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RENTING DIVERSITY: AIRBNB AS THE MODERN FORM OF HOUSING DISCRIMINATION

INTRODUCTION

Who and what determines a neighborhood's worth? What does it mean to be an "up-and-coming" neighborhood? An influx of new houses, businesses, and people into a given neighborhood contributes to gentrification.¹ New businesses often attract individuals without familial or historical ties to the neighborhood.² Particularly in Chicago, up-and-coming neighborhoods were initially inhabited by *Blacks and **Hispanics.³ New up-and-coming neighborhoods such as, Woodlawn, Hyde Park, Pilsen, and Humboldt Park are culturally and historically Black and Hispanic.⁴ While new residents may have been attracted to diverse neighborhoods with lower rent, their arrival often displaces long-time residents and increases the cost of living.⁵ The deep and systemic impact of gentrification cannot be measured by statistics or spreadsheets alone, but require an understanding of the shift in cultural values as well.⁶

A myriad of economic and cultural factors contribute to gentrification, especially a lack of regulation on the burgeoning "sharing econ-

1. Denise Lapenas & Bob Turner, *Historic Preservation: Gentrification or Economic Development*, SKIDMORE COLLEGE (Dec. 2002), <http://www.skidmore.edu/~bturner/ED%20Student%20Web%20Files/dlapenas5.html>.

2. *Id.*

* Throughout this article 'Black' will be capitalized as a reference to cultural diversity among people because of their racial or ethnic backgrounds versus visible complexion. Merrill Perlman, *Black and White: Why Capitalization Matters*, COLUM. JOURNALISM REV. (June 2015), https://www.cjr.org/analysis/language_corner_1.php.

** Throughout this article 'Hispanic' will be capitalized as a reference to the geographical or ethnic origin of a group of people. *Id.*

3. *Id.*; see generally, Akiim DeShay, *Chicago Metro Black Demographic Profile*, BLACK DEMOGRAPHICS, <http://blackdemographics.com/cities-2/chicago/>; CMW Staff, *Chicago's Latino Communities: Diverse, Growing*, COMMUNITY MEDIA WORKSHOP (May 2005), <http://www.newstips.org/briefing-papers/chicagos-latino-communities-diverse-growing/>.

4. Jason Prechtel, *How Humboldt Park Residents Are Fighting Gentrification*, CURBED CHI. (Oct. 23, 2014), <http://chicago.curbed.com/2014/10/23/10032102/humboldt-park-residents-are-fighting-gentrification>. In 1930, the "Great Black Migration" resulted in Chicago having the nation's third largest Black population, with most settling on the city's South Side. The largest percentage came from Mississippi, but Black people also migrated from Louisiana, Arkansas, Alabama, Tennessee, Kentucky, and East Texas. DeShay, *supra* note 3; CMW Staff, *supra* note 3.

5. Prechtel, *supra* note 4.

6. *Id.*

omy.”⁷ Online marketplaces such as Airbnb have created a series of new markets, which have increased the size of the online economy.⁸ Federal laws like the Fair Housing Act (FHA) have traditionally protected individuals from discrimination that excluded them from entry *into* a neighborhood based on their race.⁹ However, a lack of regulation on the sharing economy has contributed to another form of housing discrimination—pushing residents *out of* neighborhoods.¹⁰ Specifically, the sharing economy perpetuates gentrification, adversely affecting neighborhoods historically inhabited by Blacks and Hispanics.¹¹ Online marketplaces such as Airbnb have a twofold impact on housing discrimination.¹² First, they disregard the original residents by promoting an image that the neighborhood is up-and-coming.¹³ Second, their services remove units from the housing market as property owners use units for short-term rather than long-term rentals.¹⁴ As long-term rental opportunities decrease, property values simultaneously increase.¹⁵ This has the desired effect of attracting wealthy people to the neighborhood, which prices out the original residents.¹⁶

This Comment argues that housing rights should not be limited to providing access to certain neighborhoods, but should also provide equal access to sufficient long-term housing options.¹⁷ Congress should consider an often overlooked reason as to why Airbnb needs to be regulated: to ensure hosts do not violate the right to fair housing in communities predominantly populated by minorities.¹⁸ This Comment attempts to view this problem through the lens of the families blindsided by gentrification, pulled from their cultural roots, and rendered unable to afford a life in their own community.

7. Benjamin Edelman et. al., *Racial Discrimination in the Sharing Economy: Evidence from a Field Experiment*, 23 (Harv. Bus. Sch. Working Paper No. 16-069, 2016), http://www.hbs.edu/faculty/Publication%20Files/16-069_5c3b2b36-d9f8-4b38-9639-2175aaf9ebc9.pdf. A sharing economy is an economic system in which services are shared between individuals, typically for a fee and by means of the Internet. *Id.*

8. *Id.* at 19.

9. *Id.* at 3; Fair Housing Act, 42 U.S.C. §§ 3601 *et seq.* (1968).

10. Edelman, *supra* note 7, at 2.

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.*

16. Edelman, *supra* note 7, at 2.

17. See discussion *infra* Part I.B.

18. Emily Badger, *Redlining: Still a Thing*, WASH. POST, May 28, 2015, https://www.washingtonpost.com/news/wonk/wp/2015/05/28/evidence-that-banks-still-deny-black-borrowers-just-as-they-did-50-years-ago/?utm_term=.1f4646ad831e.

Part II of this Comment discusses (1) the sharing economy and how Airbnb differs from anonymous online marketplaces;¹⁹ (2) the combined effect of the sharing economy and economic factors that lead to gentrification;²⁰ and (3) the Civil Rights Act of 1964 (CRA) and FHA as they relate to housing access. Part III argues that while the CRA and FHA regulate rights to housing, they should also ensure fair housing access. This Comment examines how the lack of local ordinances allows companies like Airbnb to operate unchecked. In turn, this has created barriers for people of color through gentrification, a new form of redlining. Part IV examines the risks posed by gentrification and details why the lack of a regulatory scheme must be addressed. Finally, this Comment asserts that Congress should enact legislation that provides equal access to the housing stock in cities like Chicago.

II. BACKGROUND

Part A begins by explaining the sharing economy, and defining first-generation and second-generation online marketplaces.²¹ Next, Part A outlines the history of Airbnb, and describes its operations and locations.²² Part B and C examine the economic factors that lead to gentrification, the impact of gentrification on low-income residents, and the overall racial and economic changes to neighborhoods.²³ Part D identifies the federal laws that regulate the housing market and their role in regulating housing equality.²⁴

A. *Sharing Economy*

Online platforms are designed to “create new markets by eliminating search frictions, building trust, and facilitating transactions.”²⁵ Although they are designed to create fair and inclusive transactions, these platforms have also reduced anonymity for users.²⁶ This has resulted in the creation of two distinct online sharing platforms: the first-generation and the second-generation.²⁷ The critical distinction

19. Vanessa Katz, *Cyberlaw: Regulating the Sharing Economy*, 30 BERKELEY TECH. L.J. 1068 (2015).

20. Kellen Zale, *Sharing Property*, 87 U. COLO. L. REV. 501 (2016).

21. Katz, *supra* note 19, at 1070.

22. See Edelman, *supra* note 7, at 2.

23. See discussion *infra* Part II.B; See *infra* Part II.C.

24. See discussion *infra* Part II.D.

25. Edelman, *supra* note 7, at 3.

26. *Id.* at 6.

27. *Id.*

between these sharing platforms and other online services is the level of control they exercise over transactions.²⁸

Second-generation platforms differ from first-generation platforms in a variety of ways.²⁹ First-generation allows sellers or buyers to conduct business anonymously.³⁰ Second-generation favors profiles that identify sellers or buyers.³¹ The “[first-generation] offer[s] little scope for discrimination, as sellers effectively pre-commit to accept all buyers regardless of race or ethnicity.”³² Conversely, the second-generation allows the seller to choose who they conduct business with.³³ While legislation prevents hotels and online markets from rejecting buyers based on their race, ethnicity, or affiliation with other protected classes, these laws may not apply to second-generation private renters.³⁴ Accordingly, second-generation platforms lead to discrimination within the sharing economy impossible in the first-generation.³⁵

The differences between first and second-generation platforms and their place in society has created a controversial divide.³⁶ The second-generation has stimulated the economy and transformed the way we produce, consume, and solve social problems.³⁷ However, critics point out that second-generation platforms have exploited the financial desperation created by the weak, post-2008 labor market.³⁸ The second-generation’s ability to evade regulations designed to protect the public welfare allows this exploitation to happen.³⁹ By evading these regulations second-generation platforms avoid the risks, costs, and externalities their platforms create.⁴⁰

This evasion poses a more fundamental question regarding share economies: what does it mean to “share property?”⁴¹ The word “shar-

28. See Katz, *supra* note 19, at 1071.

29. *Id.*

30. Edelman, *supra* note 7, at 6.

31. *Id.* at 3.

32. *Id.*

33. *Id.* at 19.

34. *Id.* at 2.

35. *Id.*

36. Edelman, *supra* note 7, at 2.

37. Zale, *supra* note 20, at 504.

38. *Id.* at 505.

39. *Id.*

40. *Id.* at 509.

41. *Id.* at 515.

Share (verb, transitive): (1) to divide and distribute in shares: apportion; (2) (a) to partake of, use, experience, occupy, or enjoy with others; (b) to have in common; (3) to grant or give a share in; (4) to tell (as thoughts, feelings, or experiences) to others the concept of sharing encompasses a wide range of activities, from the gratuitous and informal—such as a child sharing his lunch with a classmate who forgot her own, to the

ing” has positive connotations, evoking thoughts of gratuitous acts towards fellow members of society.⁴² However, peer-to-peer transactions in online markets view sharing differently.⁴³ There is a lack of consensus over the definition of sharing property because a diverse group of online platforms, companies, and individuals label themselves as part of the sharing economy.⁴⁴ This does not fit within the older, standard, non-monetary version of the sharing economy.⁴⁵ Furthermore, sharing platforms differ substantially from traditional service providers because sharing platforms have a far greater degree of autonomy.⁴⁶ While the distinction between commercial and non-commercial determines whether government oversight is appropriate, historically courts have struggled to define these boundaries.⁴⁷

Nevertheless, courts must define the nature of the activities to determine to what extent government regulation is warranted.⁴⁸ The line between activities that should be regulated and those that should not is blurry; the increasingly broad range of human activities and relationships further extend the already tense outer boundaries of constitutional protection.⁴⁹ States lack a doctrinally cohesive and normatively satisfying way of handling the underlying activities within the sharing economy.⁵⁰

Even with a lack of regulation, the sharing economy allows individuals to earn additional income by monetizing underutilized assets.⁵¹ Sharing economies have created “the push to monetize seemingly everything—‘spare rooms, empty car seats, and idle hands’—rais[ing] nu-

commercial and monetized—such as an entrepreneur forming a corporation to share ownership with other investors.

Id.

42. *Zale, supra* note 20, at 514.

43. *Id.*

44. *Id.*

45. *Id.* at 527. The commercial/noncommercial dichotomy manifests itself in many areas of the law and is often a determinative factor when government oversight of an activity is appropriate:

In contracts law, portions of the Uniform Commercial Code apply only to merchants, who are defined in terms of their engagement in commercial activity. In tort law, the duty of care owed to guests varies depending on whether the property is a commercial establishment or a private residence. In copyright law, courts consider the commercial nature of the use by an alleged infringer in determining whether a defense of fair use is available.

Id. at 522.

46. *Katz, supra* note 19, at 1069.

47. *Zale, supra* note 20, at 523.

48. *Id.* at 510.

49. *Id.* at 523.

50. *Id.* at 510.

51. *Id.*

merous concerns” regarding discrimination.⁵² The CRA prohibits discrimination in hotels and other public accommodations based on race, color, religion, or national origin.⁵³ The FHA protects housing rights for individuals purchasing or renting dwellings.⁵⁴ In turn, public accommodations cannot intentionally exclude patrons based on their race.⁵⁵ Yet, the sharing economy monetizes *private* homes, skirting laws intended to regulate public accommodations.⁵⁶

Airbnb has a major role in the sharing economy and its activities have a direct and indirect impact on housing.⁵⁷ Since 2008 Airbnb has utilized the growing sharing economy to enter the housing rental market.⁵⁸ Tourists use the Airbnb website or mobile application to search and reserve housing in a city or neighborhood of their choice.⁵⁹ Instead of booking a hotel or motel, an individual can rent an apartment from a stranger in another city.⁶⁰ Airbnb facilitates the rental of anything from a living room couch to an entire apartment or house.⁶¹ Airbnb collects “host service” and “guest service” fees from each transaction.⁶²

In *Mendez v. City of Chicago*, Airbnb hosts sued the City of Chicago for imposing a tax on home-sharing rentals.⁶³ The Chicago Municipal Code’s definition of “hotel accommodations” was expanded to include home-sharing arrangements and imposed a four percent tax on those arrangements.⁶⁴ Plaintiffs asserted they already paid sales

52. Zale, *supra* note 20, at 531.

53. Edelman, *supra* note 7, at 2; Civil Rights Act, 42 USC § 2000(e) (1964).

54. Lisa T. Alexander, *Occupying the Constitutional Right to Housing*, 94 NEB. L. REV. 267 (2015); Fair Housing Act, 42 U.S.C. §§ 3601 *et seq.* (1968).

55. Alexander, *supra* note 54. “As the [second generation of online platforms] becomes an increasingly dominant mode of economic activity, the need for analytical clarity about the activities occurring within it becomes even more crucial.” Zale, *supra* note 20, at 510.

56. Zale, *supra* note 20, at 510.

57. Edelman, *supra* note 7, at 2.

58. *Id.* at 6. A further description of Airbnb follows:

Airbnb is a popular online marketplace for short-term rentals. Founded in 2008, the site gained traction quickly and, as of November 2015, it offers 2,000,000 listings worldwide. This is more than three times as many as Marriott’s 535,000 rooms worldwide. Airbnb reports serving over 40 million guests in more than 190 countries.

Zale, *supra* note 20, at 514.

59. Dayne Lee, *How Airbnb Short-Term Rentals Exacerbate Los Angeles’s Affordable Housing Crisis: Analysis and Policy Recommendations*, 10 HARV. L. & POL’Y REV. 229, 232 (2016).

60. *Id.*

61. *Id.*

62. *Id.*

63. Complaint, *Mendez v. City of Chicago*, 2016 WL 6803050 (Ill. Cir. Ct. Nov. 15, 2016) (No. 2016-CH-14897) (seeking injunction/temporary restraining order).

64. *Id.*

and property taxes to the city as property owners.⁶⁵ As such, they claimed that the ordinance was unfair and unconstitutional as applied to them.⁶⁶

Additionally, in New York and California, Airbnb has come under fire for violating state and local regulations.⁶⁷ The rental units advertised on the Airbnb website often ignore local housing laws and regulations.⁶⁸ For example, New York law mandates that owners must live in the unit while renting their apartment out for a period of less than thirty days.⁶⁹ Additionally, most states regulate holiday rental accommodations by implementing a hotel or tourist tax.⁷⁰ However, Airbnb evades these regulations, making it easy for tourists to find cheap accommodations in desirable locations.⁷¹

These transactions have impacted neighborhoods in major cities like Chicago. The transactions between hosts and renters provide income and property in desirable neighborhoods, significantly impacting the tourist industry.⁷² With Airbnb properties in more than seventy Chicago neighborhoods, “Airbnb likely reduces the affordable housing supply by distorting the housing market.”⁷³ This distortion diminishes the housing market and adds to the supply of hotel rooms by converting units previously occupied by residents into units listed on Airbnb year-round.⁷⁴ This removal leads to increased rent in areas that are affluent and gentrified.⁷⁵

Historically, the housing rental market and the hospitality sector rarely overlap, however Airbnb merges the residential and tourist markets on an unprecedented scale.⁷⁶ Airbnb rapidly removes housing units from the marketplace and neither the market nor the public sec-

65. *Id.* Any residential property that is rented for 31 days or more must be registered annually with the City on behalf of the tenant or owner. Municipal Code of Chicago, § 4-13-200 *et seq.* (2017). In addition, the property is deemed a “short term residential rental intermediary,” and the person must pay a \$10,000 license fee plus \$60 for each “short term residential” rental listed on its platform. *Id.*

66. Complaint, *Mendez v. City of Chicago*, 2016 WL 6803050 (Ill. Cir. Ct. Nov. 15, 2016) (No. 2016-CH-14897).

67. Will Coldwell, *Airbnb’s Legal Troubles: What are the Issues?*, *GUARDIAN* (July 8, 2014), <https://www.theguardian.com/travel/2014/jul/08/airbnb-legal-troubles-what-are-the-issues>.

68. *Id.*

69. *Id.*

70. *Id.*

71. *Id.*

72. Airbnb, Inc., *Economic Impacts in Chicago*, (Sept. 14, 2015), <http://blog.airbnb.com/economic-impacts-in-chicago/>.

73. Lee, *supra* note 59, at 229.

74. *Id.* at 230.

75. *Id.*

76. *Id.*

tor can swiftly replace the units.⁷⁷ Brooklyn, New York, is experiencing a rental squeeze in part due to Airbnb's success.⁷⁸ The median rental price for one unit in the Bed-Stuy/Crown Heights neighborhood is \$2,370 a month. Those who rent their property to Airbnb users see an average monthly revenue of \$2,530 a month.⁷⁹ Generally, by renting an apartment sixty-six percent of the time an individual can cover the cost of rent for an entire year.⁸⁰

This potential for increased revenue incentivizes owners to rent property to short-term Airbnb users rather than long-term tenants.⁸¹ However, neighborhoods in New York City have been affected by Airbnb listings differently.⁸² A recent report from Airbnb noted the rental vacancy rate in New York City is between 3.4% and 3.6%.⁸³ However, rental vacancy rates below 5% distort the housing market by causing an imbalance in neighborhoods.⁸⁴ Certain neighborhoods become so expensive the original residents are pushed out.⁸⁵ The Chicago statistics are very similar to New York City.⁸⁶ Chicago's apartment vacancy rate was 6.26% in 2014, but by 2015 it had dropped to 3.72%.⁸⁷ This decrease demonstrates that Chicago's neighborhoods have grown quickly, pushing minority groups and low-income residents out to make room for wealthier investors.⁸⁸

B. Gentrification

Two key theories are used to explain gentrification.⁸⁹ Production-side theory was developed by geographer Neil Smith and focuses on

77. *Id.*

78. Tyler Woods, *Report: Airbnb is Choking the Life Out of Your Favorite Neighborhoods*, TECHNICAL LY BROOK. (Jun. 30, 2016), <http://technical.ly/brooklyn/2016/06/30/airbnb-neighborhood-gentrification-report/>.

79. *Id.*

80. *Id.*

81. *Id.*

82. *Id.* Airbnb has 53% of its listings in five major neighborhoods around the city.

83. *Id.*

84. Woods, *supra* note 78.

85. "The Housing Conservation Coordinators report had a message beyond just that Airbnb is making these neighborhoods more expensive. It said that making neighborhoods more expensive pushes out the people that had been living in them, and changes the very chemistry of the place." *Id.*

86. Dan Rafter, *CoStar: Multifamily Surge in Chicago Will Bring Higher Vacancy Rate*, RE JOURNALS (Sept. 21, 2015), <http://www.rejournals.com/Articles/2015/09/costar-multifamily-surge-in-chic>.

87. *Id.*

88. *Id.*

89. Amanda Briney, *Gentrification: The Controversial Topic of Gentrification and Its Impact on The Urban Core*, THOUGHTCO (Feb. 28, 2017), <https://www.thoughtco.com/gentrification-and-its-impact-on-urban-core-1435781>.

the relationship between money and production.⁹⁰ Alternatively, consumption-side theory, developed by David Ley, focuses more on individuals and their consumption in neighborhoods.⁹¹ Production-side theory views the spread of gentrification as a social action and describes how the absence of funding for construction loans and mortgage capital fuels it.⁹² Construction loans and mortgage capital bring money into the neighborhood.⁹³ Without these forms of funding, only wealthy individuals can develop and resell property in the community.⁹⁴ This absence of funding increases the rent gap in the neighborhood.⁹⁵ The production theory describes the connection between disinvestment and decreased property values in the urban core of an established city.⁹⁶ The ramifications include the loss of blue-collar jobs, lower rent prices, and deteriorated buildings.⁹⁷ The urban space is then transformed into an area with white-collar services that fit the perception of wealth.⁹⁸ Thus, white-collar professionals have a vested interest in redeveloping the urban core.⁹⁹

However, redevelopments produce vastly different results for the original residents and their families.¹⁰⁰ By creating capital for housing and amenities they only cater to new residents, while ignoring the pre-existing issues impacting original residents.¹⁰¹ As capital investment improves, neglected neighborhoods rent prices and property values increase, perpetuating the recycling of the neighborhood.¹⁰² Thus, improvement in some areas brings drastic consequences. In these areas, factors like the rent gap begins to close causing the rent prices to skyrocket.¹⁰³

Using his theory, Smith argued that when the rent-gap was large enough, developers would see the potential profit in redeveloping inner city areas. The profit attained by redevelopment in these areas closes the rent-gap, leading to higher rents, leases, and mort-

90. Neil Smith, *Toward a Theory of Gentrification: A Back to the City Movement by Capital, Not People*, 45 J. AM. PLAN. ASS'N 538 (2007).

91. Briney, *supra* note 89.

92. Smith, *supra* note 90, at 545.

93. *Id.* at 546.

94. *Id.*

95. *Id.*

96. *Id.*

97. *Id.*

98. Smith, *supra* note 90, at 546.

99. NEIL SMITH AND PETER WILLIAMS, *GENTRIFICATION OF THE CITY* 42 (1986).

100. Smith, *supra* note 90, at 543; Briney, *supra* note 89.

101. Briney, *supra* note 89.

102. *Id.*

103. *Id.* Rent gap is the difference between under-valued rent prices in disinvested neighborhoods and the potential profit that could be realized. *Id.*

gages. Thus, the increase in profits associated with Smith's theory leads to gentrification.¹⁰⁴

Local businesses are pushed out of the neighborhood or foreclosed upon and the low-income residents must seek affordable housing elsewhere.¹⁰⁵

On the other hand, consumption-side theory studies gentrification by focusing on purchasing patterns and other sociocultural norms of first-stage gentrifiers.¹⁰⁶ First-stage gentrifiers are considered members of the artist class—artists, teachers, doctors, and/or lawyers who enjoy arts and leisure, and demand amenities that fit their lifestyle.¹⁰⁷ Ley poses that the lifestyle choices, purchasing power, and momentum of first-stage gentrifiers are the catalysts for gentrification, rejecting the production-side theory's economic analysis.¹⁰⁸

Under consumption-side theory, gentrification is the result of like-minded individuals seeking a space to transform into their own.¹⁰⁹ The impact of the artist class and the neighborhood's new marketability increases rent prices and adversely affects the low-income residents originally in the neighborhood.¹¹⁰ After raising rent prices in the first stage, the second stage of gentrification increases the capital investments from bankers and service providers.¹¹¹ This process accelerates cultural change within the neighborhood.¹¹² As gentrification displaces low income residents and accommodates new affluent residents, retail chains, restaurants, and services are also priced out and replaced with more expensive options.¹¹³ This aspect of gentrification causes the most tension between residents and developers.¹¹⁴

104. *Id.*

105. *Id.*

106. LORETTA LEES ET AL., *THE GENTRIFICATION READER* 190 (2010).

107. *Id.*; Briney, *supra* note 89.

108. Briney, *supra* note 89.

109. *Id.*

110. LEES, *supra* note 106.

111. *Id.*

112. *Id.*

Because of these drastic changes on a neighborhood, there are both positive and negative aspects to gentrification. Critics of gentrification often claim that commercial and residential developments in an area are too large after redevelopment. As a result of these big building footprints, there is a loss of urban authenticity and the gentrified areas become a boring monoculture with architecture that is too unified.

Briney, *supra* note 89.

113. *Id.*

114. *Id.*

C. Racial Segregation in Chicago

A foundational understanding of gentrification is necessary to demonstrate how it has reshaped cities like Chicago.¹¹⁵ Gentrification is the process by which affluent individuals move into low-income neighborhoods to renovate and restore housing and businesses in areas deemed high-risk or poverty stricken.¹¹⁶ The neighborhoods then suffer an overall decline in racial minority population.¹¹⁷ Although gentrification may bring financial resources into a neighborhood, the economic activity does not benefit the original residents of the neighborhood.¹¹⁸

Gentrification has a unique history within metropolitan areas, particularly in Chicago.¹¹⁹ As the cost of constructing new homes rises, the attraction to the neighborhood grows because fixing dilapidated homes is cheaper.¹²⁰ The dilapidation stems from both the physical and economic depreciation of the neighborhood, which is a direct result of the city's investment decisions.¹²¹ Due to these systemic, cultural, and economic considerations, Chicago presents a unique problem for those attempting to address gentrification issues.

The history of racial segregation in Chicago can be traced back to “redlining” in the 1930s.¹²² Redlining was government sanctioned mapping of American communities identifying which neighborhoods were worthy of mortgage lending.¹²³ The Home Owner’s Loan Corporation ranked and color-coded neighborhoods based on their racial composition.¹²⁴ Minority neighborhoods were outlined in red on maps used by mortgage lenders.¹²⁵ Those neighborhoods containing Black residents were given a D-rating regardless of income or proportionality of the area’s total population.¹²⁶ This practice was also uti-

115. *Id.*

116. *Id.*

117. *Id.*

118. Briney, *supra* note 89.

119. *Id.*

120. Smith, *supra* note 90, at 538.

121. *Id.* at 543; Briney, *supra* note 89.

122. Badger, *supra* note 18.

123. *Id.*

124. *Id.*

125. Austin Berg, *How Government Paved the Way for Chicago’s Segregated Poverty*, CITY LIMITS (May 25, 2016), <http://www.chicagonow.com/city-limits/2016/05/how-government-paved-the-way-for-chicagos-segregated-poverty/>.

126. *Id.*

lized by private banks.¹²⁷ Redlining an area effectively deprived a community from essential capital.¹²⁸

Government sanctioned redlining was outlawed in 1968 by the FHA.¹²⁹ The color-coding of neighborhoods in Chicago created two housing markets: one for Blacks and another for whites. The housing options Blacks had access to were limited and costly, whereas whites had access to plentiful cheap properties.¹³⁰ In Chicago, neighborhoods that were redlined in the 1930s are still a target of predatory mortgage lending practices.¹³¹ Using deceptive and coercive practices, lenders impose unfair and abusive loan terms to encourage borrowers to take out loans they do not need or cannot afford.¹³² Predatory lending practices include inadequate or false disclosure of costs,¹³³ risk-based pricing,¹³⁴ loan packing,¹³⁵ loan flipping,¹³⁶ reverse redlining,¹³⁷ balloon mortgages,¹³⁸ and mandatory arbitration.¹³⁹ Predatory lending limits access to resources, making it difficult for minority homeowners to invest in and recover properties in predominantly minority neighborhoods.¹⁴⁰ Recently, the Department of Housing and Urban Development (HUD) sued Associated Bank claiming it discriminated against Black and Hispanic borrowers in Chicago, Milwaukee, and Minneapolis between 2008 and 2010.¹⁴¹ HUD's analysis of Home Mortgage Disclosure Act data showed the bank disproportion-

127. Badger, *supra* note 18.

128. *Id.*

129. *Id.*; U.S. Dept. Of Just., *Fair Housing Act 2015* (Aug. 6, 2016), <https://www.justice.gov/crt/fair-housing-act-1> .

130. Berg, *supra* note 125.

131. Badger, *supra* note 18. Commentators often refer to this as “predatory lending.” *Id.*

132. Bill Faye, *What is Predatory Lending?*, DEBT.ORG, (June 6, 2017), <http://www.debt.org/credit/predatory-lending/>.

133. *Id.* (the lender hides or misrepresents the true cost or risks associated with the loan's terms).

134. *Id.* (the act of tying interest rates to credit history by charging very high interest rates to borrowers who are most likely to default).

135. *Id.* (the lender adds unnecessary products like credit insurance are added into the cost of the loan).

136. *Id.* (the lender coerces the borrower to refinance their existing loan into a larger one with a higher interest rate).

137. Faye, *supra* note 132 (the lender purposely charges higher rates to borrowers, regardless of their credit history, income, or ability to pay in the neighborhoods that conventional banks shy away from).

138. *Id.* (a borrower is told to refinance their mortgage in hopes of lower payments upfront, but instead receive excessive payments later in the loan term).

139. *Id.* (the lender adds language into the loan agreement making it illegal for a borrower to take legal action).

140. Badger, *supra* note 18. Associated Bank was the largest bank headquartered in Wisconsin.

141. *Id.*

ately denied qualified loan applicants in predominantly minority neighborhoods, compared to other lenders that operated in the same neighborhoods.¹⁴² The case settled for a record amount in 2015.¹⁴³ This case is “one of the largest redlining complaints ever brought by the federal government against a mortgage lender.”¹⁴⁴

The 2016 census shows Chicago is the second most segregated city in America; the social and economic gaps are especially large between isolated racial groups.¹⁴⁵ Nearly half of the 2,200 tracts in Chicago have a population of eighty percent or more of a single racial group.¹⁴⁶ Additionally, the Black poverty rates in predominantly Black neighborhoods are more than three times that of white neighborhoods.¹⁴⁷ This economic disparity is indicative of the two separate worlds within Chicago.¹⁴⁸ Thus, it is clear race plays a prominent role in an individual’s experience within the city.

D. Federal Regulations

Title VIII of the Civil Rights Act of 1968, also known as the FHA, prohibits discrimination in the sale, rental, and financing of dwellings based on the protected classes of race, color, religion, sex, or national

142. *Id.*

143. *Id.*

144. *Id.* One article described the settlement:

Now Associated Bank has agreed to a long list of actions to make amends over the next three years: It must finance nearly \$200 million in home loans in majority-minority census tracts within these cities, and pay nearly \$10 million in down payment assistance to borrowers or in lower interest rates. It must also open four new offices in minority neighborhoods in Chicago and Milwaukee, and invest \$1.4 million in marketing loans in many of these same underserved communities.

Ben Lane, *HUD: Associated Bank ‘Redlining’ Settlement Largest Ever*, HOUSING WIRE (May 27, 2015), <http://www.housingwire.com/articles/34006-hud-associated-bank-redlining-settlement-is-largest-ever>.

145. Mike Sauter, *The 16 Most Segregated Cities in America*, 24/7 WALL ST. (July 7, 2017), <https://www.msn.com/en-us/money/realestate/the-16-most-segregated-cities-in-america/ss-AAozfco#image=16>; Michael B. Sauter & Thomas C. Frohlich, *America’s Most Segregated Cities*, 24/7 WALL ST. (Sept. 8, 2016), <http://247wallst.com/special-report/2016/09/08/americas-most-segregated-cities-2/6/>.

While segregation of white and black people is uniquely pronounced in the United States, other racial groups are also isolated from one another. Like several other large U.S. cities, Latino immigration to Chicago accelerated in the 1990s, and today, Spanish-speaking and white residents live relatively separately. More than one in every five Hispanic area residents live in predominantly Hispanic neighborhoods, the sixth highest such percentage of large metros.

Id.

146. Sauter & Frohlich, *supra* note 145. For example, one in every five Hispanics live in predominantly Hispanic neighborhoods. *Id.*

147. *Id.*

148. *Id.*

origin.¹⁴⁹ The federal government grants an annual award on a non-competitive basis to state and local fair housing enforcement agencies if they create a fair housing law that is “substantially equivalent” to the federal FHA.¹⁵⁰ The mission of the FHA is to eliminate housing discrimination to ensure equal access.¹⁵¹ However, Airbnb is not a listed accommodation under the FHA, so it can exclude customers seeking access to public accommodations.¹⁵²

E. Prosumers

Traditional business models typically separate producers from consumers, but the sharing economy blends the two creating a third category, “prosumers.”¹⁵³ Prosumers who use the services of sharing-economy companies can evade liability because of the difficulty in applying laws written for the offline world to virtual spaces.¹⁵⁴ Thus, transactions in the sharing economy do not fit squarely into the realm of public regulation; many sharing-economy activities are unregulated or self-regulated.¹⁵⁵ However internationally, sharing economies have been strongly regulated.

European cities have passed several laws pertaining to sharing economies.¹⁵⁶ For example, Amsterdam and Berlin have passed regulations recognizing the quality of life and safety issues involved with having transient guests staying among permanent residents.¹⁵⁷ This has resulted in a better relationship between online platforms and the community, while allowing the government to get ahead of future issues. U.S. cities should also focus on regulating the online platforms to foster a better community appeal.

149. U.S. Dep’t of Housing and Urban Development, *Title VIII: Fair Housing and Equal Opportunity* (Sept. 25, 2007), https://www.hud.gov/program_offices/fair_housing_equal_opp/prog_desc/title8.

150. *Id.*

151. Briney, *supra* note 89.

152. *Id.*

153. Johanna Interian, *Up in the Air: Harmonizing The Sharing Economy Through Airbnb Regulations*, 39 B.C. INT’L & COMP. L. REV. 129, 131 (2016).

154. *Id.* at 151.

155. *Id.* at 131.

156. *Id.* at 157.

157. *Id.* To cut down on illegal home-sharing and provide more safety measures, Airbnb has agreed to only list rental properties for up to 60 days on its European site and install a “neighbor tool” so other residents can complain about aggressive tenants. Dutch News, *Amsterdam, Airbnb Agree New Deal to Stop Illegal Rentals*, DUTCH NEWS.NL (Dec. 1, 2016), <http://www.dutchnews.nl/news/archives/2016/12/amsterdam-airbnb-agree-new-deal-to-stop-illegal-rentals/>.

III. ANALYSIS

Black and Hispanic neighborhoods have continuously felt the impact of gentrification through the erasure of their cultural history. Housing discrimination within the service markets has only served to benefit those who want to exploit the disadvantaged neighborhoods. Because of society's limited view on culture, online platforms that thrive in up and coming areas unintentionally perpetuate racially biased factors reflected in the housing market. While the online sharing economy allows homeowners to freely rent their property for short periods of time, it has been likened to sharecropping because of its social implications.¹⁵⁸ First, Airbnb does not benefit original residents of disadvantaged neighborhoods, but instead benefits the property owners and potential tourists that exploit the neighborhood. Exploitation of neighborhoods begins in the first stage of gentrification, resulting in increased rent prices and capital investments that cater to the new residents.¹⁵⁹ Second, the gentrified area incentivizes property owners to hand-pick new residents not originally from the neighborhood, a form of housing discrimination. Illinois and Airbnb can address this form of housing discrimination by regulating the leases of Airbnb users. Additionally, Illinois should require Airbnb users and property owners to invest in the community of the original residents before permitting prosumer advertising.

A. *The Housing Crisis in Disadvantaged Neighborhoods*

Proponents of online sharing markets argue Airbnb encourages a positive net income within the disadvantaged neighborhoods where it is prevalent.¹⁶⁰ Hosts use more than half of their Airbnb income to pay their rent, mortgage, or other regular household expenses.¹⁶¹ However, the expansion of Airbnb does not directly benefit those *in* the disadvantaged neighborhoods.¹⁶² Instead, individuals who exploit property and opportunity receive this direct benefit.¹⁶³ Airbnb has enabled peer-to-peer transactions on a large scale, but the law has inadequately adapted to the online marketplace boom and increase of short-term rentals.¹⁶⁴

158. *Zale, supra* note 20, at 514.

159. *Briney, supra* note 89.

160. *Airbnb Inc., supra* note 72.

161. *Coldwell, supra* note 67.

162. *Id.*

163. *Id.*

164. *Katz, supra* note 19.

In 2015, a Manhattan Housing Court judge ruled that rent-stabilized tenants violated housing regulations by making money renting out their units to tourists.¹⁶⁵ The offense is punishable by eviction under New York's Rent Stabilization Codes.¹⁶⁶ The Manhattan Housing Court decision effects 35,354 Airbnb listings in the city whose hosts make upwards of \$304 million in revenue.¹⁶⁷ Airbnb makes \$40 million from its New York City listings without being subject to this holding, since the law only punishes the Airbnb *users*.¹⁶⁸ Thus, Airbnb profits by encouraging its users to violate housing regulations.¹⁶⁹ The earning potential of Airbnb drives landlords to opt for short-term tenancy agreements within areas that become affluent.¹⁷⁰ Short-term rentals convert housing units into unlicensed hotels that do not necessarily have to pay lodging taxes or abide by the strict rules hotels do.¹⁷¹ In San Francisco seventy-two percent of Airbnb properties are located outside of traditional hotel districts in neighborhoods that have not benefitted from tourism in the past.¹⁷² Statistics show that 1,900 long-term housing units have been taken off the market during a time when San Francisco is experiencing an unprecedented housing shortage.¹⁷³

The decrease in housing units indicates that the phenomenon of buying buildings and evicting tenants in order to rent units to transient tourists is an increasing trend in need of regulation.¹⁷⁴ This practice changes the character of the neighborhood and takes housing stock away from the people that need it.¹⁷⁵ Airbnb reduces the housing supply by distorting the housing market.¹⁷⁶ Units that were previously occupied by city residents but are now listed on Airbnb year-round,

165. Julia Marsh, *Rent-stabilized Tenant Evicted After Cashing in on Airbnb*, N.Y. POST, Feb. 20, 2015, <http://nypost.com/2015/02/20/rent-stabilized-tenants-who-peddle-their-pads-may-be-evicted/>. Rent stabilization allows the rent guidelines board to set maximum rates for annual rent increases. *Id.*

166. Judge Stoller wrote, "Using a residential apartment as a hotel room and profiteering off of it is ground for eviction .??. as it undermines a purpose of the Rent Stabilization Code." 42nd & 10th Assocs. LLC v. Ikezi, 9 N.Y.S.3d 593 (N.Y. Civ. Ct. 2015).

167. Marsh, *supra* note 165.

168. *Id.*

169. Coldwell, *supra* note 67.

170. *Id.*

171. Michael Hiltzik, *Rental Sites Like Airbnb Aren't as Innocuous as They Pretend*, L.A. TIMES, Dec. 30, 2016, <http://www.latimes.com/business/hiltzik/la-fi-hiltzik-20150719-column.html>.

172. *Id.*

173. *Id.*

174. *Id.*

175. *Id.*

176. *Id.*

are removed from the rental market.¹⁷⁷ Thus, the decrease in housing units leads to an increase in citywide rents, a cumulative effect that is magnified in gentrified neighborhoods.¹⁷⁸ Additionally, a property owner or leaseholder can rent a room on Airbnb for less than the price of a hotel room, while still making more than it could in a long-term residential lease.¹⁷⁹ This creates an overpowering incentive to list units on Airbnb.¹⁸⁰

The 2007 foreclosure crisis in Chicago included over 4,800 foreclosure filings in communities predominantly composed of Black and Hispanic residents.¹⁸¹ By 2013, Chicago was ranked third in foreclosures in the U.S. with over 18,000 vacant properties.¹⁸² This crisis forced former homeowners into the rental market.¹⁸³ While the city struggled to recover foreclosed properties residential owners found solace in two ways: through land banks and online platforms allowing home-sharing.¹⁸⁴ Until 2016, owners hoping to rent their property out by using online platforms avoided the fees and taxes associated with hotel accommodations.¹⁸⁵

In *Mendez v. City of Chicago*, the plaintiffs claimed an ordinance violated substantive due process, the uniformity clause, and the right to equal protection under the Illinois Constitution.¹⁸⁶ The plaintiffs alleged that the discriminatory tax on “vacation rentals” and “shared housing units” violated the Uniformity Clause of the Illinois Constitution by excluding other rentals that fell under the definition of its “hotel accommodations, such as inns, hotels, motels, lodging houses, and

177. Briney, *supra* note 89.

178. *Id.*

179. *Id.*

180. *Id.*

181. Geoff Smith, *Foreclosure Crisis Impacts Chicago Housing Market*, WOODSTOCK INSTITUTE (May 2008), http://www.woodstockinst.org/sites/default/files/attachments/foreclosurerental_housing_may2008_smith.pdf.

182. *Illinois' Slow Foreclosure Pace Traps Neighborhoods in Blight*, CHI. TRIB., Apr. 5, 2014, http://articles.chicagotribune.com/2014-04-05/opinion/ct-illinois-foreclosure-mess-edit-0405-jm-20140405_1_foreclosure-crisis-realtytrac-judicial-foreclosure-process. In the Englewood area, 18.1% of vacancies had been unoccupied for at least two years. *Id.* Humboldt Park represented 9.3% and Austin 8.5% of vacancies. *Id.*

183. *Id.*

184. *Id.* (“Land banks acquire troubled real estate, fix it up and resell it, or repurpose it for public use such as green space.”)

185. *Shared Housing Ordinance FAQ*, CHICAGO BUSINESS AFFAIRS CONSUMER PROTECTION, https://www.cityofchicago.org/content/dam/city/depts/bacp/Small%20Business%20Center/shared_housingfaqv05192017.pdf (last visited Jan. 17, 2018).

186. Complaint, *Mendez v. City of Chicago*, 2016 WL 6803050 (Ill. Cir. Ct. Nov. 15, 2016) (No. 2016-CH-14897); Municipal Code of Chicago, *supra* note 65.

bed-and breakfast establishments.”¹⁸⁷ Though the case is still pending, the Shared Housing Ordinance’s regulation of taxes and fees became effective on March 15, 2017.¹⁸⁸

While public and private investments shape neighborhood quality, limited access to capital by members of the community does as well.¹⁸⁹ Racial segregation combined with the lack of investments and the concentration of poverty results in growing economic inequality and isolation.¹⁹⁰ One study found that in the 100 largest metropolitan areas, Black homeowners received eighteen percent less value for their investments in their homes than white homeowners.¹⁹¹ Racial discrimination and segregation in the financial services markets has cost Blacks \$82 billion.¹⁹² These discrepancies perpetuate gentrification of minority neighborhoods as tourists use Airbnb and wealthy property owners buy vacant or foreclosed properties.¹⁹³ Airbnb has become a

187. Complaint, *Mendez v. City of Chicago*, 2016 WL 6803050 (Ill. Cir. Ct. Nov. 15, 2016) (No. 2016-CH-14897).

188. *Shared Housing Ordinance FAQ*, *supra* note 185; Municipal Code of Chicago, *supra* note 65. The ordinance imposes an extra four percent tax *only* on vacation rentals and shared housing units.

The City Council enacted the Shared Housing Ordinance on June 22, 2016, which changed the regulation of short-term residential rental activity in the City of Chicago. A “short term residential rental” is part or all of a dwelling unit that is rented for transient occupancy by guests, but is not a hotel. There are various license or registration requirements for short-term residential rentals and for internet platforms that connect guests with hosts of short-term residential rentals.

Id.

189. Natalie Moore, *New Redlining Maps Show Chicago Housing Discrimination*, WBEZ NEWS, Oct. 28, 2016, <https://www.wbez.org/shows/wbez-news/new-redlining-maps-show-chicago-housing-discrimination/37c0dce7-0562-474a-8e1c-50948219ecbb>.

190. Gregory D. Squires & Charis E. Kubrin, *Privileged Places: Race, Opportunity and Uneven Development in Urban America*, SHELTERFORCE (Sept. 23, 2006), https://shelterforce.org/2006/09/23/privileged_places/.

Racial disparities between cities and suburbs, and racial segregation in general, persist as dominant features of metropolitan areas. Cities are disproportionately non-white, with over 52 percent of blacks and 21 percent of whites residing in central-city neighborhoods; while suburbs are disproportionately white, where 57 percent of whites but just 36 percent of blacks reside. Segregation, particularly between blacks and whites, persists at high levels, and Hispanic/white segregation has increased in recent years. The typical white resident of metropolitan areas resides in a neighborhood that is 80 percent white, 7 percent black, 8 percent Hispanic and 4 percent Asian. A typical black person lives in a neighborhood that is 33 percent white, 51 percent black, 11 percent Hispanic and 3 percent Asian. And a typical Hispanic resident lives in a community that is 36 percent white, 11 percent black, 45 percent Hispanic and 6 percent Asian.

191. *Id.*

192. *Id.*; Justin Pritchard, *What Is Home Equity?* BALANCE (July 27, 2016), <https://www.thebalance.com/what-is-home-equity-315663>. Home equity is an asset that measures the property value that you gain from owning your home. If a buyer has a loan on their home, then the property lender also stands to gain interest from the property until the loan is paid off. *Id.*

193. Squires & Kubrin, *supra* note 190.

common way to make additional income,¹⁹⁴ which increases the supply of short-term rental units in up and coming neighborhoods.¹⁹⁵ Instead of benefiting from the increase in neighborhood revenue that comes with gentrification, original residents are forced to locate to another impoverished area.¹⁹⁶

B. Racial Discrimination

The high demand for short-term rentals on second-generation sharing platforms allows hosts to purchase property in up-and-coming neighborhoods and handpick guests, creating the image of a newly flourishing area.¹⁹⁷ By selecting renters using algorithms that are based on racist data the online marketplaces reflect discrimination found in society itself.¹⁹⁸ In 2016, Airbnb addressed complaints of discrimination reported by Black and Hispanic would-be renters.¹⁹⁹ *Harvard Business Review* data showed Airbnb hosts were sixteen percent more likely to decline guests with Black-sounding names.²⁰⁰ Additionally, most of these users had never hosted a Black guest, indicating they were discriminating based on race.²⁰¹ Although Airbnb does not intentionally promote racism, the data the company relies on reinforces racial discrimination.²⁰² Unfortunately, the data simply reflects racism that already exists in society.²⁰³ Now with the

Seventy percent of white families own their homes; approximately half of black families do so. For blacks, home equity accounts for two-thirds of their assets compared with two-fifths for whites. A study of the 100 largest metropolitan areas found that black homeowners received 18 percent less value for their investments in their homes than white homeowners. Biases, racial discrimination and segregation in the nation's housing and financial services markets have cost the current generation of blacks about \$82 billion, with the disparity in home equity averaging \$20,000 for those holding mortgages.

Id.

194. *Id.* “The typical Airbnb host in Chicago earns \$8,300 per year, renting out her home about 77 nights per year, or just 6 nights per month. This modest, yet significant amount of income has helped over half of hosts, 56 percent, stay in their homes.” Airbnb, Inc., *supra* note 72.

195. *Id.*

196. *Id.*

197. *Id.*

198. Brentin Mock, *Can the Sharing Economy Root Out Racism?*, CITYLAB (Nov. 29, 2016), <https://www.citylab.com/life/2016/11/can-the-sharing-economy-root-out-racism/508940/>.

199. *Id.*

200. *Id.*

201. *Id.*

202. *Id.*

203. *Id.*

vast differences in Chicago neighborhoods, the spread of Airbnb in minority neighborhoods further exacerbates the problem.²⁰⁴

Online platforms utilize algorithms that input racially biased housing market data, which distorts the perception of the neighborhood.²⁰⁵ Every innovation has repercussions. Airbnb's increasing popularity promotes discrimination, adversely affecting Chicago neighborhoods grounded in rich cultural history.²⁰⁶ Gentrification is the new redlining.²⁰⁷ The FHA inadvertently protects only a negative right to freedom from discrimination.²⁰⁸ Though the government recognizes a need to protect certain classes of people from discrimination, "[l]egal recognition of this right does not provide each American citizen with a positive right to adequate or affordable housing."²⁰⁹ Airbnb should create an algorithm that acknowledges racially biased factors and design a platform with fewer opportunities for discrimination.²¹⁰

Airbnb has implemented its own anti-discrimination policies.²¹¹ However, these policies are not likely to prevent racial bias from further penetrating the already segregated Chicago neighborhoods.²¹² One anti-discrimination policy requires users to sign a "community commitment" statement that prohibits hosts from rejecting guests after viewing their profile photos.²¹³ This requirement cannot be enforced without eliminating profile photos or usernames, which is something Airbnb has refused to do.²¹⁴ Another policy to be implemented in 2018 will prevent hosts from renting on the same dates it has previously denied guests.²¹⁵ Additionally, if guests suspect discrimination, Airbnb's "Open Doors" program helps them find a similar Airbnb rental or a different accommodation.²¹⁶ Airbnb also intends to set hiring requirements that will increase its employment of underrepresented populations to give them a voice in combating discrimination.²¹⁷

204. Mock, *supra* note 198.

205. *Id.*

206. *Id.*

207. *Id.*

208. Alexander, *supra* note 54, at 144.

209. *Id.* at 145.

210. Mock, *supra* note 198.

211. *Id.*

212. *Room at the Inn: Airbnb Tackles Racial Discrimination*, *ECONOMIST* (Sept. 9, 2016), <http://www.economist.com/blogs/gulliver/2016/09/room-inn>.

213. *Id.*

214. *Id.*

215. *Id.*

216. *Id.*

217. *Id.*

Only legislation, however, can effectively address the intricacies of institutionalized racism within the housing and rental property markets.²¹⁸ Illinois should adopt an “Airbnb friendly-law” like those that have been successful in cities like Amsterdam and Berlin.²¹⁹ These laws permit residents to rent their homes to up to four people at a time, for up to two months per year.²²⁰ These laws require the owner to pay the relevant taxes, including a tourist tax.²²¹ In addition to these rules legislation in the United States must address the fact that Airbnb perpetuates gentrification.²²²

Positively, Airbnb does directly help its users provide for their families; however, indirectly it negatively impacts communities.²²³ There must be restrictions on its use in poverty stricken, segregated Chicago areas as poverty lines perpetuate economic and racial disparity.²²⁴ Although property owner rights are important, correcting housing discrimination and gentrification should be a greater concern to both Illinois and Airbnb.

C. *Alternatives to Gentrification*

The National Trust for Historic Preservation and HUD believe that emphasizing the benefits of historic preservation is the best method for urban revitalization.²²⁵ Historic preservation is the restoration of significant architectural or geographical sites for future generations.²²⁶ Cultural preservation can help local economies by strengthening the connection between communities and its citizens.²²⁷ By attracting and retaining investors, historic preservation stabilizes neighborhoods and creates a demand for local suppliers and labor.²²⁸ Historic preservation saves tax dollars by reusing buildings and infrastructures, revitalizing community centers, and encouraging private and public investments.²²⁹ These investments create jobs in the construction and

218. *Room at the Inn*, *supra* note 212.

219. Interian, *supra* note 153, at 131; Coldwell, *supra* note 67.

220. Coldwell, *supra* note 67.

221. *Id.*

222. *Room at the Inn*, *supra* note 212.

223. *Id.*

224. *Id.*

225. Lapenas, *supra* note 1.

226. *Id.*

227. *Id.*

228. *Id.*

229. *Id.*

tourism industries.²³⁰ Additionally, tourist attractions create jobs in the entertainment, service, and retail industries.²³¹

The relationship between historic rehabilitation and the sharing economy can benefit impoverished neighborhoods and Airbnb property renters without pushing out the original residents.²³² The legislature should use this relationship to address segregation in Chicago.²³³ Cultural appreciation, equal opportunity realty investment, and state-governed legal limits on host's short-term leases will combat housing discrimination and gentrification.²³⁴

Illinois and Chicago should address this issue by implementing the aforementioned program in impoverished communities, as these areas are often targeted due to their low property value.²³⁵ In 1989, Missouri developed a four-point approach for restoring neighborhoods through historic preservation: restructuring, design, promotion, and organization.²³⁶ All four are still being used today because they include market analysis, business restoration, and strengthening existing economic assets by diversifying the economy from within.²³⁷ Restructuring revitalizes neighborhoods by using a management strategy program that fundamentally changes the community's economy, while preserving its historic commercial buildings and the community's heritage.²³⁸ Design focuses on aesthetics for investors and encourages property owners to invest in the "restoration and rehabilitation of historic structures, street and alley cleanup, colorful banners, and landscaping."²³⁹ Promotion entails, among other things, creating a unified image to identify downtown as a gathering place.²⁴⁰ The point is to show developers a unified image through targeted community activities that highlight the local cultural traditions that give each community its unique identity.²⁴¹ Organization refers to the connection between the state government, public officials, and preservation organizations.²⁴² Utilizing this framework could potentially desegregate

230. Lapenas, *supra* note 1.

231. *Id.*

232. *Id.*

233. *Id.*

234. *Id.*

235. *Id.*

236. Lapenas, *supra* note 1.

237. *Id.*

238. *Four-Point Approach*, MO. MAIN STREET CONNECTION, <https://www.momainstreet.org/four-point-approach> (last viewed June 30, 2017).

239. *Id.*

240. Lapenas, *supra* note 1.

241. *Four-Point Approach*, *supra* note 238.

242. *Id.*

Chicago,²⁴³ while ensuring cultural differences are respected while neighborhoods grow and diversify.²⁴⁴

Additionally, federal, state, and local governments should use a tax credit program to encourage historic preservation in the areas Airbnb is used, allowing tax credits for the expenses of rehabilitation.²⁴⁵ Chicago should model itself after similar successful programs.²⁴⁶ In Missouri the state linked federal programs like the Rehabilitation Investment Tax Credit with its federally initiated state agencies.²⁴⁷ Through this, the state offered a twenty percent tax credit for certified historic rehabilitation projects for income producing properties, apartments, and office buildings.²⁴⁸ Similarly, Georgia put an eight year freeze on property tax for certified historic properties with substantial rehabilitation.²⁴⁹ These tax incentives coupled with equal treatment by mortgage lenders will allow Black and Hispanic residents within the community to invest in a way that preserves the neighborhood's cultural identity.²⁵⁰

Historic preservation promotes tolerance and benefits both tourists and segregated neighborhoods.²⁵¹ Because historic preservation often attracts tourism, new businesses, venture capitalists, and young professionals, it will provide sustainability for long-term residents.²⁵² Accordingly, original residents can benefit from neighborhood restoration, rather than being forced to relocate to another impoverished area.²⁵³

IV. IMPACT

This Part will show that the lack of state regulation has resulted in redlining in Black and Hispanic communities in Chicago and discuss the effect the sharing economy has on Chicago suburbs.

Regulating Airbnb falls within the legal authority of a city to determine policies that will serve the public interest, including how the use of property impacts city residents.²⁵⁴ Accordingly, Chicago must bal-

243. Lapenas, *supra* note 1.

244. *Id.*

245. *Id.*

246. *Id.*

247. *Id.*

248. Lapenas, *supra* note 1.

249. *Id.*

250. *Id.*

251. *Id.*

252. *Id.*

253. *Id.*

254. Coldwell, *supra* note 67.

ance the property rights of hosts against the impact and social welfare considerations of the larger municipal community.²⁵⁵ Further, Airbnb should not prioritize the individual interests of hosts over the city's public policy as it relates to housing.²⁵⁶ Thus, it is proper and necessary for Chicago to regulate Airbnb to ensure adherence to federal fair housing laws.²⁵⁷

The unregulated growth of Airbnb in urban centers like Chicago has important social impacts. As Airbnb contributes to the loss of affordable housing for low-income residents it simultaneously drives these same populations further away from the urban core.²⁵⁸ As rental prices and property values increase in urban areas, low-income minorities are pushed out to the suburbs.²⁵⁹ However, these suburban housing options often come with limited economic opportunities and fewer social services.²⁶⁰ Higher-paying jobs remain in the urban core and suburbs typically have fewer options for affordable public transportation.²⁶¹ For example, a bus ride across Chicago currently costs \$2.25.²⁶² Whereas, a Metra ride from an outlying suburb to downtown can cost as much as \$8.00.²⁶³ If public transportation is prohibitively more expensive or time consuming, the suburban resident will be forced to bear the cost of buying and maintaining a vehicle.²⁶⁴ Alternatively, the individual may simply be forced to limit their job prospects to more easily accessible, but less desirable, positions in the suburbs.²⁶⁵

Furthermore, suburbs are ill-equipped to provide the services many low-income families depend on.²⁶⁶ This makes it harder for these

255. Pritchard, *supra* note 192.

256. *Id.*

257. The Shared Housing Ordinance amended the Chicago Municipal Code's definition of "hotel accommodations" in 2017. It now includes two categories of shared-housing arrangements: (1) vacation rentals, and (2) shared housing units. These categories are the only "hotel accommodations" that pay an extra four percent tax to the City for use of public funds, including general revenue funds. In addition to the shared housing tax, owners are prohibited from (1) renting their units when it has been established that the owners of the buildings have prohibited them from being rented out, (2) listing properties if it is not their primary residence, and (3) listing a unit for shared-housing if the building has four or fewer units. Municipal Code of Chicago, *supra* note 65.

258. Pritchard, *supra* note 192.

259. Christopher B. Leinberger, *The Next Slum?*, ATLANTIC (March 2008), <https://www.theatlantic.com/magazine/archive/2008/03/the-next-slum/306653/>.

260. *Id.*

261. *Id.*

262. *Id.*

263. *Id.*

264. *Id.*

265. Leinberger, *supra* note 259.

266. *Id.*

families to access health care, job-finding services, English as a Second Language (ESL) services, and legal assistance.²⁶⁷ Such services are often delivered through non-profit agencies, which are difficult to find in suburbs.²⁶⁸ A recent study of non-profit social services in sixty-seven suburban municipalities across Chicago, Los Angeles, and Washington, D.C. found that fifty-four of these municipalities had no employment service non-profits and thirty-seven municipalities lacked any non-profits focusing on emergency food assistance.²⁶⁹ Where social services do exist, they are often scarce—compounding the negative effects of not having affordable public transportation.

As Black and Hispanic communities leave historically cohesive neighborhoods for outlying suburbs a loss of community necessarily follows.²⁷⁰ The sense of alienation caused by leaving a familiar neighborhood is compounded by losing access to culturally specific institutions.²⁷¹ Along with social ties, members of the community suffer a loss of informal support networks—relatives who can help with child-care, neighbors who attend the same churches, contacts for job opportunities.²⁷² By adopting the proposed regulation and taking steps to preserve the culture of neighborhoods adversely affected by Airbnb, Chicago could avoid the harsh negative consequences that would otherwise result.

V. CONCLUSION

The housing crisis of 2007 impacted cities throughout the U.S., but in Chicago disadvantaged Black and Hispanic neighborhoods also felt the impact through the erasure of their cultural history. The discrimination within the financial services market has caused a lack of investment from the original residents due to a lack of access to capital. Online platforms, like Airbnb, then use algorithms that input racially biased housing market data that distorts the perception of the neighborhood. Airbnb is meant to resolve housing issues; instead, the platform indirectly progresses gentrification of those disadvantaged areas by decreasing long-term housing units and promoting a racially biased housing market.

267. *Id.*

268. *Id.*

269. Alexandra K. Murphy & Scott W. Allard, *The Changing Geography of Poverty*, INST. FOR RES. ON POVERTY (2015), <http://www.irp.wisc.edu/publications/focus/pdfs/foc321d.pdf>.

270. *Id.*

271. *Id.*

272. *Id.*

To desegregate Chicago while ensuring cultural differences are respected, an alternative to gentrifying these historical neighborhoods should be to utilize a management strategy such as, historical preservation, to change the community's economy. Historical preservation would serve to restructure, design, promote, and organize the revitalization of disadvantaged Black and Hispanic neighborhoods. However, only legislation can truly offset the institutional racism within the housing markets.

The law must provide an equal opportunity to access housing stock in Chicago. Regulatory ordinances that apply to Airbnb, such as the one proposed and enacted by Chicago, are an important step to securing the rights of original residents.²⁷³ Although Airbnb is just one component of the complex economic and social factors that contribute to the gentrification of Black and Hispanic neighborhoods, regulation of the industry will help combat the most detrimental aspects of gentrification.

In cities struggling with fair housing issues and segregation, cultural tolerance must become the cornerstone of its neighborhoods.²⁷⁴ The expectation that an outsider will invest in an unfamiliar neighborhood with the cultural sensitivity necessary to preserve the neighborhood's identity seems impossible.²⁷⁵ The area cannot be seen from the same valued eyes or memories.²⁷⁶ An outside investor will try to shape a neighborhood into what they think it should be.²⁷⁷ However, if original residents are given a chance to invest in the neighborhoods they feel connected to, they will be able to preserve the cultural identity of the neighborhood and ensure other original residents are not displaced.²⁷⁸

*Diamond Smith**

273. *Id.*

274. *Id.*

275. Murphy & Allard, *supra* note 269.

276. *Id.*

277. Briney, *supra* note 89.

278. *Id.*

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