

FEMA Drafting Trailer Park Map, Times-Picayune, October 26, 2005, copy attached, Exhibit L.

35.

Due to the decisions of federal, state and local government officials, the African-American areas of New Orleans will likely remain uninhabitable long after many predominantly white neighborhoods are cleaned and have water, electricity, gas and sewer service, further causing *de facto* disenfranchisement of African-American voters.

**NEW ORLEANS VOTERS COULD UNINTENTIONALLY LOSE
THEIR RIGHT TO VOTE**

36.

Due to the directives of federal, state and local officials, New Orleans voters are required to inform various government officials of their present addresses to obtain federal, state and local government benefits, including disaster relief, medical care and unemployment benefits. By obtaining a driver's license in another parish or state, New Orleans voters could be deemed to have changed their address for voting purposes, and could be subject to removal from the New Orleans voting rolls, pursuant to 42 U.S.C. § 1973gg-4(d), unless the voter knew to and did specifically state on the driver's license application that they did not want to change their voting address. New Orleans voters could also be subject to removal from the voting rolls due to submitting a change of address notice to the United States Postal Service to have their mail forwarded to their temporary address, due to the provisions of 42 U.S.C. § 1973 gg-6 (c).

37.

According to the Louisiana Secretary of State, some Louisiana evacuees have already registered to vote in Texas and Alabama. By registering to vote in other locations and states, New

Orleans voters could unintentionally lose their right to vote in New Orleans.

38.

Many New Orleans voters, including the plaintiffs, do not intend to change their permanent residence nor domicile, but are merely temporarily residing elsewhere due to Hurricane Katrina, and do not intend to indicate a desire to change their voter registration by informing government officials or others of their temporary addresses. *See e.g.* Dan Turner, *Storm Ravages Louisiana's Political Landscape; Hurricane Katrina*, The Daily Advertiser, September 10, 2005, at 5A.

**MUNICIPAL AND PARISH ELECTIONS ARE SCHEDULED TO OCCUR
LESS THAN THREE MONTHS FROM NOW**

39.

The Louisiana Secretary of State scheduled the following elections to occur in Orleans Parish during 2006 (Exhibit M):

February 4, 2006	Municipal / Parochial Primary
March 4, 2006	Municipal / Parochial General
April 29, 2006	Propositions
July 15, 2006	Propositions
September 30, 2006	Open Primary
November 7, 2006	General / Congressional
December 9, 2006	Congressional Run-Off / Tie ⁵

⁵ Additional statewide elections could occur on February 4, 2006 for voters to consider amendments to the Louisiana Constitution could be added, if Senate Bill 64 is passed without amendment.

40.

The Louisiana Secretary of State has set the qualifying period for the February 4, 2006 Municipal / Parochial Primary as **December 14 through 16, 2005**. *See* Exhibit M. The uncertainty surrounding voting procedures and the inability to contact voters are likely to deter potential candidates from qualifying and campaigning, particularly individuals with limited financial resources who could not personally bear the expense of nationwide advertising and campaigning.

41.

Due to the imminent elections, plaintiffs aver that there is insufficient time to comply with the 90 day notice period for violations of the National Voter Registration Act, 42 U.S.C. § 1973gg-9(b)(2), and urge this Court to immediately intervene to correct the impediments to voter registration and voting that have resulted from Hurricane Katrina and the government decisions in the aftermath of that disaster.

THE USUAL VOTING PROCEDURES ARE NOW INADEQUATE

42.

Nearly half the precinct polling places in New Orleans (204 out of 442) are unusable or uninhabitable. Many of the voting machines used for New Orleans have been damaged and require replacement or repairs. The Clerk of Criminal Court has been unable to contact many of the 2,300 election commissioners that the state election code requires for voting in New Orleans. The Louisiana Secretary of State has estimated that repairing or replacing the New Orleans voting machines will cost \$780,000, which is not available in his budget. Approximately, \$2.5 million has been requested from FEMA to cover expenses to repair and replace voting machines damaged or destroyed by Hurricane Katrina.

43.

The Louisiana Secretary of State, the Governor and the U.S. Department of Justice, Civil Rights Division, have all concluded that the current elections procedures are inadequate. Rather than proposing and implementing reforms, federal and state officials cancelled elections scheduled for October 15 and November 12, 2005.⁶

⁶ The Louisiana Secretary of State scheduled an Open Primary Election to occur on October 15, 2005. *See* Exhibit N. The deadline for voter registration for that election was September 14, 2005. Absentee voting for that election was scheduled to begin on October 3, 2005 and to end at 12 Noon on October 8, 2005. The Louisiana Secretary of State scheduled a General Election to occur on November 12, 2005. The deadline for voter registration for that election was October 12, 2005. Absentee voting for that election was scheduled to begin on October 31, 2005, and to end at 12 Noon on November 5, 2005. On September 7, 2005, the U.S. Department of Justice, Civil Rights Division, approved postponing the primary election, which had been scheduled for October 15, 2005. *See* September 7, 2005 correspondence from Bradley J. Scholzman, Acting Assistant Attorney General, to Al Ater, Louisiana Secretary of State, Exhibit O. On September 13, 2005, Al Ater, Louisiana Secretary of State issued an emergency certification and recommended to the Governor of Louisiana that the elections scheduled for October 15, 2005 and November 12, 2005 be delayed (Exhibit P). Secretary Ater recommended delaying voting for the Jefferson Parish offices: Judge Court of Appeal, 5th Circuit, 1st District, Division B; Member of the School Board, District 4; and Councilman, District 2, City of Kenner. Secretary Ater also recommended delaying the November 12, 2005 proposition elections in Orleans Parish regarding the Kingswood Subdivision Improvement District; Twinbrook Security District; and Tour Bouligny Security District. On September 14, 2005, Governor Kathleen Blanco signed and issued Executive Order KBB 2005-36, (copy attached, Exhibit Q), which indefinitely delayed the October 15, 2005 primary election and the November 12, 2005, general and proposition elections in Orleans Parish and Jefferson Parish. On September 28, Secretary Ater recommended delaying elections in Southwest Louisiana, that had been scheduled for October 15 and November 12, 2005. Exhibit R.

THE EXISTING ABSENTEE VOTING PROCEDURES ARE NOW INADEQUATE:

44.

Louisiana's present absentee voting statutes and procedures require a person to mail a request for an absentee ballot to the Registrar of Voters for their parish. The Parish Registrar of Voters is then required to verify the person's legitimacy by reviewing the person's voter registration card. Once the person's registration is confirmed, the registrar compiles and sends the appropriate ballots, instructions and return envelope to the voter. Then, the voter marks their ballot and mails it back to the parish Registrar of Voters.

45.

Louisiana and federal officials have stated that Louisiana's present absentee voting procedures and processes cannot handle the number of absentee votes that are anticipated in upcoming elections.

**STATE AND LOCAL OFFICIALS HAVE PROPOSED CHANGES TO THE
VOTING PROCEDURES AND PRACTICES FOR NEW ORLEANS**

46.

The Mayor of New Orleans has suggested a "revolutionary electronic voting system" to allow New Orleans voters to cast absentee ballots, but has not specified the details of such a system. Some form of electronic kiosks set up throughout the country, where persons with a New Orleans driver's license could vote was suggested by the Mayor.

47.

Reportedly, the Chief Technology Officer for the City of New Orleans, Greg Meffert, has proposed an Internet-based voting system for displaced New Orleans voters, based on a system

which the U.S. Department of Defense previously rejected, and has already obtained approval from the Mayor of New Orleans and the Orleans Parish Registrar of Voters to implement that Internet voting system.

48.

The Orleans Parish Clerk of Criminal Court has proposed using auditoriums and the New Orleans Arena to house multiple precincts, if homes or public buildings cannot be used by February, 2006.

49.

The Louisiana Secretary of State has proposed setting up voting machines in Baton Rouge, Houston, Atlanta and other locations where large numbers of New Orleans voters are located.

50.

The Louisiana Secretary of State has also proposed allowing displaced New Orleans voters to vote by mail, under some unspecified variation of the present absentee voting procedures.

51.

Louisiana Secretary of State Al Ater has requested \$1,000,000 of federal funding for a publicity campaign directed at displaced Louisiana voters, to inform them of their voting rights, which was recently denied by FEMA.

52.

The Louisiana Secretary of State's office has opined that Internet voting is not sufficiently secure, and has reportedly created a task force to study options for the upcoming Louisiana and New Orleans elections.

53.

The Louisiana Secretary of State's office has correctly stated that any changes in New Orleans voting procedures, even changing the location of polling places, must be approved by the Louisiana Secretary of State, the Louisiana Legislature and the U.S. Department of Justice Civil Rights Division, and/or by federal courts.

54.

On October 14, 2005, the Federal Emergency Management Agency denied the Louisiana Secretary of State's request to obtain the names and temporary addresses of New Orleans residents that registered with FEMA when they were living in shelters, claiming that such information is subject to federal privacy laws and cannot be released to Louisiana officials. FEMA also denied Secretary Ater's request for the current mailing addresses of New Orleans residents that have applied to FEMA for disaster relief benefits. *See FEMA Hampers N.O. Election Plans*, The Advertiser (Lafayette, Louisiana), October 20, 2005, at 5A. The Louisiana Secretary of State is presently seeking a reversal of FEMA's decision. Without current addresses for displaced New Orleans voters, the Secretary of State cannot contact New Orleans voters by mail to inform them of their voting rights and absentee ballot procedures. Secretary Ater has stated that, **"The absence of FEMA's assistance greatly hinders our attempt to conduct this election in February, and in my opinion, leaves us with few options."** *Id.*

55.

About October 14, 2005, FEMA denied the Louisiana Secretary of State's request for \$750,000 in federal funds for mass mailings and public service announcements in areas where the largest numbers of New Orleans voters are temporarily living. *See FEMA Hampers N.O. Election*

Plans, The Advertiser (Lafayette, Louisiana), October 20, 2005, at 5A. The Secretary of State is also seeking a reversal of that decision. *Id.*

56.

The Louisiana Secretary of State's Office has stated that Secretary Ater will decide by Thanksgiving whether or not to cancel the February 4 and March 4, 2006, Orleans Parish elections. See Ana Radelat, *Hurricane Aftermath Threatens State Election System*, The Advertiser, October 29, 2005, at 7C (Gannett News Service).

57.

As of November 6, 2005, the Louisiana Secretary of State was negotiating with the Department of Homeland Security for FEMA to send an informational mailing to displaced voters from Orleans, St. Bernard, Plaquemine, Cameron and Vermillion Parishes, without FEMA disclosing voter addresses to state election officials. See *Municipal Elections Still Uncertain in New Orleans*, The Advocate, November 6, 2005, at B1 and B2. However, the contents, timing, scope, method of mailing and forwarding, and funding for that mailing have not, yet, been determined. See *Id.* Further, any mailing sent through the United States Postal Service is unlikely to reach many displaced New Orleans voters for many weeks.

58.

The Governor of Louisiana called the Legislature into Extraordinary Session, beginning on November 6, 2005 and ending November 22, 2005. Three of the items on the Governor's 77 item agenda related to elections.⁷

⁷ Item No. 56 To legislate relative to suspending the provisions of the law relative to the annual canvas of voters.
Item No. 57 To legislate relative to the eventuality of a shortage of available

59.

Several bills have been introduced during the Extraordinary Session, which would amend the laws on notifying voters and confirming voter registration, applying for an absentee ballot, registrars using temporary offices, requesting additional commissioners, absentee voting for first time voters, and for emergency voting plans. *See e.g.* House Bills 57, 58, 59 and 100, and Senate Bill 7. Those bills have been assigned to committee. Even if enacted in their present form, those election changes should be reviewed prior to the upcoming elections to determine the effects on African-American voters, and other displaced New Orleans voters.

60.

The Governor of Louisiana and the members of the Louisiana Legislature have also made other proposals for electoral reforms to facilitate voting by displaced New Orleans voters.

61.

The proposals from the Mayor, the Clerk of Criminal Court, the Louisiana Secretary of State, the Governor, and the Legislature, while positive suggestions, have not yet been implemented. Instead, elections have been cancelled or delayed, and FEMA not yet acceded to the Louisiana Secretary of State's requests for the addresses of displaced New Orleans voters, and has denied Secretary Ater's funding requests.

-
- commissioners and commissioners in charge, authorizing persons who are qualified electors of the state to serve as commissioners in charge and commissioners, and to provide for the training and selection of sch persons.
- Item No. 58 To legislate as to the holding of elections impaired as a result of a gubernatorially declared disaster or emergency.

62.

The various proposals, individually are not sufficient to assure that all New Orleans voters will be able to vote in the upcoming elections. Some combination of these proposals, if immediately and effectively implemented, along with the requested injunctive relief, might be adequate.

**ANY PROPOSED ALTERNATIVE VOTING PROCEDURES
MUST BE REVIEWED:**

63.

Any changes to the locations of polling places, methods of voting, absentee voting requirements, voting equipment, voter identification requirements, methods of communicating with voters and/or restrictions on campaigning must be reviewed to assure that minority voting is not impacted.

64.

This Court's immediate intervention is required, because there is insufficient time for the U.S. Department of Justice Civil Rights Division to perform its usual sixty (60) day, or longer, review of proposed changes submitted for pre-clearance under the Voting Rights Act.

65.

This Court's immediate intervention is required to prevent the imminent irreparable harm to the constitutional and statutory rights of African-American voters in New Orleans, that will occur, unless federal, state and local governments take action in advance of the upcoming elections to assure that all New Orleans voters can effectively and meaningfully participate in the electoral process.

COUNTS:

ABRIDGEMENT OF RIGHT TO VOTE

66.

The foregoing events and actions of the defendants, under color of law, will, unless immediately remedied, abridge the right to vote of all New Orleans voters, including the plaintiffs and all those similarly situated, in violation of the plaintiffs' constitutional and statutory rights.

DISCRIMINATORY EFFECT

67.

The foregoing events and actions of the defendants, under color of law, will, unless immediately remedied, have a discriminatory effect upon African-American and impoverished voters of New Orleans, particularly of the Seventh, Eighth and Ninth Wards.

DILUTION OF VOTING

68.

The foregoing events and actions of the defendants, under color of law, will, unless immediately remedied, cause dilution of the voting of African-Americans, due to the geographic concentration of African-American voters in the Seventh, Eighth and Ninth Wards and other areas of the City, for which residents are not allowed or able to return.

IMPEDIMENTS TO VOTING BY NEWLY REGISTERED VOTERS:

69.

The foregoing events and actions of the defendants, under color of law, will, unless immediately remedied, prevent Rodney, and other recently registered voters from exercising their right to vote, because they could be required to vote in person at the precinct polling place for their

New Orleans address.

70.

The foregoing events and actions of the defendants, under color of law, unless immediately remedied, will prevent any displaced New Orleans residents that have reached the age of eighteen since August 29, 2005, and any other displaced New Orleans voters that have recently decided to become registered voters from registering to vote and voting in the upcoming elections, because they would be required to vote in person at the precinct polling place for their New Orleans address.

PREVENTION OF EFFECTIVE AND MEANINGFUL PARTICIPATION:

71.

The foregoing events and actions of the defendants, under color of law, will, unless immediately remedied, prevent those who seek to be elected to political office and serve Orleans Parish from being able to qualify and effectively campaign prior to the upcoming elections.

**THE DEFENDANTS HAVE ALREADY VIOLATED SEVERAL PROVISIONS
OF THE VOTING RIGHTS ACT**

72.

In cancelling regularly scheduled elections and in failing to timely seek pre-clearance of proposed changes to elections, defendants have already violated the Voting Rights Act. The U.S. Department of Justice Civil Rights Division's September 7, 2005 letter (Exhibit O), did not pre-clear cancellation of the October 15, 2005 election, but merely indicated that the Civil Rights Division was willing to expedite requests for pre-clearance. The Civil Rights Division also did not provide notice,

allow public comment, nor conduct hearings before sending the September 7, 2005 letter.

RELIEF REQUESTED:

73.

Plaintiffs pray that this Court enter a declaratory judgment holding that their voting rights will be abridged, that minority voting rights will be diluted, and that the above-described events, actions and decisions of federal, state and local officials will have a discriminatory impact and effect upon minority voters, unless remedial relief is immediately provided by the federal, state and local governments.

74.

Plaintiffs pray that this Court order defendants to immediately provide Plaintiffs and all other displaced New Orleans voters meaningful and effective access to the polls at the places where they are presently located, equal to or better than the access mandated for voters residing overseas or serving in the armed forces, under the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. §1973ff, et seq.⁸

75.

Plaintiffs pray that this Court order the Federal Emergency Management Agency to provide address data for all displaced New Orleans voters who have registered with FEMA to Louisiana and

⁸ Recently proposed federal legislation, S. 1867 and H.R. 3734, would, if passed without amendment, allow voters displaced by Hurricane Katrina to absentee vote in the November 2006 and 2006 federal elections under the Uniformed and Overseas Citizens Absentee Voting Act, if each displaced voter submitted an affidavit to state election officials (copies attached, Exhibits S and T). That legislation does not address the upcoming local and state elections, does not provide funding, nor set forth particular requirements for state officials to notify displaced voters of their rights. Both bills have been referred to committee.

Orleans Parish elections officials.

76.

Plaintiffs pray that this Court order Louisiana and Orleans Parish election officials to compile a list of the temporary addresses of displaced New Orleans voters based upon the FEMA data, the Orleans Parish voter registration data, United States Postal Service Change of Address requests, data from the Red Cross, and other information sources.

77.

Plaintiffs pray that this Court order Louisiana and Orleans Parish election officials to make the list of the addresses of displaced New Orleans voters available to political parties, candidates, and other persons and groups that would normally have access to the voter registration data.

78.

Plaintiffs, in the alternative, pray that this Court 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 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.

79.

Plaintiffs specifically urge this Court to enjoin any efforts by federal, state and/or local voting officials to purge the voter registration rolls for Orleans Parish.

80.

Plaintiffs request that this Court order the federal, state and local governments to contact all New Orleans voters and inform them of their voting rights, absentee voting procedures, and the

upcoming election dates by mail, newspaper advertising, radio, television, Internet and/or other media and methods.

81.

Plaintiffs request that this Court order the federal, state and local governments to afford all displaced New Orleans voters the opportunity to absentee vote by mail, by facsimile, via e-mail, and at polling places at the locations where they are temporarily residing, nationwide, and/or by other methods, after this Court has reviewed and approved the procedures and equipment to be used for such absentee voting. Alternatively, this Court should order the defendants to provide transportation to the polling places for displaced New Orleans voters, at government expense.

82.

Plaintiffs specifically urge this Court to order that displaced New Orleans voters be allowed to vote in upcoming elections, unless they have affirmatively and informedly indicated their intent to change their domicile for voting purposes to another Parish or to another state.

83.

This Court should order that displaced New Orleans be allowed to vote based on presenting alternative forms of identification, such as FEMA relief applications, Red Cross documents, or other documents showing their addresses, and/or by a written statement attesting to their New Orleans residence, rather than requiring photo identification issued by the State of Louisiana or a federal agency.

84.

This Court should order that recently registered voters be allowed to vote for the first time by absentee voting, rather than requiring those displaced voters to return to precinct polling places

in New Orleans to vote in person.

85.

Plaintiffs pray that this Court find that defendants have violated the Voting Rights Act.

86.

Plaintiffs pray that this Court retain jurisdiction and supervise the conduct of elections in Orleans Parish for such time as may be necessary to assure that plaintiffs and those similarly situated are able to exercise their right to vote.

STATEMENT OF QUALIFICATIONS OF COUNSEL

87.

Plaintiffs' counsel in this matter are experienced in complex litigation and have participated in numerous voting rights lawsuits, including *Chisom v. Roemer*, 501 U.S. 380, 111 S.Ct. 2354 (1991) which resulted in changing the districts for the Louisiana Supreme Court, *Jones v. Edwards*, 674 F.Supp. 1225 (E.D. La. 1987) and *Louisiana Voter Registration Education Crusade, Inc. v. Office of the Registrar of Voters for the Parish of Orleans*, 511 So.2d 1190 (La. App. 4th Cir. 1987). Undersigned counsel also participated in the recent defense of the Jefferson Parish council districts, in *Theriot v. Parish of Jefferson*, 966 F.Supp. 1435 (E.D. La. 1997). In 1986, the Louisiana State Bar Association recognized Mr. Rodney for his *pro bono* efforts in support of voting rights.

Mr. Etter and Mr. Rodney have represented defendants and plaintiffs in state and federal civil rights litigation, toxic tort class actions, administrative and regulatory matters, government ethics, and intellectual property litigation. They have been counsel to local and state governments, foreign countries, corporations, and individuals.

They are admitted to the state courts of Louisiana, the federal district courts in Louisiana and the United States appellate courts for the United States Fifth and Sixth Circuits. Mr. Etter is also admitted to practice before the United States Patent and Trademark Office. Mr. Rodney has been admitted to practice before the United States Supreme Court.

ATTORNEYS' FEES AND EXPERT FEES:

88.

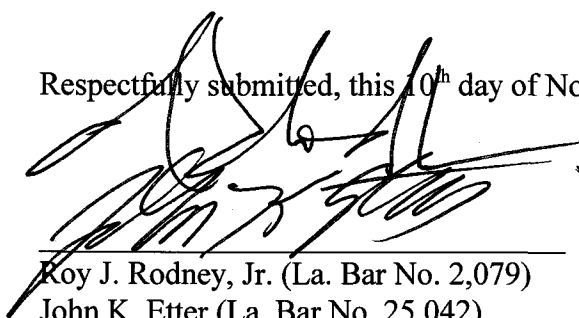
In the event that plaintiffs prevail in this matter, Plaintiffs pray that they be awarded reasonable attorneys' fees and costs, pursuant to 42 U.S.C. §1988(b) and 42 U.S.C. § 19731.

89.

In the event that plaintiffs prevail in this matter, Plaintiffs pray that expert fees be included as part of the attorneys' fee award, pursuant to 42 U.S.C. §1988(c).

WHEREFORE, plaintiffs, Gerald Wallace, et al, pray that this Court enjoin defendants from purging the voter registration rolls for Orleans Parish, and pray that this Court order defendants to institute remedial measures to assure that all New Orleans voters can exercise their constitutional and statutory rights to register, vote and effectively participate in the electoral process, and especially to assure that minority voters are not disenfranchised, grant the other declaratory and injunctive relief requested herein, and grant such other relief as is just in the circumstances.

Respectfully submitted, this 10th day of November, 2005.



Roy J. Rodney, Jr. (La. Bar No. 2,079)

John K. Etter (La. Bar No. 25,042)

RODNEY & ETTER, L.L.C.

1232 Camellia Boulevard, Suite C

Lafayette, LA 70508

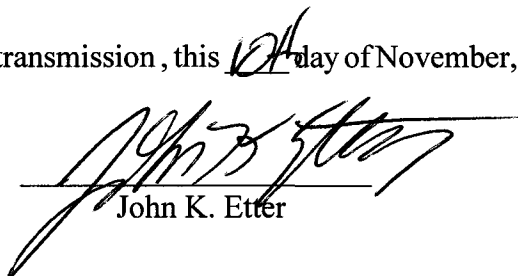
Telephone: 337-981-5293

Facsimile: 337-988-6918

Attorneys for Plaintiffs, Gerald Wallace, et al.

CERTIFICATE OF SERVICE

I hereby certify that the above and foregoing pleading and the exhibits thereto were served upon all parties by depositing a copy of same in the United States mail, properly addressed and postage prepaid, or by hand delivery or by facsimile transmission, this 10th day of November, 2005.



John K. Etter

Please Issue Summons:

Hon. Michael Chertoff,
Secretary, Department of Homeland Security
Through the United States Attorney
for the Western District of Louisiana,
Donald W. Washington, Esq.
800 Lafayette Street, Suite 2200
Lafayette, LA 70501

Governor Kathleen Blanco,
Through the Attorney General,
Charles Foti, Esq.
Civil Division
556 Jefferson Street, 4th Floor
Lafayette, LA 70501

Hon. Al Ater,
Secretary of State
8549 United Plaza Boulevard
Baton Rouge, LA 70809

Hon. Louis Keller,
Registrar of Voters, Parish of Orleans
1300 Perdido Street, Room 1W23
New Orleans, LA 70112

Hon. Kimberly Williamson Butler
Clerk of Criminal Court
Parish of Orleans
2700 Tulane Avenue, Room 115
New Orleans, LA 70119

Hon. C. Ray Nagin,
Mayor
City of New Orleans,
Through the City Attorney
Sherry Landry, Esq,
1300 Perdido Street, 5th Floor
New Orleans, LA 70112