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# Side by Side: Revitalizing Urban Cores and Ensuring Residential Diversity

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## SIDE BY SIDE: REVITALIZING URBAN CORES AND ENSURING RESIDENTIAL DIVERSITY

ANDREA J. BOYACK\*

### I. INTRODUCTION

Fifty years ago, the Reverend Martin Luther King, Jr. expressed a hope that someday people of all races would “*live side by side in decent, safe, and sanitary housing.*”<sup>1</sup> Residential patterns in America today, however, remain highly segregated by race and income.<sup>2</sup> The Fair Housing Act outlawed overt housing discrimination and unjustified discriminatory impacts,<sup>3</sup> but zoning laws and housing finance structures have continued to impede housing integration, leaving communities nearly as racially homogenous as they were in the mid-twentieth century.<sup>4</sup> These separate

\* Professor of Law, Washburn University School of Law. J.D. (University of Virginia School of Law); M.A.L.D. (Fletcher School of Law & Diplomacy, Tufts University), B.A. (Brigham Young University). I would like to thank Carol Brown, Kristen Barnes, Jim Kelly, Rigel Oliveri, Lisa Alexander, Paul Boudreaux, and Stacy Seichnaydre for their helpful input with respect to this article at the SEALS 2016 Annual Meeting. A special thank you to my son, Benjamin, who is appalled at society’s injustices and dreams of an equitable future.1. Dr. Martin Luther King, Jr., Address at the Conclusion of the Selma to Montgomery March (Mar. 25, 1965).

2. Jacob S. Rugh and Douglas S. Massey, *Racial Segregation and the American Foreclosure Crisis*, 75 AM. SOC. REV. 629, 629 (2010); Kelly DeRango, *Discrimination and Segregation in Housing*, 8 UPJOHN EMP. RES. 1, 2 (2001).

3. The Fair Housing Act of 1968, 42 U.S.C. §§ 3601–3619 (2006). The Act, as amended, prohibits discrimination in sale, rental, and financing of dwellings and in other housing-related transactions, based on race, color, national origin, religion, sex, familial status (including children under the age of 18 living with parents or legal custodians, pregnant women, people securing custody of children under the age of 18), and disability. See 42 U.S.C. § 3604 (2006). Under the Act, it is illegal to lie about housing availability, advertise discriminatorily, steer buyers to or from housing based on a suspect criteria, or choose not to rent or sell property based on such a criteria. See *id.* Housing segregation was identified as one of the greatest threats facing American Society when the Fair Housing Act was passed in 1968. REPORT OF THE NATIONAL ADVISORY COMMITTEE ON CIVIL DISORDERS 1, Ch. 6 & p. 263 (March 1, 1968) [hereinafter the KERNER COMMISSION REPORT]. The Fair Housing Act was passed in the wake of violent urban riots and the assassination of Dr. Martin Luther King, Jr. See KERNER COMMISSION REPORT 259; DOUGLAS S. MASSEY AND NANCY H. DENTON, AMERICAN APARTHEID 26–50 (1993).

4. See Rugh & Massey, *supra* note 2; DeRango, *supra* note 2; Jonathan T. Rothwell, *Racial Enclaves and Density Zoning: The Institutionalized Segregation of Racial Minorities in the United States*, 13 AM. L. & ECON. REV. 290, 347–48 (2011). In the first several decades of the 20<sup>th</sup> Century, Jim Crow laws, permitted under the Hayes-Tilden compromise, created “a system designed to ensure white racial domination of economic, cultural, and political life through violence, intimidation, dishonesty, and degradation.” Justin Hansford, *On Race and Justice: How Far Have We Really Come?*, 42 HUM. RTS. 1, 1 (2016); Until the Fair Housing Act, race-based restrictive covenants were commonplace in suburban and white communities, and until the Supreme Court in its landmark

neighborhoods are far from equal. The majority of people who reside in financially distressed city-center neighborhoods are non-white.<sup>5</sup> Historically, efforts to renovate city centers have perpetuated racial housing segregation by moving impoverished minority residents out of gentrifying areas. City-center revitalization is a key way to promote community health, wealth, and safety, but revitalization efforts must improve diversity as well as infrastructure. Revitalization efforts that include housing for all income levels and amenities that enrich all residents can help combat not only continuing racial disparity of opportunity in this country, but also the indicia of unresolved racial animus that both geographically and psychologically divides the nation.<sup>6</sup>

Failing urban cores represent one of today's biggest societal problems.<sup>7</sup> Decades of population and income loss have left many urban

decision of *Shelley v. Kraemer*, 334 U.S. 1, 20 (1948), held that such covenants could not be specifically enforced, they were routinely upheld. See *Corrigan v. Buckley*, 271 U.S. 323, 331–32 (1926); *Title Guarantee & Trust Co. v. Garrett*, 183 P. 470, 471 (Cal. Dist. Ct. App. 1916); *Queensborough Land Co. v. Cazeaux*, 67 So. 641, 643–64 (La. 1915); *Parmalee v. Morriss*, 188 N.W. 330, 331 (Mich. 1922); *Kraemer v. Shelley*, 198 S.W. 679, 683 (Mo. 1946). For a thorough discussion and analysis of racial restrictive covenants, see generally RICHARD R. W. BROOKS & CAROL M. ROSE, *SAVING THE NEIGHBORHOOD: RACIALLY RESTRICTIVE COVENANTS, LAW, AND SOCIAL NORMS* (rev. ed. 2013). The Fair Housing Act has been interpreted broadly to invalidate restrictive covenants that are motivated by racial discrimination or have the impermissible effect of creating racial segregation. *Trafficante v. Metro. Life Ins. Co.*, 409 U.S. 205, 209, 212 (1972). States have also passed fair housing legislation, that in many cases, expressly invalidates race-based restrictive covenants. See, e.g., CAL. CIV. CODE § 53(b)(1982) (Deering 2016); N.J. STAT. ANN. § 46:3-23 (West 2016).

5. Virtually all high-poverty neighborhoods contain mostly minority households. MASSEY & DENTON, *supra* note 3; PAUL A. JARGOWSKY, BROOKINGS INST., *STUNNING PROGRESS, HIDDEN PROBLEMS: THE DRAMATIC DECLINE OF CONCENTRATED POVERTY IN THE 1990S* 5 fig. 2 (2003).

6. “Today, on the eve of President Obama’s exit, the harsh and dissonant reality of enduring racialism echoes across the American landscape.” Hansford, *supra* note 4. President Obama had continually addressed the nation’s concerns regarding “deep, persistent divisions over issue of racism, inequality and policing.” Jordan Fabian, *Obama’s Toughest Challenge: Healing Racial Divide*, THE HILL (July 12, 2016), <http://thehill.com/homenews/administration/287316-obamas-toughest-challenge-healing-racial-divide>. In the twenty-first century, critics charge that the racially destructive laws and practices of the Jim Crow south have been supplanted by modern laws and practices that arguably are equally as effective means of racial oppression and injustice. See generally, MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* (2012). After the 2016 presidential election, reports of racist acts and hate speech have intensified. Holly Yan, Kristina Sgueglia, & Kylie Walker, “*Make America White Again*”: *Hate Speech and Crimes Post Election*, CNN.COM (Dec. 22, 2016), <http://www.cnn.com/2016/11/10/us/post-election-hate-crimes-and-fears-trnd/> (asserting that the Southern Poverty Law Center “has counted more than 800 cases of hateful harassment or intimidation in the U.S. since election day”). In its most recent pronouncement on Fair Housing, the Supreme Court explicitly referenced the “social unrest” that has long been fomented by separate and unequal housing conditions throughout the country. *Texas Dep’t of Housing & Cmty. Affairs v. Inclusive Cmty. Project, Inc.*, 135 S. Ct. 2507, 2515 (2015).

7. “The economic distress of America’s inner cities may be the most pressing issue facing the nation.” Michael E. Porter, *The Competitive Advantage of the Inner City*, HARV. BUS. REV. 55, 55 (May–June 1995); Detroit, with some thirty thousand vacant structures, is one of the most extreme examples of failure urban cores. Christine MacDonald, *Detroit Mayor Not Close to Demolition Goal*, DETROIT NEWS, Feb. 5, 2011, at A3; But Detroit is merely an extreme example of the problems plaguing cities country-wide. See Witold Rybczynski & Peter D. Linneman, *How to Save Our Shrinking*

neighborhoods trapped in a physical, economic, and social death spiral.<sup>8</sup> Cities present great potential sources of wealth and culture for society.<sup>9</sup> It will be challenging for municipalities, regions, and states to create and execute plans to rebuild decaying urban neighborhoods in a way that will both generate economic opportunity and sustainably integrate people of different races, ethnicities, and income levels. Federal financing structures and local zoning laws should be harnessed to achieve that vision. At the very least, financing and zoning programs and policies must be reformed so that they are no longer barriers to integrated, equitable gentrification.

Market trends support the city investment effort. The “American dream” concept of home is no longer unitary, focused solely on owner-occupied, single-family detached homes on large lots in far-flung suburbs. Housing preferences seem to be shifting toward denser, more walkable, urban-feel mixed-use neighborhoods, provided, however, that those neighborhoods are safe and provide adequate amenities and services.<sup>10</sup> The

*Cities*, 135 PUB. INT. 30, 35 (1999); Brent T. White et. al., *Urban Decay, Austerity, and the Rule of Law*, 64 EMORY L.J. 1, 4 (2014) (discussing the phenomenon of “collapsing urban infrastructure” in multiple cities).

8. For a discussion of “white flight” and its impacts, see Freda G. Sampson et. al., *Imported from Detroit: An Examination of A City in Crisis*, 15 J. L. SOC’Y 13, 15 (2013); Georgette Chapman Phillips, *Zombie Cities: Urban Form and Population Loss*, 11 RUTGERS J. L. & PUB. POL’Y 703, 707 (2014); Daniel Hartley, *Urban Decline in Rust Belt Cities*, FED. RES. BANK OF CLEVELAND (May 20, 2013), <https://www.clevelandfed.org/newsroom-and-events/publications/economic-commentary/2013-economic-commentaries/ec-201306-urban-decline-in-rust-belt-cities.aspx>; Colin Gordon, *Declining Cities, Declining Unions: Urban Sprawl and U.S. Inequality*, DISSENT (Dec. 10, 2014), [https://www.dissentmagazine.org/online\\_articles/urban-sprawl-union-decline-cities-labor-inequality-united-states](https://www.dissentmagazine.org/online_articles/urban-sprawl-union-decline-cities-labor-inequality-united-states); Jan Blakeslee, “White Flight” to the Suburbs: A Demographic Approach, 3 FOCUS: INST. FOR RES. ON POVERTY NEWSL., Winter 1978–79, at 1; BRUCE KATZ & MARGERY AUSTIN TURNER, *Rethinking U.S. Rental Policy: A New Blueprint for Federal, State, and Local Action*, in REVISITING RENTAL HOUSING 319 (Nicholas P. Restinas & Eric S. Belsky, eds. 2008). For discussions regarding the lack of investment in city centers, see Eric Morath & Ben Leubsdorf, *Slowdown in State, Local Investment Dents U.S. Economy*, WALL ST. J. (Oct. 26, 2016), <http://www.wsj.com/articles/slowdown-in-state-local-investment-dents-u-s-economy-1477495758>; Elizabeth McNichol, *It’s Time for States to Invest in Infrastructure*, CTR. ON BUDGET AND POL’Y PRIORITIES (Feb. 23, 2016), <http://www.cbpp.org/research/state-budget-and-tax/its-time-for-states-to-invest-in-infrastructure>. For a discussion of the importance of investment in infrastructure to city stability, see generally WORLD BANK, *COMPETITIVE CITIES FOR JOBS AND GROWTH: WHAT, WHO, AND HOW* (2015), <http://documents.worldbank.org/curated/en/902411467990995484/pdf/101546-REVISED-Competitive-Cities-for-Jobs-and-Growth.pdf>.

9. See, e.g., J. Peter Byrne, *Two Cheers for Gentrification*, 46 HOW. L.J. 405, 413 (2003) (discussing how gentrification can raise the standard of living for residents of previously distressed neighborhoods who are able to remain in place).

10. See LEIGH GALLAGHER, *THE END OF THE SUBURBS: WHERE THE AMERICAN DREAM IS MOVING* 39–41 (2013) (discussing how lifestyle preferences have moved beyond the 1970s suburb, and preferred housing patterns now involve walkable urban-like villages). See also REG’L PLAN ASS’N, *THE UNINTENDED CONSEQUENCES OF HOUSING FINANCE 1* (Feb. 2016), [https://static1.squarespace.com/static/53dd6676e4b0fedfbc26ea91/t/56c4e43cab48de9641559379/1455744066769/rpa-the-unintended-consequences-of-housing-finance\\_final.pdf](https://static1.squarespace.com/static/53dd6676e4b0fedfbc26ea91/t/56c4e43cab48de9641559379/1455744066769/rpa-the-unintended-consequences-of-housing-finance_final.pdf); ARTHUR C. NELSON, URB. LAND INST., *THE NEW CALIFORNIA DREAM: HOW DEMOGRAPHIC AND ECONOMIC TRENDS MAY SHAPE THE HOUSING MARKET* 9–10 (2011) <http://la.uli.org/uli-in-action/housing/the-new-california->

market's renewed demand for quality urban housing presents an opportunity for urban revival. Municipalities can salvage their city centers by aligning their land use laws and affordable housing policies to catch and ride this wave of consumer demand. Financial institutions and zoning approaches need to modernize in order to encourage and enable the creation of multi-use neighborhoods and properties. Innovative zoning and financial tools can be employed not only to achieve a redesigned city's integrated physical infrastructure, but also its income, racial, and cultural diversity.

This article discusses the need to reform financial structures and zoning approaches in the context of needed urban redevelopment. Part II explains the inadequacy of historic affordable housing programs, pointing out that these have been insufficient to provide equitable housing opportunities and have, in fact, entrenched the problems of city-suburb divide and racial and income segregation. Part III posits that federal housing assistance should be re-imagined in a more holistic way, focused first on improving a neighborhood rather than individual renters or units. It also discusses some creative ways that federal and local agencies may enlist private investment and involvement in community revitalization efforts while retaining necessary control. Part IV advocates that city planners move away from use-segregated zoning approaches and embrace inclusionary approaches that will promote neighborhoods that are diverse with respect to property uses and types of residential housing options. With the proper foresight and incentive structures, urban gentrification can be channeled to maximize housing integration and neighborhood stability.

## II. THE NEVER-ENDING AFFORDABLE HOUSING CRISIS

"If it is asserted that civilization is a real advance in the condition of man . . . it must be shown that it has produced better dwellings without making them more costly." ~ Henry David Thoreau<sup>11</sup>

Housing affordability problems can be viewed from two perspectives. On the one hand, many assert that "the rent is too damn high,"<sup>12</sup> perhaps

*dream-new-report/; see generally* JONATHAN LEVINE, *ZONED OUT: REGULATION, MARKETS, AND CHOICES IN TRANSPORTATION AND METROPOLITAN LAND USE* (2005).

11. HENRY DAVID THOREAU, *WALDEN* 27 (1985).

12. "Rent is too DAMN high!" was the slogan popularized by habitual fringe New York gubernatorial and U.S. Presidential candidate Jimmy McMillan and his self-named "Rent is Too Damn High Party." *See* RENT IS TOO "DAMN" HIGH!, <http://www.rentistoodamhigh.org> (last visited Dec. 18, 2016). The current state of housing market problems involving inadequate, expensive rental housing is discussed in the Joint Center for Housing Studies of Harvard University's most recent annual report. JOINT CTR. FOR HOUS. STUDIES OF HARVARD UNIV., *THE STATE OF THE NATION'S HOUSING* 2015 2-3

because the population of renters grows faster than the supply of rental units.<sup>13</sup> Although it is true that rents have doubled in the past two decades, lack of housing affordability may well indicate not merely undersupply, but also declining or stagnating income levels that cannot keep pace with rising housing costs.<sup>14</sup> It is important to understand the cause (or causes) of housing unaffordability, because the cure must match the disease. If rents are out of reach because of supply limitations, increasing the funding of supply-side programs, such as development grants and tax credits, may ameliorate the issue. If supply is sufficient and reasonable rents still remain out of reach, however, perhaps augmenting tenants' ability to pay through vouchers or other subsidies is also required.

For decades, the government has responded to the constantly asserted "crisis" in rental affordability by vacillating between and among various supply-side and demand-side approaches.<sup>15</sup> The Housing Act of 1949 loftily proclaimed that "every American family" deserves "a decent home and a suitable living environment," and for over six decades thereafter, the government has attempted to grow the supply of affordable units. At first, during the 1950s and 60s, the government funded publicly owned affordable housing projects.<sup>16</sup> The government also funds housing through various grants such as the HOME Investment Partnerships and Community Development Block Grant ("CDBG").<sup>17</sup> In addition, the government offers

(2015) [hereinafter STATE OF THE NATION'S HOUSING]. Rental rates "for apartments have risen nationally for 23 straight quarters." NAT'L LOW INCOME HOUS. COAL., OUT OF REACH 2015 4 (2015), [http://nlihc.org/sites/default/files/oor/OOR\\_2015\\_FULL.pdf](http://nlihc.org/sites/default/files/oor/OOR_2015_FULL.pdf) [hereinafter OUT OF REACH].

13. "2014 marked the 10<sup>th</sup> consecutive year of robust renter household growth" that "puts the 2010s on track to be the strongest decade for renter growth in history." STATE OF THE NATION'S HOUSING, *supra* note 12, at 25. The number of renters is expected to reach nearly 334 million by 2020 and 400 million by 2060. U.S. CENSUS BUREAU, POPULATION DIV., PROJECTIONS OF THE POPULATION AND COMPONENTS OF CHANGE FOR THE UNITED STATES: 2015 TO 2060 (2012).

14. Rental rates "for apartments have risen nationally for 23 straight quarters," and, on average, rents went up 15.2% between the end of 2009 and mid-2014. OUT OF REACH, *supra* note 12, at 4. During the same period, wages have stagnated or decreased. LAWRENCE MISHEL ET AL., WAGE STAGNATION IN NINE CHARTS (2015), <http://www.epi.org/publication/charting-wage-stagnation/>.

15. JOHN I. GILDERBLOOM & RICHARD P. APPLEBAUM, RETHINKING RENTAL HOUSING (1988). For an overview of fifty years of low-income housing policy and programs, see generally Charles J. Orlebeke, *The Evolution of Low-Income Housing Policy, 1949 to 1999*, 11 HOUSING POL'Y DEBATE 489 (2000), *reprinted in* THE AFFORDABLE HOUSING READER 237 (J. Rosie Tighe & Elizabeth J. Mueller, eds., 2013).

16. THE AFFORDABLE HOUSING READER 233 (J. Rosie Tighe & Elizabeth J. Mueller eds., 2013) (describing public housing and affordable housing efforts from 1949 to 1960 and post 1972).

17. "HOME is the largest Federal block grant to state and local governments" that is "designed exclusively" for use in support of affordable housing. *HOME Investment Partnerships Program*, U.S. DEP'T OF HOUS. AND URBAN DEV., [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/comm\\_planning/affordablehousing/programs/home/](http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/affordablehousing/programs/home/) (last visited Dec. 19, 2016). The Community Development Block Grant (CDBG) program provides communities with development resources. Under this program, annual grants are allocated to larger cities to help in the development of suitable living environment for low and moderate-income

finance assistance through tax-exempt or taxable bonds.<sup>18</sup> Grants and bond financing provide capital to fund specific affordable housing development or rehabilitation projects in locations deemed most deserving.

Tax incentive programs such as the Low-Income Housing Tax Credit (LIHTC) round out the menu of government supply-side incentives.<sup>19</sup> Over the past thirty years, the LIHTC has led to \$100 billion of private capital being allocated to fund the creation of about 2.9 million affordable rental units.<sup>20</sup> “State[s] and local LIHTC-allocating agencies” obtain from the federal government “the equivalent of [] \$8 billion in” tax credits annually that can be used for “the acquisition, rehabilitation, or new construction of rental housing targeted to lower-income households.”<sup>21</sup> The fiscal cost of tax credits is somewhat hidden, since it represents uncollected revenue rather than spent funds,<sup>22</sup> but clearly these tax credits are valuable to the

households. *Community Development Block Grant Program – CDBG*, U.S. DEP’T OF HOUS. AND URBAN DEV.

[http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/comm\\_planning/communitydevelopment/programs](http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/communitydevelopment/programs) (last visited Dec. 19, 2016).

18. Tax-exempt bonds play an important role in financing about forty percent of LIHTC developments, but tax-exempt bonds are available only to local public or quasi-public entities. *See Low-Income Housing Tax Credits*, ENTERPRISE CMTY. PARTNERS,

<http://www.enterprisecommunity.org/financing-and-development/low-income-housing-tax-credits> (last visited Dec. 20, 2016) [hereinafter ENTERPRISE LIHTC]; JOE BIBER, COALITION FOR SUPPORTIVE HOUSING, FINANCING SUPPORTIVE HOUSING WITH TAX-EXEMPT BONDS AND 4% LOW INCOME HOUSING TAX CREDITS (2007), [http://www.csh.org/wp-content/uploads/2012/01/Report\\_financing-withbondsand-litch\\_1012.pdf](http://www.csh.org/wp-content/uploads/2012/01/Report_financing-withbondsand-litch_1012.pdf); Justin Cooper, *Multifamily Rental Housing: Financing With Tax Exempt Bonds*, ORRICK, <https://www.orrick.com/Insights/2010/06/Multifamily-Rental-Housing-Financing-With-Tax-Exempt-Bonds>. Because interest paid on tax-exempt debt is exempt from federal (and often state) income tax, investors require less interest than they would from taxable debt to produce the same after tax return. Cooper, *supra*. Local bonds used with federal housing credits have financed the development of over 2 million affordable homes. ENTERPRISE LIHTC, *supra*. The “volume cap” for tax-exempt bonds imposed by the IRS Code in 2015 is the greater of \$100 *per* state resident or \$3,015,155,000. Volume cap figures are published by the IRS on an annual basis. All eligible projects (housing, infrastructure, etc.) must compete for this financing. BIBER, *supra*. Tax-exempt bond funding is also constrained by the “95/5 Requirement” that mandates at least 95% of bond proceeds be allocated to costs incurred after the bond issuance. In addition, only 25% of bond proceeds can be allocated to acquisition costs. *Id.*

19. LIHTC, created by the Tax Reform Act of 1986, has been one of the most significant ways that the government has funneled private capital into affordable housing production. ENTERPRISE LIHTC, *supra* note 18; *Low-Income Housing Tax Credits*, OFFICE OF POL’Y DEV. AND RES., U.S. DEP’T OF HOUS. AND URB. DEV., <https://www.huduser.gov/portal/datasets/lihtc.html> (last visited Dec. 20, 2016) [hereinafter HUD LIHTC].

20. OFFICE OF SEN. MARIA CANTWELL, *Addressing the Challenges of Affordable Housing & Homelessness: The Housing Tax Credit* 1, 4. Without LIHTC virtually no affordable rental development would happen: it is a key financing source in almost every affordable rental project. AFFORDABLE RENTAL HOUSING A.C.T.I.O.N., BUILDING AFFORDABLE HOUSING COMMUNITIES USING THE LOW-INCOME HOUSING TAX CREDIT 6 (2015) [hereinafter BUILDING AFFORDABLE COMMUNITIES].

21. HUD LIHTC, *supra* note 19.

22. *See, e.g., Orlebeke, supra* note 15, at 251–53 (citing estimates that true costs in terms of foregone tax revenues was \$3.2 billion in fiscal year 1998 alone).

holders because demand for the credits outpaces supply. The oversize demand for LIHTCs either indicates that the program should be expanded as a relatively low-cost way to support affordable housing,<sup>23</sup> or that the LIHTCs represent a wealth transfer from the government to real estate development companies that should be carefully re-assessed and potentially curtailed.<sup>24</sup> The ultimate utility of and justification for LIHTCs may depend on the particular housing market in which they are employed. If the given housing market needs additional units, then federal incentives that boost the supply of affordable rental housing options could put market pressure on rents, bringing them more within reach of tenants. If the given housing market is flush with empty housing units, however, then tax credits incentivizing more production would be less justified.

Production programs such as tax credits, government grants and bond financing, and government-held public housing are all attempts to address housing affordability concerns through the increase of housing unit production. The theory behind a supply-side approach was the simple economic maxim that rental rates will naturally decrease as supply of rental housing grows.

Although millions of affordable housing units were produced under such programs, supply-side strategies have been vulnerable to harsh criticism. Subsidizing the costs of acquiring an asset encourages asset demand, and this raises the asset price. Thus, subsidized rental housing development can create housing production cost inflation.<sup>25</sup> Federally subsidized capital similarly caused an adverse inflationary effect in the realm of home prices in the run-up to the 2008 Foreclosure Crisis.<sup>26</sup> In addition, if housing unaffordability is caused, at least in part, by lack of income rather than lack of housing stock, merely increasing the number of

23. Andrea J. Boyack, *Equitably Housing (Almost) Half a Nation of Renters*, 65 U. BUFF. L. REV. 109, 134 [hereinafter *Nation of Renters*]. Housing agencies routinely get applications for at least two or three times their available allocations. OFFICE OF SEN. MARIA CANTWELL *supra* note 20, at 4; . Senator Cartwell, one of the authors of the 2015 Protecting Americans from Tax Hikes Act, recently introduced legislation that would expand LIHTC allocation by fifty percent and promote broader income mixing in LIHTC projects. *Id.* Merely increasing available credits by fifty percent would allow 350,000-400,000 additional affordable units to become available over ten years. Affordable Rental Housing A.C.T.I.O.N. *The Action Campaign Calls on Congress to Expand the Low-Income Housing Tax Credit* (June 6, 2007), <https://static1.squarespace.com/static/566ee654bfe8736211c559eb/t/5755c5a2a3360cfd5e42a091/1465238947044/ACTION+Campaign+comments+for+Ways+and+Means+hearing+June+2016.pdf>.

24. Orlebeke, *supra* note 15, at 511.

25. See, e.g., *id.* at 497 (citing *President's Third Annual Report*, 1971, 22) (explaining that by footing the bill for housing development, the federal government was feeding "runaway inflation of housing costs").

26. See generally Andrea J. Boyack, *Lessons in Price Stability from the U.S. Real Estate Market Collapse*, 2010 MICH. ST. L. REV. 925, 994 (2010).



available units will be inadequate to resolve the issue. It is therefore unsurprising that the federal government has interspersed its production-focused efforts with demand-based programs that provide rental assistance to impoverished renters, starting with the innovation of voucher-subsidy and rental-subsidy assistance beginning in earnest in the 1970s.

Housing vouchers had actually been used a bit earlier, in the era of public housing, as a stop-gap measure to provide assistance to people who could not get off the waiting list and obtain one of the undersupplied public housing units. By the 1970s, however, the government recognized that in some markets “physical shortage of shelter” was not the problem. This was particularly true in the context of depressed inner cities, which were financially decimated by the exodus of their richer (and whiter) residents to the suburbs.<sup>27</sup> If lack of rental quantity was not the problem, then lack of tenant income likely was.

Government vouchers make up the difference between market rents and affordable rents and are provided either to landlords or to tenants in order to render housing more affordable.<sup>28</sup> Vouchers currently play a critical role in enabling more than 5 million people in 2.2 million low-income households afford their rent.<sup>29</sup> Economically speaking, however, such rental subsidies also create adverse market disruptions, including inflationary pressures on rental rates and decreasing the market incentive to boost supply. Demand-side housing subsidies do not represent investment in improving future housing markets. Instead, vouchers represent the government’s perpetual commitment to subsidize rental costs for those individuals who are lucky enough to obtain a voucher. Vouchers—be they paid to a landlord or to a tenant—do not contribute to a neighborhood’s infrastructure. In fact, Housing Choice vouchers give recipients the ability

27. For an overview of the “outmigration” from urban cores and the resulting decline of urban cores, see Elvin K. Wyly & Daniel J. Hammel, *Islands of Decay in Seas of Renewal: Housing Policy and the Resurgence of Gentrification*, 10 HOUSING POL’Y DEBATE 711, 716 (1999). See also Jed Kolko, *Where America’s Vacant Homes Are*, FORBES (Nov. 6, 2013, 12:15 PM). See generally ASHLEY COLVIN, IAN FERGUSSON & HEATHER PHILLIPS, *RENEWING THE URBAN LANDSCAPE: THE DILEMMA OF VACANT HOUSING* (2000).

28. Government vouchers are either property-based (Section 8 assistance) or tenant-based (Housing Choice vouchers). *Policy Basics: Section 8 Project-Based Rental Assistance*, CTR. ON BUDGET AND POL’Y PRIORITIES (June 1, 2015), <http://www.cbpp.org/research/housing/policy-basics-section-8-project-based-rental-assistance>; *Project Based Section 8 Rental Assistance*; NAT’L COUNCIL OF ST. HOUSING AGENCIES, <https://www.ncsha.org/advocacy-issues/project-based-section-8-rental-assistance>; *Housing Choice Vouchers Fact Sheet*, U.S. DEP’T OF HOUS. AND URBAN DEV., [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/public\\_indian\\_housing/programs/hcv/about/fact\\_sheet](http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/hcv/about/fact_sheet) (last visited Dec. 20, 2016).

29. *Policy Basics: Housing Choice Vouchers Program*, CTR. ON BUDGET AND POL’Y PRIORITIES (Sept. 29, 2015), <http://www.cbpp.org/research/housing/policy-basics-the-housing-choice-voucher-program>.

to abandon a distressed neighborhood in favor of a higher quality one. Individual equality of opportunity can be improved by ensuring that suburban “high opportunity” neighborhoods are accessible to impoverished, minority residents of distressed neighborhoods who wish to relocate there.<sup>30</sup> But a broader way to create neighborhood equity of opportunity must involve transforming a distressed neighborhood, not just enabling residents to flee it. Vouchers can therefore be important tools for individual mobility and affordability, but have less utility in terms of neighborhood revitalization.<sup>31</sup>

Both supply and demand-side housing assistance approaches are plagued with problems of inequity and adverse neighborhood consequences. For one thing, only a small fraction of low-income renters who struggle to afford housing receives the benefits of these public programs. Housing vouchers have made renting more affordable for five million people, but only one quarter of the people who suffer severe housing cost burdens receive housing aid.<sup>32</sup> Allocation of this scarce public resource is accomplished through lotteries and lengthy waiting lists for rental assistance vouchers, for remaining public housing units, and for affordable dwelling units.

The number of Americans who are considered “burdened” by housing costs (spend more than 30% of their gross income on housing) and who are considered “severely burdened” by housing costs (spend more than 50% of their gross income on housing) is increasing faster than the supply of

30. The term “High Opportunity Neighborhood” comes from the “Moving to Opportunities” experiment conducted between the 1990s and 2015. This major housing mobility experiment was sponsored by the Department of Housing and Urban Development (HUD), building on earlier academic studies from the 1960s and 70s. The study followed 4,600 low-income families with children who lived in the most disadvantaged neighborhoods across the country. Families were randomly assigned into one of three groups, and the members of the test group were given housing vouchers that could only be used to move to a “high opportunity” neighborhood. A “high opportunity neighborhood” for purposes of the Moving to Opportunity experiment was defined as a neighborhood with poverty rates below 15% and labor force participation rates above 60%, with more than 20% of adults having completed college. The neighborhood was also by definition predominantly (more than 70%) non-Hispanic white, and there were more than 200,000 low-wage jobs located within five miles of the tract centroid. MARGERY AUSTIN TURNER, AUSTIN NICHOLS, & JENNIFER COMEY, URBAN INST., BENEFITS OF LIVING IN HIGH OPPORTUNITY NEIGHBORHOODS: INSIGHTS FROM THE MOVING TO OPPORTUNITY DEMONSTRATION (2012).

31. Direct community investment and individual subsidies should be seen as “complementary” and the implementation of both should be explicitly planned as part of “policies that support sustainable regional development.” PETER TATIAN, ET AL., URBAN INST., BUILDING SUCCESSFUL COMMUNITIES (2012), <http://www.urban.org/sites/default/files/alfresco/publication-pdfs/412557-Building-Successful-Neighborhoods.pdf>.

32. ECON. POL’Y PROGRAM, HOUSING COMMISSION, HOUSING AMERICA’S FUTURE: NEW DIRECTIONS FOR NATIONAL POLICY 7 (2013), <http://bipartisanpolicy.org/library/housing-america-future-new-directions-national-policy/> [hereinafter *Housing America’s Future*]; OUT OF REACH, *supra* note 12, at iii.

housing assistance in the form of either affordable units or rental vouchers. An average of over 400,000 new households will seek rental housing in each of the next ten years, and the majority of these will be low income.<sup>33</sup> Today, more than 11 million households, 27% of renter households, are “severely burdened” by housing costs, spending more than half of their income on housing.<sup>34</sup> The affordability challenge is most pronounced for extremely low-income (“ELI”) households, which make up roughly one-fourth of the nation’s renter households.<sup>35</sup> Rental units that are affordable for extremely low-income households are increasingly rare, and three-fourths of ELI households (7.8 million) spend more than 50% of their income on housing.<sup>36</sup> Housing trends suggest that this grim statistic will worsen. The most inexpensive rental units are statistically the most likely to be removed from the housing stock.<sup>37</sup> Rehabilitation efforts for affordable units are inadequate, and each year more of these units disappear through disrepair and obsolescence than are produced.<sup>38</sup>

Our allocation systems for housing assistance (of whatever type) are inequitable. Rather than provide some (albeit an insufficient) amount of assistance to all qualified aid applicants, government housing assistance is doled out to a select few, allocating aid based on a political assessment of “merit,” or distributing aid to a small percentage of impoverished applicants based on sheer luck. Allocation schemes that fund only a few

33. Affordable Rental Housing A.C.T.I.O.N. & The Affordable Housing Tax Credit Coalition, *The Case for Expanding the Low-Income Housing Tax Credit* (2015), <http://www.taxcreditcoalition.org/wp-content/uploads/2015/12/Revised-Need-Document.pdf> [hereinafter *Expanding LIHTC*]; see OUT OF REACH, *supra* note 12, at 4–5; *Housing America’s Future*, *supra* note 32, at 7.

34. ENTERPRISE LIHTC, *supra* note 18; OUT OF REACH, *supra* note 12, at iii and 6. The number of severely cost burdened renters has increased by 49% just in the past decade. *Expanding LIHTC*, *supra* note 33.

35. OUT OF REACH, *supra* note 12, at 5–6; National Low Income Housing Coalition, *Housing Spotlight: Affordable Housing is Nowhere to be Found for Millions*, 5 HOUSING SPOTLIGHT 1, 1 (2015), [http://webcache.googleusercontent.com/search?q=cache:http://nlihc.org/sites/default/files/Housing-Spotlight\\_Volume-5\\_Issue-1.pdf](http://webcache.googleusercontent.com/search?q=cache:http://nlihc.org/sites/default/files/Housing-Spotlight_Volume-5_Issue-1.pdf) [<https://perma.cc/6R33-AVXS>]. The number of low-income and extremely low-income has significantly increased in the past several years. URBAN LAND INSTITUTE, BENDING THE COST CURVE: SOLUTIONS TO EXPAND THE SUPPLY OF AFFORDABLE RENTALS 8 (2014), [http://uli.org/wp-content/uploads/ULI-Documents/BendingCostCurve-Solutions\\_2014\\_web.pdf](http://uli.org/wp-content/uploads/ULI-Documents/BendingCostCurve-Solutions_2014_web.pdf) (noting that, as of 2011, there were 12.1 million extremely low-income renters, an increase of 2.5 million since 2007).

36. OUT OF REACH, *supra* note 12, at 5–6; THE AFFORDABLE HOUSING READER, *supra* note 16, at xxi; National Low Income Housing Coalition, *supra* note 35.

37. *Building Affordable Communities*, *supra* note 20, at 4.

38. THE NAT’L LOW INCOME HOUSING COALITION, OUT OF REACH 2011: RENTERS AWAIT RECOVERY (2011) (“for every new affordable apartment created, two are lost due to deterioration, abandonment, or conversion to more expensive housing”). See also THE AFFORDABLE HOUSING READER, *supra* note 16, at 234. Since 2001, over 12.8% of the nation’s supply of low-income housing (650,000 units) has been permanently lost from the stock of affordable rentals due to conversion, demolition, or obsolescence. *Expanding LIHTC*, *supra* note 33.

lucky applicants leave the remainder of qualified recipients with no assistance at all. This inequity of public aid allocation has plagued housing policy choices from the start. Back in 1971, the *President's Third Annual Report* warned that "it will be difficult to continue favoring a select few in the population," but bemoaned that "it is doubtful that the public, and hence Congress, will be prepared to accept the staggering budgetary cost of a more global coverage."<sup>39</sup> Similar calls to increase funding for housing assistance in order to ameliorate the inequity resulting from the system's resource limitations have continued to this day.<sup>40</sup> Far from increasing funding for housing, however, today's fiscal pressures have led to cuts in affordable housing production programs and have frozen the quantity of available rental vouchers, even in the face of a swelling population of low-income renters.<sup>41</sup>

Housing policy's systemic inequality can be improved even without fully funding all affordable housing needs. Even if needs cannot be completely met, allocation could be made more equitable. For example, funding resources could be allocated based on a system of correlative rights rather than allocated in a waterfall according to granted priorities.<sup>42</sup> For example, instead of funding the gap between market rent and 30% of income for a quarter of low-income tenants, it would be more equitable to fund the gap between market rent and 40% of income (or even between market and 50% of income) for *all* eligible applicants.

The scope of housing assistance does need to be more optimally tailored in terms of how, how much, and to whom it is distributed. It also needs to be tailored with respect to where the affordable housing is located. One of the ironies from decades of federal housing assistance is that this aid was applied in a way that entrenched existing patterns of residential

39. See, e.g., Orlebeke, *supra* note 15, at 497–98 (citing *President's Third Annual Report*, 1971, 23–24).

40. A decade ago, housing analysts called upon the government to expand the availability of gap funding and private equity capital incentives, indicating that it was critically important to expand the supply of affordable rental housing across the nation. BRUCE KATZ & MARGERY AUSTIN TURNER, THE BROOKINGS INST., RETHINKING U.S. RENTAL HOUSING POLICY: BUILD ON STATE & LOCAL INNOVATION, OPPORTUNITY 08, [hereinafter OPPORTUNITY 08].

41. For example, funding for HOME Programs has been cut 44% since 2011. *Building Affordable Communities*, *supra* note 20, at 1320.

42. To draw a parallel to debtor-creditor law: outside of bankruptcy, creditors obtain payment in the order that they execute on judgments or file liens. The first in time has the greatest claim, and only when that first priority claimant is fully repaid will any funds flow "downstream" to the next claimant in order of priority. In such a system, some creditors are fully repaid, and others are left with nothing. In bankruptcy, in recognition of the lack of sufficient funds to repay all obligations, creditors share the limited pool on a pro rata basis. In a similar way, housing aid could be divided up among all qualified applicants on a pro rata basis rather than prioritizing the claimants in a way that allows some to be fully funded and some to be left without any assistance.

segregation and concentrated poverty in certain neighborhoods, many of which remain distressed urban cores today. Indeed, the first two exuberant decades of public housing have left a legacy of “drab, monolithic housing projects, largely segregated, which still stand in our major cities as prisons of the poor—enduring symbols of good intentions run aground on poorly conceived policy, or sometimes simply a lack of policy.”<sup>43</sup>

Since 1968, governments’ various affordable housing efforts have co-existed alongside the Fair Housing Act’s mandate that governments accepting federal aid affirmatively further fair housing. In the aftermath of the Supreme Court’s recent *Inclusive Communities* case,<sup>44</sup> the Department of Housing and Urban Development (HUD) re-iterated and re-energized this mandate by issuing a new rule (the “Affirmatively Furthering Fair Housing” or “AFFH” Rule) that requires all municipalities to specifically consider fair housing goals as they spend HUD-provided affordable housing funds.<sup>45</sup> Affordable housing focuses on the economic impact of high rents; whereas fair housing focuses on the equitable need for equal housing opportunities and housing de-segregation. Sometimes these goals work together, but often they have come into conflict.<sup>46</sup> For example, it is cheaper to provide low-cost housing in low-cost neighborhoods, but these neighborhoods are predominantly minority-occupied. The siting of affordable housing options in high-poverty neighborhoods has in effect perpetuated housing segregation, not only by income, but also by race.<sup>47</sup>

43. Orlebeke, *supra* note 15, at 498 (citing *President’s Third Annual Report*, 1971, 25). See also Richard Rothstein, *The Making of Ferguson*, 24 AFFORDABLE HOUSING & COM. DEV. L., 165, 176–79 (2015).

44. 135 S. Ct. 2507, 2507 (2015).

45. Affirmatively Furthering Fair Housing, 78 Fed. Reg. 43,710 (July 19, 2013) (to be codified at 24 C.F.R. § 5); Affirmatively Furthering Fair Housing, 80 Fed. Reg. 42,272 (July 16, 2015) (to be codified at 24 C.F.R. §§ 5, 91, 92, 570, 574, 576, and 903) [hereinafter, collectively, the “AFFH Rule”].

46. Myron Orfield, *Racial Integration and Community Revitalization: Applying the Fair Housing Act to the Low Income Housing Tax Credit*, 58 VAND. L. REV. 1747, 1753 (2005) (explaining “the deep legal and philosophical contradiction in the United States between civil rights guarantees—particularly the duty to affirmatively further fair housing—and state and federal low-income housing policy” and arguing that fair housing duty should take priority before other policy considerations). See also John J. Infranca, *Housing Resource Bundles: Distributive Justice and Federal Low-Income Housing Policy*, 49 U. RICH. L. REV. 1071, 1137 (2015).

47. See Ingrid Gould Ellen & Jessica Yager, *Race, Poverty and Federal Rental Housing Policy, in HUD AT 50: CREATING PATHWAYS TO OPPORTUNITY* (2015). The propensity for affordable housing to be located in minority neighborhoods is well known and was one of the cited justifications for HUD’s new Affirmatively Furthering Fair Housing Rule. See *An Overview of HUD’s Proposed Affirmative Furthering Fair Housing Rule* (July 13, 2015), <http://www.fhco.org/pdfs/AFFHJeffrey1.pdf>. Debby Goldberg, vice president at the National Fair Housing Alliance, explained, “We have a history of putting affordable housing in poor communities.” Tim Devany, *Obama Making Bid to Diversify Wealthy Neighborhoods*, THE HILL (June 11, 2015), <http://thehill.com/regulation/244620-obamas-bid-to-diversify-wealthy-neighborhoods>. The Brookings Institute, nearly a decade earlier, also highlighted the problem that “a substantial share of the affordable

Affordable housing policy in action has created or maintained living patterns that undermine fair housing goals, doubling down on decades of government-engineered urban core segregation and decline.<sup>48</sup> Ironically, almost every attempt to alleviate housing costs and encourage housing equity has resulted in at least some degree of segregation retrenchment. Development grants and LIHTC-fueled housing projects are often larger, multi-family structures, located in decaying urban centers. Economically, this is predictable. Cheaper land costs and looser restrictions on building vertically make it less expensive to create affordable housing units in higher-poverty areas. Location of low-income housing in high-minority, high-poverty neighborhoods encounters less political opposition than would building the same sort of housing in a tony, upscale, white suburb. But cheaper and easier housing development does not ensure housing that is “fair” in terms of neighborhood quality for low-income residents, let alone in terms of affirmatively furthering racial housing integration and charting a path to future equality of opportunity.<sup>49</sup> Overconcentration of affordable housing is also a poor long-term strategy in that it dilutes the financial (and social) viability of a neighborhood, leading to economic decline or stagnation.<sup>50</sup> Socially, high-poverty siting of affordable housing is costly as well. “The concentration of affordable housing in distressed inner-city neighborhoods traps low-income children in dangerous places where public schools are failing.”<sup>51</sup>

rental stock is concentrated in distressed, high-poverty neighborhoods.” OPPORTUNITY 08, *supra* note 40, at 2.

48. MASSEY & DENTON, *supra* note 3, at 20–24, 54–55, 81. “The racial segregation in housing that has become familiar to many Americans was caused by government policies that dramatically shaped private choices and opportunities in housing markets.” Sheryll D. Cashin, *Middle-Class Black Suburbs and the State of Integration: A Post-Integrationist Vision for Metropolitan America*, 86 CORNELL L. REV. 729, 731 (2001). For more on the history of segregation in urban cores and, in particular, the complicity of local, state, and federal government actors, see generally Andrea J. Boyack, *A New American Dream for Detroit*, U. DETROIT MERCY L. REV. (forthcoming 2016) (manuscript at 576–80) (on file with author) [hereinafter *Detroit*].

49. Florence Wagner Roisman, *The Power of the Supreme Court’s Decision in the Fair Housing Act Case*, TDHCA v. ICP, 24 POVERTY & RACE 17, 18 (2015); Orfield, *supra* note 46, at 1790; Florence Wagman Roisman, *Mandates Unsatisfied, The Low Income Housing Tax Credit Program and the Civil Rights Laws*, 52 U. MIAMI L. REV. 1011, 1012 (1988). It has long been true that “a substantial share of the affordable rental stock is concentrated in distressed, high-poverty neighborhoods.” OPPORTUNITY 08, *supra* note 40, at 2. “White children are much more likely than black children to experience upward mobility over a lifetime, while black children are more likely to suffer downward mobility.” MANUEL PASTOR & MARGERY AUSTIN TURNER, URBAN INST., *Reducing Poverty and Economic Distress after ARRA: Potential Roles for Place-Conscious Strategies 2* (2010) (quoting PATRICK SHARKEY, NEIGHBORHOODS AND THE BLACK-WHITE MOBILITY GAP (2009)).

50. Merely increasing the number of affordable housing units in a neighborhood does little or nothing to revitalize the neighborhood. JILL KHADDURI, POVERTY & RACE RESEARCH ACTION COUNCIL, *CREATING BALANCE IN LOCATIONS OF LIHTC DEVELOPMENTS: THE ROLE OF QUALIFIED ALLOCATION PLANS 2* (2013). See also Orfield, *supra* note 46.

51. OPPORTUNITY 08, *supra* note 40, at 2.

Vouchers and efforts to relocate impoverished individuals to affordable housing in better neighborhoods (following the lead of the Moving to Opportunity studies), provide some way to deliver affordability benefits free from pernicious re-segregation impacts.<sup>52</sup> But, of course, vouchers that encourage relocation into better neighborhoods are neither universally available nor helpful in terms of revitalization of urban cores. The traditional methods of growing the quantity of affordable housing units and subsidizing rental costs will by themselves not achieve diverse, sustainable inner cities. Either the urban core remains decaying and distressed, or it is gentrified in a profit-focused way that moves the lower-income residents out.

### III. IF YOU FUND IT, THEY WILL COME

“Why not clean up our own neighborhoods and schools instead of trying to move out of them and into White people’s neighborhoods?” ~ Muhammad Ali<sup>53</sup>

By most measures, affordable housing programs and fair housing regulations have failed to achieve both their purposes and promise. Not only does inequality and segregation endure, but housing costs also remains dangerously high for many people. If, however, housing aid focused on neighborhood-centric revitalization rather than predominantly on increasing the number of units, gains could be made both with respect to housing affordability and funding inequality. A more holistic, neighborhood-centric funding approach would be primarily supply-side, using a combination of targeted grants and tax credits to create not only

52. See Turner et al., *supra* note 30. See also Raj Chetty, Nathaniel Hendren, & Lawrence F. Katz, *The Effects of Exposure to Better Neighborhoods on Children: New Evidence from the Moving to Opportunity Experiment*, NAT’L BUREAU OF ECON. RES. (May 2015), [http://scholar.harvard.edu/files/lkatz/files/mto\\_manuscript\\_may2015.pdf](http://scholar.harvard.edu/files/lkatz/files/mto_manuscript_may2015.pdf) (focusing on pronounced improved outcomes in children who moved to high-opportunity neighborhoods in their youth). Better health outcomes for children have also been shown to result from relocation into high-opportunity neighborhoods. Megan Sandel et al., NAT’L HOUSING CONFERENCE, *Housing as a Health Care Investment: Affordable Housing Supports Children’s Health* (Mar. 2016), <http://www.childrenshealthwatch.org/wp-content/uploads/Housing-as-a-Health-Care-Investment.pdf>. For adults who spent less time in high-opportunity neighborhoods, health outcomes did improve, but employment, income, and educational gains for adults were more limited. Margery Austin Turner et al., URBAN INST., *Benefits of Living in High Opportunity Neighborhoods: Insights from the Moving to Opportunity Demonstration* (2012). A “high opportunity neighborhood” for purposes of the Moving to Opportunity experiment was defined as a neighborhood with poverty rates below 15% and labor force participation rates above 60%, with more than 20% of adults having completed college. The neighborhood furthermore was, by definition, predominantly (more than 70%) non-Hispanic white, and there were more than 200,000 low-wage jobs located within five miles of the tract centroid. *Id.*

53. MUHAMMAD ALI WITH HANA YASMEEN ALI, *THE SOUL OF A BUTTERFLY: REFLECTIONS ON LIFE’S JOURNEY* 66 (2004).

more dwelling units (ideally of varying types and affordability levels, scattered throughout the neighborhood), but also improved infrastructure and community amenities. Legal and financial structures could encourage localities and community development groups to partner with private capital and achieve a broader vision, not just of a particular multi-family building or a certain number of affordable dwelling units, but of a mixed-income, mixed-use, amenity-rich urban core. The challenge, of course, is two-fold. First, to build it so upper-income households will come. Second, to design it so that lower-income households can stay.

Neighborhood matters.<sup>54</sup> Equality of opportunity is a myth when segments of the population live in high-crime, distressed neighborhoods. Living in declining neighborhoods intensifies the adverse effects of poverty with respect to educational success and career prospects.<sup>55</sup> An impoverished neighborhood decreases its inhabitants' physical and mental health,<sup>56</sup> civic involvement and empowerment,<sup>57</sup> and even life expectancy.<sup>58</sup> Neighborhood poverty has been linked to aggressive behavior in children.<sup>59</sup> Teen pregnancy is more common in lower-income

54. PASTOR & TURNER, *supra* note 49, at 1 (explaining that “place does indeed matter – that where you grow up affects where you wind up”); Ingrid Gould Ellen & Margery Austin Turner, *Does Neighborhood Matter? Assessing Recent Evidence*, 8 HOUSING POL’Y DEBATE 833, 859 (1997) (citing studies that prove that, even when controlling for other variables, there is significant independent evidence that neighborhood effects outcomes in residents). For a discussion of how environmental factors significantly impact income inequality, see Steven L. Durlauf, *A Theory of Persistent Inequality* 27 (Nat’l Bureau of Econ. Res., Working Paper No. 4056, 1992).

55. Kelly DeRango, *Black-White Segregation, Discrimination, and Home Ownership* 3 (Upjohn Inst. for Emp’t Res., Working Paper No. 01-71, 2001); Patrick Bayer, Fernando Ferreira, and Robert McMillan, *A Unified Framework for Measuring Preferences for Schools and Neighborhoods*, 115 J. ECON. POL. 588, 627–28 (2007); Pat Rubio Goldsmith, *Learning Apart, Living Apart: How the Racial and Ethnic Segregation of 8 Schools and Colleges Perpetuates Residential Segregation*, 112 TCHRS. C. REC. 1602, 1603 (2010); Thomas J. Nechyba & Randall P. Walsh, *Urban Sprawl*, 18 J. OF ECON. PERSP. 193 (2004). Children living in high-poverty neighborhoods are less successful in school and earn lower grades. They are also more likely to drop out and less likely to go to college. PASTOR & TURNER, *supra* note 49, at 2. This effect is seen as early as age five to six, and cognitive and socio-emotional development outcomes for young children are significantly impacted by neighborhood factors. P. Lindsay Chase-Lansdale & Rachel A. Gordon, *Economic Hardship and the Development of Five- and Six-Year-Olds: Neighborhood and Regional Perspectives*, 67 CHILD DEV. 3338 (1996).

56. The “Moving to Opportunity Study” found significant mental health benefits from relocating to a high opportunity neighborhood. See Turner, et. al, *supra* note 30, at 3. The study found that improving neighborhood environment also led to a significant reduction in obesity. Jeffrey Kling, et al., *Moving to Opportunity and Tranquility: Neighborhood Effects on Adult Economic Self-Sufficiency and Health from Randomized Housing Voucher Experiment*, (Harv. U., Kennedy Sch. of Gov’t, Working Paper RWP04-035 (2004)).

57. DeRango, *supra* note 55, at 3–4; Thomas A. LaVeist, *Segregation, Poverty, and Empowerment: Health Consequences for African Americans*, 71 MILBANK Q. 41, 41 (1993).

58. Chiquita A. Collins & David R. Williams, *Segregation and Mortality: The Deadly Effects of Racism?*, 14 SOC. F. 495, 495 (1999).

59. Janis B. Kupersmidt et al., *Childhood Aggression and Peer Relations in the Context of Family and Neighborhood Factors*, 66 CHILD DEV. 360, 369 (1995).



neighborhoods.<sup>60</sup> And people in impoverished neighborhoods are more likely to be victims and perpetrators of crime.<sup>61</sup>

Concentration of poverty and housing segregation inspires predatory lending,<sup>62</sup> makes it more difficult for lower-income individuals to become homeowners,<sup>63</sup> and makes homeownership in such neighborhoods a poorer investment in wealth-building.<sup>64</sup> The Foreclosure Crisis and its aftermath disproportionately harmed minorities living in segregated communities.<sup>65</sup> Not only did minorities lose their homes in far greater proportions than white homeowners,<sup>66</sup> but banks have also been more likely to neglect the maintenance of foreclosed homes in minority communities.<sup>67</sup> Widespread

60. RHIANNON PATTERSON, U.S. CENSUS BUREAU, NEIGHBORHOOD EFFECTS ON HIGH-SCHOOL DROP-OUT RATES AND TEENAGE CHILDBEARING 12 (2008). See also PASTOR & TURNER, *supra* note 49, at 2 (citing numerous studies).

61. ANNE C. CASE & LAWRENCE F. KATZ, NAT'L BUREAU OF ECON. RESEARCH, THE COMPANY YOU KEEP: THE EFFECTS OF FAMILY AND NEIGHBORHOOD ON DISADVANTAGED YOUTHS at i (1991) ("Residence in a neighborhood in which a large proportion of other youths are involved in crime is associated with a substantial increase in an individual's probability of the being involved in crime."); ANNA AIZER, NAT'L BUREAU OF ECON. RESEARCH, NEIGHBORHOOD VIOLENCE AND URBAN YOUTH 19 (2008) (noting not only that violent neighborhoods create more exposure to violence among inhabitants but that "families living in violent neighborhoods are poorer, less educated and more likely to be Black or Hispanic than those living in non-violent neighborhoods.").

62. IRA GOLDSTEIN & DAN UREVICK-ACKELSBERG, KIRWAN INST. FOR THE STUDY OF RACE AND ETHNICITY, SUBPRIME LENDING, MORTGAGE FORECLOSURE AND RACE: HOW FAR HAVE WE COME AND HOW FAR DO WE HAVE TO GO? 8 (2008); Ngai Pindell, *The Fair Housing Act at Forty: Predatory Lending and the City as Plaintiff*, 18 J. AFFORDABLE HOUS. & CMTY. DEV. L. 160, 169–70 (2009).

63. JOINT CTR. FOR HOUS. STUDIES, HARVARD UNIVERSITY, CREDIT, CAPITAL AND COMMUNITIES: THE IMPLICATIONS OF THE CHANGING MORTGAGE BANKING INDUSTRY FOR COMMUNITY BASED ORGANIZATIONS (Mar. 9, 2004); Jesus Hernandez, *The Residual Impact of History: Connecting Residential Segregation, Mortgage Redlining, and the Housing Crisis*, KIRWAN FAIR HOUSING AND CREDIT INITIATIVE (Dec. 2009).

64. SIGNE-MARY MCKERNAN, CAROLINE RATCLIFFE, EUGENE STEUERLE & SISI ZHANG, URBAN INST., LESS THAN EQUAL: RACIAL DISPARITIES IN WEALTH ACCUMULATION 4 (2013).

65. Hernandez, *supra* note 63, at 19 ("Because the mortgage meltdown remains rooted in long-standing patterns of housing discrimination that shaped segregated space, racially defined residential space should be seen as 'ground zero' for the foreclosure crisis"). See also DEBBIE GRUENSTEIN BOCIAN ET AL., CTR. FOR RESPONSIBLE LENDING, FORECLOSURES BY RACE AND ETHNICITY: THE DEMOGRAPHICS OF A CRISIS 2 (2010); CALIFORNIA REINVESTMENT COALITION ET AL., PAYING MORE FOR THE AMERICAN DREAM: THE SUBPRIME SHAKEOUT AND ITS IMPACT ON LOWER-INCOME AND MINORITY COMMUNITIES at i (2008) [hereinafter PAYING MORE FOR THE AMERICAN DREAM]. For more information regarding deliberate targeting of minority communities for risky and predatory loans, see generally Nicholas Kristof, *A Banker Speaks, With Regret*, N.Y. TIMES (Nov. 30, 2011), <http://www.nytimes.com/2011/12/01/opinion/kristofbankerspeakswithregret.html>; Nathalie Baptiste, *Them That's Got Shall Get*, AM. PROSPECT (Oct. 12, 2014), <http://prospect.org/article/staggering-loss-black-wealth-due-subprime-scandal-continues-unabated>.

66. BOCIAN, *supra* note 65; PAYING MORE FOR THE AMERICAN DREAM, *supra* note 65, at i.

67. Stephen M. Dane, Tara K. Ramchandani & Anne P. Bellows, *Discriminatory Maintenance of REO Properties as a Violation of the Federal Fair Housing Act*, 17 CUNY L. REV. 384, 384 (2014). See also WILLIAM C. APGAR & MARK DUDA, COLLATERAL DAMAGE: THE MUNICIPAL IMPACT OF TODAY'S MORTGAGE FORECLOSURE BOOM 6 (2005) ("For municipalities, foreclosures trigger significant direct expenditures for increased policing and fire suppression, demolition contracts,

vacancy and neglect in minority communities has driven down property values and accelerated the forces of neighborhood decline for those homeowners who remain.<sup>68</sup>

Siting of affordable housing in low-income, high-minority neighborhoods and clustering public housing in huge projects that are geographically distant from amenities and commercial activity do not alleviate the long-term effects of poverty. Individual rental assistance will not stop the cycle of intergenerational inequality of opportunity, particularly if recipients remain in impoverished neighborhoods. Traditional approaches to housing affordability problems also do nothing to combat *de facto* housing segregation and its individual and systemic destabilizing effects. The government has long understood the need to provide a fertile ground in which the seeds of housing assistance can grow and bloom, but efforts to achieve this vision have been sporadic and in some cases ineffective.

The U.S. Department of Housing and Urban Development (“HUD”) has implemented several programs to transform neighborhoods.<sup>69</sup> Some of the most recent include the HOPE VI program, which provided local housing agencies with grants to be used to transform severely distressed public housing projects into mixed-income communities,<sup>70</sup> and the Choice Neighborhoods Initiative, which aimed not only at physical rehabilitation of deteriorating housing projects, but development of the surrounding neighborhoods.<sup>71</sup> In addition, the federal government attempted to implement several Promise Neighborhoods Initiatives, offering “cradle to career” childhood development programs for disadvantaged youth.<sup>72</sup> The Promise Neighborhoods Initiative focuses on education rather than the

building inspections, legal fees, and expenses associated with managing the foreclosure process (e.g., recordkeeping/updating).”).

68. Andrea J. Boyack & Robert Berger, *Bankruptcy Weapons to Terminate a Zombie Mortgage*, 54 WASHBURN L. REV. 451, 456 (2015).

69. PASTOR & TURNER, *supra* note 49, at 3.

70. Henry Cisneros, *A New Moment for People and Cities*, in FROM DESPAIR TO HOPE: HOPE VI AND THE NEW PROMISE OF PUBLIC HOUSING IN AMERICA’S CITIES (Henry G. Cisneros & Lora Engdahl, eds. 2009).

71. PASTOR & TURNER, *supra* note 49, at 4.

72. Anthony Biglan et al., *The Promise Neighborhoods Initiative: Improving Developmental Outcomes Through Comprehensive Interventions*, 2 J. INST. COMP. COMM. DEV. 1, 2 (2011). More information regarding the Promise Neighborhoods Initiative can be found at the Promise Neighborhoods website, <http://www.promiseneighborhoodsinstitute.org>.

physical home/neighborhood environment, but it does attempt to address the needs of all residents of a given neighborhood.<sup>73</sup>

These recent approaches represent an encouraging trend in that they address the problem in a more holistic way and attempt to incorporate public and private funding sources to rebuild failing neighborhoods and support the needs of their impoverished residents. To reach a tipping point in urban center revitalization, however, will require even bolder steps. Public affordable housing funds are not currently allocated in a way that will achieve a broad, multi-faceted vision for urban renewal. To do that, public funding needs to support all aspects of a neighborhood—infrastructure, safety, schools, as well as housing.

At first blush, it sounds ludicrous to allocate affordable housing funding to neighborhood gentrification, but encouraging income and racial mixing through controlled redevelopment is perhaps the only way to affirmatively further fair housing in failing urban centers. The advantage to using public funds in gentrification projects is that the funds can come with strings attached.<sup>74</sup> The strings of control can harness private capital for public (as well as private) benefit, using the tools of zoning and targeted investment. Zoning and investment allocations should be specifically designed to achieve the highest levels of equity among the individual beneficiaries, and affordable housing tools can be tweaked to ensure the fairest result.

Supply-side affordable housing tools could easily be re-employed in a neighborhood-centric revitalization effort. Community block grants could further zoom-out their focus and authorize funding of things like transportation networks, well-located grocery stores, and mixed-use high-rise buildings, with designated affordable units alongside market-rate ones. LIHTCs could be used not only to promote development of more affordable housing units in the abstract, but also to help create vibrant integrated “revitalizing communities” and “opportunity-rich

73. Tatian, et al., *supra* note 31, at 2. See also Corey Bunje Bower & Rachel Rossi, *How Do Promise Neighborhoods' Strategies Align with Research Evidence on Poverty and Education?* (June 29, 2016), <https://ssrn.com/abstract=2832936>.

74. Federal agencies have very little direct control over private development or even local land use activities, but can have dramatic impacts through their requirements for agency funds or agency participation in lending in such communities. For example, through the Fair Housing Act, HUD can require that municipalities taking HUD funds meet certain requirements with respect to their development activities as well as with respect to the use of the funds. Fannie Mae, Freddie Mac, and the Federal Housing Authority all are very large player in the residential mortgage market, so their prerequisites for insuring or buying mortgages set the standard for private developers, because private developers understand that meeting FHA expectations will make capital more available to their buyers, and thus allow them to charge higher prices.

communities.”<sup>75</sup> Funding for a holistic redevelopment should combine and coordinate (a) the litany of currently available affordable housing funding programs with (b) sources outside the affordable housing institutions and programs, including the capital providers that currently fund market rental projects.

Government-sponsored enterprises like Fannie Mae and Freddie Mac (the “GSEs”)<sup>76</sup> present a rich and untapped source for coordinated funding of community revitalization.<sup>77</sup> More than three-fourths of multi-family credit comes from the GSEs.<sup>78</sup> Fannie and Freddie capital does not represent public funds, but rather a publicly structured securitization and investment method of obtaining private investment capital. The GSEs do not currently fund below-market rentals, but rather attempt to increase the liquidity of the capital markets for at-market housing projects.<sup>79</sup> Harnessing the market power of the GSEs to the wagon of integrated revitalization is attractive because the GSEs represent the possibility of providing vastly more development capital at virtually zero additional taxpayer cost, without the loss of government oversight and control.<sup>80</sup> Capital availability would

75. The Brookings Institute made this suggestion back in 2007. OPPORTUNITY 08, *supra* note 40, at 12. “Revitalizing communities” referred to communities with “the broadest possible mix of incomes.” *Id.* To date, the LIHTC has not focused on this qualitative aspect of affordable housing, however, and has stressed quantity over location. *Id.* at 2.

76. For details on the structure and purposes of Fannie Mae and Freddie Mac, see generally Robert Van Order, *Understanding Fannie and Freddie*, BLOGSPOT (Jul. 31, 2008), <http://real-estate-and-urban.blogspot.com/2008/07/robert-van-order-on-fannie-and-freddie.html>. “In addition to Fannie Mae and Freddie Mac, there are twelve Federal Home Loan Banks (the FHLBs, sometimes called the “mini-GSEs”). These banks perform similar functions as Fannie Mae and Freddie Mac (providing funds to originating lending institutions.” Andrea J. Boyack, *Laudable Goals and Unintended Consequences: The Role and Control of Fannie Mae and Freddie Mac*, 60 AM. U. L. REV. 1489, 1495 n.19 (2011) [hereinafter, *Laudable Goals*]. For more on the roles played by Fannie and Freddie, see generally *id.*

77. See *Nation of Renters*, *supra* note 23, at 39–40.

78. NATIONAL MULTI HOUSING COUNCIL HOUSING FINANCE REFORM: THE MULTIFAMILY PERSPECTIVE, [www.nmhc.org/Content/ContentList.cfm?NavID=435](http://www.nmhc.org/Content/ContentList.cfm?NavID=435) [hereinafter NMHC Perspective]; Nick Timiraos, *Fannie, Freddie Woes Hurt Apartments*, WALL ST. J. (Nov. 18, 2009), <http://www.wsj.com/articles/SB10001424052748704538404574542114098963886>.

79. NMHC Perspective, *supra* note 78. The GSE’s multifamily rental finance role was envisioned to allocate private funds to provide housing to those who can afford to pay reasonable housing costs, freeing up governmental funds to provide subsidies to people who cannot. *Laudable Goals*, *supra* note 76, at 1506–08. “Fannie Mae and Freddie Mac developed expertise in profitably providing financing to the middle of the rental market, where housing is generally affordable to moderate-income families.” U.S. DEP’T OF TREAS. & U.S. DEP’T OF HOUS. AND URBAN DEV., REFORMING AMERICA’S HOUSING FINANCE MARKET: A REPORT TO CONGRESS 20 (Feb. 2011), <http://www.treasury.gov/initiatives/Documents/Reforming%20America's%20Housing%20Finance%20Market.pdf>. The vast bulk of below-market housing costs, on the other hand, are provided through the FHA. Anthony Pennington-Cross & Anthony M. Yezer, *The Federal Housing Administration in the New Millennium*, 11 J. HOUSING RES. 357, 360–61 (2000).

80. CTR. FOR AM. PROGRESS, A RESPONSIBLE MARKET FOR RENTAL HOUSING FINANCE: ENVISIONING THE FUTURE OF THE U.S. SECONDARY MARKET FOR MULTIFAMILY RESIDENTIAL RENTAL MORTGAGES 1 (2010), <https://www.americanprogress.org/wp-content/uploads/issues/2010/10/pdf/multifamilyhousingreport.pdf>. More than 30 million of the 36.7

be even further increased if the GSEs began to regularly securitize their multi-family loan portfolios.<sup>81</sup>

Like the affordable housing capital providers, the GSEs currently focus their rental housing lending on large multi-family projects. A mixed-income and mixed-use renovated urban core that includes all types of housing, however, must plan and provide for rental units outside of the “big box” of large apartment rentals. Smaller multifamily rentals (below 50 units) may be more flexibly incorporated into mixed-use buildings in a revitalized downtown area. Townhomes and duplexes too may provide cheaper (or, conversely, larger and more luxurious) rental options that could help a neighborhood be attractive to a blend of income earners. The GSEs have a particular blind spot with respect to “single-family” rentals (the GSEs define “single-family” as 1-4 unit structures), and do not routinely make rental market loans secured by this product. Many of the oldest rental options, and most minority-owned rental structures, are these one- to four-unit, single-family buildings. In order to have a diverse, multi-income community, the GSEs (and other lenders) should be given the flexibility to provide capital support for all types of housing, not just owner-occupied, on the one hand, and large multi-family rental housing projects, on the other. The ubiquitous housing product of the smaller one- to four-unit rentals is shut out from GSE consideration and, accordingly, is denied a very valuable source of development capital.

Another counterproductive limitation on GSE lending involves restrictions on mixed-use developments. “By definition, walkable communities have a mix of housing and non-residential uses in settings ranging from high-rise urban neighborhoods to traditional downtowns to newer suburban main streets.”<sup>82</sup> HUD and GSE requirements that limit the amount of non-residential space within developments they finance stymie efforts to fund these sorts of mixed-use, walkable communities, cutting some of the most promising, most valuable, and most sustainable models of

million rental units in America have not subsidized in any way by the federal government. *Id.* at 9; JOINT CTR FOR HOUSING STUDIES OF HARVARD UNIV, AMERICA’S RENTAL HOUSING: THE KEY TO A BALANCED NATIONAL POLICY 12 fig. 12 (2008). *See also* Michael Stoler, *Fannie, Freddie, and the Multifamily Market*, N.Y. SUN, Sept. 18, 2008, at 2 (explaining that the multifamily housing sector was “holding up the best” even at the height of the crisis, but that if the GSEs focused on their single family problems and ignored multi-family lending, that could change).

81. NMHC Perspective, *supra* note 78; INGRID GOULD ELLEN, JOHN NAPIER TYE & MARK A. WILLIS, NYU FURMAN CTR. FOR REAL ESTATE AND URBAN POLICY, IMPROVING U.S. HOUSING FINANCE THROUGH REFORM OF FANNIE MAE AND FREDDIE MAC: ASSESSING THE OPTIONS 30–31 (2010). It is less necessary and more difficult to pool and securitize multifamily rental loans, however, because they are individually bigger and more idiosyncratic than single-family residential mortgages.

82. CHRISTOPHER JONES & SARAH SERPAS, REGIONAL PLAN ASSOCIATION, THE UNINTENDED CONSEQUENCES OF HOUSING FINANCE 2 (2016).

revitalization off from federal funding sources.<sup>83</sup> This unjustified barrier to modern urban (and suburban) redevelopment is even greater because private lenders regularly adopt the GSE underwriting requirements as their own, magnifying the effect of a FHA, HUD, and GSE exclusion for mixed use properties or for certain types of housing products.<sup>84</sup> Because of such limitations, mixed-use, walkable developments are currently more difficult and costly to finance than other sorts of real estate developments.<sup>85</sup>

Purely in the private sector, local, regional, and neighborhood financial institutions—aided perhaps by Wall Street creativity—could design investment products with respect to value-creating commercial endeavors and higher-end residential development within the same neighborhoods. For example, perhaps because the GSEs have ignored this type of rental product, Wall Street has recently targeted single-family rental housing as a new type of collateral for securitized real estate investments.<sup>86</sup> In just two years (2012–2014), private investors poured nearly \$20 billion into single-family-rental-backed securitized debt pools.<sup>87</sup> The single-family rental (“SFR”) securitization structure is somewhat similar to the infamous mortgage-backed securitization (“MBS”) structure. Rather than establishing a pool of debt obligations secured through liens on individual properties, the SFR properties are held by a Wall Street subsidiary company, and instead of tens of thousands of individual loans secured by individual mortgages, investors share lender interests in one huge loan to the company that is secured by thousands of mortgages on the individual

83. *Id.*

84. *Id.*

85. *Id.* at 4; Joseph Gyourko & Witold Rybczynski, *Financing New Urbanism Projects: Obstacles and Solutions* (The Wharton Sch., U. of Pa., Working Paper No. 330, 2000), <http://xwhartonrealestate.merchantquest.net/news/newsletter/pdf/apr00.pdf>; EMILY TALEN, ORAM FOUND. REP., PROSPECTS FOR WALKABLE, AFFORDABLE NEIGHBORHOODS 1, 11 (2011); John Norquist, *Roadblock on Main Street*, THE AM. CONSERVATIVE (Nov. 18, 2014), <http://www.theamericanconservative.com/articles/roadblock-on-main-street/>.

86. ROB CALL, HOMES FOR ALL CAMPAIGN OF THE RIGHT TO THE CITY ALLIANCE, RENTING FROM WALL STREET: BLACKSTONE’S INVITATION HOMES IN LOS ANGELES AND RIVERSIDE 15 (2014) [hereinafter, RENTING FROM WALL STREET]. Analysts now predict a near trillion-dollar single-family rental securitization market by 2019. Kerri Ann Panchuk, *Single-family Rental Securitization Market Boasts Near Trillion-dollar Potential*, HOUSING WIRE (Nov. 1, 2013), <http://www.housingwire.com/articles/27772-single-family-rental-%20securitization-market-boasts-trillion-dollar-potential>.

87. RENTING FROM WALL STREET, *supra* note 86, at 9. See also Sarah Edelman, Julia Gordon & David Sanchez, *When Wall Street Buys Main Street: The Implications of Single-Family Rental Bonds for Tenants and Housing Markets* CTR. FOR AM. PROGRESS (Feb. 27, 2014), <https://www.americanprogress.org/issues/housing/report/2014/02/27/84750/when-wall-street-buys-main-street-2/>.

properties that the company owns and rents out.<sup>88</sup> Wall Street's creativity in response to market rental demand is an example of how broader, project-level financing might be able to proceed.

It is worth exploring how new and newly combined funding approaches could contribute to a holistic renewal of a declining city center. For example, it might be easier to achieve a holistic vision for revitalization if the GSEs and other capital providers were completely freed from property-level lending and instead provided funds at the mezzanine (entity) level. The entity could hold a mortgage lien on all the property in an urban core, and investors could participate in the loan in a way similar to that being explored in the private SFR securitizations. This sort of micro-securitization approach could spread risk and could funnel lending to building a diverse, sustainable neighborhood, not just to developing isolated, individual properties or rental units. Another way to creatively acquire capital would be to look to under-explored sources of private investment in a renewed center city. The possibilities for creative fundraising exist along the entire spectrum, from the grassroots to the global level. Locals could participate in funding their city-center rehabilitation through land banks and community investment products, for example, and broader, international investment capital could be sought online through crowdfunding.

The recent experiences of HUD with respect to HOPE VI, Promise Neighborhoods, and the like do signal an increasing willingness to think more broadly with respect to improving neighborhood viability, not just individual outcomes for aid recipients.<sup>89</sup> "But experience also teaches that transforming distressed neighborhoods into 'communities of choice and opportunity' is time-consuming, expensive, and operationally challenging. Funders have to be willing to invest over many years and to wait for desired outcomes while community institutions and residents get organized

88. LAURIE GOODMAN, URBAN INST., SINGLE-FAMILY SECURITIZED FINANCING: A BLUEPRINT FOR THE FUTURE? (2014), <http://www.urban.org/sites/default/files/alfresco/publication-pdfs/412992-Single-Family-Securitized-Financing-A-Blueprint-for-the-Future-.pdf>. SFR securitization should theoretically be less risky because a diversified corporate entity, rather than a collection of individual owners, holds the title to the collateral and because the properties' collateral value derives from a rental income stream, not from a predicted resale value and appreciation gains. The value provided and risks posed by SFR securitization is currently in debate. See DAN MADGER & LAURIE GOODMAN, URBAN INST., SINGLE FAMILY RENTALS: A NEW APPROACH TO AFFORDABLE HOUSING 3 (2015), <http://www.urban.org/sites/default/files/alfresco/publication-pdfs/2000423-Single-Family-Rentals-A-New-Approach-to-Affordable-Housing.pdf>.

89. PASTOR & TURNER, *supra* note 49, at 3 (recent experience offers some basis for optimism that well-conceived and well-implemented investments can catalyze meaningful improvements, not just for *places*, but for the *people* who live in them).

and build capacity.”<sup>90</sup> The complexity of the project and the long-time horizon of the community investment is why the private sector alone will not soon achieve the sort of integrated, sustainable urban cores that the country needs. Government assistance must be repurposed to this end, and government housing policy must take the lead.

#### IV. ZONING: WITH GREAT POWER COMES GREAT RESPONSIBILITY

“This is not the rebuilding of cities. This is the sacking of cities. . . current city rebuilding is a hoax.” ~ Jane Jacobs<sup>91</sup>

Gentrification excites builders and investors, but raises deep concerns for affordable housing and fair housing scholars and advocates.<sup>92</sup> Truly, neighborhood revitalization in practice has a dismal history with insidious racial overtones. Nearly all city revitalization efforts over the past century have resulted in relocating impoverished households out of their communities in an effort to replace lower-income earners with higher-income earners.<sup>93</sup> According to one widely cited estimate, over a million people, mostly minorities, have been forced to vacate their homes because of urban renewal.<sup>94</sup> In the 1970s and 1980s, blight removal programs deliberately relocated populations from their urban neighborhoods in order to sanitize city centers and supposedly prepare the ground for redevelopment.<sup>95</sup> More recently, gentrification efforts that focused on raising urban core property values did not directly displace poorer inhabitants, but the resulting skyrocketing rentals may have been equally

90. *Id.*

91. JANE JACOBS, *THE DEATH AND LIFE OF GREAT AMERICAN CITIES* 6–7 (1961).

92. *See generally* BERNARD J. FRIEDEN & LYNNE B. SAGALYN, *DOWNTOWN, INC.: HOW AMERICA REBUILDS CITIES* (1989); JOHN R. MAUREEN KENNEDY & PAUL LEONARD, *DEALING WITH NEIGHBORHOOD CHANGE: A PRIMER ON GENTRIFICATION AND POLICY CHOICES* (2001); JOHN R. LOGAN & HARVEY L. MOLOTCH, *URBAN FORTUNES: THE POLITICAL ECONOMY OF PLACE* (1987); NEIL SMITH, *THE NEW URBAN FRONTIER: GENTRIFICATION AND THE REVANCHIST CITY* (1996).

93. *See generally* HERBERT J. GANS, *THE URBAN VILLAGERS: GROUP AND CLASS IN THE LIFE OF ITALIAN-AMERICANS* (updated and expanded ed. 1982); JACOBS, *supra* note 91. *See also* ROGER FRIEDLAND, *POWER AND CRISIS IN THE CITY: CORPORATIONS, UNIONS AND URBAN POLICY* 62–68 (1983); LAWRENCE M. FRIEDMAN, *GOVERNMENT AND SLUM HOUSING: A CENTURY OF FRUSTRATION* 159 (1968); FRIEDEN & SAGALYN, *supra* note 92, at 52.

94. MARTIN ANDERSON, *THE FEDERAL BULLDOZER: A CRITICAL ANALYSIS OF URBAN RENEWAL, 1949–1962* 53–56, 67 (1964).

95. Urban core revitalization projects caused the destruction of more than 400,000 low-income dwellings by 1971, “an act of destruction that separated and divided the residents of central cities in a manner similar to the use of exclusionary zoning in the suburbs.” Jerry Frug, *The Geography of Community*, 48 *STAN. L. REV.* 1047, 1084 (1996). Municipal siting of zoning authority was encouraged and authored by the U.S. Department of Commerce and supported by federal policies. *See also* FRIEDLAND, *supra* note 93, at 62–68.



effective at driving impoverished locals from their homes.<sup>96</sup> Many efforts to keep poorer residents in place have been ineffective.<sup>97</sup> Rent control and rent stabilization require attentive enforcement because they work against the current of economic self-interest.<sup>98</sup> Funding might help create a city center that can attract commercial and higher-income residential interests, but it must work alongside inclusive zoning to enable poorer locals to remain in place as their neighborhood improves.

In city centers, municipalities have historically used both exclusive zoning and eminent domain powers to clear out low-income inhabitants, purportedly in order to bolster the redeveloped area's property values. In *Berman v. Parker*, Justice Douglas articulated the perceived importance of using these governmental powers (zoning and takings) in the context of "slum clearance" to prevent the "cycle of decay:"

[Existing low-income housing] may also be an ugly sore, a blight on the community which robs it of charm, which makes it a place from which men turn. The misery of housing may despoil a community as an open sewer may ruin a river.<sup>99</sup>

Local concerns of poverty and crime contagion from allowing existing inhabitants to remain after re-development are misplaced.<sup>100</sup> Furthermore, the Fair Housing Act mandates, and the vision of integrated future cities requires, that zoning be re-thought and re-purposed to encourage diversity rather than root it out.<sup>101</sup> Reactions to HUD's recent Affirmatively Furthering Fair Housing Rule spotlights the tension between fair housing advocates—often labeled anti-development—and developers and advocates of revitalization—often painted as hostile to fair housing concerns. Categorical opposition to urban renewal on the grounds of potential

96. Lawrence Friedman bemoaned that "high-cost housing . . . eliminated blight and slum conditions just as efficiently as low-cost housing, and perhaps a good deal more so." FRIEDMAN, *supra* note 93.

97. "Academic solutions to gentrification tend to look like Peter Marcuse's supply-side proposals in his article 'Gentrification, Abandonment, and Displacement'—a series of development controls that would heavily restrict development in desirable and gentrifying neighborhoods. In today's high-demand, low-elasticity markets, this is precisely the wrong strategy for housing advocates who want to moderate housing price increases and avoid displacement." John Mangin, *The New Exclusionary Zoning*, 25 STAN. L. & POL'Y REV. 91, 112–13 (2014).

98. See, e.g., Louis W. Fisher, *Paying for Pushout: Regulating Landlord Buyout Offers in New York City's Rent-Stabilized Apartments*, 50 HARV. C.R.-C.L. L. REV. 491, 507 (2015).

99. *Berman v. Parker*, 348 U.S. 26, 32–33 (1954).

100. See Jens Ludwig & Jeffrey R. Kling, *Is Crime Contagious?* 50 J. L. & ECON. 491, 491 (Aug. 2007). See also notes 150–153, *infra*, and accompanying text.

101. AFFH Rule, *supra* note 45. See also Orfield, *supra* note 46; Infranca, *supra* note 46, at 1103–0446; notes 126–138, *infra*, and accompanying text.

disparate treatment throws the proverbial baby out with the bath water. Urban cores need both gentrification and integration to survive. Redevelopment of city centers is not harmful if accomplished sensibly and sensitively. Emerging data suggests that the threat of gentrification is both overblown and manageable as long as redevelopment creates diverse and inhabited city centers of tomorrow rather than the high-rise office-centric after-hours-desolate city centers of decades past.<sup>102</sup> Equitable gentrification is the key to obtaining neighborhood safety and sustainability that impoverished households so critically need.<sup>103</sup>

Redevelopment is therefore something to be promoted, but only, of course, if 21<sup>st</sup> century urban renewers can learn from 20<sup>th</sup> century urban renewal's unjustifiable collateral damages. Housing inequity was exacerbated—not ameliorated—by urban renewal projects of the past. For example, in 1954, Detroit destroyed the vibrant minority community of Black Bottom and displaced approximately 140,000 people to build a new highway and new development projects, none of which led to a sustainable or integrated city core.<sup>104</sup> As Justice Thomas pointed out in his dissent in *Kelo v. City of New London*,<sup>105</sup> the vast majority of households displaced by urban renewal projects in St. Paul, Minnesota, Baltimore, Maryland, Washington, DC, and Detroit, Michigan were non-white households, and the public and subsidized housing demolished in such projects were never replaced.<sup>106</sup> Thomas chided the court that “[u]rban renewal projects have long been associated with the displacement of

102. Michael Lewyn, *Zoning and Land Use Planning*, 43 REAL EST. L.J. 344, 346 (2014). Professor Lewyn argues that academic literature's “anti-gentrification narrative is focused on a few relatively prosperous cities where housing costs are mushrooming out of control, allegedly creating displacement. For example, news media frequently discuss gentrification in New York, Washington and San Francisco. But . . . even these cities have more poverty and lower median incomes than their suburbs.” *Id.*

103. *See generally* Byrne, *supra* note 9.

104. *See generally* THOMAS J. SUGRUE, THE ORIGINS OF THE URBAN CRISIS: RACE AND INEQUALITY IN POSTWAR DETROIT (1996); John Gallagher, Op-Ed, *When Detroit Paved Over Paradise: The Story of I-375*, DET. FREE PRESS, Dec. 13, 2013 (“Named for the rich dark soil that French explorers first found there, the Black Bottom district in the 1940s and ‘50s housed the city’s African-American entrepreneurial class, with dozens of thriving Black-owned businesses and the Paradise Valley entertainment zone, where Duke Ellington, Ella Fitzgerald and Count Basie performed.”); Carrie Da Via, *A Brief History of Detroit’s Black Bottom Neighborhood*, ROGUE HAA, (May 18, 2012), <http://roguehaa.com/a-brief-history-of-detroits-black-bottom-neighborhood/> (“Like other urban renewal projects, significant areas of the former Black Bottom neighborhood remained vacant for over half of a decade.”).

105. 545 U.S. 469, 521–22 (2005) (Thomas, J., dissenting). “If ever there were justification for intrusive judicial review of constitutional provisions that protect ‘discrete and insular minorities,’ surely that principle would apply with great force to the powerless groups and individuals the Public Use Clause protects.” *Id.* (citation omitted).

106. *Id.* at 522.

blacks; “[i]n cities across the country, urban renewal came to be known as ‘Negro removal.’”<sup>107</sup> Thomas bemoaned the fact that “[o]ver 97 percent of the individuals forcibly removed from their homes by the ‘slum-clearance’ project upheld by this Court in *Berman* were black.”<sup>108</sup> With the benefit of hindsight, it is now abundantly clear that twentieth century urban renewal via eminent domain decimated minority communities and failed to achieve sustainable city growth.

Sensible and sensitive project planning can avoid displacement of vulnerable populations and ensure that anyone involuntarily relocated be provided subsidized housing opportunities to remain in the same general area. Ensuring that people may remain in urban cores at their option requires that redevelopment include residential housing of all types, and that the residential housing becomes and remains affordable. Both of these outcomes depend on changing zoning and planning to encourage rather than discourage multiple uses in the same geographic area as well as funding a significant increase in the supply of affordable (and market) housing.<sup>109</sup>

Zoning is inextricably local and often driven by parochial political concerns.<sup>110</sup> Local control of land use seems only natural, based on the geographically targeted impact of land use regulations.<sup>111</sup> Historically, there have been many instances where use of zoning power appears to have been driven by discriminatory animus and an insular us-versus-them mindset.<sup>112</sup> The net effect of a century of zoning laws has been to create,

107. *Id.* (citing Pridgett, *The “Public Menace” of Blight: Urban Renewal and the Private Uses of Eminent Domain*, 21 *YALE L. & POL’Y REV.* 1, 47 (2003)).

108. *Id.*

109. *See supra* part II. *See also Nation of Renters*, *supra* note 23.

110. *See generally* KENNETH T. JACKSON, *CRABGRASS FRONTIER: THE SUBURBANIZATION OF THE UNITED STATES* (1985).

111. Municipal control of land use, however, exists because the states have allocated that power to the local governments. EDWARD M. BASSETT, *ZONING: THE LAWS, ADMINISTRATION, AND COURT DECISIONS DURING THE FIRST TWENTY YEARS* 13–19 (1936). There is no legal reason why the states could not have either retained police power over land use decisions or allocated that power in some other way. *See Frug, supra* note 95, at 1081. Municipal siting of zoning authority was encouraged and authored by the U.S. Department of Commerce and supported by federal policies. *Id.*

112. In fact, zoning began as a racially discriminatory effort to quarantine Chinese laundries (in California) and limit competition from immigrant garment workers (in New York). PETER HALL, *CITIES OF TOMORROW* 86–135, 285 (1988). Early racial zoning established particular areas designated for certain races—much as later *Euclidian* zoning divided particular areas designated for certain uses. CHRISTOPHER SILVER & JOHN V. MOESER, *THE SEPARATE CITY: BLACK COMMUNITIES IN THE URBAN SOUTH, 1940–1968* 21 (1995). Overtly racial zoning laws were ultimately struck down by the Supreme Court. *Buchanan v. Warley*, 245 U.S. 60, 78 (1917). But zoning laws have created racially discriminatory effects even thereafter. *See Sarah Schindler, Architectural Exclusion: Discrimination and Segregation Through Physical Design of the Built Environment*, 124 *YALE L.J.* 1934, 1975–90 (2015).

enshrine, and perpetuate racial housing segregation.<sup>113</sup> As Professor Krug put it, “[c]ity control over land use has contributed more to the dispersal and separation of metropolitan residents than any other city activity.”<sup>114</sup> Indeed, zoning has been a significant vehicle through which the “long history of legally permissible physical exclusion in the United States” has been accomplished.<sup>115</sup>

Land use law has never operated independently from federal judicial oversight, which has both bolstered and constrained local zoning power.<sup>116</sup> Federal support of local zoning power began with the Commerce Department’s circulation of standard language for zoning enabling statutes.<sup>117</sup> The Supreme Court in *Euclid v. Ambler Realty* upheld local power to exclude certain land uses (including apartment rental uses) from single-family residential areas within a community.<sup>118</sup> The seminal *Euclid* opinion validated local zoning decisions based on the rational relation test and echoed common judicial themes heralding the value single-family residential communities. These decisions legitimized local desires to protect more affluent—and typically white—communities from the purportedly disastrous consequences of proximity to higher density—and typically poorer and non-white—residential housing.<sup>119</sup> The Supreme Court in *Euclid* called a multifamily rental apartment building “a mere parasite, constructed in order to take advantage of the open spaces and attractive surroundings created by the residential character of the district.”<sup>120</sup> According to Justice Sutherland’s opinion, multifamily housing was incompatible with high-quality residential living and would cause harm by “detracting from [community] safety and depriving children of the privilege of quiet and open spaces for play.”<sup>121</sup> Fifty years after *Euclid*, the

113. Many scholarly articles and books support this assertion. See, e.g., GERALD E. FRUG, LOCAL GOVERNMENT LAW 380 n.1 (2d ed. 1994) (listing numerous sources treating exclusionary zoning); WILLIAM A. FISCHER, THE ECONOMICS OF ZONING LAWS: A PROPERTY RIGHTS APPROACH TO AMERICAN LAND USE CONTROLS 316–40 (1985); John M. Ross, *Land Use Control in Metropolitan Areas: The Failure of Zoning and a Proposed Alternative*, 45 S. CAL. L. REV. 335, 349 (1972).

114. Frug, *supra* note 95, at 1081.

115. Schindler, *supra* note 112, at 1974.

116. Frug, *supra* note 95, at 1081.

117. *Id.*

118. *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 389 (1926).

119. As one scholar glibly explained: “The basic purpose of suburban zoning was to keep Them where They belonged—Out. If They had already gotten In, then its purpose was to confine Them to limited areas. The exact identity of Them varied a bit around the country. Blacks, Latinos, and poor people always qualified. Catholics, Jews, and Orientals were targets in many places. The elderly also qualified, if they were candidates for public housing.” FRANK J. POPPER, THE POLITICS OF LAND-USE REFORM 54 (1981).

120. *Euclid*, 272 U.S. at 394.

121. *Id.*

Supreme Court further glorified the value of (usually white) suburban communities in dicta that reads like sentimental, pastoral prose.<sup>122</sup> In *Village of Belle Terre v. Boraas*, Justice Douglas described a single-family enclave as: “[a] quiet place where yards are wide, people few, and motor vehicles restricted,” asserting that there are “legitimate guidelines in a land-use project addressed to family needs” in locations where “family values, youth values, and the blessings of quiet seclusion and clean air make the area a sanctuary for people.”<sup>123</sup>

One subtle way that zoning has kept populations separate in both cities and suburbs has been to separate residential housing by “housing type.” Starting with *Euclid*, apartment buildings have been geographically separated from single-family homes, and even duplexes and tri-plexes are often situated apart from single-family residences. Large lots are grouped together, and smaller homes are sited in higher-density neighborhoods. Residential property (particularly single-family homes) are kept away from commercial uses. The reach and impact of exclusionary zoning is vast. It is true that modern zoning laws do not directly require that occupants of better neighborhoods earn certain income levels (or be of a certain race, of course), but even requirements as superficially innocuous as lot-size requirements, square-footage minimums for homes, leasing prohibitions, or occupancy restrictions create segregationary effects.<sup>124</sup> This segregation by housing type has insured that the country’s population remains fragmented by income and by race.<sup>125</sup>

Exclusionary zoning that clusters housing by type creates a discriminatory impact that adversely affects minority populations and, as such, violates the provisions of the Fair Housing Act.<sup>126</sup> This

122. This example and the term “sentimental pastoralism,” were used by Professor Frug, *supra* note 95, at 1082.

123. *Village of Belle Terre v. Boraas*, 416 U.S. 1, 7 (1974).

124. Schindler, *supra* note 112, at 1979–87. See also Lawrence Gene Sager, *Tight Little Islands: Exclusionary Zoning, Equal Protection, and the Indigent*, 21 STAN. L. REV. 767, 780–82 (1960); J. Peter Byrne, *Are Suburbs Unconstitutional?*, 85 GEO. L.J. 2265, 2265–66 (1997); Andrea J. Boyack, *American Dream in Flux: The Endangered Right to Lease a Home*, 49 REAL PROP. TR. & EST. L. J. 203 (2014) [hereinafter *Right to Lease*]; Rolf Pendall et al, *Connecting Smart Growth, Housing Affordability, and Racial Equity*, in THE GEOGRAPHY OF OPPORTUNITY: RACE AND HOUSING CHOICE IN METROPOLITAN AMERICA 220 (Xavier de Souza Briggs, ed. 2005); Paul Boudreaux, *Lotting Large: The Phenomenon of Minimum Lot Size Laws*, 68 ME. L. REV. 1, 38 (2016); Anthony Downs, *Reducing Regulatory Barriers to Affordable Housing Erected by Local Governments*, in HOUSING MARKETS AND RESIDENTIAL MOBILITY 257–58 (G. Thomas Kingsley & Margery Austin Turner, eds. 1993); Stacy E. Seicshnaydre, *The Fair Housing Choice Myth*, 33 CARDOZO L. REV. 967, 993 (2012).

125. See generally Schindler, *supra* note 112. Schindler also explains that based on exclusionary zoning law, physical infrastructure was designed and built that creates long-lasting discriminatory impacts as well.

126. *Id.* at 1979–80. This effect was acknowledged by the Supreme Court in its recent *Inclusive Communities* decision. 135 S. Ct. 2507, 2515 (2015). The Supreme Court requires that there be a policy

discriminatory impact also likely reflects discriminatory intent.<sup>127</sup> After all, “economic segregation is not only the easiest but also the most effective form of racial and ethnic segregation.”<sup>128</sup> Because the discriminatory effect of exclusionary zoning is “well documented and widely practiced,”<sup>129</sup> this use of zoning is ripe for invalidation under the Fair Housing Act’s disparate impact approach, legitimized in the 2015 *Inclusive Communities* case.<sup>130</sup> This is true, even though traditionally courts have treated local zoning decisions with a great deal of deference.<sup>131</sup>

If local laws (and federal Fair Housing oversight) stay true to the Fair Housing Act and the AFFH Rule, zoning authorities must start to take disparate impact into account in earnest.<sup>132</sup> The *Inclusive Communities* decision makes it clear that neither urban revitalization efforts *nor* affordable housing production and placement will be valid unless persistent segregated housing patterns are also addressed.<sup>133</sup> According to *Inclusive*

behind a discriminatory effect before the effect is actionable, but “local land use policy has long been linked to race and class exclusion.” XAVIER DE SOUZA BRIGGS, *Politics and Policy*, in GEOGRAPHY OF OPPORTUNITY: RACE AND HOUSING CHOICE IN METROPOLITAN AMERICA 220 (Xavier de Souza Briggs ed. 2005). Because exclusionary zoning is rife with racial disparate impact and segregatory effect, “the new generation of efforts to rethink the management of local development will have to pursue inclusionary growth quite intentionally if inclusion is a goal.” *Id.*

127. Schindler, *supra* note 112, at 1980–81.

128. Norman Williams, Jr., *Planning Law and Democratic Living*, 20 L. & CONTEMP. PROBS. 317, 330 (1955). See also Wayne Batchis, *Suburbanization and Constitutional Interpretation: Exclusionary Zoning and the Supreme Court Legacy of Enabling Sprawl*, 8 STAN. J. C.R. & C.L. 1, 37 (2012) (“Wealth and race share an unfortunate correlation in America; and while the relationship is not as strong as it once was, minorities in America are still saddled with a disproportionate share of poverty and economic despair.”); Byrne, *supra* note 124, at 2277 (“Although it is sometimes asserted that exclusionary practices result merely from the pursuit of economic self-interest by suburban residents, the history of suburban expansion makes the conclusion that it is also driven by a desire for racial isolation inescapable.”).

129. Lior Jacob Strahilevitz, *Exclusionary Amenities in Residential Communities*, 92 VA. L. REV. 437, 465–66 (2006).

130. 135 S. Ct. at 2518 (2015); Stacy Seichshnaydre, *Disparate Impact and the Limits of Local Discretion After Inclusive Communities*, 24 GEO. MASON L. REV. (Sept. 2016) (manuscript at 2) (on file with Tulane U. L. Sch). Importantly, the case clarified that proof of discriminatory intent is not necessary to maintain an action under the Fair Housing Act. *Inclusive Communities*, 135 S. Ct. at 2507.

131. Schindler, *supra* note 112, at 1981–87; ROBERT C. ELLICKSON ET AL., *LAND USE CONTROLS*, 741, 763 (4th ed. 2013); Harold A. McDougall, *From Litigation to Legislation in Exclusionary Zoning Law*, 22 HARV. C.R.-C.L. L. REV. 623, 623–24 (1987); Jonathan Rothwell & Douglas S. Massey, *The Effect of Density Zoning on Racial Segregation in U.S. Urban Areas*, 44 URB. AFF. REV. 779 (2009); Rolf Pendall, *Local Land Use and the Chain of Exclusion*, 66 J. AM. PLAN. ASS’N 125, 140 (2000).

132. See generally The Fair Housing Act of 1968, 42 U.S.C. §§ 3601–3619 (2006); Dep’t of Housing and Urban Dev., *Affirmatively Furthering Fair Housing; Final Rule*, 80 Fed. Reg. 42272, 42353 (July 16, 2015). See also James J. Kelly, Jr., *Affirmatively Furthering Neighborhood Choice: Vacant Property Strategies and Fair Housing*, 46 U. MEMPHIS L. REV. 1009, 1011 (2016); Seichshnaydre, *supra* note 130, at 32.

133. Even though the Court recognized revitalization as a “valid” exercise of local discretion, de-segregation must be a priority and taken into account when designing a revitalization project. 135 S. Ct. at 2522–25 (explaining that housing policies must be carried out in a way to remove “artificial,

*Communities*, the Fair Housing Act prohibits any zoning or other housing practices that cause a disparate impact or perpetuate segregation unless the state interest served by the practice cannot be achieved in another, less-discriminatory way.<sup>134</sup> This decision interprets the Fair Housing Act in a way that significantly limits local zoning power. Local governments no longer have discretion to decide *whether* to overcome segregation, only *how* to do so.<sup>135</sup>

The new HUD AFFH Rule, passed in the aftermath of *Inclusive Communities*, imposes an affirmative duty on municipalities and any other actors receiving HUD funds to take:

meaningful actions that, taken together, address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially and ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws.<sup>136</sup>

Under this approach, revitalization must simultaneously lessen racial isolation, and affordable housing siting decisions can no longer concentrate poverty and perpetuate segregation.<sup>137</sup> In other words, “local discretion exercised with the effect of expanding housing choice and integration is entitled to deference,” whereas “[l]ocal discretion exercised with the effect of restricting housing choice and building on segregation and racial

arbitrary, and unnecessary barriers,” citing *Griggs v. Duke Power Co.*, 401 U.S. 424, 431 (1971)). See also Seichshnaydre, *supra* note 130, at 23.

134. 135 S. Ct. at 2524–25. See also 24 C.F.R. § 100.500 (2014). Courts have assigned to the defendant the burden of proving that state interests could not be achieved by a less discriminatory practice, but HUD’s rule places on the plaintiff the burden of proof as to the availability of a less discriminatory alternative. Seichshnaydre, *supra* note 130, at 9. The Supreme Court did not address the burden of proof issue, because it did not grant certiorari on that question. 135 S. Ct. at 2514. See also *Inclusive Communities Project v. Texas Dep’t of Housing and Comm’y Affairs*, 2016 WL 4494322, No. 08-0546 (N.D. Tex. Aug. 26, 2016), at \*6, \*9 (dismissing the plaintiff’s suit based on failure to plead a prima facie case, applying the HUD and Fifth Circuit burden-shifting regimen). The Seventh Circuit previously articulated the concept that either of the two kinds of discriminatory effects, namely greater adverse impact on a particular racial group *or* perpetuation of segregation, can form the basis of a disparate impact claim under the Fair Housing Act. *Metropolitan Housing Dev. Corp. v. Vill. Of Arlington Heights*, 558 F.2d 1283, 1290 (7th Cir. 1977) (citing *Trafficante v. Metro. Life Insur. Co.*, 409 U.S. 205, 209–10 (1972)). This approach had been previously endorsed by the Second and Eighth Circuits. *Kennedy Park Homes Assoc., Inc. v. City of Lackawanna*, 436 F.2d 108, 113 (2d Cir. 1970); *United States v. City of Black Jack*, 508 F.2d 1179, 1188 (8th Cir. 1974).

135. Seichshnaydre, *supra* note 130, at 7.

136. Dep’t of Housing and Urban Dev., 80 Fed. Reg. 42353 (July 16, 2015). See also Kelly, *supra* note 132, at 1018–19.

137. Seichshnaydre, *supra* note 130, at 37–38; 135 S. Ct. at 2525. HUD has specifically indicated that “the siting of public housing developments in segregated areas” is an example of an impermissible disparate impact. United States Dep’t of Housing and Urban Dev’t., *Expanding Opportunity Through Fair Housing Choice*, EVIDENCE MATTERS (Spring/Summer 2014), <https://www.huduser.gov/portal/periodicals/em/spring14/highlight1.html> [hereinafter *Expanding Opportunity*].

isolation is invalid and subject to challenge.”<sup>138</sup> Applying this rule, an integrated gentrification program would pass Constitutional muster, while a revitalization program that did not specifically address integration would likely fail.

Before 2015, disparate impact analysis has occasionally been applied to zoning and design decisions regarding community infrastructure and architecture.<sup>139</sup> With the *Inclusive Communities* precedent and renewed HUD commitment to affirmatively furthering fair housing, however, it may be time to more aggressively root out persistent regulations and policies that create an unjustified discriminatory or segregationary impact. Furthermore, any new zoning decisions, gentrification plans, and even siting of affordable housing units must all affirmatively take into account racial and socioeconomic data in order to ensure that segregation is neither increased nor perpetuated by the contemplated actions.<sup>140</sup>

In addition to federal fair housing mandates, several states have reined in the discriminatory practices of local zoning authorities, and further state legislative mandates could be another effective way to harness zoning power for the general public good. California, for example, has enacted “Fair Share” legislation that requires local governments to either participate in the production and siting of affordable housing or forfeit their claims to state and federal affordable housing funds.<sup>141</sup> The New Jersey Supreme Court invalidated exclusionary zoning practices in the seminal case of *South Burlington County NAACP v. Township of Mount Laurel* (“Mount Laurel I”).<sup>142</sup> Soon after, New Jersey established a state administrative agency, the Council on Affordable Housing, to help coordinate affordable housing siting throughout the state.<sup>143</sup> A handful of other state courts have

138. Seichshnaydre, *supra* note 130, at 17. *See also*, Expanding Opportunity, *supra* note 137.

139. *E.g.*, *Huntington Branch, N.A.A.C.P. v. Town of Huntington*, 844 F.2d 926, 937–38 (2d Cir. 1988) (holding that a zoning decision that precluded siting of a multi-family apartment building outside of a concentrated minority neighborhood “significantly perpetuated” and “reinforced racial segregation in housing” and “impede[d] integration.”). *See also* Seichshnaydre, *supra* note 130, at 22–23 (127 discussing this decision and line of judicial reasoning).

140. Dep’t of Housing and Urban Dev., Fed. Reg. 42353 (July 16, 2015). *See* Kelly, *supra* note 132; Seichshnaydre, *supra* note 130, at 37; Orfield, *supra* note 46, at 1763. *See also* *Inclusive Communities*, 135 S. Ct. at 2525.

141. PASTOR & TURNER, *supra* note 49, at 10; Nico Calavita et al, *Inclusionary Zoning in California and New Jersey: A Comparative Analysis*, 8 HOUSING POL’Y DEBATE 109, 118 (1997). Smaller and wealthier localities are more apt to choose autonomy over funds, however. Paul G. Lewis, *California’s Housing Element Law: The Issue of Local Noncompliance*, PUB POL’Y INST. OF CA., 1, 11–12(2003).

142. 336 A.2d 713 (N.J. 1975). *See also* the successor to that case, *S. Burlington County NAACP v. Township of Mount Laurel (Mount Laurel II)*, 456 A.2d 390 (N.J. 1983).

143. Calavita et al, *supra* note 141, at 112. Until the loophole was closed in 2008, however, the New Jersey Agency was less effective because it allowed “regional contribution agreements,” however,



relied on the *Mount Laurel* decisions to place some (albeit modest) limitations on local zoning power to concentrate poverty through exclusionary siting of affordable housing.<sup>144</sup> In Massachusetts, an “Anti-Snob Zoning” law allowed affordable housing decisions to be appealed to a state rather than local zoning board, and this approach has helped increase the equity of affordable housing distribution in that state.<sup>145</sup>

Ensuring that redevelopment does not exclude lower-income urban residents is, of course, just one side of the coin. The most impoverished neighborhoods are currently highly segregated by race and income, and thus moving higher-income people and businesses into a poor neighborhood is the very thing that both redevelopment and housing integration aim to achieve. If done correctly, gentrification can create quality center-city neighborhoods that are healthy and attractive to higher-income households. Instead of allowing impoverished households to improve their environment by moving “to Opportunity,” integrative gentrification can move opportunity to these neighborhoods.<sup>146</sup>

Recent changes in housing preferences and demographic patterns means that this opportunity is now knocking. Housing experts have suggested that the era of suburbanization is drawing to an end, and housing patterns are reversing toward re-urbanization.<sup>147</sup> More upper-income people are expressing interest in moving to center cities, idealizing the amenity proximity and car independence that a well-functioning city center could provide.<sup>148</sup> A gentrified city center may indeed provide many high-valued goods for its residents, and pockets of gentrification in cities have already proven to be very attractive, both to new household-creating Millennials and to members of other generational groups, including downsizing baby boomers and Generation X’ers disillusioned with suburbia.<sup>149</sup> Higher income households will not relocate to a city center that remains distressed, however. In order to attract residents, business, and

wealthier jurisdictions have been able to make payments to cities instead of actually including affordable housing units in their jurisdictions. PASTOR & TURNER, *supra* note 49.

144. *Township of Willistown v. Chesterdale Farms, Inc.*, 341 A.2d 466, 468 (Pa. 1975); *Britton v. Town of Chester*, 595 A.2d 492, 495 (N.H. 1991).

145. PASTOR & TURNER, *supra* note 49; Sharon Perlman Krefetz, *Low- and Moderate-Income Housing in the Suburbs: The Massachusetts “Anti-Snob Zoning” Law Experience*, 8 POL’Y STUD. J. 288, 288–299 (2005).

146. For a description of the “Moving to Opportunity” experiment and the value of “high opportunity neighborhoods,” see *supra* note 30.

147. See *supra* note 10 and accompanying text.

148. See, e.g., ALAN EHRENHALT, *THE GREAT INVERSION AND THE FUTURE OF THE AMERICAN CITY* (2013).

149. *Id.* See also *Nation of Renters*, *supra* note 23, at 5–6 (discussing each generation’s particular motivations for renting rather than ownership).

investment, the city center needs to be reborn as a place of safety, good infrastructure, and schools.

Urban community redesign therefore must not only be inclusive in terms of housing types (including affordable housing) and residential income levels, it must also achieve the good neighborhood trifecta: safety, infrastructure, and schools. The “interconnected problems” of distressed cities, including not only lack of adequate housing, but lack of jobs, poor public services and schools, failing infrastructure, and lack of investment, must be addressed in concert.<sup>150</sup> As long as urban neighborhoods are denied safety, services, and amenities, their residents who have the financial wherewithal will flee. During the era of suburbanization, that is precisely what happened in cities across the nation, and population and wealth loss has caused these neighborhoods’ continuing downward spiral.<sup>151</sup> The exodus of their higher-income residents decimated the tax base of these cities, doubling down on the community’s high poverty and directly leading to municipal financial ruin and, among other things, horrific public schools.<sup>152</sup> Crime rate and school quality are two of the most salient factors affecting housing choice, and thus negative changes in these areas have accelerated the flight from the distressed communities, ensuring that this cycle continues. None of these factors can be solved in isolation because they are all connected. Although HOPE VI, Promise Neighborhoods and similar programs have begun to address the problem of declining neighborhoods in coordination with affordable housing goals, these initiatives have yet to achieve the necessary breadth to tackle these factors comprehensively.<sup>153</sup>

150. PASTOR & TURNER, *supra* note 49 at 7.

151. *See supra* note 9. Flight from the inner cities has been most extreme in the older cities of the east and the manufacturing centers of the northeast and Midwest, where city-center jobs have either evaporated or relocated. *Detroit*, *supra* note 48.

152. James E. Ryan, *Schools, Race, and Money*, 109 *YALE L.J.* 249, 272–73 (1999) (“Four general characteristics set urban schools apart from their suburban counterparts: student composition, student poverty, student performance, and dropout rates.” “Urban schools educate two-thirds of all African-American students, nearly half of other minority students, but less than a quarter of white students.”). The vast disparity between public schools sited in and serving high-poverty, predominantly minority urban areas and their counterparts in white suburbs just a few miles away is astounding. A report in *Education Week* disclosed that the majority of inner-city 4<sup>th</sup> graders “can’t read and understand a simple children’s book, and most 8th graders can’t use arithmetic to solve a practical problem.” Lynn Olson & Craig D. Jerald, *The Achievement Gap*, *EDUC. WKLY.* (Jan. 8, 1998), at 10.

153. PASTOR & TURNER, *supra* note 49 at 3–8; Pastor and Turner describe a “class of foundation-sponsored neighborhood revitalization initiatives” known as Comprehensive Community Initiatives (CCIs) that attempt to achieve this broader focus. *Id.* at 7–8; CCIs are described in a lengthy document published by The Aspen Institute’s Roundtable on Community Change entitled *COMMUNITY CHANGE: THEORIES, PRACTICE, AND EVIDENCE*, (Karen Fulbright-Anderson & Patricia Auspos, eds., 2006), <https://assets.aspeninstitute.org/content/uploads/files/content/docs/rcc/COMMUNITYCHANGE-FINAL.PDF> [hereinafter *COMMUNITY CHANGE*].

Municipal governments have long used exclusionary zoning to address public fear of “otherness” (often couched as fear of crime) and worries about falling property values.<sup>154</sup> Fears of uncontrollable crime and creeping poverty are somewhat irrational, however. Safety is, of course, paramount for stable urban communities.<sup>155</sup> But although high-poverty, majority-minority areas experience high crime, empirical studies indicate that it would be easier to address crime if these areas became integrated, multi-income, multi-use neighborhoods.<sup>156</sup> Criminal behavior is “not contagious.”<sup>157</sup> Neighborhood racial and income integration would not only help combat crime, but also help combat poverty, particularly taking the long view. Localized poverty means that an area is not self-sustaining in terms of tax revenue produced compared with municipal aid required.<sup>158</sup> High-poverty areas create a community culture that may inhibit individual academic achievements.<sup>159</sup> There is no adequate economic or social justification for concentrating poverty. Income segregation in a community does not increase wealth or property values in higher-income neighborhoods. In places where affordable housing has in fact been sited near higher-income housing, this placement has not caused economic harm.<sup>160</sup>

154. Frug, *supra* note 95, at 1083–84. Private “zoning” through neighborhood covenants have attempted to be responsive to the same concerns and achieve the same sorts of ends. *See, e.g.,* Strahilevitz, *supra* note 129; Rigel C. Oliveri, *Is Acquisition Everything? Protecting the Rights of Occupants Under the Fair Housing Act*, 43 HARV. C.R.-C.L. L. REV. 1 (2008); David J. Kennedy, *Residential Associations as State Actors: Regulating the Impact of Gated Communities on Nonmembers*, 105 YALE L.J. 761, 768 (1995); *Right to Lease*, *supra* note 124, at 286–88.

155. Amie M. Schuck & Dennis P. Rosenbaum, *Promoting Safe and Healthy Neighborhoods: What Research Tells Us about Intervention* in COMMUNITY CHANGE, *supra* note 153, at 66 (explaining how “neighborhood safety is a necessary condition for an individual to grow and develop and to become a fully functioning, healthy, productive member of society”).

156. “Neighborhood racial segregation appears to be the most important explanation for across-neighborhood variation in arrests for violent crimes in our sample, perhaps because drug market activity is more common in high-minority neighborhoods.” Jens Ludwig & Jeffrey R. Kling, INST. FOR THE STUDY OF LAB., *Is Crime Contagious?* (July 2009).

157. *Id.*

158. *See supra* note 8.

159. Students in impoverished neighborhoods face both systemic and cultural barriers to achievement, including a lack of role models and the powerful herd instinct that discourages school success. In the context of a low-achieving, predominantly minority, inner-city school, an individual who does show some interest and ability in school is sometimes mocked and criticized as “acting white.” Signithia Fordham & John U. Ogbu, *Black Students’ School Success: Coping with the “Burden of Acting White”*, 18 URB. REV. 176, 181–82 (1986). Fordham and Ogbu conducted a study of black students at a public high school in Washington, D.C., and black students indicated that speaking standard English, working hard to get good grades or actually getting good grades, spending a lot of time in the library studying, or being on time to school amounted to “acting white.” *Id.* at 186.

160. *See generally* LEN ALBRIGHT, ELIZABETH L. DERIKSON, & DOUGLAS S. MASSEY, OFFICE OF POP. RES., PRINCETON UNIV., *DO AFFORDABLE HOUSING PROJECTS HARM SUBURBAN COMMUNITIES? CRIME, PROPERTY VALUES, AND PROPERTY TAXES IN MT. LAUREL, NEW JERSEY* (2011).

Transportation and walkability are also critical features of sustainable city infrastructure.<sup>161</sup> It is particularly important that grocery stores, medical facilities, schools, and community amenities be available to people dependent on foot transport.<sup>162</sup> Employment opportunities within the community or easily available through public transportation are also critical to enabling people without cars to move into or remain in revitalized urban neighborhoods.<sup>163</sup> Walkability and public transportation are essential to an integrated, sustainable city reformation, in particular because the existing transit infrastructure design likely reflects discriminatory motives.<sup>164</sup> More affluent suburbs in many metropolitan areas have eschewed public transportation connections to city centers out of a “desire to block access by certain ‘undesirable’ people who ride transit (for example, people of color and the poor).”<sup>165</sup> The racial discriminatory intent and effect of transportation infrastructure was recognized by Dr. Martin Luther King, who pointed out that the transit systems (or the lack thereof) in many cities were specifically designed to keep minorities from getting “meaningful employment” and moving “into the mainstream of American Life.”<sup>166</sup> King called urban transit systems “a genuine civil rights issue.”<sup>167</sup> Other racial transportation architecture that requires remediation includes one-way and dead-end streets that were designed to impede access between “black” and “white” neighborhoods.<sup>168</sup>

Reforming racially discriminatory transportation design not only promotes integration and equity, it also is good planning. Car-dependence in cities results in a waste of valuable land: “More than half of the land area in the central business districts of Chicago, Boston, Detroit, and Los

161. *Id.*

162. *Id.*

163. “The spatial dispersion of entry-level jobs, reliance on cars and highways for commuting, and the exclusion of affordable housing options from many opportunity-rich suburban communities all exacerbate concentrated poverty.” Pastor & Turner, *supra* note 49.

164. Schindler, *supra* note 112, at 1960–73.

165. *Id.* at 1962; see generally Jason Henderson, *Secessionist Automobility: Racism, Anti-Urbanism, and the Politics of Automobility in Atlanta, Georgia*, 30 INT’L J. URB. & REGIONAL RES. 293 (2006). See also Strahilevitz, *supra* note 129, at 487–88; Catherine L. Ross & Nancey Green Leigh, *Planning, Urban Revitalization, and the Inner City: An Exploration of Structural Racism*, 14 J. PLAN. LIT., 367, 377 (2000).

166. Schindler, *supra* note 112, at 1963 n.133 (quoting Dr. Martin Luther King’s *Testament* (citation omitted)).

167. *Id.*

168. *Id.* at 1970–72, 2003–2010. See also *City of Memphis v. Greene*, 451 U.S. 100, 137 (1981) (Marshall, J., dissenting) (criticizing the majority holding that closing off a street connecting a black neighborhood to a white neighborhood was not actionable discrimination); THOMAS ROSS, *JUST STORIES: HOW THE LAW EMBODIES RACISM AND BIAS* 43 (1996).

Angeles is devoted to motor vehicle movement and storage.”<sup>169</sup> Creating more walkable, transit-focused urban cores that include or are easily accessible from quality residential areas will help the city center retain value and attract residents and businesses.<sup>170</sup> City centers that are accessible and attractive to people after business hours become more valuable as they evolve into vibrant and desired places to work and to live.<sup>171</sup> Today’s renewed demand for urban housing focuses on mixed-use urban neighborhoods, and thus city design that incorporates elements of walkability, transit access, and commercial and residential integration will better attract the investment and income increases that come with gentrification.<sup>172</sup>

In addition to public transit and housing for all income levels, city center neighborhoods should include retail, office, and other sorts of commercial uses. This is not to say that it is always inappropriate to geographically separate incompatible land uses, because surely it makes sense to place a cement factory and a cattle feedlot operation away from residential housing.<sup>173</sup> But separate siting of residential, office, and various other sorts of commercial properties is less justifiable, and it may improve neighborhood value and quality of life if grocery stores, churches, schools, coffee shops, laundromats, restaurants, florists, clothing stores, entertainment venues, doctors’ and dentists’ offices, and a wide variety of places of employment were located near housing. Use-based clustering in the suburbs has created car dependence. Car dependence means that extensive areas must be allocated to parking rather than to more productive uses. In urban cores in particular, car dependence and extensive parking requirements create undesirable outcomes.<sup>174</sup>

169. Gilbert Paul Verbit, *The Urban Transportation Problem*, 124 U. PA. L. REV. 368, 398–99 (1975).

170. *Id.* at 487.

171. See generally JOHN KROMER, *FIXING BROKEN CITIES: THE IMPLEMENTATION OF URBAN DEVELOPMENT STRATEGIES* (2009); LARRY KEATING, *ATLANTA: RACE, CLASS, AND URBAN EXPANSION* (2010). A recent ad calling for residential development in New York City’s Water Street—a newly renovated commercial district in downtown Manhattan, called the commercial-centric development “a textbook example of what’s wrong with America’s downtowns: windswept, empty after business hours, with too few stores and restaurants.” *The Cutting Edge at the Water’s Edge*, DOWNTOWN EXPRESS, <http://www.downtownexpress.com/alliance/thecuttingedge.html>.

172. See generally EHRENHALT, *supra* note 148.

173. See, e.g., *Boomer v. Atlantic Cement*, 26 N.Y.2d 219 (1970); *Spur Industries v. Del E. Webb Development Co.*, 108 Ariz. 178 (1972).

174. See, e.g., Michael Lewyn & Judd Schechtman, *No Parking Anytime: The Legality and Wisdom of Maximum Parking and Minimum Density Requirements*, 54 Washburn L.J. 285 (2015); Michael Lewyn, *What Would Coase Do? (About Parking Regulation)*, 22 Fordham Envtl. L. Rev. 89 (2010); DONALD C. SHOUP, *PLANNERS GONE WILD: THE OVERREGULATION OF PARKING THE HIGH COST OF FREE PARKING*, (2005).

Urban zoning does a better job than most suburbs in combining uses, but even in cities, properties are often segregated by use, with offices clustered in one area, retail properties elsewhere, and residences in still other locations. Clustering high-rise office buildings away from residences and locating shopping into self-contained malls—rather than being interspersed in neighborhoods—keeps downtown areas fractionalized, less inviting, and possibly less safe. Professor Frug points out that the “design of the new office buildings had a segmenting effect on central cities.”<sup>175</sup> Large office buildings in downtown areas are often huge, unitary-use structures that are “laid out in ways that emphasized their separation from the surrounding area.”<sup>176</sup> Furthermore, downtowns nearly exclusively used as office space become ghost towns after work hours, a fact that creates safety and community viability issues.<sup>177</sup>

Urban re-design that locates employment venues near homes and retail near residential and office can create a downtown community of harmonious inclusion and synergies with respect to residential integration and walkability, rather than a fractionalized physical reality that re-enforces separation by income and race. It is also critical to locate shopping (including grocery shopping) and entertainment venues in revitalized urban cores in order to make these areas more inviting and livable. Impoverished neighborhoods are much more likely to lack convenient sources of healthy foods. Many low-income neighborhoods exist in a “food desert,” far away from grocery stores.<sup>178</sup> Financial services are other important businesses that should be located near residences in a re-designed city center. Most inhabitants in majority-minority inner-city neighborhoods today lack access to mainstream financial services.<sup>179</sup> When high-poverty neighborhoods are located in a “financial desert,” their residents “often rely on payday lenders, pawn shops, and cash checkers” for financial services.<sup>180</sup> These businesses

175. Frug, *supra* note 95, at 1081.

176. *Id.*; FRIEDEN & SAGALYN, *supra* note 92, at 41. See also Keith Aoki, *Race, Space, and Place: The Relation Between Architectural Modernism, Post-Modernism, Urban Planning, and Gentrification*, 20 FORDHAM URB. L.J. 699, 826 (1993); Schindler, *supra* note 112.

177. LARRY BENNETT, FRAGMENTS OF CITIES: THE NEW AMERICAN DOWNTOWNS AND NEIGHBORHOODS 25–47 (1990).

178. “Approximately 23.5 million people, or 8.5% of the U.S. population, live in low-income neighborhoods located more than a mile from a supermarket. These areas have been dubbed ‘food deserts’ because they do not have a sufficient supply of healthy and affordable food options.” CAITLIN LOFTUS, AN APPLE A DAY—IF YOU CAN FIND ONE—KEEPS THE DOCTOR AWAY: HOW FOOD DESERTS HURT AMERICA’S HEALTH AND HOW EFFECTIVE LAND USE REGULATION CAN ELIMINATE THEM, 35 No. 3 ZONING AND PLANNING L. REP. 1 (2012).

179. Pastor & Turner, *supra* note 49.

180. *Id.* See generally MATT FELLOWES, BROOKINGS INST. METROPOLITAN POL’Y PROGRAM, FROM POVERTY TO OPPORTUNITY: PUTTING THE MARKET TO WORK FOR LOWER INCOME FAMILIES (2006).

on the fringes of financial institutions subject their customers to costly and predatory financial practices and stymie economic stability.<sup>181</sup> According to Manuel Pastor and Margery Austin Turner, “[e]xpanding banking services may be one of the most effective and lowest-cost place-based antipoverty policies available.”<sup>182</sup>

Finally, revitalizing the city does not mean razing what is there and starting anew, but nor does it necessarily mean keeping residents in current, dilapidated homes. Because of the ubiquitous problem of deteriorating and aging housing stock, community redesign must plan for systematic updates to existing housing when it is economically feasible, in addition to building new units in order to grow the volume of housing stock.<sup>183</sup> Public housing in dire need of rehabilitation, for example, could be overhauled and repurposed, as HOPE VI attempted to do.<sup>184</sup> Rehabilitating and adding new housing units, particularly affordable housing units, is the centerpiece of an integrative gentrification plan, which is why funding through affordable housing initiatives both makes sense and is requisite. If the housing supply (both affordable and market) is not expanded as a neighborhood revitalizes, rents will predictably climb. The best way to keep rents manageable is to feed the supply at the same time as the surrounding area is improved.<sup>185</sup>

Recently proposed legislation, such as the Housing Opportunities Through Modernization Act of 2016, attempts to achieve optimum use of funds by giving local agencies broad discretion and flexibility.<sup>186</sup> This

181. Pastor & Turner, *supra* note 49; MATT FELLOWES & MIA MABANTA, BROOKINGS INST. METROPOLITAN POL’Y PROGRAM, BANKING ON WEALTH: AMERICA’S NEW RETAIL BANKING INFRASTRUCTURE AND ITS WEALTH-BUILDING POTENTIAL 6–8 (2008).

182. Pastor & Turner, *supra* note 49.

183. William Apgar, *Rethinking Rental Housing: Expanding the Ability of Rental Housing to Serve as a Pathway to Economic and Social Opportunity*, JOINT CENTER FOR HOUSING STUDIES, HARVARD UNIVERSITY (December 2004), at 3.

184. The Center for Budget and Policy Priorities estimates that \$26 million is immediately required to adequately rehabilitate and maintain public housing. CTR FOR BUDGET AND POL’Y PRIORITIES, BIPARTISAN HOUSING BILL WOULD CUT COSTS, REDUCE HOMELESSNESS, AND IMPROVE ACCESS TO HIGH OPPORTUNITY NEIGHBORHOODS (2016), [http://www.cbpp.org/sites/default/files/atoms/files/hotma-factsheet\\_-\\_final.pdf](http://www.cbpp.org/sites/default/files/atoms/files/hotma-factsheet_-_final.pdf).

185. See *Nation of Renters*, *supra* note 23; Lewyn, *supra* note 102 (explaining that “when a city attempts to restrict new housing by limiting density, the alleged harm caused by gentrification is actually *more* likely to happen: rents will rise. By contrast, in a city with ample housing supply, even if gentrification makes one neighborhood unusually popular, other neighborhoods will continue to be affordable”). Professor Lewyn cites San Francisco as an example of a city that “aggressively limits new housing” and has thus caused the massive housing affordability problem that plagues that region. *Id.*

186. CTR FOR BUDGET AND POLICY PRIORITIES, *supra* note 184. The House of Representatives unanimously passed the Housing Opportunities Through Modernization Act (H.R. 3700) in February 2016. If it is passed the Senate and is signed into law, the Act would be the first major authorizing federal legislation affecting voucher and public housing programs since the Quality Housing and Work Responsibility Act in 1998. WILL FISCHER, CTR ON BUDGET AND POLICY PRIORITIES, HOUSING BILL UNANIMOUSLY PASSED BY HOUSE WOULD BUILD ON EFFECTIVENESS OF RENTAL ASSISTANCE (2016).

approach will work only if local agencies can avoid political capture by self-interested groups and strive to create equitable, mixed-income, mixed-race, and mixed-use neighborhoods that benefit the entire population, rather than what passed for “revitalization” in the 20<sup>th</sup> century.

## V. CONCLUSION

Successfully integrating our renovating city centers is increasingly becoming essential policy, on grounds of equity as well as stability. The 21<sup>st</sup> Century city centers must be re-formed on a different model than that of the past—one that embraces population diversity, mixed-use properties, modernized infrastructure, community amenities, and walkability. Capital market rules and practices, as well as historic approaches to affordable housing, must change to embrace and promote this vision. Zoning powers “need to be reconceived in a way that promotes community building rather than the dispersal and separation of metropolitan residents.”<sup>187</sup>

The mandate is both practical and legal. Durable recovery, declining urban cores will require rehabilitation of the physical infrastructure of the city, including its streets, its transportation, its services, and its buildings.<sup>188</sup> Fair housing law mandates integrative gentrification, but this is also good urban planning.<sup>189</sup> Mixed-income communities are more vibrant and sustainable, and rental rates remain tethered to reality when housing supply is not artificially limited. Multi-income and multi-ethnic gentrification will be most likely to create a successful neighborhood, one “whose conditions and change trajectories enhance the well-being of the families and children that live within them and, in particular, support the advancement of their socioeconomic status.”<sup>190</sup>

Following the legal requirements of fair housing law and the wisdom of doing what works, municipalities should immediately remove the numerous insidious zoning and zoning-created barriers to integration, and

187. Frug, *supra* note 95, at 1081.

188. Tariq Taherbhai, *Urban Infrastructure: Keeping Economies and People Healthy*, THEONEBRIEF.COM (July 19, 2016), <http://www.theonebrief.com/urban-infrastructure-keeping-economies-and-people-healthy/> (“Established cities must build, maintain, and upgrade extensive transport, power, water and telecommunication networks, in order to keep up with the demands of economic development and population growth. This infrastructure is necessary to continue to progress societies and improve living standards.”).

189. Racially segregated communities creates a “fundamental cleavage in American Society.” MASSEY & DENTON, *supra* note 3, at 221–23. Numerous scholars, social scientists, policy-makers, and activists have called for an end to racial segregation of housing. See, e.g., Richard Thompson Ford, *The Boundaries of Race: Political Geography in Legal Analysis*, 107 HARV. L. REV. 1843, 1847 (1994); *Government by the Nice, for the Nice*, ECONOMIST, July 25, 1992, at 26.

190. Tatian et al., *supra* note 31, at 2.



replace these with integration-promoting land use structures. Zoning plans should be revised to incentivize renewal and creation of all types of housing in every possible place. Other aspects of neighborhood infrastructure should likewise be aggressively re-defined to encourage diversity and sustainability. Diverse residential land uses in a community make occupancy more accessible to would-be residents of all ages, races, and incomes. Combining residential uses with compatible commercial uses, such as shopping, employment, services and amenities, will improve the quality of life for the neighborhood's inhabitants, increase property values, and attract investment. Integrative gentrification is the way to stabilize our urban cores and finally achieve Dr. King's vision of a community of diverse people, all living in a quality neighborhood, side by side.