UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

GREATER NEW ORLEANS FAIR HOUSING ACTION CENTER, and WALLACE RODRIGUE,	*	CIVIL ACTION
	*	NO. 2:06-CV-07185
Plaintiffs,	*	SECTION C
and PROVIDENT REALTY ADVISORS, INC.,	*	JUDGE BERRIGAN
Plaintiff-Intervenor,	*	MAGISTRATE JUDGE SHUSHAN
vs.	*	
ST. BERNARD PARISH and ST. BERNARD PARISH COUNCIL,	*	
Defendants.	*	

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MEMORANDUM IN SUPPORT OF PLAINTIFF GNOFHAC'S MOTION FOR CONTEMPT

INTRODUCTION

Despite three rulings by this Court finding St. Bernard Parish in violation of the Fair Housing Act, the Parish is at it again. This time it has enacted a new ordinance that will effectively ban all multi-family housing.

The plan to put the ban on multi-family housing on the ballot was first introduced on August 18, 2009, one day after the Court's August 17 Order finding the Parish and Council in contempt for attempting to block Provident Realty Advisors, Inc. ("Provident") from beginning construction on its proposed developments. One month later, on September 15, 2009 (only four days after the Court again found the Parish in contempt of court for continuing to block Provident's developments), the Council put its plan in place, enacting an ordinance that set a special election for November 14, 2009 to present to St. Bernard Parish voters an amendment to the zoning ordinance that would ban all multi-family housing with more than six units. (Ex. 1, SBPC #1138-09-09.)[1] The proposed ban on multi-family housing is virtually identical to the moratorium invalidated by the Court in March of this year. The only substantive difference is that this ban would prohibit developments with more than six units while the previous moratorium prohibited developments with five or more units. As described by Dr. Calvin Bradford, the change in the number of units does not change the disproportionate racial impact of the ban, an impact that the Court has found to be "significant."

The Council's decision to put the proposed ban on the ballot is an explicit, intentional attempt to evade the Court's Orders in this matter and the fair housing laws. As Councilmember Wayne Landry, who supported the moratorium, stated:

[1] The ordinance to hold a special election for the proposed ban passed the Council 5-2. Councilmember Ginart, who voted against the measure, indicated he was opposed to it because of the cost of holding a special election, not any concern about discrimination or this Court's prior rulings. (Ex. 2 at 80-81.)

> Just jumping back to the – to the Judge for a second, I just want to be real clear for public consumption, that I don't feel like I'm violating her order. You know, her order was [] to do certain things which we've complied with her order, but there's another statement in her order that says, you know, 'leaders take people where they need to be and great leaders take people where they ought to be,' so I just wanted you to know she inspired me so that we need to take everybody where they ought to be which is **continuously opposing her decision**.

(Ex. 2 at 16:2-14 (emphasis added).)

Council President Taffaro, who supported the ordinance, expressed similar words of disrespect for this Court's authority. He wrote in his "Craig's Corner" column that St. Bernard Parish "has been chastised by this group of legal road show bandits that great leaders take people where they don't want to go but ought to be. How scary is that concept when used by an agenda driven authority? Is that not what Hitler did? Is that not what Bin Laden perpetuates? Is that not what prompted the Boston tea party?" (Ex. 4.)

Councilperson Cavignac supported the ordinance with comments that echoed the views of President Taffaro and Councilperson Landry: "Judge Berrigan has effectively usurped our legislative ability to zone and develop our citizens' properties" and that "I just wanted to address your comment . . . that it would be improper to rail against activism from the bench, because I truly feel that's something we're facing here." (Ex. 2 at 41:16-18, 42:5-8.)

Plaintiff GNOFHAC has no choice but to bring this motion for contempt. Although the building permits for Provident's projects have now issued and the Parish asserts that it will not apply this new ordinance to Provident's four developments,[2] the new ban on multi-family housing will block the construction of any other affordable housing in the Parish. The ordinance is, pure and simple, a transparent attempt at an end-

[2] In an apparent recognition that no further room remains to attempt to maneuver around the Court's orders regarding the Provident developments, the Parish has represented that the proposed ordinance would not apply to Provident. *See* Ex. 3.

run around the Court's March 2009 ruling. As with the September 2008 moratorium, this new ban violates this Court's February 2008 Consent Order. It represents simply the latest in a long series of efforts to "maintain [its] demographics."

The Court is familiar with the procedural and factual history of this case. The purpose of this Motion is not to repeat those facts. Rather, it seeks to provide the relevant facts and context in which the new ordinance was conceived and put in place, and then analyze those facts within the necessary legal framework that the Fifth Circuit, and this Court, have repeatedly used to determine if an ordinance violates the Fair Housing Act.

This Motion also explains why the issue is ripe for decision now, before the election has been held. In short, GNOFHAC has standing to pursue contempt now because it has already been forced to divert resources to counter this discriminatory ordinance, and will be required to devote even more time and resources if the ordinance is not struck down. To the extent that the Court concludes, as GNOFHAC contends, that the legislative history and other relevant factors demonstrate that the St. Bernard Parish Council has enacted this new ordinance with the express purpose and intent of evading the Court's prior orders, the Court has both the duty and the power to strike this ordinance down now before the Parish implements a ban that will plainly violate the Fair Housing Act.

ARGUMENT

I. The Parish and the Council Are in Contempt of This Court's February 2008 Order and its March 25 Order and Continue to Violate the Fair Housing Act and 42 U.S.C. §§ 1981, 1982, 1983

Under Fifth Circuit case law, a party is in contempt of a court order when it is established by clear and convincing evidence "1) that a court order was in effect, 2) that the order required

certain conduct by the respondent, and 3) that the respondent failed to comply with the court's order." *American Airlines, Inc. v. Allied Pilots Ass'n*, 228 F.3d 574, 581 (5th Cir. 2000) (quoting *Martin v. Trinity Indus., Inc.*, 959 F.2d 45, 47 (5th Cir.1992)) (internal quotation marks omitted). Each of these elements is satisfied here.

A. The February 2008 Consent Order and the March 25 Order Were in Effect When the Parish Council Enacted the 2009 Ordinance Proposing to Ban Multi-Family Housing

The first element required for contempt is not in dispute. In February 2008, the Parish and the Council entered into a Consent Order enjoining them from violating the Fair Housing Act, and 42 U.S.C. §§ 1981, 1982, and 1983 for three years. (Docket #114.) The Court signed the Order on February 27, 2008. "A consent order, while founded on the agreement of the parties, is nevertheless a judicial act, enforceable by sanctions including a citation for contempt." *Whitfield v. Pennington*, 832 F.2d 909, 913 (5th Cir. 1987). Thus, the February 2008 Consent Order constitutes a court order that remains in effect. In addition, the Court's March 25 Order finding the earlier, virtually identical, multi-family housing moratorium discriminatory was issued prior to the introduction and passage of the proposed multi-family housing ban.

B. The Order Enjoined Defendants from Discriminating on the Basis of Race

The second contempt element – that the Order required certain conduct by Defendants – is also met. The Consent Order enjoined Defendants from violating the Fair Housing Act and other federal civil rights statutes by discriminating on the basis of race or national origin.[3]

[3] The Consent Order enjoined Defendants from "violating the terms of the federal Fair Housing Act, and 42 U.S.C. §§1981, 1982, and 1983. Specifically, St. Bernard Parish agrees that it shall not: A. Refuse to rent a dwelling unit, or otherwise make unavailable or deny a dwelling unit, to any person because of race or national origin; B. Deny minority citizens the same rights as are enjoyed by white citizens to make and enforce contracts; C. Deny minority citizens the same rights as are enjoyed by white citizens to lease, hold and otherwise enjoy real property; D. Deny any person equal protection of the law by discriminating on the basis of race and national origin in the leasing of real property; and, E. Retaliate against Plaintiffs or any other person who alleges that Defendants have violated the Fair Housing Act, 42 U.S.C. §3601 et seq." (Docket #114.)

(Docket #114.) In addition, the Court's Order of March 25, 2009 holding that the passage of the 2008 moratorium constituted intentional racial discrimination and had a racially discriminatory impact continues to bind Defendants and places them on notice that their continued racially motivated efforts to ban multi-family housing violate the 2008 Consent Order. *Greater New Orleans Fair Housing Action Ctr. et. al. v. St. Bernard Parish et. al.*, No. 06-7185, 2009 WL 2399999 (E.D. La. March 25, 2009) (hereinafter *GNOFHAC I*).

C. Defendants Intentionally Discriminated Against African Americans In Proposing the Multi-Family Housing Ban

As this Court has already held, the appropriate standard for determining whether Defendants' conduct in this matter constitutes intentional discrimination is set out by the Fifth Circuit in *Overton v. City of Austin*, 871 F.2d 529, 540 (5th Cir. 1989). *GNOFHAC I*, 2009 WL 2399999, at *4. The relevant factors for analysis include: "(1) the historical background of the decision, (2) the specific sequence of events leading up to the decision, (3) departures from the normal procedural sequence, (4) substantive departures, and (5) legislative history, especially where there are contemporary statements by members of the decision-making body." *Overton*, 871 F.2d at 540 (citing *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 266-68 (1977) (hereinafter *Arlington Heights I*)).

Courts consider these factors as a whole in determining whether discrimination was "a motivating factor." *Arlington Heights I*, 429 U.S. at 266; *United States v. Pelzer Realty Co.*, 484 F.2d 438, 443 (5th Cir. 1973) (holding that a plaintiff need not prove that race was the sole factor motivating the conduct, it need only be *a* purpose in order to prove discriminatory intent); *Tsombanidis v. West Haven Fire Dep't*, 352 F.3d 565, 580 (2d Cir. 2003) (noting that the *Arlington* factors are not "exclusive or mandatory but merely a framework within which a court

conducts its analysis."). Each of the *Overton* factors supports the conclusion that the Council was motivated by a discriminatory purpose.

1. Historical Background of the Decision

Consideration of the historical backdrop of the proposed multi-family housing ban shows a clear race-based motivation. The multi-family housing ban represents the third time the Parish Council has passed an ordinance that would effectively block all multi-family development in the entire Parish. In 2005, the Council passed a moratorium on the construction of new multi-family housing in the entire Parish for one year and restricted the rehabilitation of existing multi-family housing. (Docket #126-34.) Shortly after that ordinance was passed, the Council enacted the blood relative ordinance, which further restricted the availability of rental housing in the Parish by prohibiting the rental or occupancy of a single family residence to someone other than a blood relative without a permissive use permit. (Docket #126-33.)

In 2008, the Parish Council enacted a moratorium on multi-family housing in the entire Parish for an indefinite period of time. (SBPC # 095-09-08, Docket #126-37.) The Court ordered the Council to rescind the ordinance, holding that the "Council's intent in enacting and continuing the moratorium is and was racially discriminatory" and that Defendants therefore had violated the Fair Housing Act, 42 U.S.C. §3604(a), 42 U.S.C. §§ 1981, 1982, and 1983 and the Consent Order. *GNOFHAC I*, 2009 WL 2399999, at *12. The Court also found that the ordinance had a discriminatory effect on African Americans. *Id.* at *13. The Court noted that "the similarity between the 2005 multi-family ordinance, the 2008 ordinance, and the history of the 'blood relative' ordinance is striking . . . They evidence repeated attempts to restrict certain types of housing in a parish whose housing stock, along with other structures, was largely obliterated. As was shown by Dr. Bradford, *supra*, the type of housing restricted or forbidden is

disproportionately utilized by African-Americans." *Id.* at *5. Against this backdrop, the Council has now proposed putting the multi-family housing ban to a public vote. The ban has the same characteristics that the Court found evidenced the discriminatory nature of the 2005 and 2008 moratoria.

In addition, the same Parish officials have been involved in these ordinances – a fact this Court has already found "noteworthy" in its assessment of the intent behind the 2008 multi-family moratorium. *Id.* Then Councilmember Craig Taffaro (now Parish President) introduced both the 2005 multi-family ordinance and the blood relative ordinance. *Id.* Councilmember Kenneth Henderson has been on the Council during the relevant time periods and voted in favor of the 2005 multi-family moratorium, the 2006 blood relative ordinance, the 2008 multi-family moratorium, and the 2009 multi-family moratorium. All current members of the Council – except Councilperson Wayne Landry – were on the Council at the time the 2008 multi-family moratorium was passed. All current members of the Council, including Wayne Landry, have been on the Council since the Court issued its March 25, August 17, and September 11 Orders.

2. The Specific Sequence of Events Leading up to the Decision

Immediately after being directed to rescind the 2008 ordinance by the Court, the Parish redoubled its efforts to block the specific mixed income, multi-family developments proposed by Provident Realty. After the Court issued a ruling on August 17 finding the Parish to have again engaged in racial discrimination by blocking Provident's developments through the Parish's re-subdivision process, the Council responded *the next day* by introducing the proposed multi-family housing ban. *See* Ex. 5.

Councilperson Wayne Landry's only comment about the introduction of the ordinance was that he wanted to alter the language of the proposed ordinance to make it a complete ban on

multi-family, rather than a determination on a case by case basis. *See* (Ex. 6, Chris Kirkham, "St. Bernard Parish Council housing plan drawing fire," *The Times-Picayune*, Sept. 5, 2009 (quoting Mr. Landry as stating "The wording of it that I want will amend our zoning law to never allow more than 12 units to be developed somewhere.")) Councilperson Landry was successful – the ordinance that was enacted allows the voters of St. Bernard Parish to permanently ban all multi-family housing anywhere in the Parish that would have more than 6 units of housing.

Then, just four days after the Court found the Parish in contempt for a third time based on its continued discriminatory blocking of Provident's multi-family developments, the Council passed the proposed multi-family housing ban.

3. Departures from the Normal Procedural Sequence

The Council's departure from normal procedure is strong evidence of discriminatory intent. It appears that St. Bernard Parish has not held a special election for the voters to make changes to the zoning ordinance in years, if ever. The decision to hold a special election instead of simply passing the ordinance directly to ban multi-family housing is a departure from normal procedures and a transparent attempt to evade the Court's ruling and to carry out the Parish's discriminatory intent.[4]

The Councilmembers were clear that their purpose in departing from the typical means to amend the Parish's zoning ordinance is simply to evade the Court's finding the virtually identical ordinance discriminatory when passed by the Council. Councilperson Landry noted at the September 15 Council meeting that "we have the ability as the Council to pass zoning ordinances to affect [sic] that [ban on multi-family housing]," but that he felt the moratorium is "stronger" if voted on by the people of St. Bernard Parish. (Ex. 2 at 61:9-11.) Mr. Landry's statement is

[4] It is worth noting that the election will apparently cost the Parish approximately $30,000, a cost that would not be incurred if the Council followed its normal procedures and passed the zoning ordinance itself. (Ex. 2 at 64:2-65:10.)

reminiscent of his comment to a constituent regarding the Council's refusal to consider Provident's appeal of the denial of its re-subdivision applications, that the decision taken "upheld the Planning Commission without 'pulling any exposure for a judge to say we acted unjust.'" *Greater New Orleans Fair Housing Action Ctr. et. al. v. St. Bernard Parish et. al.*, No. 06-7185, 2009 WL 2567186, at *7 (E.D. La. Aug. 17, 2009) (hereinafter *GNOFHAC II*).

The departure from normal procedure is nothing more than an attempted end-run around the Court's prior rulings, motivated by the same discriminatory intent behind the 2008 multi-family moratorium and the opposition to Provident's multi-family developments.

4. Substantive Departures

The Parish and the Council have provided no new justification that differs from what they have offered in the past in this matter. All of those justifications have already been considered and rejected by the Court. The Parish cannot provide any legitimate justification for the proposed multi-family housing ban. The Court has twice considered and rejected no less than seven justifications previously proffered in support of the Parish's actions to prevent multi-family housing. In the March 25 and August 17 Orders, the Court considered and rejected the Parish's claim that it opposes multi-family development because there is no need for affordable housing in St. Bernard Parish. *GNOFHAC I*, 2009 WL 2399999, at *9-10; *GNOFHAC II*, 2009 WL 2567186, at *12. In the Court's August 17 Order, the Court rejected the Parish's claim that Provident's multi-family developments would "threaten property values and the broader economic recovery of St. Bernard Parish." *GNOFHAC II*, 2009 WL 2567186, at *13. In its most recent Order, the Court noted "[t]his Court has repeatedly found the stated justifications given by these officials to be unsound, contrived, pretextual and racially discriminatory." *Greater New Orleans Fair Housing Action Ctr. et. al. v. St. Bernard Parish et. al.*, No. 06-7185,

2009 WL 2969502, at *4 (E.D. La. Sept. 11, 2009) (hereinafter *GNOFHAC III*). These findings have equal application here.

5. Legislative History

At the time of its passage, Councilperson Wayne Landry, who sponsored the multi-family housing ban, stated:

> [J]ust jumping back to the – to the Judge for a second, I just want to be real clear for public consumption, that I don't feel like I'm violating her order. You know, her order was [] to do certain things which we've complied with her order, but there's another statement in her order that says, you know, 'leaders take people where they need to be and great leaders take people where they ought to be,' so I just wanted you to know she inspired me that we need to take everybody where they ought to be which is **continuously opposing her decision**.

(Ex. 2 at 16:2-14 (emphasis added).) Disturbingly, Mr. Landry's statement completely ignores that the fact that the Parish is under a Consent Order not to discriminate on the basis of race. Incredibly, no Councilmember raised any concerns about complying with the Consent Order or any of the Court's other prior orders. The only concern expressed about the ordinance was the cost of holding the election.

There can be little doubt that the introduction and passage of this ordinance so close in time to the Court's prior rulings is evidence of the Parish's intent to continue its discriminatory campaign. Councilmembers' statements at the September 15 meeting about the Court's September 11 ruling were at best vitriolic and disrespectful – hardly evidence of intent to obey the Court's orders. When a Parish resident addressed the Council to express his frustration about the difficulty he was having in getting permission to rent his properties in the Parish from the Planning Commission, he noted that he felt the Court deserved respect and that he was troubled by a Councilmember's characterization of the Court as "a liberal, activist judge." (Ex. 2 at 33:21-34:4.) Councilperson Landry responded:

> That Judge said, to accomplish X, Y and Z by 5 o'clock Monday. We did that … for you to make that comment that I said that Judge is a liberal activist, I don't know of any other way to describe it, sir. That's what she is. I did not lie. That's what she is. Maybe you need to do some research on that judge before you criticize how I labeled her . . . Maybe what you should do . . . is go give that speech to that Judge, but not to me because I don't deserve your speech.

(Ex. 2 at 43:9-44:8.) Councilperson Cavignac stated that "Judge Berrigan has effectively usurped our legislative ability to zone and develop our citizens' properties" and that "I just wanted to address your comment . . . that it would be improper to rail against activism from the bench, because I truly feel that's something we're facing here." (Ex. 2 at 41:16-18, 42:5-8.)

As noted in previous briefing before the Court, Defendants have made clear their view that they are engaged in a campaign to oppose multi-family development. (Docket #298 at ¶¶ 32, 33, 35-36, 54, 56, 71-73.) Having lost their battle to stop Provident's developments, the Parish now wants to ensure that no other multi-family, mixed income developments can ever be built in the Parish. Although the tactic has changed, the intent is the same.

The contemporaneous statements made regarding the 2009 moratorium, combined with the history of the Parish's previous actions to block multi-family housing and the Court's rulings on those same efforts are substantial additional evidence of discriminatory intent.

6. Additional Evidence of Defendants' Intent

In addition to all of the above evidence, there also is substantial evidence of discriminatory impact. Statistics demonstrating that official action has a disproportionate adverse impact on minorities is evidence of discriminatory intent. *See Arlington Heights I*, 429 U.S. at 266-68; *Resident Advisory Bd. v. Rizzo*, 564 F.2d 126, 143 (3d. Cir. 1977). Dr. Calvin Bradford has previously submitted an expert report and testified that the 2008 multi-family moratorium had a disparate impact on African Americans. *GNOFHAC I*, 2009 WL 2399999, at

*3. As discussed in detail, *infra*, Dr. Bradford has submitted a declaration with this Motion that explains that the impact described in his previously filed report is the same as the impact caused by this multi-family housing ban. The Court previously found, based on Dr. Bradford's report, that "the [2008] moratorium would have a significant disparate racial effect." 2009 WL 2399999, at *13. That finding is equally applicable here.

D. The Multi-Family Housing Ban Has a Racially Discriminatory Impact on African Americans

A party violates the Fair Housing Act by taking actions that have a discriminatory effect, even if there is insufficient evidence to prove intentional discrimination. *Cox v. City of Dallas, Texas*, 430 F.3d 734, 746 (5th Cir. 2005) ("the FHA . . . does not require proof of both discriminatory impact and intent"); *Simms v. First Gibraltar Bank*, 83 F.3d 1546, 1555 (5th Cir. 1996). Thus, even if the Court were to find that there was insufficient evidence that the multi-family housing ban was motivated by a discriminatory intent, it would still violate the Fair Housing Act because of its unjustified disparate impact on African Americans.

The Court has previously relied in this matter on the factors articulated in *Metropolitan Housing Development Corp. v. Village of Arlington Heights*, 558 F.2d 1283 (7th Cir. 1977) (hereinafter *Arlington Heights II*), for assessing disparate impact. In *Arlington Heights II*, the Seventh Circuit articulated a four-factor balancing test. *Arlington Heights II*, 558 F.2d at 1290. The relevant factors are: (1) the strength of the showing of discriminatory effect; (2) any evidence of discriminatory intent (the least important factor that need not rise to the level required to prove a discriminatory intent case); (3) the interest of the defendant in taking the action with the discriminatory impact; and (4) whether the plaintiff seeks to compel the affirmative provision of housing by defendants. *Id.* at 1290-93. Here, all four factors weigh in favor of a finding of discriminatory impact.

1. The strength of the showing of discriminatory effect

There are two ways to show that a neutral rule has a discriminatory effect, either of which is sufficient to meet the *Arlington Heights II* standard. The first is to show that a facially neutral policy has "a greater adverse impact on one racial group than on another." *Arlington Heights II*, 558 F.2d at 1290. The second is to show that the policy "perpetuates segregation and thereby prevents interracial association." *Id*.

Dr. Calvin Bradford sets forth in the attached report, his statistical analysis of the impact of the multi-family housing ban. Dr. Bradford demonstrates that, like the 2008 moratorium, the ban will have a statistically significant disparate impact on African-American households and families in the New Orleans metropolitan area. Dr. Bradford's analysis also demonstrates that the ban serves to reinforce the residential segregation in the New Orleans metropolitan area.

In comparing his analysis to his previous analysis of the 2008 moratorium, which the Court found had a disparate impact, Dr. Bradford concludes that "there is no statistical evidence to suggest that a change in the threshold from 5 or more units to 7 or more units has any effect on the disparate proportional impact on African American households." (Bradford Decl. at 4.)

Based on Dr. Bradford's prior report and testimony submitted in conjunction with the challenge to the 2008 multi-family moratorium, the Court made the following findings. First, the Court noted that 17.61 % of African-American households in the New Orleans metropolitan area live in structures with 5 or more units, compared to only 9.54% of white households and held that is a statistically significant finding. *GNOFHAC I*, 2009 WL 2399999, at *3. The Court went on to explain that African-American households are 85% more likely to live in structures with more than 5 units than white households. *Id.* Second, the Court found that over 90% of structures with more than 5 units are rental structures and that more than 50% (51.7%) of

African-American households in the New Orleans metropolitan area live in rental units, compared to just over 25% of white households. *Id.* It noted that this finding is also statistically significant because it means that African-American households are twice as likely as whites to live in rental housing. *Id.* Finally, the Court held that the ordinance had a clear discriminatory impact at the 99% confidence level. *Id.*

Additionally, Dr. Bradford analyzed the patterns of segregation in the New Orleans metropolitan area. (Docket #126-4 at 6.) He concluded that "67.3% of the population in Orleans Parish was African American while 28.1% of the population was white. In St. Bernard Parish, on the other hand, 88.3% of the population was white and just 7.6% was African American." (*Id.* at 6-7.) Similarly, when looking at households, "6.1% of all the households in St. Bernard Parish were African American. In the New Orleans MSA, 33.4% of the households were African American. In Orleans Parish, 60.1% of the households were African American." (*Id.* at 7.) This data is unaffected by the minor differences between the 2008 and 2009 multi-family moratoria.

The findings of the Court in its March 25 Order with respect to the disparate effect of the 2008 moratorium have equal application here. (*See* Bradford Decl. at 5 ("Ordinance SBPC #1138-09-09 (passed on September 15, 2009)) that proposes to make it unlawful to construct buildings with 7 or more units has the same disparate proportional impact on African American households as did Ordinance SBPC #905-09-08 (passed on September 16, 2008) that placed a moratorium on buildings of 5 or more units."). GNOFHAC has established that the moratorium has a discriminatory effect both because it has a disproportionately adverse impact on African Americans and because it perpetuates segregation in the New Orleans metropolitan area.

2. Evidence of Discriminatory Intent

The second consideration in the *Arlington Heights II* test is whether there is any evidence of discriminatory intent. As discussed *supra*, there is a wealth of evidence demonstrating that the 2009 moratorium on multi-family housing was passed with the intent to discriminate against African Americans. The timing of the moratorium, the history of racial hostility and segregation in St. Bernard Parish, including the history of litigation before this Court, the Parish's departures from normal procedures, and the lack of any legitimate justification all support the conclusion that Defendants acted with discriminatory intent. For these reasons, this factor weighs heavily in favor of finding discriminatory impact.

3. Lack of any legitimate justification

The third *Arlington Heights II* factor relates to a defendant's justification for taking the challenged action. *Arlington Heights II*, 558 F.2d at 1290. For a justification to be considered legitimate it must be "of substantial concern such that it would justify a reasonable official in making this determination." *Huntington Branch*, 844 F.2d at 939. Even if a justification is "non-frivolous," it "may not be sufficient because it is not reflected in the record." *Id*. Moreover, "[*p*]*ost hoc* rationalizations . . . cannot be a bona fide reason for the . . . action." *Id*. at 940. If local officials did not articulate the justification at the time of the policy or decision, "it was obviously not a legitimate problem." *Id*.

As described above, the Court has previously found the various justifications proffered by the Parish for enacting ordinances to prevent the construction of multi-family dwellings as pretextual. As a result, the justifications are not legitimate and this factor weighs heavily in favor of finding disparate impact.

4. GNOFHAC does not seek the affirmative provision of housing

The fourth *Arlington Heights II* factor also weighs heavily in favor of GNOFHAC. "[T]he courts are far more willing to prohibit even nonintentional action by the state which interferes with an individual's plan to use his own land to provide integrated housing." *See Arlington Heights II*, 558 F.2d at 1293. GNOFHAC is not asking the Council to affirmatively provide integrated housing, but rather to stop blocking potential housing providers' attempts to build multi-family housing in St. Bernard Parish.

* * *

Consideration of all four factors considered by the Court in *Arlington Heights II* weighs in favor of finding discriminatory impact. These factors, combined with the fact that GNOFHAC seeks only to lift the impediments to housing development imposed by the Defendants, compel the conclusion that the moratorium has an unlawful and unjustified disproportionate adverse impact on African Americans that violates the Fair Housing Act.

II. Plaintiff GNOFHAC Has Suffered And Will Continue To Suffer Injury Because Of Defendants' Discriminatory Actions

Finally, Plaintiff GNOFHAC addresses the related questions of ripeness and standing, which may be raised in response to this Motion. Plaintiff has standing and its challenge is ripe because it has suffered and will continue to suffer injuries as a result of Defendants' discriminatory decision to place the multi-family housing ban on the ballot.

A. Legal Standard for Ripeness and Standing

A dispute is ripe where an "actual controversy" exists. *See Shields v. Norton*, 289 F.3d 832, 835 (5th Cir. 2002). The ripeness doctrine precludes those matters that are premature because any possible injury remains speculative and may never occur. *See e.g., United Transportation Union v. Foster* 205 F.3d 851, 857 (5th Cir. 2002). As a result, "[a] court should

dismiss a case for lack of 'ripeness' when the case is abstract or hypothetical." *Monk v. Huston*, 340 F.3d 279, 282 (5th Cir.2003) (quoting *New Orleans Pub. Serv., Inc. v. Council of New Orleans*, 833 F.2d 583, 586 (5th Cir.1987)).

Ripeness, like standing, requires actual injury to the plaintiff caused by the challenged wrongdoing. As a result, the two doctrines overlap to some degree and often collapse into each other. *Warth v. Seldin*, 422 U.S. 490 (1975) at 499 n. 10 (noting that the standing question "bears close affinity to questions of ripeness-whether the harm asserted has matured sufficiently to warrant judicial intervention."); *Brooklyn Legal Servs. Corp. v. Legal Servs. Corp.*, 462 F.3d 219, 225 (2nd Cir. 2006). (describing that ripeness overlaps with standing, "most notably in the shared requirement that the injury be imminent rather than conjectural or hypothetical.").

The types of actual injuries suffered by fair housing organizations, like GNOFHAC, that are redressable under the Fair Housing Act have been described by the Supreme Court. In *Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982), the Court found standing based on allegations that a fair housing organization had "been frustrated by defendants' racial steering practices in its efforts to assist equal access to housing through counseling and other referral services . . . [and] had to devote significant resources to identify and counteract the defendant's racially discriminatory steering practices." *Havens*, 455 U.S. at 379 (citation and quotation marks omitted). Following *Havens*, courts have looked to diversion of resources and frustration of mission when determining whether an organization has suffered injury redressable under the Fair Housing Act. *Fair Housing of Marin v. Combs*, 285 F.3d 899, 904-05 (9th Cir. 2002) (collecting cases and holding that fair housing organization had standing under Fair Housing Act based on frustration of mission and diversion of resources).

GNOFHAC has standing to challenge Defendants' decision to place a proposed multi-family housing ban on the ballot and the challenge is ripe because GNOFHAC has suffered the actual injuries of diversion of resources and frustration of mission and further injury is ongoing and imminent.

B. Plaintiff GNOFHAC's Diversion of Resources to Identify and Counteract Defendants' Discrimination

As described above, Defendants' proposed multi-family housing ban is contrary to the Fair Housing Act and stands in direct contravention of the Court's Orders. As a result, GNOFHAC, with its mission of ensuring compliance with the Fair Housing Act and eradicating housing discrimination, has been forced to mount a campaign to defeat the proposal. From the time the Council voted to place the multi-family housing ban on the ballot, GNOFHAC has expended and continues to expend significant time and resources to identify and counteract the discriminatory acts of the Council.

Upon learning of Council's decision to place the proposed multi-family housing ban on the ballot, GNOFHAC held several strategic planning meetings and has had extensive internal communication in order to develop an organizing, outreach, and marketing strategy to counteract the effects of having the ordinance on the ballot as well as to defeat the discriminatory proposal.[5] (Declaration of Annie K. Scott, hereinafter "Scott Decl." at ¶ 5.) In an effort to minimize the harmful effect of the proposal being placed on the ballot, GNOFHAC immediately began to implement its strategy.

GNOFHAC is currently engaged in a variety of activities to educate the public regarding the intent and effect of the proposed multi-family housing ban. (*Id.* at ¶ 3.) It is developing

[5] GNOFHAC's efforts to identify and counteract Defendants' discrimination began with its attempts to obtain the ordinance. GNOFHAC employees made multiple trips to the St. Bernard Parish Council's office to attempt to obtain the ordinance. (Scott Decl. at ¶ 4.) GNOFHAC had to have a public records request filed to obtain a copy of the ordinance. (Scott Decl. at ¶ 4.)

plans to purchase a website domain and drafting materials for publication on the site. (*Id.* at ¶ 6.) The organization has designed and drafted copy for advertisements to be published in the St. Bernard Voice and on billboards that will educate St. Bernard citizens regarding multi-family and affordable housing residents and the contributions they make to the community. (*Id.* at ¶ 7.) GNOFHAC's co-directors are drafting a letter to the editor to be submitted to local newspapers addressing affordable housing and the discriminatory intent and effect of the Parish Council's proposed multi-family housing ban. (*Id.* at ¶ 8.) Meetings are being set up by GNOFHAC employees with various community leaders to educate them regarding the proposed multi-family housing ban and to mobilize their membership. (*Id.* at ¶ 9.) GNOFHAC's outreach will also include a public forum regarding the proposed multi-family housing ban. (*Id.* at ¶ 10.) Numerous other activities will be taken in an effort to reduce the harm of the presence of the discriminatory proposal on the ballot, to prevent the significant additional harms that will be caused by the ban, and minimize the effect of a public discussion on a discriminatory proposal that stands in contravention of both the fair housing laws and this Court's Orders.

These efforts related to identifying and counteracting Defendants' discriminatory decision to place the proposed multi-family housing ban on the ballot, which have taken tens of hours of staff time and required out-of-pocket expenditures, have taken resources from the organization's planned education, investigation, and enforcement activities that it would have pursued absent Defendants' discrimination.

C. Defendants' Placement of the Proposed Multi-Family Housing Ban on the Ballot Has and Continues to Frustrate GNOFHAC's Mission of Equal Housing Opportunity

Defendants' placement of the proposed multi-family housing ban on the ballot also frustrates Plaintiff's mission:

> The Greater New Orleans Fair Housing Action Center (GNOFHAC) is a private, non-profit civil rights organization established in 1995 to eradicate housing discrimination in the greater New Orleans area. Through education, investigation, and enforcement activities, GNOFHAC promotes equal opportunity in all housing transactions, including rental, sales, lending, and insurance. GNOFHAC is dedicated to fighting housing discrimination not only because it is illegal, but also because it is a divisive force that perpetuates poverty, segregation, ignorance, fear, and hatred.

(Scott Decl. at ¶ 1.)

Defendants' attempt to put the multi-family housing ban on the ballot is a clear statement to the public that housing discrimination is permissible if approved by the public and that a public vote can trump an Order of a United States District Court. The dissemination of these messages to St. Bernard citizens and residents of other communities is causing a significant setback to GNOFHAC's attempts to educate the public regarding the requirements of the Fair Housing Act and the consequences of noncompliance. Defendants' unabashed noncompliance with the Fair Housing Act and this Court's Orders sends a clarion message to the area's residents that the persistent and intransigent may succeed in their attempts to discourage and otherwise preclude minorities from living in St. Bernard Parish. Few messages, particularly ones that will be trumpeted to the public in the context of the proposed public vote, could have a more destructive effect on a goal of ensuring that all persons provide equal housing opportunities to all.

* * *

The actual injury suffered by GNOFHAC, as well as the imminent, ongoing injury as GNOFHAC is forced to expend efforts to counteract Defendants' discriminatory proposal that frustrates its purpose is a cognizable injury that gives GNOFHAC standing and makes its challenge ripe. All of the necessary elements are present for the Court to order that the Parish's ordinance setting the multi-family housing ban for a public vote be rescinded: (1) a Parish ordinance motivated by discriminatory intent and reflecting an attempt to evade the spirit and plain language of the Court's Orders and (2) a party with standing because it has suffered and continues to suffer actual injury as a result of the Parish's actions. As a result, there is no reason to delay resolution of this Motion and wait for the public to approve the proposed ban. The delay would only increase GNOFHAC's injury and waste the voters' time and effort in casting votes for a multi-family housing ban that will be struck down as having a disparate impact and being a product of discriminatory intent.

CONCLUSION

For the foregoing reasons, GNOFHAC respectfully requests that the Court grant the Motion, find the Parish and the Council in contempt, and order the Council to rescind SBPC #1138-09-09. GNOFHAC requests that the Court enjoin enforcement of the ordinance until such time as SBPC #1138-09-09 is repealed. GNOFHAC further requests that the Court sanction Defendants by awarding GNOFHAC damages, attorneys' fees and costs, and any other sanction the Court deems appropriate, in light of the Defendants' continued violation of the Court's orders.

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Respectfully submitted,

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