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KATRINA VOTING WRONGS: AFTERMATH OF HURRICANE AND WEAK ENFORCEMENT DILUTE AFRICAN AMERICAN VOTING RIGHTS IN NEW ORLEANS

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KATRINA VOTING WRONGS: AFTERMATH OF HURRICANE AND WEAK ENFORCEMENT DILUTE AFRICAN AMERICAN VOTING RIGHTS IN NEW ORLEANS

William P. Quigley*

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I. Introduction

*Other than the Oakies leaving the Dust Bowl, I can't think of any other time in American history where this many people have just up and moved. We're all starting to wonder what the long-term political consequences will be in terms of demographics and voting trends.*¹

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¹ Johanna Neuman & Richard B. Schmitt, *Katrina's Aftermath: Political Landscape May Shift on Displaced Voters*, L.A. TIMES, Sept. 11, 2005, at A4.

Katrina disproportionately damaged the African American community in New Orleans.² After the floodwaters receded, the voting rights of displaced black residents of New Orleans were further left unprotected and diluted, perhaps permanently. As expected, the African American vote in New Orleans dramatically diminished.³

Political advantages for Republicans, combined with posturing concerns over voting wrongs, like potential fraud and the need to try to act normal, were allowed to stop significant steps that might have given those displaced by Katrina a much better chance to participate.⁴ Voting wrongs trumped voting rights in New Orleans.

Katrina hurt many communities along the Gulf Coast, but the African American community sustained the most damage in both the flooding and its aftermath.⁵ Within days, political upheaval was identified as

² See *id.* ("Ernest Johnson, head of the Louisiana NAACP, . . . says the hurricane has potentially disenfranchised 1.5 million voters, many of them black.").

³ *Id.*

⁴ See *id.* (explaining that minority flight from Orleans Parish coupled with the looming republican redistricting plan that would likely be approved by the current Justice Department could substantially alter the voting demographics of New Orleans and Louisiana).

⁵ See Melanie L. Campbell, *Right of Return Means Access to the Ballot, Access to Neighborhoods, and Access to Economic Opportunity*, HARV. J. OF AFRICAN AMER. PUB. POL'Y, Vol. XII (2006), available at <http://www.ksg.harvard.edu/HJAP/06%20articles/campbell06.pdf> (exploring "the race, economic, and class divides that appear to be key factors in determining which Gulf Coast residents truly have access to the right of return") (on file with the Washington and Lee Journal of Civil Rights and Social Justice); Bill Quigley, *Lessons from Katrina: How to Destroy an African-American City in 33 Steps*, COUNTERPUNCH (June 28, 2007), <http://www.counterpunch.org/quigley06282007.html> (last visited Dec. 2, 2007) (outlining thirty-three events that disadvantaged the African American community in New Orleans post-Katrina) (on file with the Washington and Lee Journal of Civil Rights and Social Justice); Sherrie Armstrong Tomlinson, *No New Orleanians Left Behind: An Examination of the Disparate Impact of Hurricane Katrina on Minorities*, 38 CONN. L. REV. 1153, 1161-63 (2006) (exploring Hurricane Katrina's "disparate impact on African-Americans and what role race played in the inadequate planning and response for that minority population").

For more evidence of the storm's disenfranchising effect on the African American community in Louisiana, see Robert D. Bullard, *A 20-Point Plan To Destroy Black New Orleans*, NEW AMERICA MEDIA (Feb. 1, 2006), <http://news.newamericamedia.org/news> (search "Robert Bullard"; then follow "A 20-Point Plan To Destroy Black New Orleans") (last visited Dec. 2, 2007) (outlining the twenty steps used to harm the African American community post-Katrina, including: (1) selectively hand out FEMA grants; (2) systematic denial of SBA loans for poor and Black applicants; (3) award insurance claims using the "wind or water" trap; (4) redline black insurance policyholders; (5) use "green building" and flood-proofing codes to restrict redevelopment; (6) apply discriminatory environmental clean-up standards; (7) sacrifice "low-lying" black neighborhoods in the name of saving the wetlands and environmental restoration; (8) promote a smaller, more upscale and "whiter" New Orleans; (9) revise land use and zoning ordinances to exclude black neighborhoods; (10) phased rebuilding and restoration scheme that concentrates on the "high ground"; (11) apply eminent domain as a black land grab; (12) no financial assistance for evacuees to return; (13) keep evacuees away from New Orleans jobs; (14) fail to enforce fair housing laws; (15) no commitment to rebuild and replace low-income housing; (16) downplay the Black cultural heritage of New Orleans; (17) treatment of mixed-income housing as superior to all Black neighborhoods; (18) allow

the second wave of Katrina destruction as voting experts began to calculate the demographic and political consequences of the displacement.⁶ They noted that the forced relocation of hundreds of thousands, mostly lower income and African American, could alter the balance between the two major parties in Louisiana and decrease the opportunity for blacks to become elected officials in New Orleans.⁷ In the jargon of political experts, Louisiana was a "pink state," voting for Clinton twice and then for Bush twice, along with having U.S. Senators from each party and more state-wide Republican candidates.⁸

The displacement of black voters from New Orleans and Louisiana clearly advantaged Republicans. On September 14, 2005, one commentator suggested Katrina boosted the political fortunes of Republicans at the state, local and national level.⁹ By mid-October, reports of the massive population shift prompted predictions of losses in both black voter clout and Louisiana state-wide Democratic prospects.¹⁰ Some said that "the Democrats' margin of victory [in Louisiana] was living in the Astrodome in Houston."¹¹

Another commentator noted that the loss of voting rights by displaced African Americans in New Orleans could lead to Republican gains of a U.S. Senate seat, the governorship, two congressional seats, and Louisiana firmly in the Republican column for future presidential elections.¹² Republican strategists openly talked about the great opportunity that the

"oversight" (overseer) board to manage Katrina funds that flow to New Orleans; (19) delay rebuilding and construction of New Orleans schools; and (20) hold elections without appropriate Voting Rights Act safeguards) (on file with the Washington and Lee Journal of Civil Rights and Social Justice).

⁶ See Neuman & Schmitt, *supra* note 1, at A4 (noting that certain formerly majority-minority districts could lose up to one third of their minority voting population).

⁷ *Id.*

⁸ *Id.*

⁹ See Earl Ofari Hutchinson, *Will Katrina Wallop Black Voting Power?*, PACIFIC NEWS SERVICE (Sept. 14, 2005), http://news.pacificnews.org/news/view_article.html (search "Earl Ofari Hutchinson"; then follow "Will Katrina Wallop Black Voting Power?" hyperlink) ("The hurricane, by scattering black voters over several states, may have given the GOP a gift.").

¹⁰ See Michael A. Fletcher & Spencer S. Hsu, *Storms Alter Louisiana Politics*, WASH. POST, Oct. 14, 2005, at A7 (predicting loss of black-voter "clout" in Louisiana post-Katrina); Kristen Clarke-Avery & M. David Gelfand, *Voting Rights Challenges in a Post-Katrina World*, FINDLAW (Oct. 11, 2005), http://writ.news.findlaw.com/commentary/20051011_gelfand.html (last visited Dec. 2, 2007) (suggesting an open absentee voting process for displaced citizens, relaxed voter identification requirements, and protection against purges of displaced voters) (on file with the Washington and Lee Journal of Civil Rights and Social Justice).

¹¹ Fletcher & Hsu, *supra* note 10.

¹² See Eric Mann, *Race and the High Ground in New Orleans*, WORLD WATCH, Sept.-Oct. 2006, at 41 (discussing the key elements to rebuild New Orleans as a majority black city).

displacement of African American voters created in New Orleans and Louisiana elections.¹³

The vote impact analysis started because hundreds of thousands of people had not been able to return to New Orleans after Katrina.¹⁴ From New Orleans itself, the displaced are overwhelmingly African Americans.¹⁵ Katrina displacement has dramatically reduced the number and percentage of African Americans in New Orleans—with profound impact on electoral politics in the city.¹⁶

The impact has been even more profound for statewide contests in Louisiana.¹⁷ Race has always played a significant part in party politics.¹⁸ African Americans have been mainly Democrats in Louisiana.¹⁹ Recently, the Democratic Party has been losing ground in statewide elections.²⁰ It has only been the heavily Democratic vote in New Orleans that counterbalanced the heavily Republican vote in the rest of Louisiana. That balance has dramatically changed.²¹

Many of the displaced want to return, but they risk the permanent loss of political capital through attrition during their continued absence. Recent elections demonstrate very low voter turnout.²² Meanwhile, forces,

¹³ See Audrey Hudson, *GOP Eyes Big Easy Gains After Incumbent Lapses*, WASH. TIMES, Oct. 27, 2005, at A10 (discussing Louisiana Republican candidates' opportunities to win the elections after Hurricane Katrina).

¹⁴ See GREATER NEW ORLEANS CMTY. DATA CENTER, ADVANCE NOTICE OF NEW ORLEANS POPULATION INDICATORS FOR JULY 2007, at 1 (2007), available at <http://www.gnocdc.org/media/GNOCDCAug24-07.pdf> (assessing the repopulation of New Orleans through postal statistics).

¹⁵ See *infra* Part II (discussing that, in New Orleans, a significant percentage of African Americans are displaced).

¹⁶ See Fletcher & Hsu, *supra* note 10 (addressing the political impacts by the massive population shift after Katrina).

¹⁷ See *id.* (discussing how the population shift after Katrina could severely affect the state's elected Democrats).

¹⁸ See Steve Charing, *Racial Politics in the Campaign: The Big Elephant in the Room* (2006), <http://stevecharing.blogspot.com/2006/11/racial-politics-in-campaign-big.html> (last visited Dec. 2, 2007) (indicating that race has always been and will be a force to be dealt with in elections) (on file with the Washington and Lee Journal of Civil Rights and Social Justice).

¹⁹ See Fletcher & Hu, *supra* note 10 (addressing the political impact by the massive population shift after Katrina).

²⁰ See *id.* (addressing how the state's Democrats could be affected by the massive population shift after Katrina).

²¹ See *id.* (addressing how the population shift after Katrina affects the black votes captured by the Democrats in New Orleans).

²² See JOHN R. LOGAN, POPULATION DISPLACEMENT AND POST-KATRINA POLITICS: THE NEW ORLEANS MAYORAL RACE 1 (2006) (stating the major findings after reviewing what was known about displacement prior to the New Orleans' first election and analyzing its impact on the results) (on file with the Washington and Lee Journal of Civil Rights and Social Justice).

which say they are concerned about fraud but which reap direct political benefits from keeping African Americans disenfranchised, have discounted the votes of African Americans displaced by Katrina.²³

II. *Who Katrina Displaced*

*Black people and poor people bore the brunt of the devastation because—for the most part—they lived most often in the lower-lying, more flood-prone sections of the city.*²⁴

One study has shown that "[i]n the New Orleans metropolitan area, hurricane-induced loss produced a population that was more white, less poor, and more transitory than the pre-hurricane population. These changes resulted from the disproportionate out-migration, and slower return, of lower-income and black residents from the entire metropolitan area after the storms."²⁵

²³ See generally Rea L. Holmes, *How Section 5 of the Voting Rights Act Failed Displaced New Orleans Voters*, 43 CAL. W. L. REV. 75 (2006) (arguing that Louisiana must liberalize its election code to better allow displaced voters an opportunity to participate in elections); LOGAN, *supra* note 22 (noting that the disproportionate impact of Katrina on the city's black population would result in a decisive shift in the racial composition of the electorate).

²⁴ THE BROOKINGS INSTITUTION, *NEW ORLEANS AFTER THE STORM: LESSONS FROM THE PAST, A PLAN FOR THE FUTURE*, 13 (2005), available at http://media.brookings.edu/mediaarchive/pubs/metro/pubs/20051012_NewOrleans.pdf (discussing the impact of Hurricane Katrina on New Orleans).

²⁵ WILLIAM H. FREY & AUDREY SINGER, *KATRINA AND RITA IMPACTS ON GULF COAST POPULATIONS: FIRST CENSUS FINDINGS*, at 1 (2006), available at http://www.brookings.edu/reports/2006/06demographics_frey.aspx (stating the findings of the analysis of the first U.S. Census Bureau data regarding the demographic impacts of Hurricanes Katrina and Rita on the population of the Gulf Coast region).

For further discussion of Katrina displacement demographics, see generally Daniel A. Farber, *Disaster Law and Inequality*, 25 LAW & INEQ. 297 (2007) (arguing that social disadvantages create their own forms of long-term, low-visibility disasters and become deadly in dramatic ways during the course of a disaster); Lolita Buckner Inniss, *A Domestic Right of Return?: Race, Rights, and Residency in New Orleans in the Aftermath of Hurricane Katrina*, 27 B.C. THIRD WORLD L.J. 325 (2007) (noting that a domestic right to return might be applicable to the Katrina victims); William P. Quigley, *Obstacle to Opportunity: Housing That Working and Poor People Can Afford in New Orleans Since Katrina*, 42 WAKE FOREST L. REV. 393 (2007) (indicating that the availability of affordable housing is key to the recovery of New Orleans and the return of its population).

Katrina hit on August 29, 2005, along the coast of Louisiana. Levee failures in New Orleans caused 80% of the city to flood.²⁶ The U.S. Department of Housing and Urban Development reported that in New Orleans, 72% of the 188,251 occupied housing units were damaged, and over half suffered serious damage.²⁷ Statewide, more than 200,000 homes and 18,000 businesses were destroyed or severely damaged.²⁸

While Katrina hurt everybody along the Gulf Coast, African Americans and the poor suffered disproportionately. African American households suffered more flooding than white homes: a block-by-block analysis of census data and flood maps found that three quarters of African Americans in New Orleans suffered serious flooding, compared with about half of the city's white residents.²⁹

More than a million people along the gulf coast were displaced in the first week.³⁰ A month later, nearly 600,000 people remained in temporary housing—hotels, shelters, or with family members outside the region.³¹ Two months later, a half million people were still displaced and living in subsidized rental property, hotels or shelters.³²

²⁶ See LOUISIANA RECOVERY AUTHORITY, COMPREHENSIVE NEW STUDY REVEALS UPDATED POPULATION NUMBERS IN STORM-AFFECTED PARISHES (2006) (last visited Feb. 5, 2008) (noting that in New Orleans a survey is done to provide critical population data to aid in decision-making and planning) (on file with the Washington and Lee Journal of Civil Rights and Social Justice).

²⁷ See U.S. DEP'T OF HOUSING AND URBAN DEV. OFFICE OF POLICY DEV. AND RESEARCH, U.S. HOUSING MARKET CONDITIONS, 9 (2006), available at http://www.huduser.org/periodicals/ushmc/spring06/USHMC_06Q1.pdf (noting that the damage caused by Katrina in Louisiana is largely concentrated in a few counties with intense damage, including New Orleans).

²⁸ See LOUISIANA RECOVERY AUTHORITY, *supra* note 26 (noting that in New Orleans a survey is done to provide critical population data to aid in decision-making and planning).

²⁹ See Donna L. Brazile, *New Orleans: Next Steps on the Road to Recovery*, in THE STATE OF BLACK AMERICA 233, 236 (George E. Curry ed., 2006) (noting that African American voices should be weighted in the rebuilding process).

³⁰ See BRUCE KATZ ET AL., HOUSING FAMILIES DISPLACED BY KATRINA: A REVIEW OF THE FEDERAL RESPONSE TO DATE 1 (2005), available at http://www.brookings.edu/reports/2005/11/metropolitanpolicy_katz.aspx (noting that since Hurricane Katrina displaced a large amount of residents, flexible and cost-effective federal housing response is needed to accommodate the various needs of displaced families).

³¹ See *id.* (noting that Hurricane Katrina displaced a large amount of residents).

³² *Id.*

At the end of September, more than 71,000 people displaced by Katrina were still living in shelters. See AUDREY SINGER & KATHERINE M. DONATO, IN KATRINA'S WAKE WHO WILL RETURN? (2005), http://www.brookings.edu/views/op-ed/20050927_singer.htm (last visited Feb. 5, 2008) (stating the evacuees from Hurricane Katrina who will resettle elsewhere instead of returning to New Orleans and other Gulf Coast communities) (on file with the Washington and Lee Journal of Civil Rights and Social Justice).

Race and class impacted where people ended up after Katrina. In the hurricane's immediate aftermath, an analysis of hundreds of thousands of change-of-postal-address forms showed that low-income African American residents of New Orleans were more likely to land further away than wealthier whites—often wherever government buses or planes let them off. Nearly 15% of New Orleans evacuees ended up as far away as Las Vegas, San Francisco, Seattle, Chicago and Boston.³³

Poor people displaced far from home are unlikely to have the resources to move back or to afford the increased costs of now-scarce rental property.³⁴ Even as late as June 2006, black evacuees were nearly five times more likely to be unemployed than their white counter-parts, according to the U.S. Department of Labor.³⁵

In the city of New Orleans, the pre-Katrina population of 454,000 people dropped to 187,000 in one year.³⁶ The African American population in New Orleans dropped by 61%, or 213,000 people, from a pre-Katrina number of 302,000 down to 89,000.³⁷ New Orleans became a smaller, older, whiter and more affluent city.³⁸

A high percentage of the displaced African Americans were relocated out-of-state. In 2006, Texas reported that over 250,000 displaced people remained in the state—41% of the displaced households reported

³³ See Tomas Alex Tizon & Doug Smith, *Evacuees of Hurricane Katrina Resettle Along a Racial Divide*, L.A. TIMES, Dec. 12, 2005, at A1 ("Nearly 15% of the Orleans Parish evacuees scattered to such distant cities as Las Vegas, San Francisco, Seattle, Chicago and Boston").

³⁴ See Narayan Sastry, *Tracing the Effects of Hurricane Katrina on the Population of New Orleans: The Displaced New Orleans Residents Pilot Study*, 5 (RAND, Working Paper No. 483, 2007), available at http://www.rand.org/pubs/working_papers/WR483/ (last visited on October 9, 2007) (reporting that limited evidence suggests that poor New Orleanians were forced to move further from the City than wealthier residents) (on file with the Washington and Lee Journal of Civil Rights and Social Justice).

³⁵ See *The Labor Market Impact of Hurricane Katrina: An Overview*, MONTHLY LABOR REV., at 10 (Aug. 2006), available at <http://www.bls.gov/opub/mlr/2006/08/art1full.pdf> (noting that between October 2005, and June 2006, just 15.4% of Katrina evacuees were employed).

³⁶ See Press Release, Louisiana Recovery Authority, *Comprehensive New Study Reveals Updated Population Numbers in Storm-Affected Parishes* (Oct. 5, 2006), <http://www.lra.louisiana.gov/pr100506.html> (last visited Feb. 5, 2008) (noting that the metropolitan area of New Orleans, Orleans, Jefferson, St. Bernard and Plaquemines Parishes had a population of 1,002,046 people before Katrina, but only 668,350 one year later) (on file with the Washington and Lee Journal of Civil Rights and Social Justice).

³⁷ *Id.*

³⁸ See Rick Lyman, *Reports Reveal Hurricanes' Impact on Human Landscape*, N.Y. TIMES, July 7, 2006, at A1 (citing Census Bureau studies showing that those who remained in New Orleans following Katrina were more likely to be white, slightly older and a bit more well-off).

income of less than \$500 per month.³⁹ 81% of the displaced were black, 59% were jobless, most had at least one child at home, and many had serious health issues.⁴⁰ Houston alone was home to 150,000 of the displaced.⁴¹ Another 100,000 people displaced by Katrina were in Georgia, and more than 80,000 in metro-Atlanta—most of whom also needed long-term housing and mental health services.⁴²

The displacement of African Americans was due to a lack of resources and to blatant racial discrimination. Powerful voices made clear that not everyone was invited back to New Orleans. One power broker told the *Wall Street Journal* less than two weeks after Katrina:

The new city must be something very different . . . with better services and fewer poor people. Those who want to see this city rebuilt want to see it done in a completely different way: demographically, geographically and politically. I'm not just speaking for myself here. The way we've been living is not going to happen again, or we're out.⁴³

Racial discrimination against displaced African Americans from New Orleans took several forms. Discrimination in rental housing for Katrina survivors was widespread. The Greater New Orleans Fair Housing Center confirmed this by testing in five states and seventeen cities.⁴⁴ At two-

³⁹ See Polly Ross Hughes, *State Finds Evacuees in Holding Pattern*, HOUSTON CHRON., Aug. 10, 2006, at A1 (describing the results of a survey taken by the Texas Department of Health and Human Services).

⁴⁰ See *id.* (describing the results of a survey taken by the Texas Department of Health and Human Services).

⁴¹ See Allan Turner & Eric Berger, *Report: Storms Left New Human Landscape*, HOUSTON CHRON., June 7, 2006, at A1 (reporting local estimates that as many as 150,000 evacuees reside in Harris County, Texas, 90,000 of whom are living in FEMA-funded housing); see also Lyman, *supra* note 38 (noting that the Houston metropolitan area emerged with 130,000 new residents following Katrina); Allan Turner, *69% of Poor Evacuees are Here to Stay*, HOUSTON CHRON., Sept. 8, 2006 (asserting that between 130,000-150,000 evacuees remain in Houston).

⁴² See Bob Dart, *100,000 Katrina Evacuees Still in Atlanta*, ATLANTA J. & CONST., Aug. 15, 2006 (citing a study reporting that of the 100,000 evacuees who relocated to Georgia, 84,000 were still there one year later).

⁴³ Christopher Cooper, *Old Line Families Escape Worst of Flooding and Plot the Future*, WALL ST. J., Sept. 5, 2005, available at <http://www.commondreams.org/headlines05/0908-09.htm>.

⁴⁴ See National Fair Housing Alliance, *No Home for the Holidays: Report on Housing Discrimination Against Hurricane Katrina Survivors*, at 4 (Dec. 20, 2005), available at <http://www.nationalfairhousing.org/index.php> (reporting the results of tests conducted by NHFA over the

thirds of the apartments surveyed, white applicants were treated more fairly than blacks.⁴⁵ Forms of racial discrimination documented in this study included apartments that were shown to whites but not to African Americans, as well as higher rental prices and security deposits for people of color.⁴⁶ There were even ads that explicitly offered housing to whites or Christians only.⁴⁷

Discrimination against African American evacuees from New Orleans was also government-sponsored in the three jurisdictions that collar the city. St. Bernard Parish, a 93% white suburb adjoining the lower Ninth Ward of New Orleans, enacted a post-Katrina ordinance which restricted home owners from renting out single-family homes "unless the renter is a blood relative" without securing a permit from the government.⁴⁸ Violations were subject to fines of \$50 to \$250 per day.⁴⁹ Federal civil rights litigation forced the government to suspend the operation and enforcement of the ordinance.⁵⁰

Jefferson Parish, another adjoining majority-white suburb, unanimously passed a resolution opposing all low-income tax credit multi-family housing in the areas closest to New Orleans in an attempt to stop the construction of a 200-unit apartment building on vacant land for people over

telephone to determine what both African American and white home seekers were told about unit availability, rent, discounts, and other terms and conditions of apartment leasing).

⁴⁵ *Id.*

⁴⁶ See *id.* at 2–3 ("In many tests, Whites were given truthful information about the availability of units or the terms and conditions of securing an apartment, while that information was withheld from or provided differently to their African-American counterparts.").

⁴⁷ See Michelle Chen, *Post-Katrina Throwback to Segregation Alarms Fair-Housing Activists*, THE NEW STANDARD, Feb. 10, 2006, <http://newstandardnews.net/content/index.cfm/items/2797> (last visited Feb. 21, 2008) ("[I]n the weeks following the disaster, as offers of charity flooded the Internet, people posted dozens of discriminatory ads on websites listing emergency housing resources. Many offered free or low-cost shelter, but set conditions such as no blacks, or Christians only.") (on file with the Washington and Lee Journal of Civil Rights and Social Justice).

⁴⁸ See Bob Warren, *Rental Policy Called Discriminatory*, NEW ORLEANS TIMES-PICAYUNE, Sept. 27, 2006, at B1 ("The council approved an ordinance last week that prohibits some single-family residences from being rented to anyone who is not a blood relative of the owner."); Staff, *Fair Housing Center in N.O. Decries 'Racist' Ruling*, NEW ORLEANS CITYBUSINESS Oct. 2, 2006 ("[T]he ordinance's blood-relative requirement will limit the number of non-white residents parish wide, citing recent U.S. Census data indicating nearly 93% of homeowners in St. Bernard Parish are white.").

⁴⁹ See Warren, *supra* note 48, at B1 (noting the fines that could be imposed upon violators of the ordinance).

⁵⁰ See Bob Warren, *St. Bernard Agrees to Delay its Rent Rule*, NEW ORLEANS TIMES-PICAYUNE, Nov. 14, 2006, at A1, available at <http://www.lawyerscomm.org/2005website/publications/press/press110206.html> (noting the suit's allegations that the ordinance is intentionally exclusionary towards minorities, and this type of discrimination is prohibited by the Federal Fair Housing Act).

the age of sixty-two and the construction of any further Section 8 housing.⁵¹ The sponsoring legislator condemned poor people as "lazy," "ignorant," and "leeches on society"—specifically hoping to guard against former residents on New Orleans public housing.⁵²

In St. Tammany Parish, across Lake Ponchartrain from New Orleans, the chief law enforcement officer, Sheriff Jack Strain, openly complained about the post-Katrina presence of "thugs and trash from New Orleans" and announced that people with dreadlocks or "chee wee hairstyles" could "expect to be getting a visit from a sheriff's deputy."⁵³ Strain also voiced his objections to creating temporary housing for people from New Orleans, saying, "I don't want to see temporary housing because of Katrina turn into long-term housing for a bunch of thugs and trash that don't need to be in St. Tammany Parish."⁵⁴ The combined effect of racial discrimination in the rental market and clear bias in the surrounding suburban jurisdictions puts a "whites preferred" zone around the City of New Orleans—a preference reflected in voting as well—and keeps former African American residents displaced.

III. *Post Katrina Voting Rights Problems and Challenges in New Orleans*

After Katrina, voting quickly became one of the major challenges of New Orleans. Elections for Mayor and City Council of New Orleans were scheduled for February 2006, but there were major problems, including: extensive physical damage to voting precincts;⁵⁵ the displacement of voting commissioners;⁵⁶ the inability of candidates to communicate with potential

⁵¹ See Meghan Gordon, *Terrytowners Resist Low-Income Housing*, NEW ORLEANS TIMES-PICAYUNE, Nov. 2, 2006, at B1 (illustrating the white majority's use of discriminatory legislation); Joe Gyan, Jr., *Group Asks Parish Change Housing Stance*, BATON ROUGE MORNING ADVOCATE, Oct. 24, 2006, at B5 (describing legislator's viewpoint towards a specific group of citizens).

⁵² Rachel Wilch, *Region Will Continue to Falter Without Affordable Housing*, NEW ORLEANS CITYBUSINESS, Dec. 18, 2006, at 1.

⁵³ Paul Rioux, *Sheriff Jack Strain is Sticking to His Guns*, NEW ORLEANS TIMES-PICAYUNE, July 16, 2006, at A1; Paul Rioux, *Group to Comb Sheriff's Files for Signs of Hiring Bias*, NEW ORLEANS TIMES-PICAYUNE, Aug. 3, 2006, at A1.

⁵⁴ Paul Rioux, *Sheriff's Remarks Called 'Overtly Racist'*, NEW ORLEANS TIMES-PICAYUNE, July 8, 2006, at A1.

⁵⁵ See Frank Donze & Ed Anderson, *February Elections Planned Amid Immense Challenges*, NEW ORLEANS TIMES-PICAYUNE, Oct. 11, 2005, at B1 (noting damage to voting precincts).

⁵⁶ See Clifford J. Levy, *New Orleans Vote Near, But Who Will Go?*, N.Y. TIMES, Nov. 17, 2005, at A1 (observing the displacement of voting commissioners).

voters;⁵⁷ and Louisiana's complex absentee voting provisions.⁵⁸ However, the overwhelming problem was the fact that blacks could not return to New Orleans at anywhere near the same rate as whites.⁵⁹

Voting in person proved very challenging. Nearly 300 of the 442 polling places in New Orleans were damaged or leveled in the aftermath of Katrina and as much as 80% of the population of the city, including most of the black voter majority and most of the 2,300 voting commissioners, had not returned weeks after the storm.⁶⁰

Communicating with voters was also nearly impossible because long-cultivated voter address lists were now meaningless and few candidates had the resources to do print or television ads in all the markets where New Orleanians were displaced.⁶¹

Displaced voters who wanted to cast ballots were required to return for the election or comply with Louisiana's challenging absentee voting laws, which required the voter to vote early or cast a ballot by mail.⁶²

Dwarfing all these problems, black voters could not return to New Orleans at the same rate as whites.⁶³ After Katrina hit at the end of August 2005, the entire city was evacuated and remained empty for weeks. By mid-September, businesses were allowed to re-open in less damaged areas.⁶⁴ Sections of the city which received the least amount of damage were re-opened first, starting with the French Quarter and working up along the Mississippi River through the Garden District until reaching Uptown.⁶⁵

⁵⁷ See *id.* (addressing the disruption in communication between candidates and voters).

⁵⁸ See LSA-R.S. 18: 1301–07 (discussing Louisiana's absentee voting laws).

⁵⁹ See *infra* notes 68–81 and accompanying text (describing return rates of whites and blacks).

⁶⁰ See Donze & Anderson, *supra* note 55, at B1 (addressing the overwhelming obstacles potential voters faced); Levy, *supra* note 56, at A1 (establishing the percentage of voters who returned to the affected area after Katrina).

⁶¹ See Levy, *supra* note 56, at A1 (discussing the lack of communication between candidates and voters).

⁶² See LSA-R.S. 18: 1301–07 (detailing the adequacy of Louisiana's absentee voting laws).

⁶³ See Levy, *supra* note 56, at A1 (noting that, since the hurricane, most of the people who have returned to New Orleans have been white and middle class; a marked change from the city's original racial composition, which had been two-thirds black).

⁶⁴ See William Yardley, *Storm and Crisis: The Overview; Business Owners Start to Return to New Orleans*, N.Y. TIMES, Sept. 18, 2005, at A1 (stating that business owners in the French Quarter, Uptown, the central business district, and Algiers—across the Mississippi River—were allowed to reopen first).

⁶⁵ See Press Release, City of New Orleans, City Resumes Re-Entry Plan (Sept. 26, 2005), <http://www.cityofno.com> (follow "Press Releases" hyperlink; then follow "All Articles" hyperlink) (last

This system of reopening prioritized the highest ground in New Orleans, but also prioritized the return of the New Orleans white community, who inhabited the majority of the less flooded areas.⁶⁶ Prior to Katrina, New Orleans was home to 302,041 African Americans and 124,591 whites.⁶⁷ In the earliest months after Katrina, however, most of the estimated 60,000 to 100,000 people who returned to New Orleans were white and middle class.⁶⁸ One African American elected representative described the situation in Fall 2006 as follows: "The minority became the majority, and the majority became the minority. That changed the whole outlook of the political scene."⁶⁹

African Americans could not return home as fast as whites for several reasons. First, many more African American homes actually flooded than homes of whites in the city—recall that three quarters of African American homes in New Orleans suffered severe water damage compared to only half of the white homes.⁷⁰ This flood damage is itself a legacy of racial discrimination and poverty, because, historically, higher income and overwhelmingly white residents occupied the higher ground in New Orleans.⁷¹ Poor people and African Americans generally lived in the lower-lying more flood-prone neighborhoods—for example, 38 of the city's 47 extreme-poverty census tracts flooded.⁷² Those hit hardest by the flood were

visited Feb. 5, 2008) (noting that the city opened to residents of the French Quarter, the CBD, Uptown and Algiers on September 26, 2005).

⁶⁶ See *infra* notes 70–81.

⁶⁷ See L.A. DEP'T. HEALTH & HOSP. ET AL., 2006 LOUISIANA HEALTH AND POPULATION SURVEY REPORT 3, http://popestla2006/files/PopEst_Orleans_Survey_Report.pdf (on file with the Washington and Lee Journal of Civil Rights and Social Justice).

⁶⁸ See Levy, *supra* note 56, at A1 (describing the change in the racial composition of New Orleans after the hurricane).

⁶⁹ See *id.* (quoting State Representative Juan A. LaFonta who advocated, given the circumstances, that the elections be delayed).

⁷⁰ See Brazile, *supra* note 29, at 233–37 (describing how most of the worst flood damage occurred in homes occupied by African Americans).

⁷¹ See CRAIG E. COLTEN, *UNNATURAL METROPOLIS: WRESTING NEW ORLEANS FROM NATURE* 77–107 (L.A. State Univ. Press. 2005) (emphasizing the inequity in housing distribution across the flood plains compounded by years of disparate distribution of public works projects related to flood control); see also Martha Mahoney, *Law and Racial Geography: Public Housing and the Economy in New Orleans*, 42 STAN. L. REV. 1251 (1990) (describing the historical role of race in public housing in New Orleans); THE BROOKINGS INSTITUTION, *supra* note 24, at 9–10 (explaining that white flight between 1970 and 2000 caused the city to lose more than half of its white population while the African American population grew by 27%).

⁷² See Bruce Katz, *Concentrated Poverty in New Orleans and Other American Cities*, THE CHRON. OF HIGHER EDUC. (Aug. 4, 2006), <http://www.brookings.edu/views/op-ed/katz/20060804.htm> (providing one basis for the assertion that African Americans and the poor were more affected by the flooding) (on file with the Washington and Lee Journal of Civil Rights and Social Justice); see also THE

disproportionately non-white—the flooded areas were 80% non-white.⁷³ Second, an overwhelming majority of the poor in New Orleans, 84%, were African American.⁷⁴ Third, at the time of the flood, African American renters made up the majority of the city.⁷⁵ With skyrocketing rents due to the scarcity of rental housing, prior African American renters were priced out of the market.⁷⁶

Louisiana State University geographer Craig Colten offers additional insight into the disproportionate effects of flooding on African Americans in New Orleans. He has explained: "With greater means and power, the white population occupied the better-drained sections of the city, while blacks typically inhabited the swampy 'rear' districts."⁷⁷ Colten told National Public Radio that the lowest lying areas of New Orleans had long been segregated and inhabited by lower-income householders, especially African Americans.⁷⁸ In New Orleans, he said, "water flows away from money."⁷⁹

The overall return to New Orleans was slow, but for African Americans, the return to New Orleans has been even slower. According to the U.S. Post Office, in July 2005, prior to Katrina, New Orleans was home

BROOKINGS INSTITUTION, *supra* note 24, at 6 (explaining that of the 50 largest cities in the U.S., New Orleans had the second highest share of its poor population living in extremely poor census tracts: 38%).

⁷³ See THE BROOKINGS INSTITUTION, *supra* note 24, at 16–17 (outlining the social patterns of development which ensured that certain races would suffer disproportionately, now supported by statistics showing the disproportionate impacts after Katrina).

⁷⁴ *Id.* at 6.

⁷⁵ In 2000, 53.5% of New Orleans residents were renters compared to 33.8% nationally. U.S. Census Bureau, 2000 Fact Sheet New Orleans, Louisiana, <http://factfinder.census.gov> (search "New Orleans, Louisiana"; then follow "2000") (last visited Dec. 2, 2007) (on file with the Washington and Lee Journal of Civil Rights and Social Justice). African American renters made up 66,083 of the city's 100,662 rental units. U.S. Census Bureau, 2000 Fact Sheet, Demographic Profile Highlights—African Americans New Orleans, Louisiana, <http://factfinder.census.gov> (search "New Orleans, Louisiana"; then follow "2000"; then follow hyperlink to "Fact Sheet for a Race, Ethnic or Ancestry group"; then select "Black Alone") (last visited Dec. 2, 2007) (on file with the Washington and Lee Journal of Civil Rights and Social Justice).

⁷⁶ See Susan Saulny & Gary Rivlin, *Renewal Money for New Orleans Bypasses Renters*, N.Y. TIMES, Sept. 17, 2006 (describing the various factors, including the lack of government assistance, that result in many low-income residents being priced out of the rental market); see also John Moreno Gonzales, *Katrina's Aftermath: No Refuge, Solution for Katrina Homeless*, HOUSTON CHRON. Aug. 18, 2007, at A7 (explaining that many residents are left on the streets because affordable public housing units flooded and have yet to reopen); Jeffrey Meitrodt, *Rising Rent*, NEW ORLEANS TIMES-PICAYUNE, Oct. 15, 2006, at 1 (describing the growing homeless population in New Orleans).

⁷⁷ COLTEN, *supra* note 71, at 77.

⁷⁸ See NPR Morning Edition: Interview: Professor Craig Colten on Race, Poverty and Katrina (NPR radio broadcast Sept. 2, 2005) (describing housing patterns in New Orleans).

⁷⁹ *Id.*

to 198,232 households; in August 2006, the city had dropped to 98,141 households; as of July 2007 there were still only 133,966 households registered to receive mail.⁸⁰ It was not until July 2006 that African Americans again became a majority of the population when reports indicated that the city was home to 89,891 African Americans and 81,557 whites.⁸¹

IV. *Post-Katrina State and Federal Executive, Legislative, Administrative, and Judicial Developments*

Before Katrina hit, municipal elections for mayor and all members of the New Orleans City Council were scheduled in New Orleans for February 2006. This article will only summarize the twists and turns in the chronology of the on-again, off-again, New Orleans elections and the role played by the U.S. Department of Justice, the Governor of Louisiana, the Louisiana Legislature, the Secretary of State, the Louisiana District Court, and the U.S. District Court.⁸²

Many citizens in New Orleans thought elections should go forward as planned in February 2006.⁸³ These people thought elections were a sign of health and important to allow voters to signal their approval or disapproval of incumbents.⁸⁴ Mayor Nagin was quoted as saying that "voting during our regular cycle would further bring a sense of normalcy and empowerment to our citizens."⁸⁵ One of the lawyers who sued to keep the election date said, "[i]t may be inconvenient, it may be expensive, but there

⁸⁰ Press Release, Greater New Orleans Cmty. Data Ctr., Community Data Center Releases Zip-Code Level Population Indicators for Entire New Orleans *Metro Area*, Greater (Aug. 31, 2007), <http://www.gnocdc.org/media/GNOCDCAug31-07.pdf> (listing the number of households in New Orleans).

⁸¹ LA. DEP'T. HEALTH & HOSP. ET AL., *supra* note 67, at 3.

⁸² The first reason for summarizing is that two already published law review articles give excellent and detailed accounts of these battles. The second is because the author was a part of that journey as both litigant and voter.

The two law review articles that detail the chronology and legal actions taken before the New Orleans elections are: Holmes, *supra* note 23, and Damian Williams, Note, *Reconstructing Section 5: A Post-Katrina Proposal for Voting Rights Act Reform*, 116 YALE L.J. 1116 (2007).

⁸³ See Christopher Tidmore, *Election Delay Violates Law, Say Critics*, THE LOUISIANA WEEKLY, Dec. 19, 2005, available at <http://www.louisianaweekly.com/weekly/news/articlegate.pl?20051219w> (criticizing the Governor of Louisiana's decision to delay elections in New Orleans indefinitely).

⁸⁴ *Id.*

⁸⁵ Kim Cobb, *Louisiana Governor Agrees to Postpone New Orleans Votes*, THE HOUSTON CHRON., Dec. 3, 2005, at A12.

are few things as important as the right to vote."⁸⁶ Others thought that holding elections so quickly would effectively disenfranchise most of the voters temporarily displaced from the city.⁸⁷

In October 2005, the New Orleans Parish Criminal District Court Clerk in charge of local elections reported that 202 of the city's 442 voting precincts, mostly in heavily African American communities, were destroyed and many of the 2300 election commissioners needed to hold an election had not yet reported to the Clerk.⁸⁸ That same month, Congressional Democrats introduced the Displaced Citizens Voter Protection Act of 2005, HR3734 and S1867, which would have given displaced Katrina victims the same voting rights in balloting and registration that are available to voters who are overseas or in the military.⁸⁹ The bill mandated that every Katrina evacuee:

[S]hall be treated in the same manner as an absent uniformed services voter and overseas voter for purposes of the Uniformed and Overseas Citizens Absentee Voting Act . . . and shall be deemed to be an individual who is entitled to vote by absentee ballot for purposes of the National Voter Registration Act of 1993 and the Help America Vote Act of 2002.⁹⁰

The bill was not enacted, but it received support from forty-one cosponsors in the House of Representatives, all of whom were Democrats.⁹¹ Senator Landrieu, Democrat of Louisiana, and two other Democratic Senators, supported the companion Senate bill.⁹²

⁸⁶ *Suit Seeks to Prevent Postponement of New Orleans Elections*, ASSOCIATED PRESS, Dec. 9, 2005, <http://www.katc.com/Global/story.asp?S=4226111> (last visited Dec. 2, 2007) (on file with the Washington and Lee Journal of Civil Rights and Social Justice).

⁸⁷ See Kristen Clarke-Avery & M. David Gelfand, *Voting Rights Challenges in a Post-Katrina World: With Constituents Dispersed, and Voting Districts Under Populated, How Should New Orleans Hold Elections?*, FINDLAW, Oct. 11, 2005, http://writ.news.findlaw.com/commentary/20051011_gelfand.html (last visited Dec. 2, 2007) (discussing potential voting options that preserve the political process and address the impact of Hurricane Katrina in New Orleans) (on file with the Washington and Lee Journal of Civil Rights and Social Justice).

⁸⁸ See Donze & Anderson, *supra* note 55 (reporting voting statistics).

⁸⁹ See Mary Orndorff, *Democrats Support Bill to Allow Absentee Voting By Evacuees*, BIRMINGHAM NEWS, Oct. 26, 2005, at 8B (introducing the absentee voting proposal for hurricane evacuees).

⁹⁰ Displaced Citizens Voter Protection Act of 2005, H.R. 3734, 109th Cong. § 2 (2005), available at <http://thomas.loc.gov/cgi-bin/query/D?c109:1:./temp/~c109XY5pp3::> (last visited Feb. 21, 2008).

⁹¹ See *id.* (noting the vote on the bill).

⁹² See Displaced Citizens Voter Protection Act of 2005, S. 1867, 109th Cong. (2005), available at <http://thomas.loc.gov/cgi-bin/bdquery/z?d109:s.01867:> (noting the vote on the bill).

Louisiana's Republican Senator, David Vitter, said, "Congress should be working on helping displaced residents return to Louisiana, first and foremost, and . . . the voting legislation should wait."⁹³ At the same time, Louisiana Secretary of State Al Ater reported that about 400,000 registered voters fled the state—approximately 300,000 from New Orleans alone.⁹⁴ Ater, in charge of administering and supervising all state-wide electoral matters in Louisiana, was openly considering a plan to allow displaced New Orleans citizens to vote in upcoming elections by bringing voting machines to out-of-state locations like Houston and Atlanta.⁹⁵

Secretary of State Ater requested that FEMA provide Louisiana with the new addresses of hurricane-displaced voters, but FEMA refused, citing privacy constraints.⁹⁶ Ater unsuccessfully appealed the decision, saying, "by no fault of their own, more than 299,000 registered voters in Orleans parish have been displaced," and without that information the February 2006 Orleans elections were in jeopardy.⁹⁷ By the end of October, Ater's office appeared resigned to postponing the New Orleans elections, saying, "It's hard for us to feel we've conducted a free and fair election when there's a possibility that a majority of voters don't have any idea of their voting rights or how they can participate."⁹⁸ The Louisiana Secretary of State ultimately admitted that he would not be able to physically set up the voting machines for the election, which he termed "the most important in that city's life," because FEMA would not give any money at all towards the \$1.8 million needed to repair and replace voting machines damaged in the storm.⁹⁹

A special session of the Louisiana legislature was called on November 6, 2005, to deal with the many changes necessary to respond to Hurricanes Katrina and Rita. Included in the call for the session were a number of changes to voting laws intended to allow more flexibility in

⁹³ Mary Orndorff, *Democrats Support Bill to Allow Absentee Voting By Evacuees*, BIRMINGHAM NEWS, Oct. 26, 2005, at 8B.

⁹⁴ See Donze & Anderson, *supra* note 55 (noting voter dispersion after Katrina).

⁹⁵ See *id.* (relating possible remedies to voter dispersion after Katrina).

⁹⁶ Ed Anderson, *Feds' Ruling Jeopardizes February Elections; Displaced Voters' Records Off-Limits*, NEW ORLEANS TIMES-PICAYUNE, Oct. 19, 2005, at A3.

⁹⁷ *Id.*

⁹⁸ Ana Radelet, *Election Problems*, SHREVEPORT TIMES, Oct. 30, 2005.

⁹⁹ See Doug Simpson, *Possible Casualty of Katrina: Elections: State Official Urges Postponing Them*, CHICAGO SUN-TIMES, Dec. 3, 2005, at 18 (stating that the Secretary of State blamed much of the delay on the Federal Emergency Management Agency, which had not provided any money towards the \$2 million his office requested to repair voting machines damaged in the storm).

addressing voter issues.¹⁰⁰ On November 10, 2005, during the special session, Senate Bill 89 was introduced. The bill, which ultimately became Act 40 when it was signed by the Governor on December 6, 2005, set out new voting procedures.¹⁰¹ The bill requires that if the Governor and a committee from the Louisiana House and another from the Senate declare an emergency, the Secretary of State has to create a new plan for voting.¹⁰² That plan must then be submitted to the Governor and the same committees.¹⁰³ If they approve it, a majority of the members of each house of the legislature must then approve the plan by mail ballot.¹⁰⁴ If approved, the emergency voting plan can go into effect.

Meanwhile, the Louisiana legislature decided not to extend new opportunities to displaced voters as requested by African American legislators, citing concerns about fraud.¹⁰⁵ "You can have phantom voters under this piece of legislation," said Rep. Peppi Bruneau, R-New Orleans, a long-time opponent of expanding voting rights for African Americans.¹⁰⁶ Sen. Jay Dardenne, R-Baton Rouge, opposed the bill in the Senate because

¹⁰⁰ See items 56–58 of Proclamation No 62 KBB 2005, Convening of Legislature in Extraordinary Session, (October 31, 2005), available at http://en.wikisource.org/wiki/Proclamation_by_Her_Excellency_Kathleen_Babineaux_Blanc_Governor_of_the_State_of_Louisiana%2C_Dated_October_31_2005_Convening_the_Legislature_of_Louisiana_in_Extraordinary_Session (last visited Feb. 21, 2008) (providing flexibility to suspend provisions relating to the annual canvass of voters; to respond to the eventuality of a shortage of available commissioners and commissioners in charge; and to legislate as to the holding of elections impaired as the result of a gubernatorially declared disaster or emergency) (on file with the Washington and Lee Journal of Civil Rights and Social Justice).

¹⁰¹ See S.B. 89, 2005 Leg., 1st Spec. Sess. (La. 2005) (authorizing the Secretary of State to certify to the Governor and the Senate and House governmental affairs committees the need for an election plan for registration, early voting, absentee voting by mail, and election day voting).

¹⁰² See *id.* ("Upon the written concurrence with the certification by the Governor and majority of the members of each committee, the secretary of state shall develop a written emergency election plan.").

¹⁰³ See *id.* (requiring the Secretary of State to submit a written plan after the concurrence of the Governor and the majority of the members of each committee).

¹⁰⁴ See *id.* (following approval of the emergency plan by the Governor and a majority of the members of each committee, the Secretary of State must take all necessary steps to implement the plan in compliance with the Voting Rights Act of 1965).

¹⁰⁵ See Audrey Hudson, *Eased Voting Rules Sought After Storms; Critics Fear Fraud in Louisiana*, WASH. TIMES, Nov. 17, 2005, at A1 ("Opponents of changing the law say it could lead to voter fraud in a state with a long and colorful history of political corruption.").

¹⁰⁶ Will Sentell, *Voters Can't Mail Ballots***House Kills Bill; History of Irregularities Cited*, BATON ROUGE ADVOCATE, Nov. 17, 2005, at A6; see also Ed Anderson, *Mail-in Voting Measure Advances, Proposal Intended to Aid Storm Evacuees*, NEW ORLEANS TIMES-PICAYUNE, Nov. 10, 2005, at 19 (highlighting Bruneau's concern that expanded voting rights for the displaced would allow many people who have never voted in person to vote by mail, inviting election irregularities).

he was worried about fraud.¹⁰⁷ On November 10, 2005, a federal voting rights class action, *Wallace v. Chertoff*, was filed on behalf of all New Orleans voters.¹⁰⁸ The case, litigated by the NAACP Legal Defense and Educational Fund and local civil rights lawyers, was a broad challenge to the disenfranchisement of Orleans Parish voters.¹⁰⁹ The claimants requested that FEMA provide data on the current addresses of New Orleans residents to Louisiana election officials, who would then make that information "available to all political parties, candidates, and to all other persons or groups that would normally have access to the voter registration rolls for Orleans Parish."¹¹⁰ The complaint further called for meaningful and effective access to voting polling "at the places where they are presently located, equal to or better than the access mandated for voters residing overseas or serving in the armed forces, under the Uniformed and Overseas Citizens Absentee Voting Act, 42 USC Section 1973ff et seq."¹¹¹

Gerald Wallace, the lead plaintiff in the first federal voting rights case, provides a good illustration of the problems of voters in New Orleans. He lived in the Lower Ninth Ward of New Orleans, where his home was flooded.¹¹² At the time the suit was filed in November 2005, months after Katrina hit, he had lived in five different places.¹¹³ He was legally prohibited from living in his home or neighborhood; had no access to drinkable water, electricity, gas or sewer services; and was living under a dusk to dawn curfew enforced by police and the National Guard.¹¹⁴

On December 9, 2005, only days before qualifying for the February elections was to begin, the Governor of Louisiana issued an executive order postponing the New Orleans elections indefinitely because of an inability to hold them.¹¹⁵ The *Times-Picayune*, in an editorial titled, *They Did It in*

¹⁰⁷ See Ed Anderson, *1st Time Voter Bill Flops in House; Fraud is Concern in Mail-Ballot Plan*, NEW ORLEANS TIMES-PICAYUNE, Nov. 16, 2005, at 8 (explaining Dardenne's concerns with a method to validate a voter from Louisiana who is registered somewhere else and still remains on voter rolls in Louisiana).

¹⁰⁸ See *Wallace v. Chertoff*, 2005 WL 3609839 (E.D. La. 2005) (seeking declaratory and injunctive relief for violations of the Voting Rights Act and the Civil Rights Act).

¹⁰⁹ See *id.* (raising a host of voting rights concerns).

¹¹⁰ Complaint at 3 ¶ Preliminary Statement, *Wallace v. Chertoff*, 2005 WL 3609839 (E.D. La. 2005).

¹¹¹ *Id.* at 28 ¶ 74.

¹¹² See *id.* at ¶ 5 (noting Wallace's background).

¹¹³ See *id.* at ¶ 6 (noting that Wallace lived in five different places after Katrina hit).

¹¹⁴ See *id.* at ¶ 6 & 7 (noting living conditions in the Lower Ninth Ward after Katrina).

¹¹⁵ See Executive Order KBB 2005-96, Dec. 9, 2005, <http://www.gov.state.la.us/assets/docs/PDFs/EO%2096.pdf> (authorizing the Governor to postpone primary elections

Baghdad,¹¹⁶ characterized the postponement as a defeat. The editorial suggested that the postponement showed that New Orleans could not govern itself, and that elected officials could stay in office longer than their legal terms.¹¹⁷

Coincidentally, a state court action was filed on the same day, December 9, 2005, seeking to hold onto the February 2006 election date.¹¹⁸ It was dismissed in late December 2005, after Louisiana agreed to hold the elections on or before April 29, 2006.¹¹⁹

Another federal action, this one challenging the postponement, was filed December 13, 2005.¹²⁰ Part of the challenge was that the effect of delaying the elections beyond May 1, 2006 would allow sitting elected officials to serve past the end of their legal terms.¹²¹

In addition to uncertainties about when the election would be held were uncertainties about which of the displaced would be allowed to vote and how they would do so.¹²² Out-of-state satellite voting was becoming more important because Louisiana officials concluded that eight states and

scheduled for February 2006 and general elections scheduled for March 2006) (on file with the Washington and Lee Journal of Civil Rights and Social Justice).

¹¹⁶ Editorial, *They Did It in Baghdad*, NEW ORLEANS TIMES-PICAYUNE, Dec. 8, 2005, at B6.

¹¹⁷ See *id.* (arguing that a delay would send the message that New Orleans could not manage something as basic as an election after Hurricane Katrina, and that a delay would keep officials in office more than six months after the expiration of their terms).

¹¹⁸ See *Voters Sue Gov. Blanco to Schedule Elections*, NEW ORLEANS CITYBUSINESS, Dec. 9, 2005 (stating that voters filed a petition with the 19th Judicial District Court to stop the indefinite delay of the February 4, 2006 city elections); see also *Former La. Secretary of State Jim Brown Scoffs at Al Ater's Electoral Timidity*, NEW ORLEANS CITYBUSINESS, Dec. 21, 2005 (listing plaintiffs' attorney as Rob Couhig and judge as state District Judge William Morvant in Baton Rouge); Adrian Angelette, *Group Files Suit Against Blanco***Residents Say Governor Wrong To Halt Elections*, BATON ROUGE ADVOCATE, Dec. 10, 2005, at B1 (noting that Couhig had asked state District Judge William Morvant to issue a temporary restraining order that would block Blanco from halting the February 4th election).

¹¹⁹ See Melinda Deslatte, *N.O. Elections Deal Reached*, SUN HERALD, Dec. 23, 2005, at A5 (dismissing lawsuit after Ater's office formally agreed that the state would hold elections by the April deadline, if practical).

¹²⁰ See Complaint, *Tisserand v. Blanco*, No. 05-6487 (E.D. La. Dec. 13, 2005) (noting that "Plaintiffs filed suit on December 13, 2005, after the Governor's announcement that Orleans Parish elections were suspended indefinitely").

¹²¹ See Robert Travis Scott, *State Elections Could Be Held by April 29*, Dec. 22, 2005, www.nola.com/newslogs/tpupdates/index.ssf?/mtlogs/nola (last visited Dec. 2, 2007) (noting that the plaintiffs in *Tisserand* are concerned with keeping elections on schedule) (on file with the Washington and Lee Journal of Civil Rights and Social Justice).

¹²² See Stephanie Grace, *Law Imperils Evacuees' Right to Vote*, NEW ORLEANS TIMES-PICAYUNE, Dec. 22, 2005, at 7 (stating that a state law provision could prevent evacuees from voting by mail).

Louisiana had "high concentrations" of persons displaced from New Orleans: Texas, Alabama, Arkansas, Georgia, Mississippi, Tennessee, California and Florida.¹²³

In response to concerns about the problems of out-of-state displaced voters, another federal voting challenge was filed on February 9, 2006.¹²⁴ The Advancement Project and local civil rights attorneys brought *ACORN v. Blanco* as a class action on behalf of displaced voters challenging their disenfranchisement for the elections set for April 22, 2006 and May 20, 2006.¹²⁵ This action specifically addressed the rights of voters displaced outside of Louisiana and asked that out-of-state satellite voting be allowed in nine states.¹²⁶

Another special legislative session was called for February 2006. Voting rights for the displaced were taken up again.¹²⁷ When concerns about fraud derailed a bill to allow expanded rights to vote for displaced voters, the members of the Louisiana Black Caucus walked out of the House in protest.¹²⁸

After a frank conference with the federal judge handling the voting rights lawsuits, the legislature made it somewhat easier for the displaced to vote.¹²⁹ Governor Blanco signed into law a new election law, Act 2, on February 23, 2006, during another special session of the Louisiana legislature.¹³⁰ This law allowed registered voters temporarily displaced by a Governor-declared emergency to register by mail to vote absentee without appearing first in person at the polls or voting at the registrar's office.¹³¹ It was available to those who registered between Oct. 5, 2004, and Sept. 25, 2005, submitted an affidavit attesting that the voter is displaced due to the

¹²¹ Complaint at 44, *ACORN v. Blanco*, No. 06-0611 (E.D. La., filed Feb. 9, 2006).

¹²⁴ *See id.* (noting that the complaint was submitted on Feb. 9, 2006).

¹²⁵ *See id.* at 64-65 (noting the large amount of displaced voters with no access to absentee ballots).

¹²⁶ *See id.* at 41, 44, 50, 85-86 (stating that the Secretary of State determined that "it is feasible to conduct out of state satellite voting in the 9 states" with the most evacuees).

¹²⁷ *See Local News* (CBS television broadcast Feb. 13, 2006), transcript available at 2006 WLNR 2616630 (confirming that a bill to assist displaced voters was discussed in the special legislative session).

¹²⁸ *See id.* (noting that "members of the legislative black caucus" walked out during the legislative session).

¹²⁹ *See Williams, supra* note 82, at 1132-33 (noting that the presiding judge "strongly hinted that if the legislature did not reconsider its rejection (of the absentee voter proposal), he was prepared to 'take over the elections'").

¹³⁰ H.R. 12, 1st Extraordinary Sess. (La. 2006).

¹³¹ *See id.* (stating that displaced persons who registered to vote between Oct. 5, 2004 and Sept. 25, 2005 will be eligible to vote by mail pending certain requirements).

state of emergency, and signed the affidavit in front of a notary public or two witnesses.¹³² Once the registrar received the voter's application, the registrar then contacted an election official in the voter's original jurisdiction to confirm that the voter was not attempting to vote in person and by mail.¹³³ It left many out and was complex and cumbersome.¹³⁴ Even then it was criticized as an invitation to voter fraud.¹³⁵

The Louisiana Black Caucus tried to help give the 250,000 people displaced, in state and out, an increased opportunity to vote—the result was first-time satellite voting in ten places in Louisiana, outside of New Orleans, but not for the thousands outside of the state.¹³⁶

¹³² See *id.* (noting that a displaced voter must have registered within a specific timeframe and have submitted a signed affidavit to be eligible to vote by mail).

¹³³ See *id.* ("If the registrar finds that the person has registered in that jurisdiction or state, the person shall not be permitted to vote absentee by mail.").

¹³⁴ See *id.* (requiring the voter to submit an application to vote, including an affidavit signed before a notary or two witnesses under penalty of perjury for providing false or fraudulent information). The affidavit must state that the registered voter is temporarily displaced due to an emergency, that she is eligible to vote in her parish of residence, that she is not registered to vote anywhere else, and that she expects to be out of the jurisdiction during early voting and on election day. *Id.* See also Holmes, *supra* note 23, at 81 (detailing the election plan's three options for a voter to cast a ballot). First, a voter could vote in person at a designated Orleans Parish precinct. *Id.* Second, a voter could participate in "early voting" that took place in the weeks leading up to each election. *Id.* Depending upon how a person registered, an early voter could cast his or her ballot either in Orleans Parish or in one of the ten satellite polling places located throughout the state. *Id.* Third, a voter who registered between October 5, 2004 and September 24, 2005, could vote by absentee ballot. *Id.*

There were many problems with the new scheme: (1) The voter must have been registered to vote before September 24, 2005; therefore, displaced individuals could not register to vote except in person. Even then, they could not vote at a satellite voting place or by absentee ballot; (2) Satellite voting was limited to specific places in Louisiana. The tens of thousands outside Louisiana could not vote by satellite—they had to be able to travel to and from Louisiana or to execute an absentee ballot; (3) Absentee voting actually had a four-part test to determine whether a person could vote absentee. (a) If registered to vote by mail after Sept. 24, 2005, the voter had to vote at a polling place in NOLA or by registrar in early voting. (b) If registered on or before October 5, 2004 and a first time voter—the voter could not vote absentee. The voter had to appear in person either in NOLA or at a satellite polling place. (c) If registered by mail between October 5, 2004 and September 24, 2005, the voter could vote in person during the early voting. Or, if the voter wanted to vote absentee, the voter had to complete a displaced voter affidavit certifying displacement. (d) Student voters who were first-time voters could vote in any of the three ways: early, in person, or absentee; (4) All requests for absentee ballots had to be submitted by April 18, 2006 for the primary election and by May 16, 2006 for the general election. *Id.*

¹³⁵ See Marsha Shuler, *Legislators Pushing Absentee Voting Plans*, BATON ROUGE ADVOCATE, Feb. 9, 2006, at A4 (stating that Harold LaCour "testified in the House Committee that he feared the legislation was an 'invitation to (vote) fraud'").

¹³⁶ See generally Bob Dart, *Remote Voting Urged for Evacuees*, PALM BEACH POST, Mar. 25, 2006, at A2 (noting that evacuees "are living all over the United States and will want to cast votes"); Halimah Abdullah, *Uneasy Balloting Proceeds*, MEMPHIS COM. APPEAL, Apr. 17, 2006, at A1 (stating that many displaced New Orleans residents in Memphis were not provided sufficient means to register to vote); Stephanie Grace, *A Vote for Closure*, NEW ORLEANS TIMES-PICAYUNE, Mar. 30, 2006, at B7

Because the new law was complex, and because there were no provisions for out-of-state polling places or the casting of absentee ballots by first time voters, the federal voting rights challenges continued.¹³⁷ Opposition to holding the elections with the displaced and disadvantaged in this manner was similarly lodged before the Voting Rights Section of the U.S. Department of Justice in their Section 5 preclearance process.¹³⁸ Both efforts failed.¹³⁹

The Department of Justice approved the plan March 16, 2006, despite widespread protest from civil rights leaders, black elected officials, and the displaced.¹⁴⁰

The voting rights claim in the U.S. District Court for the Eastern District of Louisiana was dismissed, allowing the election to proceed.¹⁴¹ The judge stated it was important for the election to go forward because "we have a burning desire for wholeness, completeness, normalcy."¹⁴²

The *Times-Picayune*, which consistently advocated quick elections, continued to raise concerns about potential fraud.¹⁴³ Louisiana officials defended their restrictions on voting by displaced voters by pointing to their

(expressing support for out-of-state satellite locations for displaced voters); Kris Axtman, *Big Easy Has Candidates, Ballots . . . But Voters?* CHRIST. SCI. MON., Mar. 10, 2006, at A1 (noting that "more than half" of New Orleans voters were scattered around the country and were difficult to reach).

¹³⁷ See Holmes, *supra* note 23, at 90–91 (explaining how the VRA provides an avenue for citizens to object to changes in voting procedures).

¹³⁸ See Holmes, *supra* note 23, at 89 (describing how Section 5 is part of the Voting Rights Act that requires covered jurisdictions to submit all voting changes to the Department of Justice for preclearance to see if minority voting rights are diluted); see also Pamela S. Karlan, Note, *Section 5 Squared: Congressional Power to Extend and Amend the Voting Rights Act*, 44 Hous. L. REV. 1 (2007) (explaining and critiquing Section 5). For the underwhelming results of Section 5 review in this matter, see Holmes, *supra* note 23, at 88–90 (describing the reactions to Section 5); and Williams, *supra* note 82, at 1136 (describing how section 2 of the VRA put a burden on the right to vote under the First and Fourteenth Amendments of the Constitution).

¹³⁹ See Williams, *supra* note 82, at 1136, 1139 (explaining how regardless of the burden put on the right to vote, given the lack of supportive doctrine, the court was not convinced and the arguments failed to convince the court that the legislature violated its authority).

¹⁴⁰ See Peter Whoriskey, *Election Plan for New Orleans Approved*, WASH. POST, Mar. 17, 2006, at A3 (explaining the new regulations and their approval); see also Holmes, *supra* note 23, at 88–89 (describing how despite challenges, the new regulations were approved).

¹⁴¹ See Holmes, *supra* note 23, at 90 (discussing how New Orleans voters, represented by the NAACP Legal Defense brought a section 2 claim against the U.S. District Court for the Eastern District of Louisiana but the Court dismissed the claim because the success or failure of section 2 is immaterial).

¹⁴² Adam Nossiter, *Judge Orders New Orleans To Proceed with Election*, N.Y. TIMES, Mar. 28, 2006, at A12.

¹⁴³ See Editorial, *Ballot Blocks*, NEW ORLEANS TIMES-PICAYUNE Mar. 31, 2006, at 6 (describing how legislation on absentee balloting that would send absentee ballots to voters displaced from their home parishes, regardless if these ballots had been requested is likely to promote fraud and chaos at the polls).

responsibility to guard against fraud.¹⁴⁴ As Professor Holmes observed: "In the end, the Louisiana legislature adopted, and the DOJ precleared, a plan that was more restrictive and provided fewer opportunities for displaced residents to vote."¹⁴⁵

V. Results of Elections

*"In the end, the fervor over proving New Orleans was on the fast track to recovery hurt displaced voters."*¹⁴⁶

The election went forward despite problems with voting machines, voting places, and with displaced voters.¹⁴⁷ Mayor Ray Nagin received an estimated 90% of the African American vote for the April primary, and went on to win the general election.¹⁴⁸

As expected, overall turnout was down to 36% from the previous 46% who voted in the much less high profile 2002 mayoral race.¹⁴⁹ White turnout in the primary election increased from previous elections.¹⁵⁰ Voter turnout was low for black neighborhoods that Hurricane Katrina hit hardest.¹⁵¹ Those who predicted disenfranchisement for the displaced turned out to be accurate. 36% is a small turnout for what most described as "the most important election in the history of New Orleans."¹⁵² Turnout was

¹⁴⁴ See Brian Thevenot, *Absentee Voters' Interest is Brisk, But How Many Cast Ballot is Big Question*, NEW ORLEANS TIMES-PICAYUNE, Apr. 3, 2006 at 1 (explaining how the state is bending over backwards to accommodate displaced voters without gutting provisions meant to guard against fraud).

¹⁴⁵ Holmes, *supra* note 23, at 84–85.

¹⁴⁶ Holmes, *supra* note 23, at 80.

¹⁴⁷ See Tracy Clark-Flory, *Whitewashing the New Orleans Vote?*, SALON, Apr. 15, 2006, available at http://www.salon.com/news/feature/2006/04/15/neworleans_vote (explaining how Louisiana officials have offered to accommodate displaced residents through absentee ballots and satellite polling stations).

¹⁴⁸ See Holmes, *supra* note 23, at 91 (noting the results of the elections).

¹⁴⁹ See *id.* (noting the results of the elections).

¹⁵⁰ See *id.* (noting the results of the elections).

¹⁵¹ See *id.* (stating that voter turnout was low for black neighborhoods that were hardest hit by Hurricane Katrina); Kim Cobb & Kristen Mack, *New Orleans Mayoral Election: Black Voters Made Their Presence Felt: Predictions of Large Racial Shift in City Politics Prove Unfounded*, HOUSTON CHRON., Apr. 24, 2006, at A1 (describing how fewer voters in general turned out for the election); Michelle Krupa & Matt Scallan, *Broad Appeal Aided Nagin in Runoff: Higher Turnout, White Support Gave Mayor the Edge Saturday*, NEW ORLEANS TIMES-PICAYUNE, May 22, 2006, at 1 (discussing how Nagin has been able to appeal to every segment of the community).

¹⁵² LOGAN, *supra* note 22, at 15.

heavy in the mostly prosperous and white areas of Uptown, where little damage occurred, and was exceptionally low in the heavily damaged and mostly black areas of New Orleans East, Gentilly and the Ninth Ward—where some precincts reported as little as 15% voter turnout.¹⁵³ The lack of voter participation by African Americans from New Orleans has led many to conclude that the people who did not have a chance to vote were not interested in returning.¹⁵⁴

A June 2006 analysis of the New Orleans Mayoral race by John R. Logan of Brown University concluded that the foreseeable result was to reshape "the political map of the city by suppressing the vote in the poorest and blackest neighborhoods."¹⁵⁵ Professor Logan made several observations: (1) it was well known that the majority of New Orleans voters were living outside the city and the greatest share were outside the state—and displacement was consistent with race and class—the displaced were disproportionately black, and among the blacks displaced the most displaced were low-income; (2) total voter turnout was predictably low—more than 10% below usual mayoral turnout (as in the March 2002 mayoral election) and more than 40% below potential turnout (as in the November 2004 presidential election); (3) black neighborhoods lost 6-7 points of share in electorate, down from 63% in 2002 and 2004 to 57% in 2006; and (4) in undamaged white areas, like the French Quarter and Garden District, turnout was up, while in New Orleans East it fell by 23% and in the Lower Ninth Ward it fell by 40%.¹⁵⁶ Logan expected that there would be somewhat lower turnout given the magnitude of the population displaced, but the size of the actual drop in participation was unexpected.¹⁵⁷

"In its first post-Katrina election, despite the gravity of public policy issues facing New Orleans, voter turnout has been fourteen percent below that of the previous mayoral race in 2002 and a startling forty-two percent below the votes cast in the 2004 presidential election."¹⁵⁸

¹⁵³ See Chris Kromm, *One Year After Katrina: The State of New Orleans and the Gulf Coast*, 34 S. Exposure, No. 2 at 23, available at http://southernstudies.org/gulfwatch/reports/One_Year_After.pdf (describing the voter turnout post-Katrina).

¹⁵⁴ See Stephanie Grace, *Democrats take hit in post-K vote*, NEW ORLEANS TIMES-PICAYUNE, Oct. 12, 2006, at 7 (editorial describing how the Democrats did far worse than expected in the first statewide election post-Katrina).

¹⁵⁵ LOGAN, *supra* note 22, at 1.

¹⁵⁶ See *id.* at 1–2 (2006), available at <http://www.s4.brown.edu/katrina/report2.pdf> ("In predominantly black and middle class New Orleans East, turnout for the run-off fell 23% and in the less affluent Lower Ninth Ward it plummeted by nearly 40%.").

¹⁵⁷ See *id.* (recounting the report's conclusions).

¹⁵⁸ *Id.* at 24.

VI. Conclusion

*"Voting rights are going to be an issue for a long time in Louisiana."*¹⁵⁹

The fact that dramatically fewer African Americans than whites did not and could not return to New Orleans was not a secret—it was well known and well documented.¹⁶⁰ That was a political plus for some.¹⁶¹ Protecting the right to vote of the people displaced through no fault of their own was not nearly as much of a priority as protecting against potential fraud. Trying to display some stability for those who returned to New Orleans was more important than waiting to allow those not yet home to fully participate in the elections.

Disasters will continue to degrade the right to vote until the law catches up. People victimized by disaster have enough trouble voting.¹⁶² Unresponsive laws and political posturing should not further disenfranchise them. The methods to make it easier for displaced people to vote are well known.¹⁶³ What is lacking is the political will.

Voting challenges for Louisiana continue:

- In the summer of 2007, the Louisiana Senate rejected a filed bill by an African American Senator to set up satellite voting centers around

¹⁵⁹ Damon Hewitt, NAACP Legal Defense Fund, *Nagin Wins Reelection in New Orleans*, THE POST CHRONICLE, May 21, 2006, http://www.postchronicle.com/news/breakingnews/printer_21219575.shtml#continue (last visited Dec. 2, 2007) (on file with the Washington and Lee Journal of Civil Rights and Social Justice).

¹⁶⁰ See Saulny & Rivlin, *supra* note 76, and accompanying citations.

¹⁶¹ See LOGAN, *supra* note 22, at 24 ("The new pattern of turnout . . . has certainly altered the constituency that the next mayor will be politically accountable to.").

¹⁶² See Jeanne Woods and Hope Lewis, Statement at the Hearings of the United Nations Rapporteur On Extreme Poverty, at 5 (Oct. 27, 2005), available at <http://www.slw.neu.edu/clinics/WoodsLewis.pdf> (pointing out the international human rights issues at stake in the voting problems in the post-Katrina gulf in a presentation to a visiting representative of the United Nations in October 2005). Woods and Lewis stated: "The right to choose governmental representatives and participate in important official decisions affecting human lives are well recognized in the Universal Declaration of Human Rights, the ICCPR, the ICESR and CEDAW." *Id.* at 5–6.

¹⁶³ See Holmes, *supra* note 23, at 92–94 (suggesting same day registration, allowing first-time voters to absentee vote, and creating out of state polling places).

Louisiana to allow in-state displaced voters to vote in the governor's race in Fall 2007 as they did for the mayoral election in 2006.¹⁶⁴

- The Louisiana Secretary of State announced in August 2007 that he had deleted 20,000 former Louisiana residents from voter rolls after a computer search matched people who were registered to vote in Louisiana with names of people registered in other states. Some of those registered in other states never knew they had registered to vote there—they had apparently registered when they signed up to get drivers licenses, according to the Orleans Parish Registrar of Voters, Sandra Wilson.¹⁶⁵
- The weak 2006 law expanding the ability for the displaced to vote expired February 23, 2007.¹⁶⁶
- Most now think it more likely that Louisiana will vote Republican, as heavily Democratic voters in New Orleans have often made the difference in statewide races.¹⁶⁷
- Louisiana is likely to lose one of its seven congressional seats due to loss of population, according to 2006 Census population estimates.¹⁶⁸

¹⁶⁴ See *Senate Rejects Setting Up Satellite Voting For Fall Elections*, ASSOCIATED PRESS, June 20, 2007, <http://www.wlox.com/Global/story.asp?S=6688604> (last visited Feb. 5, 2008) ("The Senate . . . rejected a bill to set up satellite voting centers around Louisiana where residents displaced by the 2005 hurricanes could cast early ballots in this fall's election for governor.") (on file with the Washington and Lee Journal of Civil Rights and Social Justice).

¹⁶⁵ See Stephen Maloney, *Voter Purge Drops 20,000 From Louisiana Rolls*, NEW ORLEANS CITYBUSINESS, Aug. 27, 2007, at 1, available at <http://www.neworleanscitybusiness.com/viewFeature.cfm?recID=846> ("More than 6,700 former Orleans Parish voters were also registered in another state, which Orleans Parish Registrar of Voters Sandra Wilson said probably resulted from the availability of voter registration forms when citizens apply for a driver's license in a new state.").

¹⁶⁶ See Susan Finch, *Absentee, Early Votes Being Cast*, NEW ORLEANS TIMES-PICAYUNE, Mar. 21, 2007, at Metro 1 ("Under a 2006 law that expired Feb. 23, hurricane-displaced voters were automatically sent absentee ballots instead of being required to request them.").

¹⁶⁷ See Robert Travis Scott, *Dardenne Is New Secretary of State, Heitmeier Drops Out, Blames the Hurricane*, NEW ORLEANS TIMES-PICAYUNE, Oct. 11, 2006, at 1 (noting that the large population of African Americans in New Orleans' Ninth Ward has often been crucial for Democratic candidates).

¹⁶⁸ See Edward Still, *Votelaw: New Population Projections Show 7 Seats Will Be Moved From One State to Another*, <http://www.votelaw.com/blog/archives/004872.html> (last visited Dec. 2, 2007) (noting that a Census Population Estimates document projects that Louisiana will lose one Congressional seat because of Hurricane Katrina's effect on the state's population) (on file with the Washington and Lee Journal of Civil Rights and Social Justice).

Many of the hundreds of thousands still displaced want to return to New Orleans.¹⁶⁹ Will they ever get back home, and until they do return, will they ever get full voting rights? Unless there is a substantial change in political will, the answer to both questions will remain no.

The right to vote must be allowed to become more flexible and more accommodating as challenges to voting like Katrina unfold. Otherwise, the very clear message is sent, as it has been in Katrina, that voting wrongs are more important than voting rights.

¹⁶⁹ See Sheila Dewan, *Road to New Life After Katrina is Closed to Many*, N.Y. TIMES, July 12, 2007, at A1 ("For thousands of evacuees . . . going home to New Orleans has become a vague and receding dream.").

