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Hurricanes, Oil Spills, and Discrimination, Oh My: The Story of the Mississippi Cottage

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Hurricanes, Oil Spills, and Discrimination, Oh My: The Story of the Mississippi Cottage
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Abstract: Immediately following Hurricane Katrina, the Mississippi Governor’s Commission for Recovery, Rebuilding, and Renewal collaborated with the Congress for the New Urbanism to generate rebuilding proposals for the Mississippi Gulf Coast. One of the ideas generated from this partnership was the Katrina Cottage—a small home that could improve upon the FEMA Trailer. The State of Mississippi participated in the resulting Alternative Housing Pilot Program, which was funded by the U.S. Congress. Five years after Katrina, this study examines how local governments have responded to the Mississippi Cottage Program. The study poses two research questions centered around the barriers residents face when they try to place Mississippi Cottages on their properties. What are the regulatory barriers local governments have put in place to limit the siting of Mississippi Cottages? Are the strategies that local governments are using a violation of state and federal laws, including the Fair Housing Act? This study finds that while the Mississippi Cottage program provided citizens with needed housing following Hurricane Katrina, there are significant policy and implementation challenges to providing post-disaster housing.

Table of Contents
Introduction, Page 1
History of the Mississippi Cottage, Page 4
Local Government Regulation of Mississippi Cottages, Page 9
The Story of Gulfport, Page 19
Legal Analysis of Discriminatory Anti-Cottage Ordinances, Page 29
Conclusion, Page 34

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Introduction

The Mississippi Gulf Coast has been hit hard over the last five years. Hurricane Katrina brought a massive storm surge to the Mississippi Gulf Coast that wiped thousands of homes away, and it has taken five years for many families to begin a serious recovery. They have faced substantial challenges in rebuilding their lives. The immediate response to housing provision was through the Federal Emergency Management Agency (FEMA), which has authority to provide temporary housing for up to 18 months.¹

Following Hurricane Katrina, there was much discussion around provision of affordable housing. Generally, the public supports the concept of affordable housing, but when it comes to siting there is often a collective resistance.² For instance, in the aftermath of the Hurricane, local governments across the Gulf Coast engaged in exclusionary zoning practices, passing ordinances that limited the ability of people to find appropriate housing.³,⁴

Government ordinances, supported by community resistance to affordable housing, have exacerbated the problem of scarcity of affordable housing over the last five years. While communities acknowledge the need for affordable housing, and in many cases mention it in their community plans,⁵ there has been a failure on the part of local governments to enact ordinances that support the siting of affordable housing. One of the most significant affordable housing challenges has related to the Mississippi Cottage program, which provided free housing to nearly 3,000 families from 2007 on. However, following Hurricane Katrina, local governments

¹ This eighteen-month deadline can be extended at FEMA’s discretion if, “due to extraordinary circumstances an extension would be in the public interest.” Federal Assistance to Individuals and Households, 44 C.F.R. § 206.110(e) (2006).
⁴ See St. Bernard Parish, La., Ordinance No. 670-09-06 (Sept. 19, 2006), which prohibited rental of single-family residences in St. Bernhard Parish to non-family members.
enacted discriminatory housing policies that made it difficult for residents to site Mississippi Cottages. In part, discriminatory policies may have been put in place as knee jerk reactions to what was seen as a temporary problem. Simply put, local governments may have felt that there would be a brief period after a disaster during which people would have a need for a temporary housing solution while they rebuilt their homes. However, research has found that it can take 100 times the emergency period and ten times the restoration period to achieve complete reconstruction.\(^6\) The temporary housing that FEMA provides for 18 months is simply inadequate to meet the recovery needs of many residents\(^7\)—a dramatic improvement in a city can take two to three times longer. Research has also found that post-disaster policies can work to eliminate less desirable uses from a city, such as affordable housing, which can result in greater segregation based on social class.\(^8\)

However, this type of recovery is unacceptable. We have a mandate “to provide, within constitutional limitations, for fair housing.”\(^9\) Five years after Hurricane Katrina, though, local governments are still working to enact discriminatory ordinances that leave the most socially and economically vulnerable residents who have been living in uncertainty without a permanent housing solution.

This is all in the face of the Gulf Coast’s latest disaster, the British Petroleum oil spill from the Deepwater Horizon well off the coast of Mississippi and directly south of Pascagoula, Mississippi. The latest disaster has had an immediate impact on the oil services, fishing, and tourism industries. Many of the residents of Mississippi Cottages have been affected by the oil spill and are facing significant economic challenges. Where will the most socially vulnerable residents of the Mississippi Gulf Coast live if they are not able to keep their Mississippi Cottages?

\(^7\) See note 1
\(^8\) Cited in note 6.
This article explores the history of the Mississippi Cottage, with a focus on local government efforts to stop, and then tightly restrict, the temporary placement of Cottages in their jurisdictions. It critically explores the arguments and beliefs implicit in anti-Cottage officials' and advocates' negative reactions to Cottages. This article also discusses the legal arguments suggesting that Cottage discrimination is contrary to state and federal laws. Although Cottage discrimination appears to be unlawful (in addition to economically divisive), it has been allowed to continue to the present day without any real oversight or enforcement. This article concludes with a case study of the City of Gulfport’s efforts to stop Cottage placements and segregate Cottages to lower-income areas only, a goal which was successfully enacted by the City Council in June 2010.

History of the Mississippi Cottage

Following Hurricane Katrina, FEMA deployed travel trailers and manufactured homes to displaced households. This type of temporary housing had proved successful in past disasters, but the scale of Hurricane Katrina revealed that this housing response was simply inadequate in addressing the needs of disaster victims.10

There was, simply put, an overwhelming demand for temporary housing in Mississippi. More than 50,000 housing units were damaged in the three coastal counties of Mississippi.11 FEMA was unable to respond immediately to the enormous demand, resulting in difficult temporary housing conditions for residents, including shelters, tents, doubling up with family/friends, motels, and hotels. Three months after the storm, FEMA began to distribute

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travel trailers and manufactured homes. At the peak, FEMA had 37,000 FEMA trailers and manufactured homes in Mississippi.\textsuperscript{12}

In addition to the problem of overwhelming demand, affected households, advocates, and the public became increasingly concerned about the negative public health consequences of living in FEMA-provided temporary housing. From early 2006—almost immediately after the FEMA trailers' deployment—residents started to report health problems, such as frequent nosebleeds, respiratory problems, and mysterious mouth and nasal tumors.\textsuperscript{13} At that time, FEMA declined to systematically investigate these claims.\textsuperscript{14} Later government studies found that the construction materials used in FEMA trailers emitted high levels of formaldehyde, which remained in the unit because the poorly-designed trailers had insufficient ventilation.\textsuperscript{15} Formaldehyde, in turn, “can cause vision and respiratory problems; long-term exposure has been linked to cancer and higher rates of asthma, bronchitis and allergies in children.”\textsuperscript{16} Widespread public health fears outraged some members of Congress.\textsuperscript{17}

In response to these problems, Congress authorized the Alternative Housing Pilot Program, providing $400 million for FEMA to work with states to develop alternative forms of housing that would serve the immediate needs of disaster victims and offer alternative forms of housing to respond to future disasters.\textsuperscript{18}

\begin{flushleft}
\textsuperscript{14} Id.
\textsuperscript{16} Hsu, supra note 13.
\textsuperscript{17} Id. (“FEMA's primary concerns were legal liability and public relations, not human health and safety,” said Rep. Thomas M. Davis III (R-VA); “I haven't seen this level of government incompetence outside of the nation of China. . . . And they executed an official in China for not having done their job,” said Rep. Jim Cooper (D-Tenn.).)
\textsuperscript{18} See supra note 9; see also P.L. 109-234 (2006 HR 4939), 120 Stat. 418 (“EMERGENCY SUPPLEMENTAL APPROPRIATIONS ACT FOR DEFENSE, THE GLOBAL WAR ON TERROR, AND HURRICANE RECOVERY, 2006”).
\end{flushleft}
FEMA invited states to submit proposals for Alternative Housing Pilot Program funding. Mississippi was able to respond immediately because it was already engaged in designing alternative temporary housing. The Congress for the New Urbanism, in partnership with the Governor’s Commission for Recovery, Renewal, and Rebuilding, hosted the Mississippi Renewal Form in October 2005. During the week-long design charrette, they formed an idea for an alternative to the FEMA trailer. The key concept was a temporary-to-permanent alternative housing model, and a shotgun-style house typical of historic housing in the south emerged as a potentially viable alternative.  

The concept was simple. The house would be available during the post-disaster period as temporary housing, when every unit would be quickly delivered and placed on blocks in a temporary setting. Then, over time, the house could be converted to permanent use by placement on a foundation, allowing it to be added onto over time or to become a guest Cottage once the original home was rebuilt. Legally, the addition of a permanent foundation served to transform the Cottage from personal property (owned by MEMA and leased to residents for free) to real property (owned by the resident with no mortgage and therefore having 100% equity). This idea of a temporary-to-permanent housing solution gained a significant amount of press, and architects began to work on market-ready products. For example, Lowe’s Home Improvement stores now sell building plans for the Katrina Cottage in a number of different models.

An architecture student at Mississippi State University consulted with the State to take the idea from concept to plan. The goal was to create a unit that felt like a real home for approximately $50,000. This resulted in two housing models, a 340-square-foot, one-bedroom

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19 Michael Womack and Jeff Rent, Mississippi Emergency Management Agency Director and Associate Director, personal communication, March 18, 2008.
20 See Lowes.com for building plans; see also supra note 39.
21 Id.
22 See FEMA Fact Sheet Awards: Selected Grant Awards for Alternative Housing Pilot Program, available at http://www.fema.gov/media/fact_sheets/ahpp_awards.shtm
model and a 700- or 850-square-foot, two- to three-bedroom model (see Figure 1). Both models were designed to withstand 150-mile-per-hour winds, while including all the standard features of a typical home. Importantly, the units would be dual-certified as manufactured homes (a lower construction standard) and modular homes (a higher construction standard). The modular certification in particular would enable Cottages to be transitioned into permanency, since local zoning laws generally allow modular homes in residential areas on terms equal to stick-built, site-built homes.

The Mississippi Emergency Management Agency (MEMA) submitted the Cottage concept for consideration by the Alternative Pilot Housing Program, which planned to distribute the money competitively. The Mississippi proposal was well received by FEMA and was allocated $281 million to support the program—the lion’s share of the funding. This was not well-received by other states and had to be justified by a 2007 Governmental Accounting Office study.

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23 See Mississippi Alternative Housing, available at [http://www.msCottage.org/Cottage/](http://www.msCottage.org/Cottage/); see also Cottage building plans (showing 150mph certification).

24 See MEMA’s Cottage building plans (showing “Mississippi modular approval” designation and compliance with the 2003 International Residential Code, among other national and international building standards); Letter of Chief Deputy Fire Marshal Ricky Davis, Dec. 31, 2009 (describing how the State Fire Marshal’s Office outfitted each Cottage with a “Mississippi Modular Data Plate” certifying that it is a modular home suitable for permanent placement).

The State of Mississippi quickly contracted for the construction and design of a program to distribute the Cottages. FEMA identified approximately 14,000 households that were eligible for a Mississippi Cottage. MEMA initially ran a lottery and began contacting interested households for screenings to determine their housing needs, including a site assessment to determine if the soils would support the home and whether there would be room for both the Cottage and a permanent home. At the time, the State didn’t realize that one of the biggest barriers to siting would be local government resistance, which has been an ongoing challenge throughout the program. As a later evaluation put it, securing local approval even for the temporary portion of the program “turned out to be a more difficult and time consuming process than MAHP staff initially expected.” This response was driven by forces that included “the enormity of the recovery effort, concerns (and misconceptions) about the Cottages themselves and perceptions of the circumstances of households that remained in FEMA units.”

26 See Abt Associates, Inc. and Amy Jones & Associates, Developing a More Viable Disaster Housing Unit: A Case Study of the Mississippi Alternative Housing Program, prepared for FEMA and HUD, Feb. 2, 2009, at 30 (“In order to move quickly, the management contract initially was not competitively bid.”) [hereinafter Abt Case Study].
27 Cited in note 19.
28 Cited in note 19.
29 Abt Case Study, supra note 26, at 30; id. at 13-14.
30 Id.
After initial placement of the Cottages, some households were offered the opportunity to purchase them. In order to qualify, households had to own the land and meet other requirements. FEMA’s agreement with MEMA required that the units sold to occupants remained owner occupied through March 2011.\footnote{31 Final Approved Agreement Articles, Revised 01/09 (governing agreement between FEMA and MEMA); City of Gulfport, Mississippi 2010b. Transcript of May 27, 2010 Planning and Zoning Commission Hearing}

**Local Government Regulation of Mississippi Cottages**

The Mississippi Emergency Management Agency was creating a program to provide much needed affordable housing to residents of the Mississippi Gulf Coast, but it had not anticipated the immediate backlash by many local governments. In 2007, a number of local governments along the coast reacted negatively to the possibility of Mississippi Cottages entering their communities, even if only for temporary use.\footnote{32 Cited in note 3.}

Local officials’ reasons for opposing the Cottages varied. A primary theme was that the Cottages were “trailers.” According to one City Councilman in Bay St. Louis, “the Mississippi Cottage is a trailer -- except that instead of coming in through the side, you come in through the front. . . We don't want the stigma of these homes in our community.”\footnote{33 Jenny Jarvie, L.A. Times, Post-Katrina Cottages get a lukewarm welcome, Dec. 16, 2007.}

The term “trailers” is indeed stigmatized, and it corresponds to a specific social meaning beyond that of its synonym, “manufactured home.” “Trailers” suggest residents with low- and moderate-incomes who live in older, more rural areas typically thought to contain lower property values. Manufactured homes are also less well-constructed than other homes and generally not permitted in single-family areas of many incorporated cities. In short, many local officials thought that the Cottages would allow undesirable residents and homes to remain—and mix—next to “desirable” families in typical residential zoning areas.
In addition to the “trailers” argument, anti-Cottage advocates repeatedly argued that Cottages would lower property values. “I rebuilt a $179,000 home and I’ve got Katrina Cottages near me,” said one Waveland resident. “What does that do to my property values?” This person and others like him feared that allowing Cottages would discourage the rebuilding of new, larger stick-built homes.

Although it was never fully articulated, the best-case reasoning behind this theory was that families still in FEMA trailers should be denied a Cottage and that the small, unsafe, and unhealthy FEMA trailers would serve as an incentive to rebuild their homes more quickly. This reasoning assumed that these families had the capacity and resources to rebuild and that they would rebuild a conventional home (or other development) worth more than the value of a permanent Cottage. It also assumed that if a FEMA trailer family gave up and moved away, then another purchaser or developer would come in and utilize the lot to its full economic potential. The “lower property values” argument was not deployed with evidence or empirical support for its propositions.

Several of the assumptions of anti-Cottage residents were unfounded. Some Cottage residents who attempted to rebuild were stymied by contractor fraud, which was rampant and under-prosecuted by state and local law enforcement. Others could not afford to rebuild. In some cities with countless vacant lots for sale, such as Waveland and Long Beach, the assumption of replacement development was also highly unlikely. At least over the short- to medium-term, one family leaving would only result in another vacant and abandoned slab, not a new family coming in with money to rebuild. As one reporter put it, preserving property values is

35 Leslie Eaton, N.Y. Times, Agency is under pressure to develop disaster housing, April 13, 2008 (“But local governments in Mississippi have resisted the Cottages. They fear people who get Cottages will simply live in them and not rebuild their houses, said Mike Womack, executive director of the Mississippi Emergency Management Agency.”)
36 USA Today, Rick Jervis, Katrina Cottage occupants face new displacement, Dec. 31, 2008 (example of Mimi Sherrouse).
37 Sea Coast Echo, Mary G. Seiley, Bay residents beg council to relax rules on MS Cottages, Oct. 13, 2007.
“an odd case to make in neighborhoods where rebuilding has barely begun and abandoned lots are going to jungle."38 Finally, the empirical evidence appears to be on the other side of the argument: According to a recent independent study of the economic value of a Cottage in incorporated areas, in more cases than not a Cottage turns out to be worth more than the pre-Katrina home that it replaced.39

It is possible that part of the opposition to Cottages was rooted in ignorance of the unit itself. Even with advocacy from state officials, residents, and nonprofits, some local officials and "not in my backyard" residents would not believe that the Cottages were dual-certified, had a modular home data plate, or complied with existing city ordinances incorporating the 2003 International Residential Code (a standard that all of the Cottages satisfied).40

There were also powerful emotions at work. As post-storm planning commissions and processes so vividly described, Hurricane Katrina allowed everyone to dramatically rethink their communities, starting over from scratch to create their vision of a better Coast.41 Local officials were given a greater platform and influence with which to impose their vision of the recovered community. For some of them, Katrina was, perhaps, a golden opportunity to remove low- and moderate-income families from city limits, pushing them into trailer parks and unincorporated counties.42

As one New Orleans advocate put it, “they’ve had an agenda for St. Bernard a long time, but as long as people lived here, they couldn’t do it. So they used the disaster as a way of cleansing the neighborhood when the neighborhood is weakest. . . . This is a great location for

38 Christopher Swope, Road to Katrinaville, Governing Magazine, April 1, 2009.
39 Elizabeth Newlon, Ph.D., NERA Economic Consulting, Assessing the Property Value Impact of Mississippi Cottages, [will insert date when public version is released].
40 See supra note 24; Abt Case Study, supra note 26, at 30.
41 Cited in note 5.
42 In Bay St. Louis, “the City Council has been trying to prevent the Cottages from taking root in what had been its most valuable neighborhoods.” Jarvie, supra note 33. The City attempted to keep Cottages only in mobile home parks. Id. The urge to restrict Cottages to poorer areas only was also found in Gulfport’s January 2009 and June 2010 ordinances, discussed below, as well as Waveland’s 2008 attempt to keep Cottages in mobile home parks only, Sea Coast Echo, Homeless for the Holidays, Meaghan Chapman, Dec. 5, 2008.
bigger houses and condos. The only problem is you got all these poor black people sitting on it!“

One example of this “disaster capitalism” in post-Katrina Mississippi occurred in 2006 in Biloxi. At that time, the civic establishment released a proposal calling for expanded casino and tourism development in post-Katrina Biloxi, including a new “central park.” The Vietnamese community, however, found a striking overlap between land the City wanted for the development and land that was disproportionately owned by Vietnamese families, who are not well-represented in the Biloxi political and business establishment. Simply put, communities re-envision themselves after a disaster, but not necessarily with the buy-in or inclusion of lower-income and minority communities who were not necessarily incorporated into the decision-making process before the disaster, much less equally served after it.

Similarly, the Cottages collided with local officials and NIMBY residents’ visions of their new cities. To Cottage residents and advocates, anti-Cottage advocates wanted communities that would be more exclusive than they were before the storm, populated only by desirable homes and desirable people who could afford to rebuild expensive site-built homes.

On-the-ground advocates encountered a wide variety specious reasoning and judgments from local officials about homes that they themselves would never need to live in. Said one official, “The Cottage doesn't solve the housing problem. . . they might be more comfortable than a trailer, but . . . they’re not as comfortable as a real home.” Obviously, many Cottages residents disagreed. The bigger question, however, is why local officials would ever have the authority to determine that a Cottage was not a “real home” when the Cottage was built to existing ordinances and construction standards that define permanent housing.

For some, anti-Cottage positions reflected perceptions of persons receiving government assistance: “People say we’ve got obligations for affordable housing, but this is a community

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44 Jarvie, supra note 33.
that has to get moving. . . What’s happening is that people who have not paid rent or utilities for 2 1/2 years just want to keep on having a free ride.”\textsuperscript{45} This common opinion was especially ironic for local government officials to vocalize, since the basic needs of their city governments—rent for offices, road repaving funds, fire station construction monies, and a propping up of the reduced tax base—have been on the equivalent of federal life support since Hurricane Katrina struck. Many officials were willing to accept federal funds for individual rebuilding (through the rebuilding grants) and for the operation of their local governments to the present day, but they would not extend the same lifeline to individuals in need.

Ultimately, MEMA was able to convince every local government on the coast to accept Cottages on a temporary basis. In exchange, MEMA promised to remove the units at the end of March 2009. The cities also imposed a variety of conditions upon the residents, such as the following:

- [The next four bullets are direct quotes from Abt] “The City of Moss Point permitted units only on private residential lots (no group sites or commercial lots) and initially restricted occupancy to one year.
- “The City of Pascagoula gave blanket approval to place Park Model units (1 bedroom) wherever a travel trailer existed, but individual approval was required for placement of the larger Cottages. The agreement also defined MEMA’s responsibility for the cost of installation maintenance, demobilization, and reasonable site restoration.
- “Several jurisdictions (Gulfport, Bay St. Louis, Pascagoula, and Gautier) required applicants to provide specific evidence that they were rebuilding a permanent unit in order to obtain a permit for placement of the Cottages.
- “Harrison County and Pass Christian authorized the placement of Cottages only where local zoning allowed modular and manufactured homes, and required

\textsuperscript{45} \textit{Id.}
applicants to follow the normal process for obtaining a zoning variance if they wished to place a unit elsewhere in the jurisdiction. Pass Christian’s agreement further specified that “no person will be allowed to purchase the units from the State of Mississippi” at the end of their occupancy and reminded the State that “time is of the essence” in the removal of units.”

- Waveland forced prospective Cottage residents to sign a waiver certifying that they would not, and could not, seek permanency in the Cottage. Later, in 2009, Cottage residents sued Waveland for this restriction, and the waiver became a minor issue in the litigation.

The federally-funded evaluators of the early Cottage program, again in their typical understatement, concluded that this “process proved to be time consuming, confusing and sometimes frustrating for all concerned.” Ultimately, however, every jurisdiction on the coast allowed some form of temporary Cottage use.

The biggest concerns revolved around the potential for permanent siting. Based on policies set in early 2008, only 9 of the 15 jurisdictions on the Mississippi Gulf Coast considered permanent siting of Cottages, and then there were specific restrictions. For example, most restricted the siting to replacement of a previously manufactured home or in agricultural areas. The local governments seemed largely resistant to the idea of these homes becoming permanent in their communities.

This started to change in fall 2008 through a confluence of factors. The State of Mississippi realized it was falling short of the housing unit production numbers it had pledged to Congressional officials and federal agencies, who were scrutinizing why Mississippi was diverting $600 million to enhance its port at Gulfport with federal funds intended for low- and

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46 Abt Case Study, supra note 26, at 36.
47 The waiver is on file with the authors.
48 Abt Case Study, supra note 26, at 36.
49 Cited at note 3.
50 Id.
moderate-income housing. The shortfall was especially true with respect to affordable housing units. The State knew that it could not sit and let these valuable Cottages go unused: it would be a major embarrassment in both Jackson and Washington that could potentially threaten Mississippi’s plans for the port and other projects.\footnote{The Washington Post ran a front-page story highlighting Mississippi’s inability to replace FEMA trailers with the higher-quality Cottages, publishing a picture of hundreds of Cottages sitting vacant in a field only several miles from people living in FEMA trailers. See Spencer S. Hsu, Permanence Eludes Some Katrina Victims, The Washington Post, June 13, 2009.}

Also in 2008, the Governor finally gave in to coastal governmental leaders and appointed a high-level “Gulf Coast Housing Director,” who was locally known and respected, to address local concerns about the recovery.\footnote{In short, coast residents felt like there was a disconnect between the reality of their needs and a decision-making process centered in the state capitol, Jackson, nearly three hours north of the coast.} The governor’s selection, former Biloxi Mayor Gerald Blessey, immediately took up the cause of permanent Cottage placement. He visited with officials from every jurisdiction on the coast, attended planning and city council meetings, and generally used his public influence to advocate for Cottage permanency.\footnote{See, e.g., Anita Lee, A case for permanence, Sun Herald, Nov. 15, 2008; Meaghan Chapman, Homeless after the holidays, Sea Coast Echo, Dec. 5, 2008; J.R. Welsh, Blessey faces MEMA Cottage opponents, Sun Herald, Nov. 18, 2008.} “If they can stay there and live in this Cottage, for many that’s the most affordable solution and the main solution,” Blessey said. “From a ‘humanitarian standpoint,’” Blessey added, allowing the Cottages to stay past the deadline “is the only practical solution’ for residents who might otherwise be homeless.”\footnote{Anita Lee, A case for permanence, Sun Herald, Nov. 15, 2008}

Mr. Blessey’s lobbying was fairly successful. By January, most jurisdictions appeared to be on track to allow some form of Cottage permanency with restrictions. But some of the following difficulties remained:

- The Gulfport City Council passed a special Cottage ordinance in January 2009. This was a mixed blessing: It showed at least formal approval for some Cottages to remain permanently, but the number of restrictions Gulfport put on them meant that dozens if not hundreds were threatened. (At that time,
Gulfport had approximately 160 Cottages.) Gulfport’s restrictions will be discussed further below.

- Also in January 2009, the City of D’Iberville passed a similar Cottage ordinance that placed over a dozen restrictions on Cottage residents.\textsuperscript{55} It prohibited Cottage residents from keeping their units if they did not have a 2005 homestead exemption, meaning that only owner-occupiers from before Katrina could keep a Cottage in D’Iberville after the storm. It also prohibited renting the Cottages, denied landowners’ rights to bring Cottages into D’Iberville, dictated the kinds of foundations that could be used for Cottages, prohibited applications for variances from Cottage residents, and placed severe deadlines on the application and receipt of necessary building permits. None of these requirements were applied to non-Cottage modular homes seeking to enter D’Iberville.

- The City of Long Beach refused to pass any Cottage ordinance. In a way, this could be interpreted as pro-Cottage—a resident could assume that existing zoning that allowed modular homes would also apply to the Cottages. However, in reality, Long Beach would simply deny permit applications for the permanent placement of Cottages on the grounds that they were mobile homes. Six residents sought legal representation from the Mississippi Center for Justice, which appealed these denials and filed fair housing complaints with the federal government. In response, the City passed a new, independent barrier to deter keeping a Cottage. It imposed a minimum square footage barrier of 850 square feet, just high enough that no Cottage could possibly

\textsuperscript{55} See City of D’Iberville Ordinance 121.
While the permit applications of the original six residents were in before the new barrier passed, and were therefore exempted from this burden, all other Cottage residents were impacted. Later, several other Cottage residents went through the variance process, which took months and cost several hundred dollars each. Ultimately, at least three more residents were allowed to remain in their Cottages permanently through the expensive and time-consuming variance process.

- In Hancock County, both incorporated municipalities, Waveland and Bay St. Louis, voted to restrict Cottages to mobile home parks. This led to a lawsuit in which eight Waveland Cottage residents—seven of whom owned their own land—challenged their city’s Cottage prohibition. The residents argued that the Cottages were modular homes, which were already allowed in residential areas of Waveland. They also argued that Waveland could not pass its own definition of modular home without coming into conflict with state law, a theory discussed in the legal section of this paper. After public interest lawyers from Mississippi Center for Justice sued Waveland three times over the Cottages, the City settled in early June 2009. A new ordinance allowed the plaintiffs to remain and removed some of the worst restrictions from Waveland’s ordinance. However, the new ordinance was still a far cry from treatment equal to that given to other modular homes.

- In March 2009, two months after the Waveland litigation commenced, the City of Bay St. Louis passed its own Cottage ordinance. The City Attorney may have felt that Bay St. Louis would minimize the risk of being a litigation target if it passed an ordinance more similar to those in Gulfport and D’Iberville, rather

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57 See also J. Rice letter explaining this theory.
than Waveland’s restrictions which had led to three lawsuits. While Bay St. Louis’s Planning & Zoning Commission drafted one of the more fair Cottage ordinances, the City Council went back and re-inserted restrictions. The end result was an ordinance similar to those in D’Iberville and Gulfport.

MEMA tracked these changes in a “jurisdictional matrix.” As of April 2009, Long Beach was the lone holdout on Cottage permanency, and it later allowed a handful of Cottages as described above. Finally, after extensive lobbying and litigation efforts, every municipality theoretically allowed some pathway to permanent Cottage placement—all with substantial restrictions.

Local governments have the right to segregate land uses, based on Euclid v. Ambler Realty. This right was an early foreshadowing of exclusionary zoning, which is an illegal practice of excluding low-income and minority residents under zoning classifications.

Exclusionary zoning practices can be observed across the nation and are often supported by communities that argue that they are protecting their property values. Courts have upheld the rights of local governments to develop zoning ordinances that best serve their communities. This has encouraged local governments to develop zoning regulations that ignore the needs of socially vulnerable populations. Exclusionary zoning contributes to the unequal development within a region and limits access to affordable housing. The result can be segregated communities that are divided based on race and class.

58 Personal communication with author.
60 Id.
The restrictions on Mississippi Cottages varied, but in many cases they were exclusionary. The reasons for restricting the Cottages varied, but most raise significant fair housing and exclusionary zoning concerns. While each community took a different approach, one of the most outspoken communities has been the City of Gulfport. Gulfport is the second largest city in Mississippi, the largest city in the region, and has had one of the most clearly discriminatory Mississippi Cottage policies. The City of Gulfport has been selected for a case study examining the evolution of their Cottage land use policy and the reactions and results of their land use decisions.

The Story of Gulfport

While a number of communities implemented regulatory strategies to limit the siting of Mississippi Cottages, the City of Gulfport proved to be openly defiant in its resistance to the homes. Gulfport’s defiance is more unusual than its neighbors because it has been reaffirmed over time through multiple ordinances. Over the past five years, the City has adopted a series of exclusionary zoning ordinances related to the Mississippi Cottage. This section discusses these ordinances.

Mississippi Cottage Ordinance, 2009

In January 2009, the City adopted an ordinance specifically regarding the permanent placement of Mississippi Cottages. It considered MEMA Cottages to be non-conforming structures that must be owner occupied and located on property owned by the resident of the Cottage. They were required to be for single-family use, could not be rented, and could not be

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63 Along with clearly discriminatory ordinances in Bay St. Louis, Waveland, Long Beach, and D’Iberville. It cannot be said that anti-Cottage discrimination has been subtle.

64 Ordinance 2617, passed January 15, 2009.
added onto or modified. All of these are prohibitions and requirements not placed on other homes in Gulfport.

The most discriminatory element of the ordinance allowed neighbors within 160 feet of the proposed Cottage placement to veto the unit staying permanently. According to the ordinance, a permanent Cottage:

May not be located where pre-storm homes share or shared similar architectural standards or historical consistency except where all (i.e., 100% of) property owners within a 160’ radius of the subject property have consented, in writing, to the placement. The request for consent will be forwarded to the neighboring property owners by the Department of Urban Development and the request for consent shall be advertised in a newspaper of general circulation in the City. Failure of a neighboring property owner to respond to the letter or advertisement within fifteen (15) days of posting or advertisement, respectively, whichever is later, shall be deemed to be written consent to the placement.65

As to the requirement of “architectural standards or historical consistency,” the City’s criteria for determining such neighborhoods were vague and never released. The Mississippi Center for Justice filed a public records request seeking clarification of this standard, but the City did not produce any documents about it. One possibility is that the City used this standard to arbitrarily keep Cottages out of higher-priced areas, such as along Second Street and the beachfront; however, this could not be confirmed.

As to the veto provision, this clause is completely inconsistent with public input procedures for other types of zoning matters. Property owners seeking to place a normal modular home in Gulfport are not subject to any neighbor input, much less a veto. Also, the

65 Id. Section 2, part 4(i).
language of the veto itself is one-sided: property owners were not invited to submit their comments in favor of the siting; rather, they could respond only in opposition.

We conducted a public records review of all letters in opposition to the siting of a Mississippi Cottage. The City declined to release the records in contravention of the Mississippi Public Access to Public Records Act. The Mississippi Center for Justice had to file a lawsuit to get the records, and several weeks later obtained 61 letters of objection regarding 19 Cottages. More Cottages may have been objected to; these 61 letters were the only ones released by the City of Gulfport, which could be sitting on more in contravention of state law. Even Cottages that did not receive objections had problems getting permitted by the City of Gulfport, as we will discuss later.

In enacting the 2009 ordinance, Gulfport first sent a letter to neighboring property owners within 160 feet of each Cottage notifying them of their right to object. One resident had a problem with the way the letter was worded and wrote, “In writing this letter, I reserve all my rights for future objections. The notification letter from the City stated that failure to respond would ‘deemed to be written consent to the placement.’ I object to any such position of the City and without my express consent no consent is to be inferred.”

In all cases, 50 percent or less of the contacted property owners submitted letters of opposition, meaning that, based on the wording of the City’s letter, the majority of property owners gave consent to the placement of the Cottages. On average, only 18 percent of contacted property owners responded with opposition to the siting of a Cottage, but the ordinance did not allow for majority rule. Based on the Ordinance, any Cottage receiving a letter of opposition was ineligible for permanent siting.

The reasons for opposing the siting of the Cottages varied from property to property. Much of the language in the letters of opposition contained terms that could be commonly associated with exclusionary zoning. The most common concern was property values, with 69

See Cause No. C2401-10-425(1), Chancery Court of Harrison County, First Judicial District.
percent of the letters containing a reference to the effect of the siting on property values. The arguments around property values were mixed and, in some cases, contradictory. For example, one person said that “our neighborhood should not be devalued just so someone can have a weekend get away.” This statement was itself made by an out-of-state property owner that had not rebuilt. Another reported that they believed that the siting of the Cottages was an unconstitutional taking, referring to the perceived loss in property value. This argument is legally meritless.

Along this same theme, some neighbors reported that they were concerned that the placement of the Cottages would slow rebuilding because people would have a disincentive to invest in rebuilding a site-built home. However, this logic is not completely sound because, for example, one person wrote that they were the only permanent home within two blocks of the proposed Cottage address because no one else had returned after four years. It is hard to understand how one Cottage would further slow almost nonexistent rebuilding.

The second most common concern was the fit with the neighborhood. Forty-six percent of objectors raised this as a concern. For example, “This neighborhood is being rebuilt and a MEMA Cottage is not representative of what was there before, or of what is being built. We have spent more than $180,000 repairing our 1901 home and do not want a small manufactured Cottage in our neighborhood.” Another stated, “Hopefully the area is going to be rebuilt with traditional family homes. We feel that a MEMA Cottage does not fit in this neighborhood.”

Very few of the letters raised concerns relevant to the land use siting decision. For example, less than 10 percent raised a reasonable zoning concern. Where zoning issues were raised, they appeared to be valid concerns relating to required setbacks, lot sizes, etc.

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67 Some Cottage opponents were responding to feelings that Cottage residents were taking advantage of the situation. See Abt Case Study, supra note 26, at 35. However, many of these feelings were grounded in rumor rather than fact. “[W]hen MAHP staff requested specific information about cases of abuse the response was often that someone ‘had heard’ about a case.” Id.

68 This was also a recurring issue in the cities of Waveland and Long Beach, where the population is still thousands of residents down since Katrina, and a Cottage is occasionally the only home back on the entire block.
However, these requirements applied to Cottages as well—they were not waived and, ostensibly, would have been discovered during the formal permitting process. On a related note, 21 percent of objectors raised code enforcement concerns based on the existing property conditions, such as commercial car repair operations being conducted on-site.

A number of the concerns point to possible discrimination. For example, approximately 10 percent made reference to the type of people living in the Cottage. One person stated, “this neighborhood is not a trailer park,” and another said, “we are not trailer park people.” Approximately 10 percent reported concerns about the appearance of the Cottages. There were also the clearly angry views about a perceived lack of quality of the structures (8 percent). This comment captures some of the concern: The Cottage is “nothing more than a proposed missile aimed at our neighborhood.” There was clearly a disconnect between the fact that this was a house that was brought in by truck and the storm resistance inherent in the design, which was meant to withstand 150-mile-per-hour winds.

The Planning Commission and City Council intended to use the objection letters to prevent the siting of the Cottages in a number of cases. Site visits to the properties that received letters of objection revealed that a Cottage was able to be sited in eight of the 19 cases (only 42 percent successfully sited). [I don’t recall if these were permanent placements or not. We may want to say, ... “revealed that a Cottage was not able to be sited in at least 11 out of the 19 cases: while 8 more remained, some were temporarily placed and may not have been retained to permanent placement.”] In none of these cases did more than half of the property owners within 160 feet write in to oppose the siting of a Cottage, and only 10 percent of respondents raised a zoning concern for three of the 19 cases (16 percent). This suggests that the City Council or City Building Department put weight on the opposition letters that were received regardless of whether the comments pertained substantively to the zoning request or not.
Site visits confirmed where the Cottages were located. If a property owner was home, he or she was interviewed to find out more about his or her Cottage situation. One respondent indicated that getting the Cottage sited was just too difficult. In one instance, a property owner reported that their MEMA Cottage was moved to a manufactured home park, and in another, MEMA took the home back. One property owner specifically cited the City ordinances as a barrier to housing. Another cited their neighbors as the barrier.

**Mississippi Cottage Ordinance, 2010**

There was significant political turmoil throughout 2009 and 2010, in part related to Mississippi Cottages. In the May 2010 election, there was turnover in the City Council. The new City Council adopted a new Mississippi Cottage ordinance to replace the previous Cottage ordinance. In part, the change in policy was due to the pending sale of Mississippi Cottages to residents. In late 2009 and early 2010, the Mississippi Emergency Management Agency began entering into contracts for residents to purchase their homes. Part of the sale process was making sure that each property owner had zoning clearance to permanently site a Cottage. At one point, MEMA representatives assisted Cottage owners in applying for permanent siting approval, submitting approximately 30 permits at once. 69

Another reason for the proposed tightening of the ordinance was a pending auction of Cottages. On June 4, 2010, approximately 175 Cottages were auctioned off to the general public several miles north of Gulfport. The City did not want new Cottages to enter in waves and turn Gulfport into a Cottage city. Advocates heard this concern repeatedly from city officials and their attorneys across the Coast. Allegedly, “no one” had a problem with letting their current Cottage residents stay, but if they let down their restrictive ordinance, then Cottages from the auctions and other jurisdictions could flood into their city. To advocates, this was merely a

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69 See Transcript at 44
repetition of the same theme: Cottages are trailers and we don’t want them. To city officials, however, it was a collective action problem.

Additionally, from a legal perspective, it would be easier for cities to apply a new across-the-board definition of modular home, or even a minimum-square-footage ordinance, than to adopt an ordinance that singles out MEMA Cottages by name, which is what most Coast communities had done in the past. Across-the-board ordinances could be justified as merely impacting Cottages, rather than targeting them for removal from the city.

On June 22, 2010, the City adopted three amendments to the Zoning Ordinance related to Cottages. First, the City struck its previous MEMA Cottage ordinance that had been passed in January 2009. This took all language specifically referring to MEMA Cottages off of the books.

Second, the City expanded the definition of manufactured home as follows: “any structure plated or certified as a manufactured home/mobile home, no matter what other plate or certification it holds or building code it meets, shall, for the purposes of this ordinance, be considered to be a manufactured home/mobile home and no other structure type.”70 Because Cottages are dual-plated to both the lower manufactured home standard and the higher modular home standard, this meant that the city was declaring—out of thin air—that Cottages were manufactured homes, and thus restricted only to mobile home parks. This effectively overrode the State Fire Marshal’s certification of the Cottages as modular homes, making it meaningless.71 This change seemed arbitrary: one would think that if a home was dual-plated, a city could just as easily treat it as the higher-quality modular home.

Third, the City adopted a new definition of “modular home.” A modular home “shall consist of two (2) or more components that can be separated when transported but designed to

70 City of Gulfport, Mississippi. 2010a. Zoning Ordinance Amendment Manufactured Home. Ordinance Number ________
71 See Cottage building plans (showing Mississippi modular approval), supra note 24; Ricky Davis Letter, supra note 24.
be joined into one integral unit.” This means that in order to be considered a modular home, a house must come in two or more parts. This directly excludes the one-part Mississippi Cottage, specifically designed to be easily transported. The effect was to declare that all Mississippi Cottages are manufactured homes, rather than modular, thus restricting them only to the districts that allow manufactured homes, primarily manufactured home parks. This ordinance meant that Mississippi Cottages would be permanently segregated and concentrated into manufactured home parks rather than be allowed to stay on the sites of the residents’ pre-storm homes.

In their June 22, 2010 meeting, the City Council and municipal officials also declared that they had gone through a private discussion with MEMA about which Cottages could remain and which had to go. It is not clear what criterion were used to make these determinations. The net result, however, was an announcement at the City Council meeting that 22 of the Cottages currently in Gulfport were on a special list of exceptions and would be able to remain and be permanently placed as non-conforming structures. The new ordinances would not apply to them. This effectively ensured that Gulfport was limiting its “exposure” to new Cottages coming up for auction.

Gulfport Resident Reaction

The City held a public hearing in May, 2010 for the consideration of the adoption of the new ordinance. The authors reviewed the transcript of the public hearing to determine the opinions of residents. There was significant opposition to the proposed ordinance from Mississippi Cottage residents.

Several people were confused and frustrated by the City changing their decision on Mississippi Cottages. They reported that they were in the process of purchasing their Cottages from MEMA, only to be told that because the City of Gulfport was trying to amend the ordinance, the City may prevent them from permanently siting the homes on their properties. These people
admitted that the Cottages were all they could afford and that they couldn’t afford to rebuild their homes. One resident requested grandfathering for those that had already started the process of purchasing their Cottages.

A number of the people offering testimony pointed to the challenges of the most socially vulnerable. One person described their personal struggles, between the loss of their home in Katrina, a contractor stealing $35,000 intended to be used for repairing the home, and now the possibility of losing their Cottage. Speaking about Cottage residents, one person said, “I guess the greater percentage of the people living in these homes right now are disabled. I can tell you right now, they’re disabled, and they’re low income families. And we don’t know what’s going on in the Gulf with the oil going…” These residents understood that the socially vulnerable didn’t have any other alternatives than the Mississippi Cottage.

Others expressed their support of the ordinance and opposition to the MEMA Cottages. One resident responded that they didn’t mind the existing modular homes, but they didn’t want more MEMA Cottages coming into the neighborhoods. This points to a general misunderstanding that the Mississippi Cottage is a type of manufactured housing, which is perpetuated by the City’s proposed ordinance. One resident did rebut, stating, “So the lumping a modular home – well, first of all, the MEMA Cottage is a modular home. And saying that the fact that it’s in one piece and not in two pieces is really, if you ask me, a very frivolous criteria for whether it is or is not a modular home. It’s a modular home based on its building specifications and its strength.”

A specific concern was raised about the impact of the Cottages on property values. However, another resident rebutted in favor of the Cottages, stating, “Hell, property value been overrated for the last three years. Everybody knows homes is out of whack. And that’s not the issue. The issue is that people want a place to stay.”

One common concern was the use of the Cottages for secondary residences. “There’s a Cottage across the street from me that he didn’t live there when the storm happened. He now
has that Cottage there because in the summer, it’s his summer home that’s there. If he had lost his home like the rest of us, you wouldn’t hear me saying a word about it.” However, the zoning ordinance makes no distinction between first and second homes for any type of housing. The distinction of who will live in the home as a primary residence is further discussed by another resident:

…the existing ordinance definitely called out specifically MEMA Cottages and puts it in parentheses. And it goes further to talk about these are the ones that the Mississippi Emergency Management Agency provided to certain qualified and eligible individuals to serve as temporary housing following Hurricane Katrina … I see nothing in here that would preclude someone who purchased the Cottage today from selling it to another individual and selling the property that it’s sitting on such that was intended to serve as a temporary housing following Hurricane Katrina in perpetual would remain as a permanent structure. .. it seems to be a fair argument that the intent of this was developed before ownership was a possibility and that it does not have language in it that precludes the permanent placement and the passing along as long as it’s a single family, as long as it’s owner occupied, and as long as it’s not rented…we would want to make sure of every tool available to identify individuals that are abusing – I use that word in my personal opinion – the right to have temporary housing following a major disaster in this area. I would think that it would totally preclude situations where people may purchase one of these, except to place it in a location that the text amendments would clearly allow, such as a trailer park or an A-1 district where such a use would be permitted.

The testimony clearly pointed to the need for socially vulnerable residents to keep the housing on a permanent basis. The concerns raised by many of the residents, such as whether
the Cottages would be rented in the future, whether they would be occupied by the pre-Katrina permanent residents, and their impact on property values all point to discriminatory concerns.

In spite of this, the Planning Commission recommended approval of the ordinance amendments, which went on to pass the City Council on June 22, 2010.

The story of Gulfport is an extreme example of exclusionary zoning practices that disproportionately segregate low-income and disabled residents into manufactured home parks. The lack of effort to aid Gulfport Cottage residents in their housing need and the drawn-out effort to prevent residents from having a permanent home is disappointing.

What is especially sad about Gulfport’s story is that the largest city on the coast (and second largest in the state) has suffered almost no public consequences for their transparent attempts to zone out Cottages. The city continues to draw millions of CDBG-Disaster funding from HUD and the State of Mississippi. It has not been sued in court over its treatment of Cottages, at least to the authors’ knowledge. Also, the last recourses of zoning discrimination, HUD’s Fair Housing and Enforcement Office and the Department of Justice’s Civil Rights Division, were made aware of the situation but never stepped in to stop it.

The people of Gulfport have been let down by their elected officials, and arguably they could remedy the situation through local elections. It is the general public that has collectively lost when state and federal enforcement mechanisms turn a blind eye to the low-income residents and fair housing classes that they are charged with protecting.

Legal Analysis of Discriminatory Anti-Cottage Ordinances

There are at least four theories as to why Cottage ordinances are unlawful: state preemption, arbitrary and capricious decision making, equal protection, and fair housing.

1. State Preemption
First, several cities tried to limit Cottage placements by attempting to redefine “modular home.” Unfortunately for them, this action exceeds the authority of local governments.

Zoning powers are inherited and derived from the State’s powers and passed down for local governments to implement in a manner not inconsistent with state law. If the State legislature has defined something—such as what constitutes a “modular home”—then the State’s definition trumps and defeats the local government’s attempt at local regulation.

This is similar to the power relationship between the federal and state governments on certain issues. For example, the Constitution grants the federal government authority to regulate commerce between the states, and therefore any attempt of one state to itself regulate interstate commerce is prohibited. Where the federal government has “occupied the field,” the state government may not intrude.

In the Cottage situation, in June 2010 the City of Gulfport redefined “modular home” as something that comes in two or more pieces. State law, however, defines modular home as follows: a structure which is: (i) transportable in one or more sections; (ii) designed to be used as a dwelling when connected to the required utilities, and includes plumbing, heating, air conditioning, and electrical systems with the home; (iii) certified by its manufacturers as being constructed in accordance with a nationally recognized building code; and (iv) designed to be permanently installed at its final destination on an approved foundation constructed in compliance with a nationally recognized building code.

Mississippi Code Ann. § 75-49-3 (emphasis added). Therefore, the State’s definition of “modular home” pre-empts any conflicting laws passed by the City of Gulfport. As set forth in the Mississippi Code:

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72 Including, at a minimum, the Cities of Gulfport and Waveland.
In addition to those powers granted by specific provisions of general law, the governing authorities of municipalities shall have the power to adopt any orders, resolutions or ordinances with respect to such municipal affairs, property and finances which are not inconsistent with the Mississippi Constitution of 1890, the Mississippi Code of 1972, or any other statute or law of the State of Mississippi....


Applying the state preemption theory, these various municipal attempts to redefine modular home are unlawful.

2. Arbitrary and Capricious Decision Making

Throughout the MEMA Cottage story, several cities made decisions to treat Cottages as mobile homes without any evidence to support their decision. Therefore, these decisions are arbitrary, capricious, and unlawful.

In fact, there is a substantial amount of evidence that Mississippi Cottages are modular homes when affixed to permanent foundations. The Cottage building plans show that they have “Mississippi modular approval” designation and comply with the 2003 International Residential Code, among other national and international building standards.73 The State Fire Marshal’s Office has outfitted each Cottage with a “Mississippi Modular Data Plate” certifying that it is modular.74 And the State of Mississippi’s position is that the Cottages are modular when affixed to a permanent foundation.75

This “mobile versus modular” issue had to be resolved by litigation in January 2009, in the suit brought by long-time residents of Waveland over their City’s Cottage prohibitions. The

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73 See Building Plans, supra note 24.
74 Id.; see also Ricky Davis Letter, supra note 24.
residents claimed that Waveland was not allowing Cottages to remain in the City permanently, even though Waveland accepted other modular homes without problem. After reviewing the issue, Waveland’s attorney acknowledged in court that the Cottages were modular and that the City would accept them when presented with complete permit applications. The Chancery Court Judge also ruled that the Cottages were modular and could be placed under Waveland’s existing ordinance that allowed modular homes in R-1, R-2, and R-3 areas.\textsuperscript{76}

It is disappointing that at least two cities have declined to follow this ruling. Throughout 2009, the City of Long Beach issued permit denial letters stating that the Cottages were mobile homes and therefore could only be kept in mobile home parks. And as discussed above, in June 2010 the City of Gulfport decreed that any dual-plated unit would be deemed a manufactured/mobile home. This decision is arbitrary and capricious because dual plating could just as easily require the unit to be treated under the higher, modular home building standard. It would be arbitrary and capricious to override the State Fire Marshal’s determination of the Cottages without any evidence to the contrary.

3. Equal Protection

This constitutional claim is triggered when the government treats one group of persons differently from another group without any rational basis. In the Cottage context, it is generally-accepted knowledge that modular homes have been accepted for permanent housing in every municipality along the Gulf Coast.\textsuperscript{77} Local ordinances allow modular homes exactly as they do site-built, stick-built homes.

The cities’ discrimination against Cottages, however, is based solely on the fact that they were obtained through a government-funded program. The cities are not arguing against all modular homes, or saying that there is a legitimate health or safety reason why the modular

\textsuperscript{76} Chancery Court Transcript, Jan. 30, 2009.
\textsuperscript{77} Press Release, Mississippi Manufactured Home Association, Jan. 28, 2009.
home standards should be limited to only certain zoning areas. They are selectively treating Cottage modular homes differently than non-Cottage modular homes without any rational basis. There is no rational basis for this treatment because there is no relationship between government funding and construction standards.

4. Fair Housing

Finally, federal fair housing laws should also prohibit local jurisdictions from enforcing their anti-Cottage ordinances. The Fair Housing Act and its amendments protect persons in certain protected classes from unlawful housing discrimination, including exclusionary zoning. The protected classes are race, color, religion, national origin, sex, disability, and familial status (presence or anticipated presence of children under 18 in the household). Claims can be brought for intentional discrimination as well as “disparate impact,” meaning that the alleged activity has the effect of denying housing opportunities to one or more protected classes.

Although rumors abound, local officials along the Gulf Coast have not been recorded making racist statements about a particular protected class (or person) that would be affected by an anti-Cottage ordinance. One study reported that the racial composition of Cottages was roughly that of the general population,\(^\text{78}\) although one would want to check the implementation of this on the ground to confirm that there was not a pattern or practice of discrimination in the permitting process.

Unfortunately, however, MEMA claims not to have counted or tracked the race of Cottage occupants.\(^\text{79}\) This certainly has to be an independent violation of federal laws in and of itself, and it has limited efforts to understand the racial impact of the Cottage program.

One area in which the impact is clear, though, is in the disability context. In 2007, the year that Cottages started to be delivered, persons with disabilities made up 20 percent of

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\(^{78}\) See Abt Case Study, supra note 26, at 44.

\(^{79}\) See Letter from Mike Womack to Andrew Canter, January 2009
Harrison County. However, the Cottage program is housing a significantly higher percentage of persons with disabilities. Bay St. Louis’s Cottages had a 26.6 percent disability rate, unincorporated Jackson County’s had 27.5 percent, D’Iberville’s had 29.3 percent, and Gautier’s had 46 percent. Clearly, persons with disabilities are more likely to occupy Cottages than other kinds of homes.

The numbers are even more discouraging when considered on a household level. The federal evaluation of the Cottage program reported that an astonishing 43 percent of Cottages were housing at least one person with a disability.

Thus, anti-Cottage ordinances may have a disparate impact on racial and ethnic minorities—there is not sufficient data to know for sure—but they definitely have a disparate impact on persons with disabilities. When cities seek to exile Cottages to mobile home parks, they are also exiling persons with disabilities, pushing them farther from mainstream civic life. While more evidence needs to be gathered, this suggests that a fair housing claim could properly be brought against a city working to limit the locations of the Cottages placed within its borders.

Conclusion

As Hurricane Katrina demonstrated, FEMA’s 408 housing program represents a short-term housing solution, but in the aftermath of this serious disaster, hurricane residents were left with ongoing insecurity. The Mississippi Cottage program provided the opportunity for a temporary-to-permanent housing solution. However, this solution cannot be permanent if local governments make siting difficult or impossible. Post-disaster housing should, above all, be fair.

82 See Abt Case Study, supra note 26, at 44.
The Fair Housing Act requires the federal government to act affirmatively to further the Act’s policies. This obligation, however, also extends to state and local recipients of certain federal funds, who then must certify that they are affirmatively furthering fair housing. The consequences of making such a certification falsely can be severe.\(^{83}\) The 1968 Civil Rights Act requires the Secretary of HUD to affirmatively act relative to housing and urban development matters, and other federal agencies have the same responsibility.\(^{84}\) In the Supreme Court case \textit{Trafficante v. Metropolitan Life Insurance Company}, the Court refers to the purpose of the legislation, which was to “foster integration and counter discrimination.”\(^{85}\)

One of the significant limitations of the Fair Housing Act is that it relies heavily on proving individual claims. The Department of Justice takes fewer than 1,000 cases per year. This is in comparison to the approximately two million acts of housing discrimination that are estimated to happen each year.\(^{86}\) Mississippi Cottage residents are consumed with the effort to rebuild their lives and to get their homes sited. They simply do not have the time or, after years of struggling with FEMA, insurance companies, or their local governments, the energy to file individual complaints to the federal government. Similarly, HUD is overwhelmed and unlikely to respond in a timely manner.

An equitable housing policy would support inclusionary zoning. It should focus on creating choice, so that residents can choose neighborhoods that best meet their needs.\(^{87}\)

\(^{83}\) See, e.g., the 2009 fair housing settlement in Westchester County, New York, worth $62.5 million. Anti-Discrimination Center, Westchester False Claims Case, available at http://www.antibiaslaw.com/westchester-false-claims-case (concluding that “Westchester County had ‘utterly failed’ to meet its affirmatively furthering fair housing (‘AFFH’) obligations during the false claims period (2000-06), and that each and all of Westchester’s certifications that it had or would AFFH were ‘false or fraudulent.’”).


There has been substantial debate about removal of low-income people from areas of concentrated poverty. However, as seen in Gulfport, there has been a concerted effort to push Mississippi Cottage residents into areas of concentrated poverty.

HUD or DOJ could choose to withhold federal funding because of these exclusionary zoning practices. The post-Katrina Mississippi Cottage is an example of how well-intended federal and state government programs can be met with a discriminatory policy environment at the local level. Local government must focus on the most socially vulnerable residents who are in real need of permanent housing so that they can move on with their lives in spite of repeated and ongoing disasters on the Mississippi Gulf Coast.

http://4909e99d35cada63e7f757471b7243be73e53e14.gripelements.com/publications/Housing_in_NOLA_KI_OppAg_NAACP.pdf