parish, nor the Road Home case, would have been possible without application of the Disparate Impact theory. Both cases are textbook examples of facially neutral laws that dramatically discriminated against a protected class of people. Proving intentional discrimination in either of these cases may have been nearly impossible and the result would have been disastrous for the region's recovery.

In February of 2019, HUD sent the Office of Management and Budget (OMB) proposed rule making changes to the existing 2013 Disparate Impact Rule. These changes are likely to make bringing and successfully proving a disparate impact case nearly

³ Seicshnaydre, S. (2011). How government housing perpetuates racial segregation: Lessons from post-Katrina New Orleans. *Catholic University Law Review*, 60(3), 678-81.

⁴ U.S. Decennial Census, 2000.

⁵ Fletcher, M. (2011, July 6). HUD to pay \$62 million to La. homeowners to settle Road Home lawsuit. *The Washington Post*. Retrieved from www.washingtonpost.com/business/economy/hud-to-pay-62-million-to-la-homeowners-to-settle-road-home-lawsuit/2011/07/06/gIQAtsFN1H_story.html?utm_term=.e4475e8a9717; *Greater New Orleans Fair Housing Action Center v. U.S. Dept. of Housing and Urban Development*. Civil Action No. 08-1938 (D.D.C. Nov. 12, 2008). Retrieved from <https://www.clearinghouse.net/detail.php?id=11242>

⁶ Ibid.

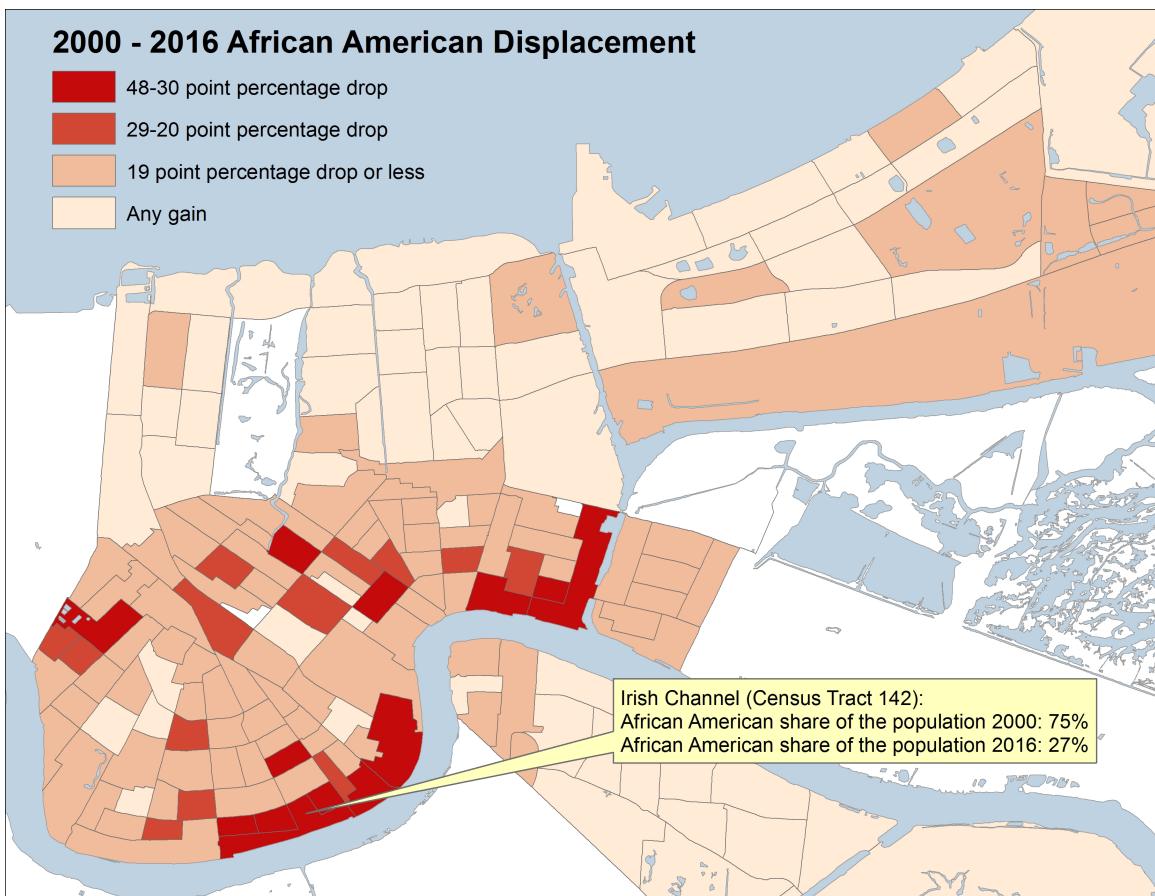
impossible. If this rule moves forward, it could severely weaken the Fair Housing Act and test our nation's commitment to equal treatment under the law.

There's one last lesson from New Orleans inequitable recovery that must not be overlooked: local governments, working hand-in-hand with federal agencies, must be prepared to administer disaster relief dollars with an eye toward preventing the displacement that follows disaster. In New Orleans, this has specifically manifested as climate gentrification, fueled by a fight for higher ground.

After Katrina, disaster and flooding risk were clearly at the forefront of many residents' minds; however, white residents were far more likely to have the resources to secure high-ground real estate. Before the storm, many of the high-ground neighborhoods bordering the Mississippi River had been majority or significantly black (see the areas in darkest red on the 2000-2016 African American Displacement map below). That changed dramatically after Katrina. Most African American renters were easily displaced by rents that doubled and tripled. Even long-time homeowners who managed to navigate the Road Home program faced climbing flood insurance rates and property tax assessments. 10 years after the storm, the City of New Orleans began to publicly discuss policies to address the gentrification that had already and continues to displace many long-time neighborhood residents.⁷ As of 2017, only one East Bank neighborhood along the high ground near the Mississippi River retains a black majority, largely due to a mixed-income public housing development.⁸ New Orleans has made significant public investments in many of these neighborhoods as well, including a new streetcar line, waterfront park, and a number of fresh food retailers. In most cases, those public investments did not include a complimentary investment in affordable housing, and the lack of investment in affordable housing ensured that long-time lower-income residents will not be able to stay in the area and enjoy the new amenities. As whites have returned to the city, African Americans are again being relegated to higher risk neighborhoods further from job centers, where health and life outcomes are worse.

⁷ The City of New Orleans. (2016). *Housing for a Resilient New Orleans*. Retrieved from www.nola.gov/home/buttons/resilient-housing/.

⁸ American Community Survey, 2017.



In the last few years, New Orleans has begun to rethink our housing policy. City officials now take displacement and segregation seriously and are actively crafting multiple local ordinances to address these issues. Still, it has been a slow shift, made possible only by the tools afforded by the Fair Housing Act. Without disparate impact, the city's current positive efforts would be no match for the deep segregation that would have resulted from an unchecked discriminatory Road Home rebuilding formula and the St. Bernard Parish "blood relative" ordinance. Similarly, the AFFH rule and AFH process brought diverse stakeholders together, provided invaluable data, and charted a clear path forward for equitable development.

For cities that are in the midst of recovery or will be from future disasters, we can't afford to wait 10 years before beginning to consider the mandate of the Fair Housing Act. It must be a foundational part of disaster recovery.

At the federal level, and in all communities, we hope to see a recommitment to, and strengthening of, the Fair Housing Act. This commitment and strengthening begins with fully funding enforcement efforts, as well as passage of the legislation before you to restore and add tools to the Fair Housing Act that ensure everyone has a fair chance at finding a place to call home.

On behalf of the Greater New Orleans Fair Housing Action Center, I appreciate the opportunity to offer this testimony and will gladly be a resource on any issues discussed today.