

# The (In)Equities of Superstorm Recovery

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## Introduction

Soon after the initial shock of largest hurricane to ever hit the Jersey Shore began to dissipate, scholars, reporters and advocates began to look deeper at the implications of the disaster. Like Hurricane Katrina, Hurricane Sandy exposed fundamental inequities in our society that resulted in frightening racial and economic disparities between those devastated by the storm, and those less affected. We learned from Hurricane Katrina that “outsiders who wonder why residents ‘chose’ housing susceptible to flooding disregard the legacy of laws and hostility that excluded most African Americans from surrounding suburbs.”<sup>[1]</sup>

Hurricane Katrina was transformative not just in the damage that it inflicted. As another commentator explained, “Floods wash away the surface of society, the settled way things have been done. They expose the underlying power structures, the injustices, the patterns of corruption and the unacknowledged inequalities.”<sup>[2]</sup>

While, perhaps, not to the extent as New Orleans, New Jersey suffers from its own unique landscape of inequality. A history of “home rule,” sprawl, and opposition to affordable housing has turned New Jersey, and particularly the Jersey Shore, into a checkerboard of racial and economic segregation.<sup>[3]</sup> The devastation that results from natural disasters such as Hurricanes exploits the particular vulnerabilities that result from this inequity. New Orleans demonstrated that the concentration of underemployed, uneducated, impoverished individuals in an area with insufficient resources, infrastructure, and transportation opportunities puts individuals at a heightened state of vulnerability to natural disasters.<sup>[4]</sup> As in New Orleans, some of the most affected communities in New Jersey were those most in need prior to the storm.<sup>[5]</sup>

It is not enough to simply point out these inequities, however. The State’s disaster recovery plan must reflect an understanding of, and adequately account for, these inequities. It must recognize what the landscape of inequity in New Jersey was like prior to the storm, it must consider the factors that increase individuals’ and communities’ vulnerability to the effects of natural disasters, and – most importantly – it must be implemented to both address the needs of the vulnerable and remedy the systemic inequities that created the vulnerability in the first place. Manuel Pastor explains that:

Achieving regional equity means considering both people and place. A competitive and inclusive region is one in which members of all racial, ethnic, and income groups have opportunities to live and work in all parts of the region, have access to living wage jobs and are included in the mainstream of regional life. It is also one in which all neighborhoods are supported to be vibrant places with choices for affordable housing, good schools, access to open space, decent transit that connects people to jobs, and health and sustainable environments.<sup>[6]</sup>

An equitable disaster recovery plan must:

- Recognize that two neighboring places that are equally geographically vulnerable may have different needs based on the characteristics of its people;
- Reflect the reality that while these two places might have been hit by the storm with a similar magnitude, the ability of some to rebuild is dramatically different; and
- Attempt to remedy the inequities that existed prior to the storm in order to ensure that future disasters provide people with a better opportunity to protect themselves, rebuild, and prosper.

This paper will begin with a short description of who, exactly, was affected by the storm. It will continue with an examination of the landscape of inequity in New Jersey prior to Hurricane Sandy. Understanding the distribution of poverty, racial segregation, unemployment, affordable housing, and access to transportation will provide the necessary context for an analysis of vulnerability to the hurricane. Part II of the paper discusses some of the legal mechanisms used in disaster recover. Specifically, it examines the structural issues associated with Community

Development Block Grant (“CDBG”) funding from the Department of Housing and Urban Development (“HUD”), and disaster relief funding from the Federal Emergency Management Agency (“FEMA”). Finally, Part III looks specifically at New Jersey’s response in the context of the vulnerable populations and structural deficiencies in disaster relief mechanisms.

This paper concludes that the state’s disaster recovery plan fails to account for the most vulnerable populations, and does little to counteract the societal inequities that led to their vulnerability in the first place. These vulnerable populations include racial minorities, the impoverished, and renters. Despite the overwhelming evidence from both Hurricane Katrina, and Hurricane Sandy itself, the state has failed to protect those most in need.

### Part I

#### *Who was affected?*

Hurricane Sandy hit landfall in New Jersey near Atlantic City on October 29, 2012.<sup>[7]</sup> It was the most destructive storm ever to hit New Jersey and is only second to Hurricane Katrina in costliness. It is estimated that Hurricane Sandy caused approximately \$62 billion in damage throughout its path.<sup>[8]</sup> On October 30, 2012, President Obama designated every county in the State as a major disaster area. While every county in the state was affected, counties along the shore, the Raritan Bay, and the Hudson River suffered the greatest destruction.<sup>[9]</sup>

The State’s CDBG Action Plan broke down the most affected counties by census tract to assess the number of homes with major or severe damage, and the demographic makeup of those affected homes.

County	Town	Percent Major/Severe Damage	Percent White	Median Income
Atlantic	Brigantine	61%	97%	\$84,492
Atlantic	Atlantic City	51%	15%	\$38,492
Hudson	Jersey City (1)	45%	92.40%	\$158,207
Hudson	Jersey City (2)	21%	21%	\$68,859

In Atlantic County, 9 percent of the households suffered from this type of damage. Of those 9 percent, 67 percent were white families. A closer examination of the two most affected census tracts in Atlantic County indicate dramatic differences in the ability to recover. For example, the most affected tract in Brigantine, which had 61 percent major or severe damage, has a median household income of \$84,492. This tract is also comprised of 97 percent white residents. On the other hand, the most affected tract in Atlantic City, with 51 percent major or severe damage, has a median income of \$38,804 and is comprised of 72 percent black residents.<sup>[10]</sup> The median household income in the State as a whole is \$71, 180, and in just Atlantic County it is \$55,222. This has serious implications for recovery from a disaster because within a very small geographic area, the financial limitations of certain people are dramatically different, and these differences are strongly associated with racial segregation.

The data reported by the State on Hudson County is concerning for two reasons. First, the Action Plan reports data that is inaccurate. The State reported that according to the U.S. Census American Community Survey (“ACS”), the most affected census tract in Hudson County – census tract 69, which had 45 percent of its homes suffer major or severe damage – has a median income of \$158,207, and is comprised entirely of black and Hispanic residents (30 percent and 70 percent respectively). If this were accurate, it would be a truly extraordinary census tract from an equity standpoint; however, additional research uncovered that these numbers are not accurate. In fact, while the median income for this tract reported by the State was correct, the ACS actually indicates that the tract is 92.4

percent white. This is particularly troubling because the state's distribution of aid is dependent upon the accuracy of the information in the Action Plan.

Second, after considering the accurate data, it becomes clear that Hudson County follows a similar trend as Atlantic County, in that the most affected census tract is comprised of mostly rich, white individuals. Additionally, this tract is comprised entirely of homeowners.

The next most affected tract, with 21 percent major or severe damage, is comprised of 8% black residents, 21 percent white residents, and 37 percent Hispanic residents. This tract, however, is mainly renters (68 percent), and has a median income of more than half that of the prior - \$63,859. The Hudson County data highlights that renters tend to have lower incomes than homeowners, and tend to be concentrated in certain places.

Ocean County--the most affected county--had 10.3 percent of its households with major or severe damage. The affected people in Ocean County were 90 percent white, 3 percent black, and 5 percent Hispanic. This follows, approximately, the demographics of the county. Additionally, the median income in Ocean County is \$60,712, and the damage affected mostly (82 percent) renters. The report acknowledges, however, that Ocean County is "a community with a large number of vacant second homes. [And its] . . . year round residents include lower-income persons and retirees who will have challenges with recovery."<sup>[11]</sup>

Information regarding who, exactly, has applied for FEMA assistance after the storm is also a helpful indicator of who was most affected. Soon after the storm, Enterprise Community Partners published a report examining applications for FEMA assistance after Hurricane Sandy. While the damage varied by census tract, location, race, and income, the report found that in New Jersey as a whole, *67 percent of FEMA registrants were low-income individuals.*<sup>[12]</sup> This is a higher percentage than both New York City and New York State as a whole. The report found that of the \$254,496 FEMA registrants, 114,443 had incomes below \$30,000. Additionally, while 43 percent of the registrants were renters (as opposed to the 57 percent who were home owners), 67 percent of these renters had incomes lower than \$30,000. On the other hand, 72 percent of the homeowners had incomes over \$30,000. Also, the report noted that 82 percent of homeowners in New Jersey are white, while only 56 percent of renters are white. Finally, of the ten most affected zip codes in the State, all but one was comprised of at least 50 percent renters earning under \$30,000.<sup>[13]</sup>

This section demonstrates that while the storm substantially affected people across racial and economic lines, renters and low-income individuals were affected in alarming numbers. Moreover, of the most affected census tracts, individuals tended to be segregated by race and economic status. Wealthier tracts tended to contain mostly white individuals, and poorer tracts tended to contain mostly black and Hispanic individuals. As later sections of this paper will discuss, this has serious implications on the vulnerability of certain groups of people to the storms affects, and their ability to rebuild later.

## Part II

### *A Landscape of Inequity*

Hurricane Katrina exposed this country to the reality that natural disasters don't affect people equally. The social, political, and economic systems that interact with natural disasters make certain people, groups, and places more vulnerable to its effects.<sup>[14]</sup> Social vulnerability is a recognition that Hurricanes "may be a natural phenomenon, [but] the disaster that results is essentially human-made--a product of social, political, and economic systems that have been in place both historically as well as at the time when the hazard strikes."<sup>[15]</sup> In New Orleans, for example,

your income and your family's wealth determine whether you live on higher or on lower ground in a city below sea level, whether you can flee to seek safety of shelter in a storm, or whether you are forced by lack of transportation, a place to go, or money to get there, to huddle in your low-lying home or chance a poorly-equipped, temporary shelter.<sup>[16]</sup>

Pre-storm conditions of inequity had a dramatic effect on post-storm suffering. Unsurprisingly, then, the poor and historically disenfranchised tend to be the most vulnerable to these disasters. "There is a large body of research on the vulnerability of specific groups, e.g., women, children, the elderly, members of low castes, and many more."<sup>[17]</sup> Thus, in assessing the vulnerability of New Jersey's towns before the hurricane, it is important to examine the socioeconomic and demographic makeup of the most affected places.

Similarly, resources help to determine vulnerability, too. The resources available to a community have a dramatic affect on that community's ability to protect itself from a disaster. Access to transportation, unsafe infrastructural conditions, and fragile economic conditions also contribute to the increased vulnerability of individuals and communities.[18]

As noted above, the Enterprise Community Partners issued a report on the top ten most impacted zip codes in New Jersey. This data certainly tells an important piece of the story, but without context it is incomplete. In order to properly analyze why a particular place or group was more vulnerable to Hurricane Sandy and, in turn, assess recovery needs for the place or group, it is imperative to examine the landscape prior to the storm. In other words, how severe were the conditions of inequity and vulnerability in certain affected towns prior to the storm?

### Poverty

Higher poverty rates are strongly associated with an undereducated workforce, higher crime rates, low property values, lack of access to health care, and access to housing.[19] Hurricane Katrina demonstrated that these conditions of poverty and the consequences therefrom, "presaged the devastating impact of the hurricane's disaster on the underserved residents of New Orleans." [20]

### Family Poverty Rates

*Table 1*

An examination of the family poverty rate for the ten most affected zip codes offers a great deal of insight into the potential need post-storm. New Jersey as a whole has a poverty rate of 9.7 percent. This burden is certainly not distributed evenly throughout the state, however. Certain towns like Beach Haven and Toms River, which were heavily affected by the storm, have particularly low poverty rates. Beach Haven has a poverty rate of 3.5 percent and Toms River has a rate of 4.7 percent. Other towns, like Atlantic City, and Irvington, however, have family poverty rates of 28.1 percent and 16.8 percent, respectively.[21] As this section will demonstrate, these high poverty rates are strongly associated with other characteristics of vulnerability to disasters. The most impoverished towns hit by Hurricane Sandy also suffered from substantial racial segregation, overwhelming reliance on public transportation, and an older and more susceptible housing stock.

### Race

Poverty, alone, does not offer full insight into who was really affected. When considered in the context of race, it is obvious that the zip codes with the highest poverty also have the highest percentage of residents of color.

### Racial Characteristics

*Table 2*

Atlantic City, for example, has 39.9 percent black residents and 24.4 percent Hispanic residents. Likewise, Irvington has 85.2 percent black residents.[22] Similarly, there is a strong relationship between large white populations and low family poverty within a given zip code. The zip code with the lowest poverty, Beach Haven, is comprised of 97.5 percent white residents. Also, Toms River, the zip code with the second lowest poverty is 92.9 percent white.[23] This is unsurprising, considering the data from Hurricane Katrina, which indicated that 28 percent of New Orleans residents were in poverty before the storm, and that that 28 percent was disproportionately comprised of black residents.[24] The overwhelming concentration of poor people of color in certain places prior to the storm reflects substantial inequity in the distribution of vulnerable populations throughout the state.

## Transportation

Major storms have a tendency to disrupt every facet of an individual's life. Individuals who rely on public transportation to get to work were particularly at risk prior to the storm. In fact, as Senator Menendez contends, "The storm was the largest mass transit disaster in our nation's history." Noting that "[f]our out of 10 of the nation's transit riders had their commutes disrupted by the storm, many still today."<sup>[25]</sup> Unsurprisingly, then, of the ten most affected zip codes, in five of them at least 20% of people rely on public transportation to get to work.<sup>[26]</sup>

Access to transportation is relevant for two reasons. First, as Hurricane Katrina demonstrated, for many, lack of access to a car substantially restricts your ability to leave when warned of the storm. "Twenty-seven percent of the people of New Orleans did not have access to a car. People did not have cars not because they chose the 'green option,' but because they were too poor to afford one. Over 125,000 people, 27% of the people of New Orleans, lived below the poverty level before Katrina."<sup>[27]</sup> In New Orleans, those too poor to afford a way out were simply left behind to fend for themselves.<sup>[28]</sup>

### Rely on Public Transportation for Work

*Table 3*

This relationship between poverty, race, and access to transportation presents itself in New Jersey as well. Like the poverty data indicates, some of the areas with the largest percentage of white individuals also have the lowest percentage of individuals who rely on public transportation to get to work. In Atlantic City and Irvington, 28.5 percent and 21.4 percent of individuals rely on public transportation, as opposed to the 2 percent and 2.3 percent in Beach Haven and Toms River. The exception to this, in the case of transportation, is that the highly urbanized – yet mostly white - areas like Bayonne and Hoboken also rely heavily on public transportation. Like those areas, however, Jersey City residents also rely largely on public transportation, and that city is comprised of many fewer white individuals. Additionally, residents of the white, low poverty shore towns have virtually no reliance on public transportation. As demonstrated by Hurricane Katrina, lack of access to transportation can result in the inability to evacuate.

The severity of the damage sustained in Irvington is particularly interesting, because of its geographic location. Irvington is an inland town, not immediately near any body of water, yet it sustained more damage than its neighboring towns.<sup>[29]</sup> This example makes clear the fact that vulnerability is not exclusively a function of geographic location. The other factors of vulnerability noted in this paper have resulted in a heightened vulnerability for Irvington, despite its location.

The other reason transportation is relevant to assessing disaster recovery is because it substantially affects an individual's ability to get back to work after the storm. While a great number of cars were certainly damaged as a result of the storm, individuals with car insurance and enough disposable income have a greater ability to quickly replace their vehicle and return to work. This is particularly important when considered in the context of unemployment rates in the most affected areas. The two poorest and least white zip codes also have the two highest unemployment rates of the most affected zip codes. Atlantic City and Irvington, respectively, have unemployment rates of 16.8 percent and 15.1 percent, whereas Beach Haven and Toms River have rates of 8.4 and 8.9 percent. And, as mentioned above, both Atlantic City and Irvington have the second and third highest percentage of individuals who require public transportation to get to work.<sup>[30]</sup>

### Unemployment Rates

*Table 4*

## Housing

Housing plays a major role in a community's vulnerability to disasters for several reasons. First, the age and overall stability of the housing stock affects the amount of damage a particular home will sustain. Second, the tension between exclusionary zoning laws and a need for affordable housing concentrates the most vulnerable in *certain* topologically and structurally vulnerable places and housing. Finally, the type of housing (i.e., rental vs. home ownership) affects the type of aid for which an individual is eligible. This vulnerability is compounded in urban cities, which have a higher reliance of public transportation, higher poverty than its suburban counterparts, and higher unemployment.

## Percent Renters

*Table 5*

Since the 1983 New Jersey Supreme Court Ruling in *Mount Laurel*, the state has grappled with the issue of exclusionary zoning and affordable housing. The ruling influenced fair housing policy across the nation and was supposed to be transformative in the state.<sup>[31]</sup> Despite this, the state still struggles with exclusionary zoning. A study by Rowan University found that since the ruling both sprawl and exclusionary zoning ordinances have increased.<sup>[32]</sup>

The richer, whiter towns also tend to have a much younger housing stock. In Beach Haven and Toms River, just 8.1% and 4.8% of homes, respectively, were built prior to 1939. On the other hand, the poorest and blackest towns – Atlantic City and Irvington – had 27.3% and 24.7% of their homes built before 1939. Interestingly, the oldest housing stocks of the most affected towns were found in Hoboken and Bayonne – both of which have mostly white residents. As noted, however, these urban cities suffer from other indicia of vulnerability like higher use of public transportation, higher poverty than its suburban counterparts, and – in the case of Bayonne – high unemployment.

## **Part III**

### *Legal Mechanisms of Disaster Recovery*

Disaster recovery is allocated, largely, in two ways. The Department of Housing and Urban Development (“HUD”) provides substantial funding for disaster relief in the form of Community Development Block Grants (“CDBG”), which are intended to aid in the redevelopment of low income, urban communities.<sup>[33]</sup> Additionally, the Robert T. Stafford Disaster Relief and Emergency Assistance Act (the Stafford Act), guarantees that disaster victims will receive help through the Federal Emergency Management Agency (FEMA).<sup>[34]</sup> Much of FEMA's aid comes in the form of temporary housing assistance for victims of disasters.<sup>[35]</sup> The Stafford Act also authorizes FEMA to provide financial assistance for various other costs associated with the disaster.<sup>[36]</sup> This section will examine these two forms of disaster relief. It will discuss the various equity concerns raised during Hurricane Katrina with respect to these types of aid, and the implications this has on disaster relief after Hurricane Sandy. Ultimately, this section concludes that both CDBGs and FEMA provide inadequate relief for low-income individuals.

#### A. Community Development Block Grants

The Disaster Recovery Action Plan prepared by the State for the allotment of CDBG funding represents how the state prioritizes loss and its understanding of the inequities prior to the storm. According to the Plan, the bulk of CDBG funding goes to three things: 1) homeowner assistance; 2) renter assistance; and 3) economic development.<sup>[37]</sup> The plan allocates \$780 million to homeowner assistance, and estimates that \$528 million of that will benefit low and middle-income individuals.<sup>[38]</sup> It also allocates about \$380 million for rental assistance programs, about \$367 million of which will benefit low and middle-income individuals. Finally, \$460 million has been allocated for economic development<sup>[39]</sup>, \$69 million of which will benefit low and middle-income individuals.

At the outset, these numbers do not reflect the actual need. The plan allocates about 24% of its total funds towards renters, yet about 43% of those affected by the storm were renters.<sup>[40]</sup> In fact, the 43% number found in the Enterprise report does not tell the entire story. Looking, again, at the top ten most affected zip codes used in that report, it is clear that the same places that suffered from high unemployment, poverty, and other symptoms of

vulnerability to disasters also have a much higher percentage of renters. In fact, both Atlantic City and Irvington, the two most impoverished of the affected zip codes are comprised of over 60% renters. Beach Haven and Toms River, on the other hand, have 13% and 19.1% renters, respectively.<sup>[41]</sup>

CDBGs also make up the largest of HUD's grant programs that are subject to the §3608 mandate that "federal housing funds be used 'affirmatively to further the [FHA's] policies.'"<sup>[42]</sup> Additionally, "a condition of substantial transfer of Block Grants from the federal government has required city governments to develop plans for citizen participation. . . . In practice, [however this] . . . has meant little more than requiring cities to provide the affected low and moderate-income citizens with notice of the planned allocation of Block Grant funds and a public hearing to provide citizens with the opportunity to comment on the allocation."<sup>[43]</sup>

Despite these requirements requirement, however, HUD has shown indifference, and their enforcement has been sporadic at best.<sup>[44]</sup> In fact "courts typically have found that the statutory language provided near-absolute discretion to the cities in utilizing minimal citizen participation schemes that were subject to minimal, if any, oversight by HUD."<sup>[45]</sup> This has raised questions among scholars and practitioners regarding what is really stopping governments from enacting plans with CDBG funds that violates fair housing laws.<sup>[46]</sup>

After Hurricane Katrina, for example, Mississippi received \$5.05 billion in CDGB funds from HUD.<sup>[47]</sup> The State then sought to divert nearly \$600 million of these funds away from its low-income citizens.<sup>[48]</sup> Governor Barbour asked HUD to waive its requirements and managed to misdirect this money away from disaster relief for low-income individuals towards an expansion of the Port of Gulfport.<sup>[49]</sup> This decision was made without public hearing and the project encroached on area with a large black population. When groups sued to enjoin the State from moving forward with this plan, the complaint was dismissed for lack of standing.<sup>[50]</sup>

A frequent criticism of recovery plans for the distribution of CDBG funding is that it fails to account for renters and, in particular, low income renters.<sup>[51]</sup> Despite the fact the CDBG funds are explicitly intended to help low-income individuals, eligibility for funds under Mississippi's post-Katrina plan was conditional on home ownership. The plan directed just five percent of CDBG funds to rents; meanwhile, twenty-eight percent of those living near the coast at the time of Katrina were renters.<sup>[52]</sup> Before Hurricane Katrina, federal regulations required that at least 70 percent of CDBG funds allocated go to low and moderate income populations; however, this in light of the storm, this requirement was lowered to 50%.<sup>[53]</sup> Thus, even if this requirement is being properly enforced, only half of the state's low-income population benefited from funds that were legally intended for them.<sup>[54]</sup>

In Louisiana, as well, the CDBG funds failed to reach their intended targets. HUD allocated \$10 billion CDBG funds, yet renters – who comprised most of the people in New Orleans before the storm – did not "receive any direct assistance through the Louisiana CDBG Road Home Program."<sup>[55]</sup> Advocates in New Orleans expressed these concerns, to no avail, by filing formal complaints with HUD, challenging the use of the funds.<sup>[56]</sup> As Bill Quigley has noted, the Road Home Program would give up to \$150,000 to homeowners who had damage not covered by insurance; however, "No direct CDBG assistance is even contemplated for renters despite the fact that most of the people in New Orleans were renters."<sup>[57]</sup>

Even governing officials as well have recognized the misuse of CDBG funds. Senator Tom Coburn has reposted an article to his website pointing out that of the \$3.06 million one of his counties received, only 19% of the funds went towards housing rehabilitation. Much of the money went to sidewalk and sewer improvements in a wealthy county.<sup>[58]</sup> Likewise, both "Presidents George W. Bush and Barack Obama have argued that the program, which cost about \$4 billion last year and is the federal government's largest and most flexible community development program 'is not targeted enough to the neediest.'"<sup>[59]</sup> This is evidenced in New Jersey's plan as well.

Specifically, the funding for economic development projects ignores the needs of the low and middle income individuals. These projects receive the second most amount of funding of anything in the plan, yet only 15% will benefit low and middle-income individuals.<sup>[60]</sup> These funds specifically include \$75 million for neighborhood and community revitalization, including repairs and improvements to infrastructures. This is precisely the type of aid which would help struggling cities with high poor and minority populations, yet it is being directed – almost exclusively – to benefit higher income individuals. The higher income areas likely have a great need for economic development funding to rebuild from the storm, an equitable distribution of this funding would also account past inequities. Funding for neighborhood and community revitalization, as well as for small business loans could alleviate some of the burdens on low-income individuals that contribute to their heightened vulnerability in the first place and protect them from such devastating outcomes after future storms.

## B. FEMA Funding

In order to be eligible for funding from FEMA after a disaster, an individual's damage must qualify as "sufficient."<sup>[61]</sup> Additionally, FEMA has rejected aid applications on the basis of "deferred maintenance," meaning that an individual's home was not sufficiently maintained prior to the disaster.<sup>[62]</sup> The term deferred maintenance does not appear in any FEMA regulations, but was used to deny aid to thousands of farm workers in Texas. Their lawsuit is still pending, but FEMA claims to not use that term anymore. Despite this, however, the inspector does still note "pre-existing conditions."<sup>[63]</sup>

The standard used for each of these bases for rejection is vague and arbitrary, and as a result, has been used to deny FEMA funding to low-income individuals affected by a storm.<sup>[64]</sup> For example, after a disastrous Tornado in Alabama, the number one reason that individuals were denied FEMA aid was for "insufficient damage." After a FEMA inspector visits an individual's home and makes this determination, they send a one line letter to the victim stating:

Although the disaster may have caused some minor damage it is reasonable to expect you or your landlord to make these repairs. At this time you are not eligible for FEMA housing assistance.<sup>[65]</sup>

In order to receive any explanation as to why the individual was denied aid, they must go through a complicated appeals process, for which there is a 60-day statute of limitations to file.

These alleged deficiencies in FEMA's damage assessment and aid allocation process are felt, largely, in low-income and minority communities.<sup>[66]</sup>

There are various different types of aid that FEMA provides, include: 1) emergency assistance and shelter; 2) temporary housing assistance; 3) home repair and replacement; 4) other needs assistance.<sup>[67]</sup> Scholars have criticized the implementation of each of these programs for their inability to help those most in need. Jonathan Hooks notes, with respect to emergency assistance and shelter (section 403) programs, that while these are available without respect to FEMA eligibility, issues arise when individuals seeking aid attempt to transition from these emergency programs to ongoing disaster assistance.<sup>[68]</sup> Hooks also notes that rental assistance programs are not particularly effective in helping low-income individuals after a storm because the availability of rental properties decreases and rents tend to increase, thus only people with the means to supplement rental assistance can find suitable alternatives. Likewise, the rental assistance may not be used to cover security deposits or utilities. For low-income individuals who are struggling to meet immediate necessities following a storm, like food, medical care, and other expenses, this can create a substantial burden for them.

With respect to Hurricane Sandy specifically, Senators Menendez and Schumer have criticized FEMA for its efforts as they relate to low and middle income individuals. At a hearing before the Banking Subcommittee on Economic Policy the Senators noted that "newly implemented flood insurance premiums that they say are too expensive for low- and middle-income residents."<sup>[69]</sup> No study was done to assess the affordability of these insurance premiums before the regulations were implemented. An equitable recovery strategy must address these issues; FEMA failed to even consider them.

## **Part IV**

### *Conclusion*

The entire state was dramatically changed by Hurricane Sandy, and its effects will be long lasting. Like Hurricane Katrina, Sandy exposed many of the inequities deeply ingrained in our society. While disaster recovery projects have not been fully implemented and the final allocation of recovery funds has not yet occurred, the state's action plan is representative of how it prioritizes damage. As indicated above, state's recovery plan fails to adequately account for the demonstrated relationship between race, poverty, and natural disasters.

The action plan explicitly states, "[T]he State will ensure that housing assistance relating to Superstorm Sandy recovery is prioritized and allocated solely based on disaster-related need, without regard to race or ethnicity."<sup>[70]</sup> While it is certainly important that disaster funding is allocated without racial discrimination, especially

considering the many allegation of racial discrimination in the response to Hurricane Katrina, a completely colorblind approach to disaster recover ignores reality. It ignores the fact that the storm disproportionately affected renters and poor people, and that those renters and poor people are disproportionately black and Hispanic.

Clearly, rich, white people were affected as well in very severe ways and this report does not attempt to diminish this in the slightest. In fact, the data on Ocean County demonstrates that these people are quite vulnerable to disasters as well when they live in its path. The difference is the ability to recover. Those affected in Ocean County's had a higher median income and were a higher percentage of homeowners than in Atlantic County. These richer areas also indicated little reliance on public transportation, providing their residents with a reliable method of evacuation prior to the storm.

The state's ignorance of this data is not a reflection of explicit racism or even a lack of empathy for the poor. Rather, it is reflective of the state's failure to recognize the underlying societal issues that created these vulnerabilities. An equitable recovery plan would not just provide adequate funding to the most vulnerable; it would attempt to remedy these vulnerabilities. To put it another way, the remedial issue isn't just about how *much* money certain individuals or groups get, however. The *way* this money will be used to rebuild must reflect principles of equity within the region, especially considering the inequity that existed prior to the storm.

The action plan is silent on this dimension of equitable relief from natural disaster. While the plan offers funding for the rehabilitation and restoration of affordable rental properties, [71] it makes no reference to the necessity of revamping inequitable housing and land use rules such as exclusionary zoning that forced the need for affordable housing into certain more vulnerable places – nor propose sustainability principles by which to remedy this inequity. In fact, the State has expressed explicit hostility toward the use of Sandy funding for this purpose. The State actually attempted to expropriate \$164 million in municipal affordable housing trust funds that are need for Hurricane Recovery.[72] While the Appellate Division enjoined the state from using this money, which would have diverted it from 3000 affordable homes, the state's effort speaks volumes to its priorities in recovery.

The majority of New Jersey residents will eventually recover from this disaster. The Eagleton Institute of Politics recently conducted a poll that found that the Hurricane has not stopped shore-goers from taking their vacations at the Jersey Shore this summer.[73] The question that remains is whether the poorest and most vulnerable will be left to fend for themselves next time a Hurricane hits the Jersey Shore. Based on the state's action plan, the answer appears to be yes. This conclusion is supported by a recent lawsuit filed by the Fair Share Housing Center, alleging that the State is withholding important data regarding aid for low-income families. "The housing center says that it is contacted 'on an almost daily basis' by low-income families who have been denied assistance for their damaged or destroyed homes and cannot get clear answers from the state on why they have been turned down." [74]

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[1] Karen M. O'Neil, Who Sank New Orleans? How Engineering the River Created Environmental Injustice, 15

[2] David Brooks, *The Storm After the Storm*, Sept. 1 2006, NY Times, [http://www.nytimes.com/2005/09/01/opinion/01brooks.html?\\_r=0](http://www.nytimes.com/2005/09/01/opinion/01brooks.html?_r=0).

[3]Former New Jersey Governor Brendan Byrne once said that "Home rule in New Jersey is a religion." Mitchell Blumenthal, *Tough Talk on Home Rule, But is it Just Talk?*, May 28, 2006, NY Times, <http://query.nytimes.com/gst/fullpage.html?res=9503E5D8113EF93BA15756C0A...>. See generally Andrew J. Bruck & H. Joseph Pinto III, *Overruled by Home Rule: The Problems with New Jersey's Latest Effort to Consolidate Municipalities*, 32 Seton Hall Legis. J. 287 (2008) (explaining the history of home rule, sprawl, and fragmentation in New Jersey).

[4] Brian K. Fair, *After Katrina: Laying Bare the Anatomy of American Caste* 45 (University of Nebraska Press 2009).

[5][5] CDBG Action Plan, *supra* note 1.

[6] Manuel Pastor, *et. al*, *This Could Be the Start of Something Big* 24 (Cornell University Press 2009).

[7] State of New Jersey, *Community Development Block Grant, Disaster Recovery Plan 2013*, available at <http://www.state.nj.us/dca/announcements/pdf/CDBG-DisasterRecoveryAction...> [hereinafter CDBG Action Plan].

[8] <http://www.huffingtonpost.com/2012/11/29/superstorm-hurricane-sandy-deat...>

[9] *Id.* at 1-1.

[10] Action plan, 2-4.

[11] Action plan, 2-8.

[12] Enterprise Community Partners, *FEMA Assistance Analysis, New Jersey, New York, and Other Areas of New York*, 2013, available at <http://www.practitionerresources.org/cache/documents/678/67899.pdf>

[13] The 10<sup>th</sup> zip code had 49%.

[14] John Handmer, Elsie Loh, Wei Choong, *Using Law to Reduce Vulnerability to Natural Disasters*, 14 *Geo. J. on Poverty L. & Pol'y* 13, 16 (2007).

[15] *Id.*

[16] William P. Quigley, *Thirteen Ways of Looking at Katrina: Human and Civil Rights Left Behind Again*, 81 *Tul. L. Rev.* 955, 956 (2007).

[17] CRN Report, Factsheet: Social Vulnerability to Disasters, 2010, available at [http://www.academia.edu/1606768/Factsheet\\_Social\\_Vulnerability\\_to\\_Disasters](http://www.academia.edu/1606768/Factsheet_Social_Vulnerability_to_Disasters)

[18] *Id.* at 5; Quigley, *supra* note \_\_\_\_.

[19] Orfield at 10, 54-55; Ruth Gordon, *Katrina, Race, Refugees, and Images of the Third World*, 230; Leah J. Tulin, *Poverty and Chronic Conditions During Natural Disasters: A Glimpse at Health, Healing, and Hurricane Katrina*, 14 *Geo. J. on Poverty L. & Pol'y* 115, 153 n.37 (2007).

[20] Gordon *supra* note \_\_\_\_ at 231.

[21] See Table 1. [Where's Table 1 and 2?]

[22] See Table 2.

[23] *Id.*

[24] Leah J. Tulin, *Poverty and Chronic Conditions During Natural Disasters: A Glimpse at Health, Healing, and Hurricane Katrina*, 14 *Geo. J. on Poverty L. & Pol'y* 115, 153 (2007).

[25] Kate Hinds, *Hurricane Sandy was "Largest Mass Transit Disaster in our Nation's History," Says Senator*, Nov. 29, 2012, WNYC, <http://www.wnyc.org/blogs/transportation-nation/2012/nov/29/hurricane-sa...>

[26] See Table 3.

[27] Quigley, *supra* note \_\_\_\_ at 598.

[28] *Id.*

[29] See Appendix.

[30] See table 4

[31] Editorial, *The Mount Laurel Doctrine*, Jan. 28, 2013, NY Times , <http://www.nytimes.com/2013/01/29/opinion/the-mount-laurel-doctrine.html...> [What the heck is this and why don't we know?]

[32] <http://www.njfuture.org/2011/07/21/rowan-exclusionary-zoning-sprawl/>

[33] 10 U.S.C. § 5301 [Is this bluebook form?]

[34] John K. Pierre & Gail S. Stephenson, *After Katrina: A Critical Look at FEMA's Failure to Provide Housing for Victims of Natural Disasters*, 68 La. L. Rev. 443, 444 (2008).

[35] *Id.*

[36] See generally § 5174; John K. Pierre & Gail S. Stephenson, *After Katrina: A Critical Look at FEMA's Failure to Provide Housing for Victims of Natural Disasters*, 68 La. L. Rev. 443, 444 (2008).

[37] Action plan, 4-3.

[38] *Id.*

[39] The Action Plan divides economic development into three general categories: business, employment, and tourism.

[40] Enterprise Community Partners, *supra* note \_\_\_\_.

[41] See Table 5.

[42] Robert G. Schwemm, *Overcoming Structural Barriers to Integrated Housing: A Back-to-the-Future Reflection on the Fair Housing Act's "Affirmatively Further" Mandate*, 100 Ky. L.J. 125, 147 (2012)

[43] Daniel S. Shah, *Lawyering for Empowerment: Community Development and Social Change*, 6 Clinical L. Rev. 217, 230 (1999)

[44] *Id.* Robert G. Schwemm, *Overcoming Structural Barriers to Integrated Housing: A Back-to-the-Future Reflection on the Fair Housing Act's "Affirmatively Further" Mandate*, 100 Ky. L.J. 125, 153 (2012) ("The record of CDBG grantees in complying with their post-1995 AFFH requirements has been mixed at best."). Matthew J. Termine, Note, *Promoting Residential Integration Through the Fair Housing Act: Are Qui Tam Actions A Viable Method of Enforcing "Affirmatively Furthering Fair Housing" Violations?*, 79 Fordham L. Rev. 1367, 1392 (2010) ("There is also anecdotal evidence of HUD's inability to effectively enforce the AFFH obligation").

[45] Audrey G. McFarlane, *When Inclusion Leads to Exclusion: The Uncharted Terrain of Community Participation in Economic Development*, 66 Brook. L. Rev. 861, 882 (2001). See *City of Miami v. Rodriguez-Quesada*, 388 So.2d 258 (Fla. Dist. Ct. App. 1980) (holding that the community input requirement is advisory in nature); *City of Miami v. Rodriguez-Quesada*, 388 So. 2d 258 (Fla. Dist. Ct. App. 1980) (holding that the adequacy of citizen participation opportunities is defined by the city).

[46] Matthew J. Termine, *Promoting Residential Integration Through the Fair Housing Act: Are Qui Tam Actions A Viable Method of Enforcing "Affirmatively Furthering Fair Housing" Violations?*, 79 Fordham L. Rev. 1367, 1392 (2010)(quoting Nat'l Comm'n on Fair Hous. & Equal Opportunity, Pub. Hearing at 2 (Sept. 22, 2008) (testimony of Michael Allen))(" Advocacy groups have noted that HUD has not 'developed the enforcement tools or the political will to take on the powerful constituent groups, like mayors, governors and county executives who are the primary recipients of CDBG' funds.").

[47] John Jopling, *Two Years After the Storm: The State of Katrina Housing Recovery on the Mississippi Gulf Coast*, 77 Miss. L.J. 873, 876 (2008)

[48] See *Plaintiffs Lack Standing to Challenge HUD Approval of Mississippi's Use Of Katrina Disaster Relief Funds*, 38 No. CD-3 HDR Current Developments 35 (2010).

[49] Bonnie Allen, Barbara Bezdek, John Jopling, *Community Recovery Lawyering: Hard-Learned Lessons from Post-Katrina Mississippi*, 4 DePaul J. for Soc. Just. 97, 110 (2010).

[50] *Id.* at 117, n. 37; *Plaintiffs Lack Standing to Challenge HUD Approval of Mississippi's Use Of Katrina Disaster Relief Funds*, 38 No. CD-3 HDR Current Developments 35 (2010).

[51] Jopling, *supra* note \_\_\_\_ at 887 (noting that this was a common criticism of the CDBG recovery plan in Mississippi post-Katrina).

[52] *Id.*

[53] John A. Lovett, *Rebuilding A Region Housing Recovery Efforts in the Wake of Katrina and Rita*, Prob. & Prop., September/October 2006, at 49, 52

[54] See 42 U.S.C. § 5301. A stated purpose of community development block grants is "to improve the living environment of low- and moderate-income families." *Id.* § 5301(b)(1).

[55] William P. Quigley, *Thirteen Ways of Looking at Katrina: Human and Civil Rights Left Behind Again*, 81 Tul. L. Rev. 955, 984 (2007).

[56] Davida Finger, *Stranded and Squandered: Lost on the Road Home*, 7 Seattle J. for Soc. Just. 59, 68 (2008)

[57] William P. Quigley, *Obstacle to Opportunity: Housing That Working and Poor People Can Afford in New Orleans Since Katrina*, 42 Wake Forest L. Rev. 393, 412 (2007)

[58][http://www.coburn.senate.gov/public/index.cfm/news?ContentRecord\\_id=dc62...](http://www.coburn.senate.gov/public/index.cfm/news?ContentRecord_id=dc62...)

[59] *Id.*

[60] Action plan, 4-3.

[61] See Elizabeth Pierson Hernandez, *Twice Uprooted: How Government Policies Exacerbate Injury to Low-Income Americans Following Natural Disasters*, 14 SCHOLAR 219, 221 (2011)

[62] *Id.*

[63] Daily Mail Reporter, *Tornado-hit family denied FEMA grant to repair home... because of 'insufficient damage'*, Jun. 13, 2011, <http://www.dailymail.co.uk/news/article-2002793/Alabama-tornado-hit-fami...>

[64] *Id.*

[65] Daily Mail Reporter, *Tornado-hit family denied FEMA grant to repair home... because of 'insufficient damage'*, Jun. 13, 2011, <http://www.dailymail.co.uk/news/article-2002793/Alabama-tornado-hit-fami...>

[66] John K. Pierre & Gail S. Stephenson, *After Katrina: A Critical Look at FEMA's Failure to Provide Housing for Victims of Natural Disasters*, 68 La. L. Rev. 443, 466 (2008)

[67] Jonathan P. Hooks, Trisha B. Miller, *The Continuing Storm: How Disaster Recovery Excludes Those Most in Need*, 43 Cal. W. L. Rev. 21, 41 (2006).

[68] *Id.*

[69] Malia Rulon Herman, Menendez, Schumer Push for Faster Sandy Recovery Cash, USA Today, Sept. 18, 2013, <http://www.usatoday.com/story/news/politics/2013/09/18/hurricane-sandy-r...>

[70] Action Plan, 4-5

[71] Action Plan at 4-9.

[72] Kevin Walsh, Fair Share Housing Center, <http://fairsharehousing.org/blog/entry/court-issues-injunction-blocking-...>

**[73] Eagleton Institute of Politics, *Celebrating the First Day of Summer with a Look at New Jerseyans' Summer Shore Plans*, <http://eagletonpollblog.wordpress.com/>**

[74] The Editorial Board, Hurricane Sandy and the Poor, NY Times, Sept. 18 2013, [http://www.nytimes.com/2013/09/19/opinion/hurricane-sandy-and-the-poor.html?\\_r=0](http://www.nytimes.com/2013/09/19/opinion/hurricane-sandy-and-the-poor.html?_r=0)