



voters that are similarly situated, and aver as follows upon information and belief:

**PRELIMINARY STATEMENT:**

1.

This petition consolidates the claims of three plaintiffs, all African-American voters in New Orleans who face the imminent threat of deprivation of their right to vote, due to the directives, confusion, acts and omissions of federal, state and local officials in the aftermath of Hurricane Katrina and Hurricane Rita. After being forced to leave their homes, the plaintiffs and similarly situated New Orleans voters, and particularly African-American voters, now face the imminent threat of irreparable harm and denial of their constitutional and statutory rights due to the arbitrary, capricious and constantly changing decisions of their elected representatives and bureaucrats. Plaintiffs seek this Court's intervention and relief under the Civil Rights Act, the Voting Rights Act and the National Voter Registration Act.

This Court's immediate intervention and supervision are required to assure that all New Orleans voters will be able to freely and fully exercise their constitutional rights to campaign and vote in the February 4 and March, 2006 municipal and parish elections, the 2006 congressional election, and other upcoming elections. Defendants have already violated the Voting Rights Act by not obtaining pre-clearance before canceling elections scheduled for October and November, 2005.

Plaintiffs urge this Court to enter a declaratory judgment holding that their voting rights are in imminent danger of being abridged due to the acts and omissions of federal, state and local officials, that minority voting rights are in danger of being diluted, and that the events, actions and decisions of federal, state and local officials in the aftermath of Hurricane Katrina will have a discriminatory impact and effect upon minority voters, unless relief is immediately provided by the

federal, state and local governments.

Plaintiffs urge this Court to enjoin all defendants from purging or removing displaced New Orleans voters from the voter registration rolls, except where the person has informedly and affirmatively indicated their intention to change their voter registration to another parish or state.

Plaintiffs urge this Court to order defendants to provide meaningful and effective access to polling places at all locations where plaintiffs and other displaced New Orleans voters are located, equal to the access required under existing federal law for voters residing overseas or serving in the armed forces, including but not limited to providing for absentee voting by mail, facsimile, Internet, e-mail, and other means, and including but not limited to nationwide in-person voting.

Plaintiffs urge this Court to order the Federal Emergency Management Agency ("FEMA") to provide FEMA's data on the present addresses of New Orleans residents to Louisiana state election officials. This Court should order Louisiana election officials to compile a list of the temporary mailing addresses of all New Orleans voters, based upon the pre-hurricane voter registration rolls, the FEMA data, United States Postal Service change of address requests, and the Red Cross Hurricane Katrina and Hurricane Rita evacuee lists, and other information sources. This Court should order state and local elections officials to make a list of the temporary addresses of all New Orleans voters available to all political parties, candidates, and to all other persons or groups, that would normally have access to the voter registration rolls for Orleans Parish.

Alternatively, this Court should order FEMA to determine the names, addresses, telephone numbers, ward and precinct data, party affiliation, gender and other information usually available regarding New Orleans voters, and should order FEMA to promptly provide a means for election officials, candidates, parties, political committees and others to communicate with all and/or selected

segments of the New Orleans voters by mail, telephone, e-mail, and other means, so that voters will be fully informed about their voting rights, voting procedures, candidates and issues.

Plaintiffs further urge this Court to order that New Orleans voters be allowed to present alternative forms of identification to vote, including but not limited to FEMA relief applications, Red Cross documents, other documents showing their New Orleans address, and/or provide a written statement attesting to their New Orleans address.

This Court should also order election officials to permit recently registered voters to vote by absentee voting, rather than requiring displaced first-time voters to return to the New Orleans precinct polling places to vote in person.

**JURISDICTION:**

2.

This Court has jurisdiction of this matter pursuant to 28 U.S.C. § 1331, 28 U.S.C. §1343(a), and 28 U.S.C. §1357.

**VENUE:**

3.

Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) and 28 U.S.C. §1392(a).

**CONSTITUTIONAL AND STATUTORY BASIS FOR CLAIMS:**

4.

Plaintiffs seek this Court's intervention and relief to remedy imminent violations of their right to vote and to meaningful participation in the political process. In particular, plaintiffs allege violations of their rights under the First, Fourteenth and Fifteenth Amendments to the United States Constitution, and deprivations of their statutory rights under Civil Rights Act of 1957, 42 U.S.C. §

1981, et seq., the Voting Rights Act of 1964, 42 U.S.C. §1971, et seq., and the National Voter Registration Act of 1993, 42 U.S.C. §1973gg.

**PLAINTIFFS**

5.

Gerald Wallace, (“Wallace”) is a person of the age of majority, domiciled in the Parish of Orleans, State of Louisiana, is registered to vote in Orleans Parish, is an African-American, and resided in the Lower Ninth Municipal Ward of the City of New Orleans. Wallace desires to exercise his right to vote in all upcoming elections.

6.

Wallace, evacuated from New Orleans in compliance with mandatory evacuation orders issued by the Governor of Louisiana and by the Mayor of the City of New Orleans. Since evacuating, Wallace has been temporarily living at various addresses in Baton Rouge, Lafayette, and Kenner, Louisiana, including living in temporary emergency shelters.

7.

Wallace is presently unable live in his home in the Lower Ninth Ward of New Orleans, due to it being uninhabitable. The City of New Orleans is only permitting residents of the Lower Ninth Ward to visit their homes temporarily - to “look and leave” and is still prohibiting residents of the Lower Ninth Ward from living in their homes. The New Orleans Police Department and the National Guard are enforcing a dusk to dawn curfew and exclusion orders in the Lower Ninth Ward and have established check points at the entrances to the Lower Ninth Ward. The neighborhood has not been provided clean water, electricity, natural gas or sewage treatment. *See* Situation Report for the City of New Orleans, November 4, 2005, Exhibit A. City officials are only allowing Lower

Ninth Ward residents to take brief bus tours of the neighborhood and are not allowing Wallace and other Lower Ninth Ward residents to even enter their homes. *See Gwen Filosa, Lower 9<sup>th</sup> Ward to Open, But Only for Tours on Bus*, Times-Picayune, October 26, 2005, copy attached, Exhibit B. Based on public statements, proclamations and orders issued by the Mayor of New Orleans, the Department of Homeland Security and the Governor of Louisiana, Wallace reasonably believes that he will be unable to return to his home for several months, if not for several years.

8.

Due to his home being uninhabitable and the extensive destruction of his neighborhood and polling place, Wallace reasonably believes that he will be unable to exercise his right to vote at his usual polling place, located in the Lower Ninth Ward of New Orleans.

9.

Gail Miller ("Miller") is a person of the age of majority, domiciled in the Parish of Orleans, State of Louisiana, is registered to vote in Orleans Parish, is an African-American, and resided in the Ninth Municipal Ward of the City of New Orleans, in the area known as New Orleans East. Miller desires to exercise her right to vote in all upcoming elections. Miller's home is presently uninhabitable and does not have clean water, electricity, natural gas or sewer service. Based on public statements, proclamations and orders issued by the Mayor of New Orleans, the Department of Homeland Security and the Governor of Louisiana, Miller reasonably believes that she will be unable to live in her home for several months, if not for several years. *See Going Home to the New Orleans Area?*, Louisiana Department of Health and Hospitals, Exhibit C. *See also EPA and Louisiana Department of Environmental Quality Warn of Potential Environmental Hazards When Returning to Homes and Businesses*, October 10, 2005, Exhibit D.

10.

Due to the damage to her home and to her polling place, Miller reasonably believes that she will be unable to exercise her right to vote at her usual polling place, located in the Ninth Ward of New Orleans.

11.

Kristin Rodney ("Rodney"), is a person of the age of majority, domiciled in the Parish of Orleans, State of Louisiana, who recently registered to vote in Orleans Parish for the first time through mail-in ("Motor Voter") registration, and is an African-American. Rodney lived in the Seventh Ward of New Orleans. Rodney desires to exercise her right to vote in all upcoming elections. Due to not previously voting in person, Rodney is prohibited from voting by absentee ballot, pursuant to 42 U.S.C. § 1973gg-4( c).

12.

Rodney is a college student, attending Howard University, in Washington, D.C. As of the present date, Rodney is unable to return to her home in New Orleans, because it was damaged by flood waters and is uninhabitable.

13.

Prior to Hurricane Katrina, Rodney intended to return to New Orleans to vote in person, during the next regularly scheduled election. Due to her home being uninhabitable and due to the extensive damage to her neighborhood and polling place, Rodney reasonably believes that she will be unable to exercise her right to vote at her usual polling place, located in New Orleans.

14.

Plaintiffs, Wallace, Miller and/or Rodney, may also desire to qualify and campaign for

political office during the upcoming local, state and federal elections. Plaintiffs believe that they will not be able to effectively campaign for public office, especially within the campaign fund-raising and spending limits set forth by the Louisiana Campaign Finance Act, since New Orleans voters are scattered throughout the entire United States. Candidates are also unable to communicate with voters by direct mail or telephone at their temporary addresses.

**DEFENDANTS:**

15.

Made defendants are:

- a. Michael Chertoff, in his capacity as Secretary of the Department of Homeland Security of the United States,
- b. Kathleen Blanco, in her capacity as Governor of the State of Louisiana,
- c. Al Ater, in his capacity as Secretary of State of the State of Louisiana,
- d. Louis Keller, in his capacity as Registrar of Voters for the Parish of Orleans, State of Louisiana,
- e. Kimberly Williamson Butler, in her capacity as Clerk of Criminal Court for the Parish of Orleans, State of Louisiana, and
- f. C. Ray Nagin, in his capacity as Mayor of the City of New Orleans.

16.

Plaintiffs aver that all defendants have acted under color of law at all times relevant concerning all matters alleged herein.

**UNIVERSALLY APPLICABLE BACKGROUND FACTS**

**NEW ORLEANS HAS A HISTORY OF RACIAL DISCRIMINATION IN VOTING**

17.

Louisiana has a long history of pervasive racial discrimination, including racial discrimination and polarization in voter registration, voting and districting. *See e.g. Reno v. Bossier Parish School Board*, 520 U.S. 471, 117 S.Ct. 1491 (1997). New Orleans, in particular, has a long history of pervasive *de facto* and *de jure* racial discrimination including racial discrimination in voter registration, voting and districting. *See Major v. Treen*, 574 F.Supp. 325 (E.D. La. 1983); *Chisom v. Roemer*, 501 U.S. 380, 111 S.Ct. 2354 (1991). *See also* Richard L. Engstrom and Jason F. Kirksey, *Race and Representational Districting in Louisiana*, in Bernard Grofman, ed., **Race and Redistricting in the 1990s**, pp. 229 - 269 (1998). Louisiana has a history of low voter registration among minority and impoverished residents. *See e.g. Association of Community Organizations for Reform Now v. Fowler*, 178 F.3d 350 (5<sup>th</sup> Cir. 1999).

18.

Any changes to voting standards, practices, procedures, polling places, and districts in Louisiana and New Orleans require pre-clearance by the United States Justice Department pursuant to the Voting Rights Act of 1965, 42 U.S.C. §1973.

19.

Prior to Hurricane Katrina, approximately 300,000 voters were registered and lived in Orleans Parish. Approximately 189,500 New Orleans voters are African-American, many of whom lived in the Ninth Ward.

20.

Even when New Orleans has not been decimated by a hurricane, the City has experienced delays and difficulties in voting, as most recently shown by the September 18, 2004 elections, where many polling places lacked voting machines or were unavailable due to the threat of adverse weather a few days before the election.

**NEW ORLEANS VOTERS ARE NOW DISPERSED NATIONWIDE**

21.

On August 26 and 27, 2005, New Orleans residents left the City, following the advice of federal, state and local officials, to evacuate before Hurricane Katrina made landfall. During the morning of Sunday, August 28, 2005, the Governor of Louisiana and the Mayor of New Orleans declared a state of emergency for Orleans Parish and ordered mandatory evacuation of the entire population of the City of New Orleans, except for essential medical personnel, police, fire, and other designated government officials and employees.

22.

Approximately eighty percent of the population of New Orleans heeded one or more of the voluntary and mandatory evacuation orders. Residents of New Orleans, who did not leave New Orleans before Hurricane Katrina struck, remained in their homes, hospitals, buildings, and the few poorly provisioned shelters that were made available, including the New Orleans Superdome.

23.

Beginning on August 29, 2005, federal, state and local governments and their officials and employees, including the New Orleans Police Department, Louisiana State Police, law enforcement officers from other parishes and states, the Louisiana National Guard, the United States Coast Guard,

and other federal and state agencies, moved people from the places where they sought shelter during the Hurricane to the Superdome and to other locations. Other citizens were instructed to make their way to the New Orleans Convention Center. New Orleans residents were, then, transported to shelters and temporary housing elsewhere in Louisiana, in adjoining states, and to distant states by bus and airplane, upon the decisions and directives of federal, state and local officials, creating a New Orleans diaspora.

24.

By late-September, 2005, virtually the entire population of Orleans Parish had voluntarily or involuntarily left New Orleans, except for a few police officers and City officials, rescuers and federal, state and local government personnel, members of the press, and a few citizens who defied the decisions of the Mayor who called for another mandatory evacuation after Hurricane Katrina passed the City.

25.

Many of those who evacuated did not take their driver's licenses or other identification with them. Many residents are unable to return to New Orleans to obtain such documents. For many others, all of their vital records, family documents, birth certificates and other identification were destroyed by Hurricane Katrina and the ensuing flooding. Many New Orleans voters may not be able to obtain photo identification before the upcoming elections.<sup>1</sup>

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<sup>1</sup> The Department of Justice Civil Rights Division pre-cleared the State of Georgia's recent amendments to the Georgia voter identification statute, which limited the acceptable forms of identification to six categories of government-issued photo identification, which is similar to the Louisiana voter identification statute. *See* October 7, 2005 Letter from William E. Moschella to Senator Christopher S. Bond, Exhibit E. Enforcement of the Georgia law was recently enjoined by the U.S. District Court, which ruling was maintained by the Eleventh

26.

New Orleans voters are now scattered throughout the entire United States, and are living in shelters, government provided or assisted housing, mobile homes and trailers, with family and friends, and in private properties. *See* Hayer El Nasser and Paul Overberg, *Katrina Exodus Reaches All States: 'Big Social Networks' Help Some Relocate*, USA Today, September 29, 2005, at 1A and 6A (with map based on FEMA aid applications)(copies attached, Exhibits F and G). As of October 1, 2005, Presidential disaster declarations had been issued for 44 states and the District of Columbia, due to the influx of New Orleans residents and others that were displaced by Hurricane Katrina. *See* FEMA News, October 1, 2005, Exhibit H.

27.

Due to the directives of federal, state and local officials, and due to their own efforts, New Orleans voters are changing living sites frequently and are likely to repeatedly change their temporary locations during the next several months, as they are moved from government shelters into hotels, trailers, apartments, other government housing and/or private housing. New Orleans voters have experienced significant delays in receiving mail at there temporary addresses, frequently receiving mail weeks or months after it was mailed, if at all, especially if they have changed addresses repeatedly or have temporarily resided in shelters, such that sending voting information to displaced New Orleans voters by U.S. Mail is unlikely to reach many voters in a timely manner.

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Circuit Court of Appeals, pending briefing and the appellate court's ruling. *See Common Cause / Georgia League of Women Voters of Georgia, Inc. v. Cox*, No. 05-15784-G (11<sup>th</sup> Cir. 10/27/05). That decision, while persuasive, would not preclude Louisiana election officials from barring voting by persons that have lost their photo identification.

28.

The dispersion of New Orleans voters will make traditional campaigning based on signs, meetings with voters, word-of-mouth, and local print, radio and television advertising nearly impossible. Direct mail and telephone campaigning will be useless, unless candidates are given access to federal, state and local databases containing the temporary addresses and telephone numbers of displaced New Orleans voters. Even, Internet based campaigning would only allow access to voters with computers and Internet access, which is likely to be a small percentage of the displaced New Orleans voters, as it is believed that impoverished and elderly voters are less likely to have Internet access at their temporary residences.

**AFRICAN-AMERICAN VOTERS HAVE BEEN  
HAVE BEEN DISPROPORTIONATELY IMPACTED  
AND FACE DISENFRANCHISEMENT**

29.

The United States Census Bureau estimated that approximately 302,000 African-Americans resided in New Orleans in 2004. The Seventh, Eighth and Ninth Wards of New Orleans were predominantly African-American.<sup>2</sup> Several of the areas hardest hit by Hurricane Katrina and by the flood waters include the Seventh, Eighth and Ninth Wards of New Orleans. *See* attached Census Bureau Data and Maps, Exhibit I, *in globo*.

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<sup>2</sup> The municipal wards of New Orleans, including the Seventh, Eighth and Ninth Wards, represent traditional, cultural, racial and political subdivisions of the City. *See Major v. Treen*, 574 F.Supp. 336, n. 16 (E.D. La. 1983)(*quoting Taylor v. McKeithen*, 499 F.2d 893 (5<sup>th</sup> Cir. 1974).

30.

The City of New Orleans, after consultation and acting in concert with federal and state officials, is only permitting residents to return to particular portions of the City, designated by zip code. The City is prohibiting residents from returning to the Lower Ninth Ward and to other areas of the City, also designated by zip code. The portions of the City, for which residents are not being allowed to return, were predominantly African-American and impoverished. *See* attached Census Bureau Map and Data, Exhibit J, *in globo*. *See also* Flooding and Voting Statistics and Maps, Exhibit K, *in globo*.

31.

The decisions on which neighborhoods to allow to repopulate have been arbitrary and capricious, and lack any reasonable basis. For example, the adjacent 70118 (Uptown / Carrollton) and 70125 (Fountainbleau / Broadmoor) neighborhoods, which are divided by South Claiborne Avenue, suffered similar wind and water damage, but residents and businesses were not allowed to return to zip code 70125 for a week after residents were allowed to return to 70118. The choice to use zip codes appears to be based entirely on administrative simplicity, rather than on any information regarding the type of damage sustained, the type of homes and businesses in the neighborhood, or the availability of utilities in the area.

32.

The Seventh, Eighth and Ninth Wards of New Orleans do not have drinkable water, electricity, natural gas or sewer service at most residences, due to the decisions of the City of New

Orleans, the New Orleans Sewerage and Water Board,<sup>3</sup> and Entergy New Orleans.<sup>4</sup> To date, no rationale has been offered for the decisions to restore utility service to some portions of the City, while denying those same services to other portions of the City that suffered similar damage, and there has been no opportunity for public comment or input on those decisions.

33.

FEMA and its debris removal contractors have also concentrated their efforts on the French Quarter, Garden District and Uptown areas, and have not removed debris in the Seventh, Eighth and Ninth Wards. Again, no plan, rationale or schedule has been made public for the debris removal, and the public has not been afforded an opportunity for comment and input on the criteria for FEMA's assignment of debris removal work.

34.

Ten weeks after Hurricane Katrina, the federal, state and local governments have not even made a meaningful proposal to provide replacement and/or temporary housing to New Orleans residents that would allow the City's population to return before the upcoming elections. FEMA has only proposed placing 2,000 trailers in New Orleans; far fewer than the more than 50,000 uninhabitable homes in the Seventh, Eighth and Ninth Wards. *See James Varney and Martha Carr,*

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<sup>3</sup> The Mayor of New Orleans is the President of the Sewerage and Water Board and appoints the board's members.

<sup>4</sup> Entergy New Orleans provides electricity and natural gas within Orleans Parish, subject to a franchise agreement with the City. Entergy New Orleans is regulated by the City of New Orleans. Entergy's efforts to restore natural gas service have been concentrated in the "mayor-targeted Zone Improvement Plan" zip codes, such that there is no gas service available in the 70126, 70126, 70127 and 70129 zip codes, other than areas along Dowman Road, the Industrial Canal and the New Orleans Regional Business Park. *See Leslie Williams, Residents Fuel Gas Service Return*, Times-Picayune, October 31, 2005, at B1, B2 and B8.