



PENN IUR BRIEF

# RACE AND POLICY: 50 YEARS AFTER THE FAIR HOUSING ACT

## COMMENTARY

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## INTRODUCTION

On the 50th anniversary of the Fair Housing Act it is imperative to take a critical look at segregation and discrimination in the United States, and the opportunities and challenges associated with making progress on this pressing issue. In that spirit, we released a call for papers focusing on fair housing, which all went through peer-review and were recently published in *Cityscape*. While these papers add to our knowledge, they also highlight the need for continued debate about policies and programs around fair housing. As a result, we asked some of our nation's leading scholars to opine on the *Cityscape* articles, and to offer their thoughts on this topic. This report is a compilation of response papers to the *Cityscape* special issue, and serves as a way to continue the debate about how best to pursue the goals of equity, inclusion, and eliminating discrimination.

This report begins with commentaries by both Elizabeth K. Julian and Justin Steil, who provide important reactions to the mandate to affirmatively further fair housing, which is well documented in the paper by Katherine O'Regan and Ken Zimmerman. Next, Kevin Chavers highlights the importance of and challenges associated with fair housing and homeownership, and Gary Painter offers insight into drivers of the racial disparities in homeownership rates, which are discussed in detail in a paper by Arthur Acolin, Desen Lin, and Susan Wachter. Olatunde Johnson then offers thoughts on deconcentrating areas of affluence, while Amy T. Khare and Mark L. Joseph take a critical look at the mindset and framework associated with this approach set forth by Edward G. Goetz, Anthony Damiano, and Rashad A. Williams. Finally, both Casey Dawkins and Lisa Alexander offer insight into how fair housing goals, and the Act itself, engage with existing federal housing policy programs and larger issues of neighborhood change, which serves as an important complement to the paper by Vincent Reina, Jake Wegman, and Erick Guerra. A copy of the *Cityscape* issue with the original papers can be found here: <https://www.huduser.gov/portal/periodicals/cityscape.html>.

It is our hope that the responses in this report will garner further debate, and that collectively we can continue to make the case for the importance of fair housing and develop nuanced and impactful policies that ensure the Fair Housing Act meets its full intent.

## CHANGING DYNAMICS OF URBAN DEVELOPMENT AND THREATS TO THE AFFIRMATIVELY FURTHERING FAIR HOUSING RULE

*Responding to Katherine M. O'Regan and Ken Zimmerman 2019, The Potential of the Fair Housing Act's Affirmative Mandate and HUD's AFFH Rule, Cityscape 21(1): 87-98.*

*Justin Steil, Assistant Professor of Law and Urban Planning, Massachusetts Institute of Technology*

O'Regan and Zimmerman provide an invaluable perspective from inside the Department of Housing and Urban Development (HUD) into the careful process that led to the creation of the Affirmatively Furthering Fair Housing (AFFH) Rule. First, they note that the major challenges that our metropolitan areas face, from climate change to racial and economic inequality, must be addressed through coordinated planning and integrated resource allocation. Accordingly, the AFFH Rule includes the provision of concrete metrics that illuminate how housing and community development policies are intertwined with disparities in access to high-performing schools, exposure to environmental hazards, access to jobs, and other place-based dimensions of socioeconomic mobility. Second, they emphasize the need to creatively use “federal authority to harness state and local housing and community development capacity,” given that the interrelated problems our metropolitan areas face require solutions that are locally tailored and locally driven. This aspect of the AFFH Rule as a form of equality directive (Johnson 2012), in which the federal government sets objectives and leaves states and localities wide discretion on how to accomplish them, is likely to be an important aspect of fair housing policy moving forward. Third, O'Regan and Zimmerman emphasize the importance of community engagement and the challenges of enabling meaningful participation in contexts shaped by deep social and economic inequality. Indeed, several of the most innovative Assessments thus far have been those from jurisdictions that forged deep partnerships with a diverse group of residents and community based organizations, allowing new ideas from the grassroots to be translated into fair housing policy. As O'Regan and Zimmerman suggest, HUD should build in continual assessment and sharing of best practices so that jurisdictions and their residents can benefit from each other's experience.

Building on O'Regan and Zimmerman's insights into the AFFH Rule's strengths and opportunities for improvement, it may be useful to identify here the primary threats that the Rule faces. The most immediate threats to the AFFH Rule are conservative opposition to the Rule's goals and the current administration's efforts to revise it, arguably in ways that will undermine the Rule's effectiveness. This threat is most clearly seen in the advance notice of proposed rulemaking regarding “streamlining and enhancements” to the Rule (83 Fed. Reg. 40713, Aug. 16, 2018), which largely sets out goals that the current AFFH Rule already is well poised to accomplish (such as “a process that is focused primarily on accomplishing positive results,” that provides for “local control and innovation,” and that encourages “actions that increase housing choice, including through greater housing supply”) but seems to call into question some of the Rule's basic principles and existing strengths, such as its requirement that jurisdictions set out meaningful metrics and milestones that actually address fair housing goals and its simultaneous provision of uniform data together with support for the use of additional locally available data.

The longer term and arguably more challenging threats, I would suggest, are the changing dynamics of urban development and growing questions about who bears the costs of those changes. Increasing investment in central cities is bringing needed resources to many underinvested neighborhoods and creating some forms of residential integration by race and by class (Ellen and Torrats-Espinoza, 2018). The pressing questions are how stable that integration will be and the extent to which it will benefit lower-income residents. Especially in low-income communities of

color in high-cost cities, concern continues to rise about displacement, resegregation, and the suburbanization of poverty to even more under-resourced neighborhoods. Low-income households are increasingly finding that the only affordable option involves moving further from relatives, from social institutions, from work, and from affordable transportation as the struggle for urban space intensifies. In addition to the tangible effect of further isolating low-income households from central city resources, gentrification may also have the harder to measure consequence of cultural dispossession, and the erasure of culturally, socially, and politically significant spaces.

At first glance, these concerns may seem distinct from the concerns at the forefront of public attention when the Fair Housing Act was passed, such as white flight and central city abandonment. On further reflection, however, these fears about displacement are wholly consistent with the Fair Housing Act's overarching priorities of addressing disparities in housing choice and confronting the durable structural inequalities embedded in our metropolitan areas and their housing, zoning, and community development policies. As investment pours into many city centers, place-based affordable housing in some central cities, which have often been seen as fair housing liabilities are increasingly fair housing opportunities—oases of affordability in the midst of seas of gentrification (Dastrup and Ellen 2016; Lens and Reina 2016). Indeed permanently affordable housing in gentrifying neighborhoods provides a crucial form of housing choice for those residents who want to remain as investments are made in formerly disinvested neighborhoods. Several of the Assessments of Fair Housing already submitted, such as Seattle's, have focused on racial equity and a nuanced view of housing choice that includes both opportunities for housing mobility as well as anti-displacement strategies, all with a goal of reducing disparities in access to opportunity.

Fair housing and civil rights advocates must take a clear-eyed view of the long-term consequences of gentrification for racial equity, consistent with the broad principles of the AFFH Rule (see O'Regan 2016). Local policies must address both the fact that our neighborhoods are separate and also that they are unequal, as the Fair Housing Act and AFFH Rule require.

## REFERENCES

- Dastrup, Samuel and Ingrid Gould Ellen. 2016. Linking Residents to Opportunity: Gentrification and Public Housing. *Cityscape* 18(3): 87-107.
- Ellen, Ingrid Gould and Gerard Torrats-Espinosa. 2018. Gentrification and Fair Housing: Does Gentrification Further Integration? *Housing Policy Debate*: 1-17.
- Johnson, Olatunde. 2012. Beyond the Private Attorney General: Equality Directives in American Law. *New York University Law Review* 87(5): 1339-1413.
- Lens, Michael C. and Vincent Reina. 2016. Preserving neighborhood opportunity: Where federal housing subsidies expire. *Housing Policy Debate*, 26(4-5): 714-732.
- O'Regan, Katherine. 2016. Commentary: A Federal Perspective on Gentrification. *Cityscape* 18(3): 151-162.

## THE FAIR HOUSING ACT'S AFFIRMATIVE MANDATE AT 50: POWER, PROMISE, AND POTENTIAL UNREALIZED

*Responding to Katherine M. O'Regan and Ken Zimmerman 2019, The Potential of the Fair Housing Act's Affirmative Mandate and HUD's AFFH Rule, Cityscape 21(1): 87-98.*

*Elizabeth K. Julian, Founder, Senior Counsel, Inclusive Communities Project*

This paper is perhaps more timely and may be more useful than the authors could have imagined when it was first contemplated. The paper is a well written, succinct and well documented summary of both the history of the Fair Housing Act's Affirmatively Further Fair Housing requirement and the record of the development of the AFFH Regulation promulgated by HUD in 2015. The articulation not only of the process by which the Rule was developed, but the justification and aspirations for the Rule, make clear that HUD gave a great deal of thought to both the unfulfilled mandate of the FHA and the way that mandate might be most effectively met across a wide range of programs and geographies. It was not hastily done.

The discussion of the circumstances and premises which shaped the agenda of the administration as it undertook the effort, as well as the summary of the critiques from both fair housing advocates and other stakeholders, demonstrate that HUD understood that it has many constituencies, and that for the Rule to be successful it would have to be accepted, if not embraced, by all of the them to a significant degree for it to accomplish its goals. The "real time" information about the experience with the first submissions is useful, as is the caution that any Rule this ambitious was going to have to continue to evolve as lessons are learned and results are measured.

Had the implementation of the Rule proceeded on schedule, such an overview of the Rule as this paper gives would have provided a useful benchmark and historical context, but would probably not have had great implications for the future of the Rule at this stage of the process. The jury would still be out, way out, on how effective it was going to be in fulfilling its promise as envisioned by the drafters. The sorts of questions and observations outlined in the paper would be the focus of ongoing research and discussion as the Rule played itself out in communities throughout the country.

However, as the paper describes, that is not the context in which the AFFH Regulation is now operating. Instead, the new administration at HUD is moving to dismantle the Rule before it has an opportunity to demonstrate its effectiveness, and sabotage its goals, through use of the same administrative process by which it was developed. There are encouraging signs that at least some jurisdictions recognize the value of the sort of process and the ultimate goals of the AFFH Rule and will move forward at the local level with some sort of effort regardless of what HUD does. But the Trump HUD will no doubt be more efficient in the dismantling the official Rule than the Obama administration was in promulgating it, which is something that should not be lost on future efforts. As the paper points on in a footnote (this should have been given more attention), the imperative to do what HUD had failed to do for over 40 years was created by a federal court ruling just as the Obama administration came in. At the time the new administration made sweeping promises about finally taking its obligation seriously, and there was every reason to think that would happen. However, it took almost the full two terms of a purportedly progressive administration on fair housing, to do something that could have and should been done in its first term. While the "all deliberate speed" approach may have left everyone involved feeling good about the "process" as much as the "product", it took too long, and left the Rule much more vulnerable than it would have been had it been 4 years down the road of implementation.

Of course, if the current HUD administration moves to effectively dismantle this long overdue effort to comply with the Fair Housing Act, and return to its historic role as defender of the segregated status quo, it is likely that fair housing advocates will find themselves once again seeking judicial relief. It is in this environment that this paper can be perhaps most useful because it is both evidence of and a guide to the “thoughtful deliberation” that went into the development of the Rule, the efforts to consult with all the stakeholders, and, in the end, to promulgate a Rule which reflected a sincere effort to address all the concerns heard during that lengthy process. The record made about the failures of the AI, and the Final Rule’s clear statement that the AFFH mandate requires “meaningful actions to overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics” are powerful agency declarations, based on a well-documented deliberative process. The paper persuasively articulates all the reasons misguided efforts to dismantle the Rule should fail. An optimist would hope that those seeking to undo the Rule would realize why it should allowed to go forward. However, in the event that the better angels in HUD don’t prevail, this paper will be an important contribution to the effort by advocates seeking remedy outside of the agency environment. In the end, the paper is a sobering reminder that justice delayed may indeed mean justice denied. The right balance in a deliberative process like rule making must be struck, and if supporters of fair housing ever get another chance, they must remember the lessons of this endeavor.

## THE FAIR HOUSING ACT AND PERSISTENCE OF LOW MINORITY HOMEOWNERSHIP, INDEED

*Responding to Arthur Acolin, Desen Lin, and Susan M. Wachter 2019, Endowments and Minority Homeownership, Cityscape 21(1): 5-61.*

*Kevin Chavers, Chairman, Bedford Stuyvesant Restoration Corporation*

*"This afternoon, as we gather here in this historic room in the White House, I think we can all take some heart that democracy's work is being done. In the Civil Rights Act of 1968 America does move forward and the bell of freedom rings out a little louder."*

*-Lyndon B. Johnson: "Remarks upon Signing the Civil Rights Act." April 11, 1968.*

April 11th of this year marked the 50th anniversary of the enactment of the Fair Housing Act, Title VII of the Civil Rights Act of 1968. Enacted exactly one week after the assassination of Dr. King and on the heels of widespread civil unrest and violence across the country, it was hailed as the completion of the historic civil rights legislation ending de facto apartheid in the nation. Acolin, Lin, and Wachter's analysis of the homeownership rates of racial minorities since the enactment of the Fair Housing Act is timely and provides an important contribution to the analysis of the rates of homeownership today and the factors which seek to explain the persistent racial disparities. The analysis utilizing the 1989, 2005 and 2013 American Home Survey data set tracks the progression of homeownership rates of racial minorities across the 5 decades and highlights the minority/white homeownership gap. The analysis also endeavors to extract and explain the variables which correlate with the observed differentials. However, unexplained factors emerge from the analysis. Regrettably, race as a construct, in and of itself, is the factor.

Though its impact is broad, the context of the 50th anniversary of the Fair Housing Act, enacted shortly after Dr. King's death as a direct result of the civil rights movement, is important to the analysis of its success. The analysis illustrates the striking fact that the current Black homeownership rate today is the same as in 1970. Perhaps an even more sobering finding is the Black/white homeownership rate gap persists. This is particularly concerning given the aspirations of the Fair Housing Act and the socio-political history of the quest for full and fair participation in the economic fabric of the nation by the descendants of slavery. The analysis serves as an acute rebuke of those who would argue that racial disparities no longer exist in our nation. For many of us who are committed to the eradication of such disparities and who have spent time in the public policy arena and as practitioners, this quest challenges us and continues to confound.

The trajectory of homeownership rates across the decades illustrates the correlation with broad national economic trends and the differential impact of such on the various racial cohorts accounting for their respective household (income, education, age, gender and family size) and market (price and location) endowments. The household and market endowments are extracted in Acolin, Lin, and Wachter's analysis to illustrate their impact on the observed differential in homeownership rates across racial lines. Though correlated, those other factors don't fully explain the differential. While the analysis indicates that not all of the factors, (e.g. credit, intergenerational wealth), were taken in to account, it is clear a differential racial gap persists. A gap that is most acute for Black homeownership. Moreover, the household and market endowment as well as credit and intergenerational wealth are all factors whose disparities along racial lines are acute. In particular, the historic experience of the Black population in the nation explains the ultimate impact of that racial history on an array of socio economic factors, including homeownership, and by extension the full and fair participation in the economic fabric of the nation.



As the paper indicated some progress in the Black homeownership rate was observed in the 1990's through 2005, consistent with broad positive economic trends and affirmative initiatives in public policy (e.g. the Community Reinvestment Act (CRA), the Home Mortgage Disclosure Act, the Equal Credit Opportunity Act, and the Federal Housing Enterprises Financial Safety and Soundness Act of 1992). Unfortunately, these gains were disproportionately wiped away as a result of predatory lending practices (Studies have indicated that even adjusting for credit, Blacks were more likely than their white counterparts to have been steered to subprime loans and in segregated neighborhoods), the financial crisis and the lagging recovery for the Black community. So today the Black homeownership rate sits at 42 percent. The same level it was in 1972, two years after enactment of the Fair Housing Act. In 1972 the white homeownership rate was 66 percent, it has risen to 72 percent today.

Acolin, Lin, and Wachter's analysis and findings should serve as a stern reminder to those who question the need for policies and practices that seek to address these persistent homeownership gaps. Those who question the need to address the disparities in the current public policy debates, including enforcement of the Fair Housing Act, the future of housing finance reform and CRA reform choose to ignore the reality. Given the historic impact of homeownership on wealth creation (In 2013, the net worth of white households was \$144,200, roughly 13 times that of black households, according to Pew Research Center analysis of data from the Federal Reserve's Survey of Consumer Finance), and access to educational and income opportunities addressing the disparities is vital to efforts to close the racial wealth gap.

## COMMENTARY: ENDOWMENTS AND MINORITY HOMEOWNERSHIP

*Responding to Arthur Acolin, Desen Lin, and Susan M. Wachter 2019, Endowments and Minority Homeownership, Cityscape 21(1): 5-61.*

*Gary Dean Painter, Professor, Sol Price Center for Social Innovation, University of Southern California*

The question of why minority homeownership levels continue to be far lower than the rate of homeownership for white households is a question that deserves continued attention for policy and research. Leaving aside the debate about whether homeownership generates community externalities (civic participation, maintenance, etc.) or within family benefits (school age children), the absence of a housing asset from so many households' portfolio is an indicator that these families have fewer wealth building options and face additional barriers than white households face. Even if a study can explain additional portions or all of the homeownership gap, these differences can still be consequential for families and for policy.

Acolin, Lin, and Wachter (2019) bring a renewed focus on what portion of the minority-white homeownership gap can be explained by endowments and the portion that remains unexplained. The analysis highlights the critical role of permanent income over the last three decades in explaining the homeownership gap, but note that there remains an important part of the gap that is unexplained for African-Americans. The analysis also notes that among foreign residents of the United States, citizenship predicts higher homeownership.

This paper does provide an important contribution in noting how much of the homeownership gap can be explained across time. Unfortunately, there remains much unexplained, and it is possible that some of the explanation could lie in testing additional hypothesis, or as the paper notes these differences may be due to unexplained wealth gaps or the credit environment, and it could be a combination of all of these issues.

Below, I note some of the alternative modeling approaches that can provide additional insights into how to understand estimated homeownership gaps. As is well appreciated, the choice to own a home is embedded in a series of sometimes simultaneous choices that households make. These choices include the choice to become or remain an independent household, the choice to move, and the choice of where to locate. There is no single paper that includes a framework to account for all of these choices, but there have been important insights derived from this literature.

One first key difference between racial and ethnic groups that has been noted by researchers is the substantial differences in household formation between race and ethnic groups. The first paper that I read to make this point clear was Haan and Yu (2012). In their analysis of immigrants in Los Angeles and Toronto, they noted that while African immigrant had far lower homeownership rates than Chinese immigrants, the share of adults that were homeowners as a head of household was exactly the same. The difference in homeownership rates was that African immigrant adults were far more likely than Chinese adults to live on their own as renters. Chinese adults were more likely to remain living in shared living arrangements with other adults. In my own work (Lee and Painter, 2013; Painter and Yu, 2014), this pattern of difference in household formation was documented between other groups. Prior to the recession, households headed by a Caucasian or African-American had headship rates about 10 percentage points higher than Latino and Asian households. After the recession, the headship rates of African-American largely converged to the rates of Latino and Asian households.

A second key difference observed between native and immigrant households are the rates of

mobility. As documented by Kan (1999), it is important to account for expected mobility in the estimation of housing tenure choice models. Because choosing to buy a home carries with it very large transactions costs, households would prefer to remain renters if they anticipate moving within a short time frame. In a series of papers (Painter, 2000; Painter et al. 2001; Painter et al, 2003), demonstrated that a large portion of the estimated gap between native and immigrant households can be explained by higher rates of mobility among immigrants. Unlike this paper (Acolin, Lin, and Wachter, 2019), which focuses on the citizenship question, the likely driver of the importance of citizenship can be explained by an immigrant's newness to the country and the rates of mobility.

A final difference between racial and ethnic groups can be attributed to the choice of location for households. A number of papers have estimated tenure choice and location choice jointly and found that these decisions should be estimated together if one is to properly access homeownership gaps. Legacies of redlining, discrimination, and disinvestment have restricted choices for households of color. These restrictions reduce the value in owning a home in some neighborhoods. For example, Gabriel and Painter (2008) found that reductions in neighborhood crime rates increases the probability that a household would own in previously high crime areas. In the case that a household lives in a neighborhood with fewer positive amenities and more disamenities, one would not expect similar homeownership rates to households living in other neighborhoods where neighborhoods have better amenities.

While it is important to think about these documented differences in understanding the size of the homeownership gap between white and non-white households, the explanations offered in these studies is consequential. As other papers (Linneman and Wachter, 1989) have noted differences in wealth and intergenerational wealth (Charles and Hurst, 2002; Myers et al, 2018) are key drivers of homeownership differences. These gaps in wealth are also related to housing stability, the rate of household formation, and neighborhood choice. If the purpose of the analysis is to simply account for gaps between races and ethnic groups, then it is essential to estimate these more robust models. However, if the purpose is to document the direction in these gaps and develop policies to reduce them, then I suspect we know what to do.

The broader literature on housing gaps is conclusive that discrimination is pervasive at many steps in the process for households of color (e.g., Yinger, 1995). From neighborhood choice (steering) to appropriately assessing credit worthiness to types of mortgage instrument provided, government policy must remain vigilant to eliminate all forms of discrimination. Policy can also make the necessary investments to allow wealth gaps to close. In the short run, such policies should focus on human capital investments to close the gap in earnings and wealth as noted in Lee et al (2018). However, the necessary human capital investments to close such substantial wealth gaps will take generations, so patience and persistence is required.

## REFERENCES

- Charles, K. K., & Hurst, E. (2002). The transition to home ownership and the black-white wealth gap. *Review of Economics and Statistics*, 84(2), 281-297.
- Gabriel, S. A., & Painter, G. (2008). Mobility, residential location and the American dream: The intrametropolitan geography of minority homeownership. *Real Estate Economics*, 36(3), 499-531.
- Kan, K. (1999). Expected and unexpected residential mobility. *Journal of Urban Economics*, 45(1), 72-96.



Hyojung Lee, Dowell Myers, Gary Painter, Johanna Thunell, Julie Zissimopoulos, and (2018), "The role of parental financial assistance in the transition to homeownership by young adults," *Journal of Housing Economics*, forthcoming.

Lee, K. O., & Painter, G. (2013). What happens to household formation in a recession?. *Journal of Urban Economics*, 76, 93-109.

Linneman, P., & Wachter, S. (1989). The impacts of borrowing constraints on homeownership. *Real Estate Economics*, 17(4), 389-402.

Myers, D., Painter, G., Zissimopoulos, J., Lee, H., & Thunell, J. (2019) Simulating the Change in Young Adult Homeownership Through 2035: Effects of Growing Diversity and Rising Educational Attainment. *Housing Policy Debate*, 29(1), 126-142.

Painter, G. (2000). Tenure choice with sample selection: a note on the differences among alternative samples. *Journal of Housing Economics*, 9(3), 197-213.

Painter, G., Gabriel, S., & Myers, D. (2001). Race, immigrant status, and housing tenure choice. *Journal of Urban Economics*, 49(1), 150-167.

Painter, G., Yang, L., & Yu, Z. (2003). Heterogeneity in Asian American home-ownership: The impact of household endowments and immigrant status. *Urban Studies*, 40(3), 505-530.

Painter, G., & Yu, Z. (2014). Caught in the housing bubble: Immigrants' housing outcomes in traditional gateways and newly emerging destinations. *Urban Studies*, 51(4), 781-809.

Yinger, J. (1995). *Closed doors, opportunities lost: The continuing costs of housing discrimination*. Russell Sage Foundation.

Yu, Z., & Haan, M. (2012). Cohort progress toward household formation and homeownership: Young immigrant cohorts in Los Angeles and Toronto compared. *Ethnic and Racial Studies*, 35(7), 1311-1337.

## CONSIDER SEGREGATED AFFLUENCE

*Responding to Edward G. Goetz, Anthony Damiano, and Rashad A. Williams (2019), Endowments and Minority Homeownership, Cityscape 21(1): 99-123.*

*Olatunde Johnson, Jerome B. Sherman Professor of Law, Columbia Law School*

The 50th Anniversary of the Fair Housing Act (FHA) has invited reflection on our nation's progress in achieving the Act's nondiscrimination and integration goals. The assessment has been mixed. Some researchers are optimistic, pointing to decreases in discrimination as measured by testing, and to reductions in segregation levels. Others are more sanguine, highlighting the emergence of subtle forms of discrimination (through steering and algorithms for instance), and a persistence of black-white segregation and of high-poverty, racially isolated communities. In the midst of this debate, comes new research on "racially concentrated areas of affluence" (RCAs). This research by Goetz, Damiano, and Williams shifts the conversation to a different aspect of the geography of economic and racial inequality implicated by the FHA—specifically the spatial segregation of affluent whites. The Article offers a "preliminary investigation" of the emergence of RCAs, and their prevalence across regions.

This data and mapping are timely. This research should be read alongside recent concern about the extent of economic inequality generally and the rise of economic segregation in metropolitan neighborhoods, as well as more long-standing inquiry into the effects of the socio-economic composition of neighborhoods on social mobility.

For lawyers and reformers, the question immediately turns to the salience of this data, and its implication for legal and social policy. The authors offer a comparison at the outset between RCA's and Racially/Ethnicly Concentrated Areas of Poverty (RECAPs), a more familiar area of social science study. They provide data to show that RCAs are in fact more prevalent in most metro areas than RECAPs. And yet the harm of concentrated poverty is much more documented than the harms of concentrated affluence. A large body of research associates the prevalence of RECAPs with poor health and education outcomes, and a dampening of social mobility. On the flip side, we know much about the benefits to children especially of living in low-poverty neighborhoods. RECAPs also pose challenges of justice and democracy. In many respects they are a legacy of slavery and racially discriminatory government policies. A set of normative ideas flow from an understanding of the harms of RECAPs. For instance, that we should provide poor children greater access to low-poverty neighborhoods, and diminish the prevalence of high-poverty neighborhoods. Legal reformers have focused legal and regulatory policies including expanding affordable housing in low-poverty neighborhoods; structuring vouchers to allow individuals and families meaningful access to low-poverty communities; challenging exclusionary zoning; and building regional cooperation and planning between cities and suburbs.

This Article does not squarely challenge the standard emphasis on RECAPs, though it hints at a misguidedness in the "overwhelming orientation of public policy toward altering the pattern of residential settlement among people of color and the poor." But the Article does suggest that we should pay more attention to the potential effects of RCAs. The questions that remain are why we should, and if we should, what are the implications for policy and law. Are RCAs materially harmful in the way of RECAPs? A next phase of research might examine whether low RCA regions are associated with more social and economic mobility as the research now suggests about low RECAP regions. Such new research might complement existing research on how spatial and economic arrangements in different regions affect the mobility of a poor child into the middle



class. Particularly promising is the Article's conclusion that future research should examine this type of intra-metropolitan variation.

The question of remedy would come next. Should we now consider altering the pattern of residential settlement among the rich? That may be the implication of this research. But if so, we might be led to many of the same reforms as we would employ to diminish RECAPs: opening up RCAs to low- and moderate- income housing and challenging exclusionary land-use zoning. The Article does not yet offer a set of new prescriptions, and perhaps the research is at too early a stage to confidently do so. As such, the question that arises is whether RCAs are a distinct feature of segregation that requires new interventions of disruption. Or whether they are simply an extreme product of more familiar patterns of economic and racial segregation.

There is reason to suspect that the authors of this Article have a bolder vision in mind. Goetz, Damiano, and Williams offer some tantalizing hints that the key harm may be to our democratic commitments. For one, they invoke Iris Young, the political philosopher, who has identified the harms of segregation as fundamentally democratic harms, including that segregation obscures the privilege that it creates and impedes political communication. Separation might produce social distancing, lack of empathy, and thus can contribute to a range of societal pathologies. Residents of affluent communities might hoard resources, and thwart investment in public and more redistributive infrastructure including mass transit, housing, and schools. Spatial distancing might also exacerbate criminalization of socially excluded and vulnerable groups. The rise of RCAs might contribute to trends of rising political polarization, racism, and social mistrust. These outcomes may be more challenging to measure, but have deep resonance with phenomena observed outside the field of housing. This research on concentrated affluence allows us to view these trends of political and ideological polarization in spatial terms.

The solutions to how the spatial dimension challenges democracy are not clear. At minimum, considering the democratic effects of segregation invites fair housing reformers to be more ambitious. Governance structures at every level of government, as well as mechanisms for local and civic engagement, should be more squarely on the traditional housing agenda. Discussions of the harms of segregation and its remedies, should not just be oriented to experts and insiders, but must engage a broader audience.

It is not a new idea that addressing segregation implicates our shared fate. Martin Luther King once said "if democracy is to live, segregation must die." These are notions that have long undergirded the quest for integration--expanding conceptions of who deserves citizenship and of who we consider to be part of our community and worthy of concern. Perhaps as this research on racially isolated affluence progresses, it will give new urgency to achieving these integration goals.

## PROMOTING EQUITY AND INCLUSION THROUGH PROBLEMATIZING CONCENTRATED WHITE AFFLUENCE

*Responding to* Edward G. Goetz, Anthony Damiano, and Rashad A. Williams (2019), *Endowments and Minority Homeownership*, *Cityscape* 21(1): 99-123.

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Prevailing policy strategies to address racial segregation and spatial inequality focus on changing conditions within low-income, communities of color and moving low-income, people of color to neighborhoods of opportunity. Policymakers, advocates, and researchers assert that redevelopment and mobility strategies will result in a deconcentration of poverty, positive individual outcomes for low-income households, and general benefits for neighborhoods and cities as pockets of urban distress are revitalized.

However, the results of over twenty-five years of poverty deconcentration policy have been disappointing, as pathways to greater economic and social prosperity for the urban poor are fraught with significant barriers. Metro areas that promoted mixed-race, mixed-income communities have faced challenges with how to intentionally socially, politically and culturally integrate in ways that do not reproduce exclusion and marginalization (see, for example, Chaskin and Joseph, 2015; Hyra, 2017; Khare, Joseph, and Chaskin, 2015). Even those cities with a progressive electorate, sophisticated housing and school integration policies, and long-term commitments to diversity, such as Shaker Heights outside Cleveland and Oak Park outside Chicago, struggle to ensure fairness and justice for low-income, households of color. And residential mobility efforts, despite the promise engendered by Chetty, Hendren and Katz's (2016) positive findings about outcomes for a particular subpopulation of young movers, have also yielded mixed and disappointing results, depending on the subpopulation in question (see, for example, essays in Fraser, Oakley, and Levy, 2013).

On a positive note, greater numbers of metro areas have experienced declines in racial segregation (Firebaugh and Farrell, 2016; Gould-Ellen, Steil, and De la Roca, 2016; Lichter, Parisi, and Taquino, 2015). But, racial segregation is not the greatest challenge. Rather, our greatest challenge as a field requires us to acknowledge the much harsher foundational realities of racism and classism, explicitly name the deeply pernicious underlying frame of white supremacy, and discover creative interventions that promote inclusion and equity within segregated *and* integrated spaces.

### A GAME-CHANGING CONTRIBUTION TO POLICY AND SCHOLARSHIP

Goetz, Damiano, and Williams' excellent article challenges us to turn attention away from a singular focus on black and brown, poor communities to the underexplored dimension of concentrated white affluence. This is a profound contribution to the housing policy field. They expand the current debate beyond a focus on the redevelopment of low-income, communities of color and the mobility of residents of those communities to one focused on whiteness, confronting our devastating comfort with "rendering whiteness normative" within our policies and even our scholarship.

They succeed in advancing a compelling argument: If we are to understand U.S. metro level inequality and segregation, then we must address the challenge by defining and exploring the persistent segregation of affluent, predominantly white communities. The paper provides sufficient evidence that the problem of segregation is not one *only* demarcated by low-wealth, black and

brown neighborhoods, but also by “exclusionary enclaves of white affluence.” In addition, their new construct for the study of segregation, Racially Concentrated Areas of Affluence (RCAAs), is extremely valuable. Their “preliminary investigation” yields a bounty of implications for future housing policy and research. We hope that their contribution is broadly discussed and applied.

Our main critique of their argument is that it is solely based on a fairness argument about the prevalence and durable nature of concentrated white affluence and the inequality and harm to people of color that it causes. They fail to also advance the economic and social *value* case for greater integration and inclusion. Thus, as often afflicts most of us, their argument remains within a white supremacist frame of what white people should do for people of color without posing the thrillingly boundless question about the *value* that African Americans and other people of color can offer to communities and to society, if they were privy to more opportunity and inclusion. White people do not just avoid and exclude people of color because they are afraid of them or are uncaring about them. Rather, they do not see *value* in people of color, because of their presumed inferiority.

Thus, Goetz, Damiano and Williams allow the conversation about greater integration to remain in the zero-sum frame that stifles most policy discussions on the topic: What would one group have to give up in order for a marginalized group to receive more? This plays directly into the prevailing “us versus them” dynamics that are crushing the potential of America as it diversifies. Instead, we urge a radical shift in the discussion to emphasize the *value* of people of color and the motivating potential of a *positive-sum* reality whereby greater opportunity for the marginalized actually generates increased, sustained opportunity for all.

## REEXAMINING POLICY THROUGH A RACIAL EQUITY LENS

We concur with Goetz, Damiano and Williams that we cannot expect our nation to reverse persistent patterns of segregation and related inequitable outcomes without problematizing how whiteness is construed, elevated and protected. And we must be cognizant and honest that, due to internalized racism, individuals of all races hold mental models of whiteness as purer and more valued. None of us are immune to these societal norms; “anti-racist” thinking and action requires constant vigilance to question our assumptions. While national housing policy preferences white, affluent spaces as “opportunity” areas, it is necessary to step back and imagine an alternative reality in which housing policy establishes a set of principles for investment and strategy that elevates the *value* of all groups. At the core of this framework would be a commitment to housing financing, siting, design, regulations and management that is keenly attuned to avoid stigmatizing any group as more valued than another.

## IMPLICATIONS FOR POLICY AND PRACTICE

**Promote Inclusion and Equity, not Integration.** It is not enough to focus on residential integration within wealthy, white enclaves. Rather, we need to advance a different “operating culture” within those places— one that values the meaningful participation of low-income people of color into everyday activities and decisions in ways that seeks to equalize power and shape a sense of belonging for those traditionally marginalized.

**Name and Problematize White Supremacy as an Enduring and Universal Mindset.** A key target of change must be the places where white supremacy is reinforced, rather than the current focus on the segregated poor communities where its negative effects are experienced and internalized by



people of color. We need not expect the burden of integration, inclusion and equity to fall on those people of color and lower-income people who move to white communities. Rather, we need to acknowledge the responsibility among white leaders and institutions to change.

**Foster White Allies in the Anti-Racism Movement.** Some affluent whites living in these communities have the desire and capacity to be allies in the fight for racial equity and broader societal healing and advancement. We need to learn from them about what works best in these environments to promote changes in perception, attitudes and behaviors among people living in concentrated, affluent white spaces.

**Frame a Holistic Narrative.** Framing of the issue of inequality often focuses on the negatives of concentrated poverty and segregation for low-income people and for cities, without recognizing if and how areas of concentrated wealth and whites are also negatively impacted. Expanding our understanding of the cost of segregation at a regional scale is important, but just as important are the narrative messages that are compelling to white, affluent communities (Acs et al., 2017; Manuel and Kendall-Taylor, 2018). We propose the following narrative frame: Segregation and inequality are harmful to all. By addressing the institutional barriers that create disparities by income and race, our entire city and all of its residents will be better off. Everyone contributes and everyone benefits when we focus on inclusion and equity.

**Move Beyond Spatial Solutions with a Racially-Equitable Agenda.** Since racism and classism are at the basis of exclusionary decisions, practices and policies, we need to complement spatial solutions with racially-equitable policies across social and geographic spheres.

We appreciate Goetz, Damiano and Williams' inspiration to broaden our aspirations for racial equity and inclusion in the U.S., and we look forward to future studies and policy innovations that build from the concept of RCAAs. To achieve economically and socially vibrant metropolitan areas, where all can sustainably thrive, our U.S. poverty deconcentration policy requires more than its current focus on residential mobility and inner-city redevelopment; rather we need a more geographically and strategically comprehensive agenda that prioritizes equity, inclusion, and social justice.

## REFERENCES

- Acs, Gregory, Rolf Pendall, Mark Treskon, and Amy T. Khare. 2017. "The Cost of Segregation, National Trends and the Case of Chicago, 1990-2010." Washington, D.C.: Urban Institute.
- Chaskin, Robert J. and Mark L. Joseph. 2015. *Integrating the Inner City: The Promise and Perils of Mixed-Income Public Housing Transformation*. Chicago, IL: University of Chicago Press.
- Chetty, Raj, Nathaniel Hendren, and Lawrence Katz. 2016. "The Effects of Exposure to Better Neighborhoods on Children: New Evidence from the Moving to Opportunity Project." *American Economic Review* 106 (4):855-902.
- Ellen, Ingrid Gould, Justin P. Steil, and Jorge De la Roca. 2016. "The Significance of Segregation in the 21st Century." *City & Community* 15 (1): 8-13.
- Firebaugh, Glenn, and Chad R. Farrell. 2016. "Still Large, but Narrowing: The Sizable Decline in Racial Neighborhood Inequality in Metropolitan America, 1980-2010." *Demography* 53 (1): 139-64.



Fraser, James C., Deirdre Oakley, Diane K. Levy, Editors. 2013. Symposium Issue: Mixed Messages on Mixed-Income. *Cityscape* 15(2).

Hyra, Derek. 2017. *Race, Class and Politics in the Cappuccino City*. Chicago, IL: University of Chicago Press.

Khare, Amy T., Mark L. Joseph and Robert J. Chaskin. 2015. "The Enduring Significance of Race in Mixed-Income Developments." *Urban Affairs Review* 51(4): 474-503.

Lichter, Daniel T., Domenico Parisi, and Michael C. Taquino. 2015. "Spatial Assimilation in US Cities and Communities? Emerging Patterns of Hispanic Segregation from Blacks and Whites." *Annals of the American Academy of Political and Social Science* 660 (1): 36–56.

Manuel, Tiffany and Kendall-Taylor, Nat. 2018. "Creating Affordable Housing Opportunities Means Talking Equity." *Stanford Social Innovation Review*. April 20, 2018.

## COMMENTARY: ARE LOCATION AFFORDABILITY AND FAIR HOUSING ON A COLLISION COURSE?

*Responding to Vincent J. Reina, Jake Wegmann, and Erick Guerra (2019), Are Location Affordability and Fair Housing on a Collision Course? Race, Transportation Costs, and the Siting of Subsidized Housing, Cityscape 21(1): 125-148.*

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U.S. affordable housing policies are often designed to simultaneously achieve multiple goals, from improving housing quality to enhancing access to neighborhood opportunities and amenities. While we often view housing policy's multiple goals to be complementary, "Location Affordability and Fair Housing on a Collision Course?" by Vincent Reina, Erick Guerra, and Jake Wegman call attention to a potential tradeoff between the goal of enhancing "location affordability," understood as lowering the combined housing and transportation costs of living in a particular area, and the fair housing goal of reducing, or at least not exacerbating, residential segregation by race. Based on an associative analysis of data for the nation and for the largest 25 metropolitan areas, the authors find that people of color tend to live in neighborhoods with lower transportation costs, and these are often the neighborhoods where Low Income Housing Tax Credit (LIHTC) units are sited. Based on these findings, the authors conclude that that by prioritizing affordable housing investments to low-transportation cost areas that are well-served by transit, HUD may run afoul of the fair housing goal of desegregating neighborhoods by race.

I commend the authors for tackling this important topic in a comprehensive and careful manner. In this brief comment, I wish to make a few general observations about the policy implications of the authors' findings. Specifically, I argue that while the authors' study certainly points to a potential conflict between the housing policy goals of location affordability and fair housing, this conflict does not arise in all affordable housing policy decisions. Specifically, the conflict only arises from fair housing policies designed to promote racial integration, and the conflict is less likely to be a concern in the LIHTC program than in other place-based affordable housing programs.

While residential integration is not explicitly cited as a goal of the U.S. Fair Housing Act (FaHA), housing policymakers have come to understand the FaHA's charge to "affirmatively further" fair housing as a mandate to promote integration either by ending governmental actions that perpetuate racialized enclaves, by dismantling existing patterns of segregation, or by promoting newly integrated living patterns. Not all housing advocates accept that fair housing policy should place emphasis on integration. For example, Goetz (2018) argues that pro-integrative policies often do more harm than good, conflict with the goal of promoting community development in segregated neighborhood, and unfairly place the burden of achieving integration on the backs of low-income people of color by restricting their housing choices. The authors of "Location Affordability and Fair Housing on a Collision Course?" briefly touch on this debate in their literature review, but their analysis does not address the broader fair housing goals of expanding housing choice for members of protected classes and ending housing discrimination. Arguably, efforts to enhance location affordability are less likely to come into conflict with these broader goals, which have unified the fair housing movement since its inception.

The authors place emphasis on the tradeoffs between location affordability and integration in the LIHTC program, but for several reasons, location affordability criteria are less likely to produce highly segregated housing patterns when applied to LIHTC units than when applied to units subsidized by other place-based subsidy programs. Since the maximum income requirements for LIHTC units tend to be higher than those for other HUD housing assistance programs, an influx of

LIHTC properties into high-poverty neighborhoods may actually reduce segregation by income and race (Horn and O'Regan, 2011). New LIHTC properties may also replace vacant and dilapidated structures that previously existed in the neighborhood, and a concentration of new properties may spur community revitalization, even if the units are co-located in a concentrated fashion (Baum-Snow and Marion, 2009; Ellen et al., 2009). The community revitalization potential of LIHTCs is consistent with evidence cited by the authors linking LIHTC developments to localized property value increases (Ellen et al., 2007), particularly when LIHTCs are sited in more distressed areas (Diamond and McQuade, 2016). Furthermore, given that transit investments have also been shown to increase local property values, LIHTC developments may preserve a modicum of affordability and integration amidst rising property values and “transit-induced gentrification” (Dawkins and Moeckel, 2016).

Even if the conflict between location affordability and fair housing is not a problem that is as widespread and encompassing as the authors suggest, the authors do a convincing job of demonstrating the potential conflicts that may arise and the tradeoffs facing housing policy makers. When such conflicts arise, policymakers must choose between promoting residential integration and promoting location affordability. While it is beyond the scope of this brief commentary to elaborate on which of these housing policy goals is more defensible, fair housing policy has a longer and more established track record. The jury is still out on whether shifting the location of affordable housing would have meaningful impacts on a household's total housing + transportation cost budget. One recent study finds that proponents of location affordability may have significantly overstated the household cost savings from living in transit-rich neighborhoods (Smart and Klein, 2018). Perhaps rather than using housing policy to steer households to neighborhoods where we think they would be better off, we should focus instead on making affordable housing more widely available in all neighborhoods.

## REFERENCES

- Baum-Snow, Nathaniel and Justin Marion. 2009. The effects of low income housing tax credit developments on neighborhoods. *Journal of Public Economics* 93: 654-666.
- Dawkins, Casey and Rolf Moeckel. 2016. Transit-Induced Gentrification: Who Will Stay, and Who Will Go? *Housing Policy Debate* 26,4-5: 801-818.
- Diamond, Rebecca, and Timothy McQuade. 2016. *Who wants affordable housing in their backyard? An equilibrium analysis of low income property development*. No. w22204. National Bureau of Economic Research.
- Ellen, Ingrid Gould, Amy Ellen Schwartz, Ioan Voicu, and Michael H. Schill. 2007. Does federally subsidized rental housing depress neighborhood property values?. *Journal of Policy Analysis and Management: The Journal of the Association for Public Policy Analysis and Management* 26, 2: 257-280.
- Ellen, Ingrid Gould, Katherine M. O'Regan, and Ioan Voicu. 2009. Siting, spillovers, and segregation: A reexamination of the Low Income Housing Tax Credit program. In *Housing Markets and the Economy*. Edward L. Glaeser and John M. Quigley, eds. Cambridge, MA: Lincoln Institute of Land Policy.

Goetz, Edward G. 2018. *The One-Way Street of Integration: Fair Housing and the Pursuit of Racial Justice in American Cities*. Ithaca, NY: Cornell University Press.

Horn, Keren M. and Katherine M. O'Regan. 2011. The Low Income Housing Tax Credit and Racial Segregation. *Housing Policy Debate* 21,3: 433-473.

Smart, Michael J. and Nicholas J. Klein. 2018. Complicating the Story of Location Affordability. *Housing Policy Debate* 28,3: 393-410.

## TIMING IS EVERYTHING—COMMENTARY: ARE LOCATION AFFORDABILITY AND FAIR HOUSING ON A COLLISION COURSE?

*Responding to Vincent J. Reina, Jake Wegmann, and Erick Guerra (2019), Are Location Affordability and Fair Housing on a Collision Course? Race, Transportation Costs, and the Siting of Subsidized Housing, Cityscape 21(1): 125-148.*

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In “Are Location Affordability and Fair Housing on a Collision Course?” Reina, Wegman, and Guerra argue that governmental policies that direct subsidies to affordable housing projects in neighborhoods with low-transportation costs collide with the Fair Housing Act’s (FHA) integration mandate. Their empirical analysis of national-level and metropolitan-specific Location Affordability Index data<sup>1</sup> shows that neighborhoods with low-transportation costs frequently correlate with racially segregated enclaves.<sup>2</sup> The authors warn that awarding housing subsidies to projects in areas with low-transportation costs may concentrate affordable housing developments in high-poverty, racially segregated, low-opportunity neighborhoods. Conversely, fair housing advocates who encourage developers to build affordable housing projects in predominately white, low-poverty neighborhoods may also concentrate minority households in neighborhoods with high transportation costs.

Timing and regional differences are everything when determining whether location affordability and integration are on a collision course. In 1968, when Congress enacted the FHA,<sup>3</sup> white flight from urban neighborhoods created racially segregated and geographically isolated urban areas. In 1967, the Kerner Commission Report explained that “to create an unsegregated population distribution, an average of over 86 percent of all Negroes would have to change their place of residence within the city.”<sup>4</sup> Now, at the fiftieth Anniversary of the Fair Housing Act,<sup>5</sup> American urban landscapes have changed. While racially segregated and impoverished urban neighborhoods abound,<sup>6</sup> the global trend toward urbanization,<sup>7</sup> the return of middle- and upper-middle class white residents to the city,<sup>8</sup> and the gentrification of some formerly segregated and disinvested urban neighborhoods,<sup>9</sup> complicates the dichotomy of the Black urban ghetto and the prosperous white suburb.

Many urban neighborhoods now have escalating land costs, since the return to the city creates new competition for urban space.<sup>10</sup> Land costs also continue to be high in many predominately white prosperous suburban areas, due to the persistent effects of long-standing exclusionary zoning tactics.<sup>11</sup> Global, national, and local real estate interests, seeking to maximize returns on investments, hunt for low-cost land on which to build market-rate developments.<sup>12</sup> When commercial real estate interests buy land to re-develop and revitalize former urban ghettos, they often marginalize advocates of affordable housing at the tables of urban planning and reform.<sup>13</sup> Developing affordable housing in fully integrated and highly-gentrified areas can be cost-prohibitive when land costs are high, and because the financial resources available to build affordable housing projects (absent some form of inclusionary zoning) are limited. Waiting until neighborhoods are fully integrated or gentrified to direct affordable housing subsidies may prohibit affordable housing construction. Low-income, segregated areas may have cheaper land for development and may have lower transportation costs, precisely because the area is segregated and partially disinvested.

How can fair housing advocates adequately reconcile these new urban realities? Fair housing advocates may need to more closely examine how, when, and whether to bring fair housing suits against public agencies for directing affordable housing subsidies to areas

with high concentrations of low-income minorities and low-transportation costs. How can fair housing advocates adequately discern when public agencies' decisions to site affordable housing projects in areas with low-transportation costs are merely a pre-text for intentional discrimination, rather than a legitimate planning decision? Is every low-income and partially segregated metropolitan area in which public agencies seek to build affordable housing a threat to integration? Should public agencies terminate all projects that seek to locate affordable housing projects in areas with low-transportation costs?

A way forward is to utilize and analyze a broader set of data points beyond mere statistical disparities between blacks and whites living in a given metropolitan statistical area. Fair housing advocates should consider analyzing data across regions and at the neighborhood level over a slightly longer time horizon, when determining which siting decisions may exacerbate segregation or cause a negative disparate impact on a vulnerable protected class. Reina, Wegman, and Guerra concede that while areas with lower transportation cost areas tend to be highly Black and Hispanic across all of the major metropolitan statistical areas in the country, there are some regional differences in the distribution of transit costs by race.<sup>14</sup> For example, the authors find that “only 16 percent of Black residents live in the lowest quintile of transportation costs in the Seattle MSA, whereas 48 percent in the San Francisco MSA live in such tracts (Appendix A). In addition, just over 2 percent of Blacks in Chicago live in the highest quintile of transportation costs, whereas 20 percent do in Boston.”<sup>15</sup> Both affordable housing agencies and fair housing advocates should take this regional variation into account when awarding subsidies in low-transportation cost areas and when developing litigation strategies.

New indices forecast which features make a neighborhood potentially susceptible to gentrification and revitalization. While gentrification is difficult to measure and define, and current data does not suggest that gentrification is a nationwide problem even though the number of census tracts gentrifying has substantially increased in many cities,<sup>16</sup> these indicators help identify local patterns that may lead to gentrification and neighborhood change, particularly in high cost cities. The Center for Community Innovation at UC Berkeley has developed the Regional Early Warning System for Displacement (REWS). The REWS incorporates “extensive qualitative and quantitative regional analysis to better understand the nature of neighborhood change and its relationship to TOD [transit-oriented development].”<sup>17</sup> Los Angeles Mayor Eric Garcetti’s Los Angeles Innovation Team (i-team) developed the Los Angeles Index of Neighborhood Change, “a map that allows users to explore the degree to which zip codes in Los Angeles experienced gentrification between 2000-2014.”<sup>18</sup> Gentrification does not always equal integration, but researchers are also learning more about how gentrification facilitates racial transition.<sup>19</sup>

Policies that direct affordable housing subsidies to locations with low-transportation costs should incorporate this new data, along with Location Affordability Index data and statistical racial disparities, to ascertain whether investments in low-transportation cost areas perpetuate segregation or cause a disparate impact. Fair housing advocates should also analyze this same complex mix of metropolitan statistical area and neighborhood-level data to determine whether, in the not too distant future, the racial and economic composition of the area may change. Affordable housing investments in such areas will be necessary to help low-income minorities remain in, and gain economic, social and political traction in, revitalizing neighborhoods. These data innovations can help housing advocates avoid conflicts between the FHA and location affordability, as well as realize the full potential of the FHA in the future.

## ENDNOTES

1. “The Location Affordability Index (LAI) is a public online data base that enables users to compare the transit access and average transportation costs in various neighborhoods. The authors conduct a national-scale empirical analysis of whether “location efficient places overlap with racialized enclaves, followed by a metropolitan-specific analysis of the same.” See Vincent J. Reina, Jake Wegmann, and Erick Guerra (2019), Are Location Affordability and Fair Housing on a Collision Course? Race, Transportation Costs, and the Siting of Subsidized Housing, *Cityscape* 21(1): 125-148.
2. Reina et al., *supra* note 1, at 10.
3. 42 USCA §§ 3601 et seq. (sometimes called Title VIII of the Civil Rights Act of 1968) [hereinafter *the Act* or *the Fair Housing Act*].
4. Nat’l Advisory Commission on Civ. Disorders, Report of the National Advisory Commission on Civil Disorders 6 (1968) [hereinafter *Kerner Commission Report*].
5. See *id.*
6. See generally, Patrick Sharkey, *Stuck in Place: Urban Neighborhoods and the End of Progress Towards Racial Equality* (2013); Joseph Cortright & Dillion Mahmoudi, *Neighborhood Change, 1970-2010: Transition and Growth in High Poverty Neighborhoods* 1 (2014).
7. See e.g., United Nations, Department of Economic and Social Affairs, Population Division (2014); *World Urbanization Prospects: The 2014 Revision, Highlights* (ST/ESA/SER.A/352).
8. “Gentrification is at least equally the consequence of lower income residents moving out of downtown neighborhoods as it is the affluent whites moving in. As the study points out, “while some of the gentrification in central neighborhoods has to do with population growth, most of it has to do with shifts in the composition of a declining population.” (internal quotations omitted) Richard Florida, *The Downsides of the Back-to-the City Movement*, Citylab (Sept. 29, 2016), <https://www.citylab.com/equity/2016/09/downsides-of-the-back-to-the-city-movement/501476/>.
9. See e.g., Richard Florida, *The Complicated Link Between Gentrification and Displacement*, Citylab (Sept. 8, 2015), <https://www.citylab.com/equity/2015/09/the-complicated-link-between-gentrification-and-displacement/404161/>.
10. See e.g., Richard Florida, *The Downsides of the Back-to-the City Movement*, Citylab (Sept. 29, 2016), <https://www.citylab.com/equity/2016/09/downsides-of-the-back-to-the-city-movement/501476/>.
11. John Mangin, *The New Exclusionary Zoning*, 25 *Stan. L. Pol’y Rev.* 91, 91-93 (2014).
12. See Stabilizing NYC & Urban Justice Center, *The Predatory Equity Story: Tenant Perspectives on Speculative Landlords, Displacement and fighting for Justice*, (2017) [https://cdp.urbanjustice.org/sites/default/files/CDP.WEB.doc\\_Report\\_SNYCPredatoryEquity\\_20171214\\_0.pdf](https://cdp.urbanjustice.org/sites/default/files/CDP.WEB.doc_Report_SNYCPredatoryEquity_20171214_0.pdf).
13. Lisa T. Alexander, *Stakeholder Participation in New Governance: Lessons from Chicago’s Public Housing Reform Experiment*, 16 *Geo. J. on Poverty L. & Pol’y* 117, 174 -175 (2009).
14. Reina et al., *supra* note 1, at 10.
15. See *id.*



16. *See generally* Mike Maciag, Gentrification in America Report, GOVERNING: The States and Localities, Feb. 15, 2015, <https://governing.com/gov-data/census/gentrification-in-cities-governing-report.mtml>; Lance Freeman, *There Goes the 'Hood: Views of Gentrification from the Ground Up* (2006).

17. Chris Bousquet, *Data-Smart City Solutions, Using Mapping to Understand Gentrification, Prevent Displacement*, Government Technology (June 6, 2017), <http://www.govtech.com/data/Using-Mapping-to-Understand-Gentrification-Prevent-Displacement.html>.

18. *See id.*

19. *See* Florida, *supra* note 10, at 5.