

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	Civil Action No.
v.)	
)	
ST. BERNARD PARISH,)	
)	
Defendant.)	
_____)	

COMPLAINT

The United States of America alleges as follows:

Nature of Action

1. This action is brought by the United States against St. Bernard Parish, Louisiana, to enforce Title VIII of the Civil Rights Act of 1968, 42 U.S.C. §§ 3601-3631, as amended (“the Fair Housing Act” or “the FHA”), in order to, among other things, enjoin and remedy the Parish’s multi-year campaign to limit rental housing opportunities for African-Americans in St. Bernard Parish under the pretext of post-Hurricane Katrina recovery planning.

Jurisdiction and Parties

- 2. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 3610(g)(2)(C) and 3614(a).
- 3. Venue is proper under 28 U.S.C. § 1391(b), because the events or omissions giving rise to the claims alleged herein occurred in the Eastern District of Louisiana.

4. Defendant St. Bernard Parish (hereinafter “the Parish”) is a local governmental subdivision located within the Eastern District of Louisiana. St. Bernard Parish operates under a Home Rule Charter governed by the St. Bernard Parish Council (hereinafter “the Parish Council”).
5. The Parish Council consists of the St. Bernard Parish President, David E. Peralta, and seven elected council members.
6. Pursuant to the authority granted it by the State of Louisiana, the Parish exercises zoning authority over land within its borders. The Parish’s zoning regulations are set forth in an ordinance entitled “The Comprehensive Zoning Ordinances of the Parish of St. Bernard, Louisiana” (hereinafter “the Zoning Ordinances”).

Factual Background

7. St. Bernard Parish has taken a series of actions and defied repeated court orders in its persistent and ongoing effort to make unavailable and deny housing to African Americans through a pattern or practice of discriminatory conduct.
8. In July of 2005, prior to the landfall of Hurricane Katrina, the population of St. Bernard Parish was approximately 86% white and 10% African-American, while the population of neighboring Orleans Parish was approximately 29% white and 67% African-American.
9. In July of 2005, approximately 93% of owner-occupied homes in St. Bernard Parish were occupied by whites while approximately 4% of owner-occupied homes in St. Bernard Parish were occupied by African-Americans.

10. In July of 2005, approximately 71% of renter-occupied homes in St. Bernard Parish were occupied by whites while approximately 25% of renter-occupied homes in St. Bernard Parish were occupied by African-Americans.
11. As a result of the devastation of Hurricane Katrina, St. Bernard Parish and surrounding communities lost, and have yet to fully replace, a significant percentage of their single and multi-family rental housing stock.
12. Public and private expenditures in St. Bernard Parish related to recovery from Hurricane Katrina and the Gulf Coast Oil Spill of 2010, have spurred, and will continue to spur, significant demand for single and multi-family rental housing in St. Bernard Parish.
13. The average vacancy rate for rental housing in St. Bernard Parish from between 2005 to 2009 was approximately 6.3%.
14. On November 1, 2005, approximately two months after Hurricane Katrina's landfall, the Parish imposed a twelve-month moratorium on the re-establishment or development of any multi-family dwellings in St. Bernard Parish and prohibited the rehabilitation of any preexisting multi-family dwellings without prior Parish approval.
15. In the metropolitan New Orleans housing market, including St. Bernard Parish, approximately 90 percent of multi-family housing structures with more than five units are rentals.
16. In the metropolitan New Orleans housing market, including St. Bernard Parish, approximately 52% of African-American households are renters, while only approximately 25% of white households are renters. This difference is statistically

significant; African-American households in the metropolitan New Orleans housing market are twice as likely as white households to live in rental housing.

17. The Parish's moratorium was intended to and had the effect of limiting or reducing the supply of multi-family housing of more than five units and disproportionately disadvantaged African-Americans seeking to rent housing in St. Bernard Parish.
18. On March 7, 2006, the Parish passed another moratorium, this time prohibiting the rental of single-family homes in St. Bernard Parish allegedly "to preserve the integrity of single-family neighborhoods . . . until such time as the post-Katrina real estate market in the Parish stabilizes."
19. The Parish's moratorium was intended to and had the effect of limiting or reducing the supply or availability of single-family rental housing and disproportionately disadvantaged African-Americans seeking to rent housing in St. Bernard Parish.
20. On July 6, 2006, the Parish enacted an ordinance restoring single-family rentals as an allowed use in single-family districts, but only as a conditional use requiring a permit issued by the Parish.
21. On September 19, 2006, the Parish exempted from its rental permitting requirements all homeowners that intended to rent their single-family dwellings exclusively to persons "related by blood."
22. The Parish's blood-relative exception disproportionately disadvantaged African-Americans seeking to rent housing in the predominantly white community of St. Bernard Parish.

23. The Parish's stated purpose in enacting the blood-relative ordinance was to re-establish "preexisting neighborhoods," and to maintain the "integrity," "quality of life," "family atmosphere" and "quiet enjoyment" of "long established neighborhoods."
24. However, a Council member who voted against the ordinance stated that it was passed "to block the blacks from living in these areas."
25. Craig Taffaro, a member of the Parish Council at the time, drafted and sponsored the blood-relative ordinance. Taffaro admitted at the time that "all we're doing is saying we want to maintain the demographics."
26. The Parish's blood-relative exception was designed to be a proxy for race in order to artificially fix the racial composition of renters in St. Bernard Parish.
27. The Parish's blood-relative exception disproportionately disadvantaged African-Americans seeking to rent housing in St. Bernard Parish.
28. On or about January 2007, the Parish repealed its November 1, 2005 moratorium, the July 6, 2006 conditional use permit requirement, and the related September 19, 2006 blood-relative exception, and enacted a replacement permissive use permit requirement for single-family rentals in districts zoned for single-family use.

The Parish's Permit-Approval Process for Single-Family Rentals

29. In August 2007, the Parish issued regulations governing the new permit-approval process for single-family rentals (hereinafter the "PUP Process").
30. The PUP Process imposed, among other things, a new \$250 application fee, granted the Parish discretion to deny permits, and allowed no more than two permissive use permits

to be issued for every five-hundred linear feet of frontage for contiguous single-family dwellings in districts zoned for single-family use.

31. Similar to the Parish's preceding ordinances concerning single-family rentals, the effect of the PUP Process was to severely reduce the amount of single-family properties available for rental in St. Bernard Parish.
32. The Parish has denied homeowner-applicants, including African-Americans, permits to rent their single-family dwellings.
33. The Parish's PUP Process disproportionately disadvantaged African-Americans seeking to rent housing in St. Bernard Parish.
34. On or about April 5, 2011, the Parish rescinded the permissive permit requirement and PUP Process for the rental of single-family homes.
35. Between March 2008 and September 2011, ten residents and homeowners of St. Bernard Parish filed complaints with the Department of Housing and Urban Development ("HUD"), alleging that the Parish discriminated on the basis of race through the enforcement of the PUP Process and that they suffered harms from the discrimination.
36. Pursuant to the requirements of 42 U.S.C. §§ 3610(a) and (b), the Secretary of HUD conducted an investigation of the complaints. Based on information gathered during the investigation, the Secretary of HUD, pursuant to 42 U.S.C. § 3610(g)(2)(C), determined that the matter involved the legality of a local zoning or other land use law or ordinance and, on April 8, 2011, referred the matter to the Attorney General for appropriate action under 42 U.S.C. § 3614(b)(1).

The Parish's Elimination of Multi-Family Housing

37. On September 16, 2008, the Parish passed a new moratorium prohibiting “all R-3 (Multiple-Family Residential), and/or any housing developments with five (5) or more units for up to twelve (12) months or until such time as the Council approves these structures in the zoning updates to the St. Bernard Parish Code of Ordinances.”
38. On December 15, 2009, the Parish made comprehensive revisions to its Zoning Ordinances (hereinafter “Comprehensive Revisions”) that eliminated multi-family housing as a permitted use in four zones (A-1, C-2, C-2 and I-1), and entirely eliminated the RO zone, which also allowed multi-family use.
39. The Comprehensive Revisions restricted new multi-family dwellings— defined as housing with three or more units—to only one zone, the R-3 multi-family zone.
40. Through the Comprehensive Revisions, the Parish reduced the land available for development of multi-family housing as of right by 99.3%, leaving only 109 acres for such developments.
41. In the metropolitan New Orleans housing market, including St. Bernard Parish, approximately 90 percent of multi-family housing structures of three or more units are rentals as opposed to owner-occupied dwellings.
42. The Parish's Comprehensive Revisions severely limited or reduced the supply or availability of multi-family housing of more than three units and disproportionately disadvantaged African-Americans seeking to rent housing in St. Bernard Parish.
43. On or about April 5, 2011, the Parish rescinded the Comprehensive Revisions.

44. On October 17, 2011, the court in *Greater New Orleans Fair Housing Action Center, et al v. St. Bernard Parish, et al.*, No. 06-7185 (E.D. La) (Dkt. 813) found that “the history behind the CZO [Revisions] and the sequence of events leading up to it suggests that Defendants have doggedly attempted to preserve the pre-Katrina demographics of St. Bernard Parish” and “presents ample evidence of intentional discrimination” against African-Americans. *Id.* at 8.
45. The court held that the Parish’s “intent in enacting the CZO [Revisions] was racially discriminatory, and as such [] violated the Fair Housing Act.” *Id.* at 10.
46. In addition, the court held that the Comprehensive Revisions also had “a discriminatory effect on African-Americans and violate[d] the Fair Housing Act.” *Id.* at 14.
47. On January 28, 2011, John Trasviña, HUD’s Assistant Secretary for Fair Housing and Equal Opportunity, filed a housing discrimination complaint on behalf of the HUD Secretary, as authorized by 42 U.S.C. § 3610(a) and 54 Fed. Reg. 13121, alleging that the Parish violated the Fair Housing Act by enacting and implementing the Comprehensive Revisions so as to continue to exclude African Americans from residing in the Parish. On January 20, 2012, HUD referred this complaint to the Department of Justice as a potential pattern or practice violation of the Fair Housing Act.

The Parish’s Conduct Toward a Developer of Multi-Family Housing

48. On October 3, 2006, the Greater New Orleans Fair Housing Council (“GNOFHAC”) filed suit in federal district court against the Parish alleging violations of the FHA and of 42 U.S.C. §§ 1981, 1982, and 1983 over the Parish’s moratorium on single-family rentals and blood-relative ordinance discussed in paragraphs 18 and 21, above.

49. On February 8, 2008, the Parish and GNOFHAC entered into a consent order, approved by the federal district court for the Eastern District of Louisiana that settled GNOFHAC's lawsuit and prohibited the Parish from, among other things, refusing to rent a dwelling unit, or otherwise make unavailable or deny a dwelling unit, to any person because of race.
50. On or about July 2008, Provident Realty Advisors, Inc. ("Provident"), a multi-family housing developer, approached then Parish President Craig Taffaro and other Parish Council Members with plans to develop four multi-family, affordable-housing developments in St. Bernard Parish at a cost of \$60 million.
51. The Parish was made aware that approximately \$34 million of the funding would come from low-income housing tax credits.
52. The tax credits were set to expire on December 31, 2010, meaning that Provident would lose the credits if construction of its projects was not completed by that date.
53. On September 18, 2008, the Parish Council unanimously enacted an ordinance establishing a moratorium on the construction of multi-family dwellings with more than five units for a period of twelve months or until the Parish adopted new zoning ordinances.
54. Based, in part, on the moratorium on the construction of multi-family dwellings with more than five units, GNOFHAC filed a motion in federal district court seeking an injunction prohibiting enforcement of the moratorium. Provident intervened and joined GNOFHAC's motion.

55. On or about March 2009, the district court, in ruling on GNOFHAC's motion for an injunction, found, among other things, (1) that the Parish's intent in enacting and continuing the moratorium is and was racially discriminatory; (2) that the moratorium had an adverse disparate impact on African-Americans; and (3) that in enacting the moratorium the Parish had violated the FHA. The district court then enjoined the Parish from enforcing the moratorium.
56. Between July 2009, and November 2011, the court repeatedly found the Parish in contempt over its attempts to prevent or impede the construction of Provident's affordable-housing developments.
57. On July 22, 2009, the court found that the Parish had violated the FHA and the Consent Decree in enacting and enforcing the moratorium on the construction of multi-family dwellings with more than five units.
58. On August 17, 2009, the court found that the Parish violated the FHA and the Consent Decree following the Parish's denial of a re-subdivision application by Provident.
59. On September 11, 2009, the court held the Parish in contempt for violating the court's August 17th order by upholding their denial of Provident's re-subdivision application.
60. On April 8, 2011, the court held the Parish in contempt for violating a March 4, 2011, court order by shutting down construction of Provident's building sites through the issuance of cease and desist orders without the prior approval of the court.
61. On October 17, 2011, the court found that the Parish's Comprehensive Revisions violated the FHA and the Consent Decree and held the Parish in contempt for refusing to renew

Provident's permits and for issuing cease-and-desist orders stopping construction on Provident's building sites.

62. On October 24, 2011, the court held the Parish in contempt for violating an October 18, 2011, court order by failing to immediately authorize release of electricity to parts of Provident's building sites.
63. By the conduct set forth in paragraphs 1-62 above, the Parish has
 - a. Made unavailable or denied a dwelling to a person because of race, in violation of the Fair Housing Act, 42 U.S.C. § 3604(a); and,
 - b. Interfered with one or more persons in the exercise or enjoyment of, or on account of their having exercised or enjoyed, rights granted or protected by section 804 of the Fair Housing Act, in violation of 42 U.S.C. § 3617.
64. There are victims of the Parish's discriminatory conduct or actions that are aggrieved persons within the meaning of 42 U.S.C. § 3614(d)(1)(B).
65. The Parish's discriminatory conduct or actions as set forth above was intentional, willful, and taken in disregard for the rights of others.
66. By the conduct set forth in paragraphs 1-65 above, the Parish has:
 - a. Engaged in a pattern or practice of resistance to the full enjoyment of rights granted by the Fair Housing Act, in violation of 42 U.S.C. § 3614(a);
 - b. Denied to a group of persons rights granted by the Fair Housing Act, which denial raises an issue of general public importance, in violation of 42 U.S.C. § 3614(a);
or,

- c. Engaged in a discriminatory housing practice involving the legality of a state or local zoning or other land use law, in violation of 42 U.S.C. § 3614(b).

PRAYER FOR RELIEF

WHEREFORE, the United States prays that the court enter an ORDER that:

1. Declares that the Parish's conduct, as alleged herein, violates the Fair Housing Act;
2. Enjoins the Parish, its officers, employees, agents, successors and all other persons in active concert or participation with it, from further:
 - a. Making unavailable or denying a dwelling to any person because of race;
 - b. Coercing or interfering with any person in the exercise or enjoyment of any right granted or protected by section 804 of the Fair Housing Act;
 - c. Failing or refusing to take such affirmative steps as may be necessary to restore, as nearly as practicable, each identifiable victim of the Parish's discriminatory conduct to the position he or she would have been in but for the Parish's conduct; and,
 - d. Failing or refusing to take such affirmative steps as may be necessary to prevent the recurrence of any discriminatory conduct in the future and to eliminate, to the extent practicable, the effects of such conduct.
3. Awards monetary damages, pursuant to 42 U.S.C. § 3614(d)(1)(B), to all persons harmed by the Parish's discriminatory practices; and,
4. Assesses a civil penalty against the Parish in an amount authorized by 42 U.S.C. § 3614(d)(1)(C), to vindicate the public interest.

The United States further prays for such additional relief as the interests of justice may require.

Dated: January 31, 2012

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Service of the complaint will be effected by waiver of service