

# Public Housing

and the Legacy of Segregation

Margery Austin Turner, Susan J. Popkin, and Lynette Rawlings

Also of interest from the Urban Institute Press:

*Primer on U.S. Housing Markets and Housing Policy*, by Richard K. Green and Stephen Malpezzi

*Choosing a Better Life? Evaluating the Moving to Opportunity Social Experiment*, edited by John Goering and Judith D. Feins

*Learning the Way: Deconcentrating the Poor in Urban America*, by Edward Goetz

2. This definition of community also begs the question of whether there can be a "healthy community" in some modern suburbs in which neighbors do not know one another. It is my hope that this question will be further explored in the future.

3. The District of Columbia Home Rule Act, passed by Congress in late 1973, prohibits it from imposing a commuter tax, though recently the federal government has provided operating funds for the District.

4. The leadership and work of Alexander Polikoff in fighting for and implementing the remedies from *Gautreaux v. Chicago Housing Authority* is a landmark accomplishment in combating the concentration of poverty in public housing. For more details, see chapter 3 in this volume.

5. I will avoid entering the debate about the market-skewing role of the massive federal investment in roads, mortgage insurance (including previously racially discriminatory policy of redlining), and the mortgage tax deduction toward creating modern suburbs.

6. Ironically, the first New Community in the District, called Northwest One, represents a major area of relocation for urban renewal relocatees from southwest D.C. In less than 30 years, it became one of the most crime-ridden areas of D.C.

7. The real problem is that they must live somewhere, if not in a prison cell, and no neighborhood wants to take them.

## THE FUTURE OF RACE-CONSCIOUS GOALS IN NATIONAL HOUSING POLICY

Philip Tegeler

*Civil rights advocates have argued that assisted housing mobility initiatives should be targeted to help low-income minority families move not just to lower-poverty neighborhoods, but to neighborhoods that are less predominantly minority. But would such requirements withstand a federal court challenge? Philip Tegeler suggests that the recent U.S. Supreme Court decision on voluntary school integration leaves the door open for properly drawn racial classifications in a national housing mobility program, but that policymakers should ensure that race-conscious approaches are well justified. This essay explains the legal issues and outlines an agenda of research that will be needed to address the legal questions likely to arise in the years ahead.*

In fair housing policy, America has largely been spared the upheaval occasioned by high-profile reverse discrimination cases in employment, government contracting, higher education, and voting rights. Racial classifications designed to promote integrated housing, such as selection of neighborhoods for new housing construction, affirmative marketing, and geographic targeting of vouchers, have generally been assumed legitimate and lawful under the Fair Housing Act's express mandate that the Department of Housing and Urban Development (HUD) and its grantees must "affirmatively further" fair housing.

However, the increasingly conservative drift of the federal courts and the spread of a new constitutional code of "color-blindness"—which would reject any use of race in official decisionmaking—should cause policymakers to reassess and perhaps buttress the legal and research underpinnings of important civil rights policies in housing. A harbinger

of the “color-blind” advocacy approach applied to fair housing came in a 1999 federal appeals court ruling in *Walker v. City of Mesquite*, striking down a racially based siting requirement for new housing in a Texas desegregation decree.<sup>1</sup> While this case is still a legal outlier and has not been followed by other courts of appeals, its approach is instructive in planning for the future use of racial desegregation criteria in housing programs.

In 2007, in *Parents Involved in Community Schools v. Seattle School District No. 1* (the voluntary school integration case), the Supreme Court stepped back from a full-scale rollback of race-conscious policies, albeit by a slim 5-4 margin.<sup>2</sup> Although a majority of five justices struck down the specific student assignment plans in the Seattle and Louisville public schools (which included individual admission preferences based on race), a different majority of five justices endorsed “avoidance of racial isolation” and “achiev[ing] a diverse student population” as compelling governmental interests and expressly approved the use of non-student-specific techniques in the future to achieve racially explicit goals.<sup>3</sup>

Advocates working to understand and intervene in segregated housing markets recognize the benefits of efforts to promote integration, especially in vindicating the rights of individual families that have been denied integrated housing choices.<sup>4</sup> They also know from experience the necessity of taking race into account in planning integration: proxies that take only economic status into account (like the fair share housing requirements in New Jersey) have often created fewer integrated housing opportunities for poor black and Latino families (Payne 1996; Roisman 1997). This commentary will not try to revisit the debate over the continuing importance of integration in American society;<sup>5</sup> rather it will focus on the most defensible and effective means of achieving this goal in future housing policy.

Following the decision in *Parents Involved*, a number of commentators have pointed to the importance of using housing policy to promote school integration.<sup>6</sup> Mindful of the experience in *City of Mesquite*, policymakers need to be prepared to defend these future housing policies from the kind of litigation brought against the Seattle and Louisville school plans. The discussion that follows will take the *Parents Involved* and *City of Mesquite* cases as its primary texts to explore the legal standards that might now be applied to challenges brought against race-conscious housing programs and the research agenda needed to protect and expand the use of race-conscious measures to promote racial integration in housing. Overall,

the Court’s splintered decision in *Parents Involved* counsels some caution as policymakers move forward, but it does not suggest that they abandon or disguise efforts to promote racial integration.

### The Lessons of the *Parents Involved* Case

In *Parents Involved*, the Supreme Court struck down voluntary school integration plans in Seattle and Louisville that gave some students a preference for admission to certain schools on the basis of their race. But in the process of reaching this decision, a majority of Court members (Justice Kennedy plus the four-justice dissent) agreed that “reduction of racial isolation” constitutes a compelling governmental interest that might justify racial preferences in some cases, and the key concurring opinion of Justice Kennedy enumerated various steps that may be taken to achieve race-conscious goals—so long as these policies do not classify *individuals* on the basis of race in a way that allocates educational benefits. *Parents Involved* comes after the landmark case of *Grutter v. Bollinger*,<sup>7</sup> which upheld carefully drawn racial preferences in law school admissions to further a compelling interest in “diversity” in higher education.<sup>8</sup>

This five-justice “majority” in *Parents Involved*—as articulated in Justice Kennedy’s concurring opinion joining with the dissent—lays out a basic road map to follow in assessing race-conscious programs outside the area of education. First, it clarifies that a policy agenda to promote racial integration (or reduce racial isolation) does not need to be hidden or disguised—indeed, this is a valid if not compelling basis for government action. Second, the decision suggests that most programs to achieve racial integration—if they do not classify individuals on the basis of race—will be subject to a reasonably deferential standard of review by the courts. Third, it seems that policies giving preference to individuals on the basis of race will likely be subject to the most stringent form of equal protection review (“strict scrutiny”), and the Court in *Parents Involved* provides some guidance about what evidence must be advanced to support such programs.

The strict scrutiny standard, applied by the courts to assess many racial classifications, requires the court to first determine whether a “compelling government interest” is present to justify the policy, and then asks the court to assess whether the race-based policy is “narrowly tailored” to achieve its goal. The court is essentially asking, “is the policy necessary?” and “is it being imposed in the most careful way?”

Justice Kennedy's opinion in *Parents Involved* is consistent with the view that government programs that do not classify *individuals* based on race are subject to a less exacting form of review—either “intermediate scrutiny” or “rational basis” review. However, some courts—like the appeals court in *City of Mesquite*—had been applying the higher standard to any explicitly racially directed program, even those that did not racially classify individuals. Presumably, the *Parents Involved* decision will discourage this trend—but there may be enough remaining ambiguity in the decision to foster continued division among the circuits on this point.

Within the analytic framework of Justice Kennedy's concurring opinion in *Parents Involved*, several questions need to be answered for future race-conscious housing policies. Specifically, how should policymakers characterize the nature of government interest in housing? Can the specific techniques used to achieve permissible race-conscious results mention race without triggering a higher level of scrutiny? And if an individualized racial classification is necessary to achieve program goals, what evidence will be needed to overcome the constitutional hurdle?

### Where Is the Compelling State Interest?

In evaluating the constitutionality of a government program under the 14th Amendment, the first question to be addressed is the nature and importance of the government interest asserted. Where a government program is subject to the highest form of constitutional scrutiny (as in the *Grutter* and *Parents Involved* cases, for example), the court must be convinced that the government interest is “compelling.” In cases where lower standards of review are called for, the court may inquire whether the government interest is “important” or “legitimate.”

In the context of fair housing law and policy, what government interests will justify race-conscious policies in the future? The rationale advanced in *Grutter*—an interest in diversity in higher education—is unlikely to transfer directly to the housing field, although at least one commentator has made a convincing argument that it should.<sup>9</sup> The interest in “reduction of racial isolation,” as identified in Justice Kennedy's opinion in *Parents Involved*, is more easily transferable to the concerns of housing policy in addressing segregated metropolitan areas. The other acceptable interest mentioned by Justice Kennedy, “achiev[ing] a diverse student population,” may also be analogous to neighborhood integration goals.

However, in assessing race-conscious housing policies, it may not be necessary to persuade the Court to import a rationale from these prior cases. An arguably compelling government interest is embedded in the Fair Housing Act of 1968, which states unequivocally that “it is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States,”<sup>10</sup> and requires the federal government to “affirmatively further” fair housing in all its housing programs.<sup>11</sup> While it has been argued that this broad statement of fair housing policy was never defined in the Act,<sup>12</sup> both the general policy and the “affirmatively furthering” requirement are explained in the Congressional Record,<sup>13</sup> further elucidated in case law and regulations,<sup>14</sup> and endorsed by the executive branch in a detailed 1994 executive order.<sup>15</sup> The Fair Housing Act, and its integration imperative, flows primarily from the 13th Amendment<sup>16</sup> and comes, in 1968, as the culminating act in a series of federal legislative victories for the civil rights movement. The admonition to affirmatively further fair housing was renewed again by Congress in the Fair Housing Amendments Act of 1988.<sup>17</sup> The federal courts are likely to defer to these explicit statements of national policy in the Fair Housing Act as a “compelling government interest.”<sup>18</sup>

In spite of the clear congressional statement of purpose, we should avoid complacency on this point. It has not been definitively established which branch of government has the power to define a compelling government interest, and given the Supreme Court's history, it is likely to reserve such powers to itself while at the same time expressing deference to congressional judgments.<sup>19</sup> Recall also that Justice Powell in the *Regents of the University of California v. Bakke* case rejected several well-accepted justifications for affirmative action in higher education before settling on the “diversity” interest that became the cornerstone of the Court's decision.<sup>20</sup> For all these reasons, it is essential that researchers continue to explore and document the underlying benefits of residential integration and harms of racial segregation. In the current school integration cases, for example, a wealth of social science literature has been brought to bear to explain why school integration is important. As set out in the “Amicus Brief of 553 Social Scientists”<sup>21</sup> in the *Parents Involved* case, school integration is associated with several positive outcomes:

- reducing racial stereotypes and prejudice
- improving academic achievement and critical thinking skills
- promoting access to social networks

- increasing the ability of minority students to attend selective colleges and earn higher-status jobs
- increasing graduation rates and college attendance rates

We will need a similar marshalling of evidence should housing integration programs come under judicial scrutiny. Although there is substantial research on the harms of racial and economic segregation,<sup>22</sup> research on the benefits of residential integration is less developed, in part because much of this new research is based on the less-than-ideal research design of the Moving to Opportunity for Fair Housing Demonstration Program (MTO), which did not have a racial integration focus.<sup>23</sup> It may be advisable to look at the entire history of research on integration—including the landmark Gautreaux studies, as well as earlier studies in the 1940s and '50s<sup>24</sup>—rather than relying too heavily on MTO as the research model. Additional research on the benefits of residential integration will also be helpful if a new race-conscious HOPE VI relocation or targeted mobility program is adopted as legislation, as it would need to be grounded in detailed findings by Congress.

### What Is the Standard of Review?

The next important question in assessing the constitutionality of a race-conscious housing program will be the level of constitutional scrutiny to be applied by the courts. A racial preference targeting individuals is generally expected to receive a searching strict scrutiny analysis by the courts, while a non-racially explicit requirement would receive a more relaxed “rational basis” review that defers to legislative or executive judgment. In the middle ground are racially explicit policies, like those considered in *City of Mesquite*, that do not target individuals. This essay will first review the usual application of the strict scrutiny standard by the courts to individual racial classifications.

The 1995 case of *Adarand Constructors, Inc. v. Peña* (a minority contracting case)<sup>25</sup> reaffirmed that strict scrutiny applies to all individualized racial preferences, including preferences designed to benefit minorities and remedy past disadvantage. Significantly, the *Adarand* case also clarified that racial preferences passed by Congress are subject to the same standard of review as those adopted by state and local governments or federal agencies.

In the past, the strict scrutiny standard was applied to Jim Crow-type racial policies disadvantaging blacks, and the standard was invariably “fatal” to the challenged policy. However, in applying the same standard to “benign” preferences designed to benefit minorities and compensate for past discrimination, the courts have not invariably struck these programs down. Thus, the 1995 *Adarand* case emphasized that the strict scrutiny standard was not necessarily “fatal in fact” and that benign racial classifications may still survive careful court review.<sup>26</sup> Further reassurance came in the 2003 decision in *Grutter v. Bollinger*, upholding considerations of racial diversity in law school admissions decisions. There, the Supreme Court reaffirmed that “although all governmental uses of race are subject to strict scrutiny, not all are invalidated by it,” and that the function of strict scrutiny was in part to separate “illegitimate” uses of race from appropriate remedial programs: “Not every decision influenced by race is equally objectionable and strict scrutiny is designed to provide a framework for carefully examining the importance and the sincerity of the reasons advanced by the governmental decisionmaker for the use of race in that particular context.”<sup>27</sup>

Most cases involving challenges to benign racial preferences are not won or lost on the question of whether the government interest is compelling, but rather whether the precise policy adopted is necessary or “narrowly tailored” to achieve the government’s goal. The classic statement of the factors to be reviewed in the “narrowly tailoring” analysis was set out in *U.S. v. Paradise*,<sup>28</sup> a 1987 employment case. These factors have come to be known as the “Paradise factors,” and they include an assessment of these four points:

- the necessity of the particular relief and the efficacy of alternative remedies
- the flexibility and duration of the relief, including the availability of waiver provisions
- the relationship between the numerical goal of the relief and the relevant market
- the impact of the relief on the rights of third parties

This basic analytic framework was left undisturbed by the decisions in *Parents Involved* and *Grutter*.<sup>29</sup> But as *Parents Involved* teaches, not all “race-based” programs should fall into the category of “strict scrutiny.”

This failure to distinguish between strict scrutiny and a more deferential standard of constitutional review is where the *City of Mesquite* case went astray.

### ***City of Mesquite* and the Color-Blind Agenda: A Cautionary Tale**

As suggested above, it has been commonly assumed that so-called “reverse discrimination” challenges were limited to situations where a government quota or preference for racial minorities directly “took away” benefits from “equally qualified” whites. This zero-sum scenario was most common in government hiring, minority contractor goals, and higher-education admissions (like the *Bakke* case). Increasingly, however, these challenges have been extended to racial classifications that do not directly “take away” benefits from whites but that simply consider race in program design. John Charles Boger (2000) of the University of North Carolina School of Law has called this trend “willful color-blindness”:

Recent decisions of the Supreme Court have applied this skeptical orthodoxy to a discrete range of problems—principally disputes over public contracting, public employment, competitive admission to graduate and professional schools, and the redistricting of state and federal voting districts—almost all of which involved racially diverse competitors for limited public favors or rewards. In its application of skeptical strict scrutiny principles to these problems, however, the Supreme Court has repeatedly cautioned against too categorical or unsparing an application of its color-blind approach, stressing that strict judicial scrutiny does not invariably forbid state actors to abandon all considerations of race. . . . Nonetheless, a number of legal scholars, public advocates, and lawyers have dismissed the Court’s cautionary warnings and worked with zeal and some success to secure unqualified legislative and judicial commitment to colorblindness as an unvarying rule.

The *Walker v. City of Mesquite* housing case in Texas is one of this new class of cases that reaches beyond individual racial preferences to attack other forms of racial classifications. In this case, a group of white homeowners sued to stop the siting of a low-income family housing development in a predominantly white neighborhood as part of a court-ordered remedy in the *Walker v. HUD* public housing desegregation case.<sup>30</sup> The basis for the legal attack was not that any individuals were being granted or denied access based on their race, but rather that the neighborhood itself was being targeted because of its predominantly white demographics.<sup>31</sup>

The underlying civil rights case, *Walker v. HUD, et al.*, was originally filed in 1985 and, after a lengthy battle, was resolved by findings of liability against HUD, the Dallas Housing Authority, and the City of Dallas.<sup>32</sup> The various remedial orders that were entered over the life of the case involved race-conscious provisions that were designed to remedy de jure and intentional segregation, and addressed a wide range of issues including demolition and replacement of vacant and uninhabitable public housing, targeted site selection, and site and neighborhood improvements.<sup>33</sup>

One provision of the *Walker* order targeted new public housing construction in “predominantly white areas” in Dallas and surrounding communities. In one location (in North Dallas), a white homeowners group filed suit to block construction of the new developments, claiming that their neighborhoods had been singled out because of race, and that this “discriminatory” site selection would cause them harm by lowering property values (and other speculative harms related to anticipated mismanagement, poor tenant selection, and so on).

The homeowners argued that a strict scrutiny analysis should be applied even though no individuals were being classified on the basis of race. The homeowners also argued that the requirement that the remedy be “narrowly tailored” was not satisfied because HUD had an alternative remedy available to it through the Section 8 housing voucher program and that this “less burdensome” alternative had to be tested first before developing the proposed housing. The district court judge carefully reviewed the *Paradise* factors and found that each aspect of the race-conscious remedy was necessary to achieve the goal of desegregation. He also found that the Dallas Housing Authority had taken steps to minimize the impact of the program on third parties and that there were no harms to whites from either the site selection process or the selection of tenants for the mobility program. He concluded

this Court has been dealing with the flinty, intractable realities of remedy in this case for almost 10 years. The remedial requirement that the existing allocation of new public housing be developed in predominantly white areas serves the compelling governmental purpose of remedying past racial discrimination. The remedy is an exact fit to the violation, the refusal to develop public housing in white areas. Unless the housing is developed in white areas, the violation and its effects will continue.<sup>34</sup>

In spite of the district court’s extensive findings, a reviewing panel of judges from the U.S. Court of Appeals for the Fifth Circuit unanimously

reversed,<sup>35</sup> focusing their analysis on the first and fourth of the *Paradise* “narrowly tailoring” factors (the efficacy of the Section 8 alternative and the policy’s impact on whites). In an opinion written by Judge Edith Jones, the court did not dispute the compelling government interest in a race-conscious remedy, but it expressed skepticism that the race-conscious site selection policy was *necessary* to remedy the constitutional violation: “In application, arriving at an exact fit between harm and remedy requires consideration of whether a race-neutral or less restrictive remedy could be used. . . . This is because a race-conscious remedy should be the remedy of last resort.”<sup>36</sup> The court found, without crediting any of the lower court’s findings, that “Section 8 housing vouchers have not been given a fair try to prove their potential to desegregate” and that “other criteria than a racial standard will ensure the desegregated construction or acquisition of any new public housing.”<sup>37</sup>

The alternatives suggested by the court for improving the Section 8 program’s reach into whiter areas are familiar to housing mobility advocates: “increased reliance on Section 8 demands that the public agencies implement a vigorous mobility plan that serves the relocation needs and concerns of black families, reaches out to white landlords, affords adequate fair-market rent exceptions, and combats illegal private discrimination.”<sup>38</sup>

The alternatives suggested by the court for public housing site selection include “geographical” siting and reliance on a poverty-based standard to achieve desegregation. In response to the lower court’s rejection of these approaches, the appeals court simply observes that “the district court’s concern that if it does not attach a race-conscious site selection criterion to new construction, then the new units will end up in minority areas and, as a consequence, Dallas’s public housing projects will almost all remain in minority areas, is unfounded.”<sup>39</sup> The Court also found that the plaintiff homeowners had adequately demonstrated harm, in spite of the lower court’s detailed findings that their property values would not be diminished.<sup>40</sup>

In response to this judicial setback, HUD and the Dallas Housing Authority worked to devise nonracially explicit standards for site selection that were designed to achieve racial integration. Using these standards, the same North Dallas site was selected for the final housing development, with the approval of both the district court and a different panel of judges on the court of appeals.<sup>41</sup>

As suggested earlier, the initial Fifth Circuit ruling in *City of Mesquite* is out of the legal mainstream because the policy that it struck down did not involve individual race-based preferences, but rather a broad geographically targeted consideration of race. But for the Fifth Circuit Court of Appeals, the mere mention of race in an official policy was enough to trigger strict scrutiny even though no individuals were targeted for differential treatment based on race. For this reason, as will be discussed below, the Fifth Circuit’s 1999 decision would be unlikely to be affirmed today by the U.S. Supreme Court that decided *Parents Involved*.<sup>42</sup>

*City of Mesquite* is also an “outlier” for another reason: it makes no distinction in the required constitutional analysis between court-ordered, race-conscious programs and legislatively adopted programs like those at issue in *Parents Involved*. A similar but more lenient standard would likely be applied to a court-ordered remedy that had characteristics similar to the Seattle and Louisville admissions preferences—this is even suggested in Chief Justice Roberts’ plurality opinion.<sup>43</sup> Nonetheless, the *City of Mesquite* case is an instructive framework through which to view potential future challenges to race-based housing programs.

On one level, HUD’s approach on remand in *City of Mesquite*—using a nonracial policy to achieve a benign or remedial racial goal—is prescient, and consistent with Justice Kennedy’s approach in *Parents Involved*. However, in hindsight, even the original racially targeted siting requirements that were struck down by the Fifth Circuit would have safely passed constitutional review under the standard outlined in Justice Kennedy’s opinion.

### What Would the U.S. Supreme Court Do? Housing Policies That Should Survive the *Parents Involved* Test

To understand which types of race-conscious housing programs will or will not be subject to heightened constitutional review, it is essential to start with Justice Kennedy’s frequently quoted statement from *Parents Involved* discussing the types of education interventions that would *not* trigger strict scrutiny:

If school authorities are concerned that the student-body compositions of certain schools interfere with the objective of offering an equal educational opportunity to all of their students, they are free to devise race-conscious measures to address the problem in a general way and without treating each student in different fashion solely on the basis of a systematic, individual typing by race.

School boards may pursue the goal of bringing together students of diverse backgrounds and races through other means, including strategic site selection of new schools; drawing attendance zones with general recognition of the demographics of neighborhoods; allocating resources for special programs; recruiting students and faculty in a targeted fashion; and tracking enrollments, performance, and other statistics by race. These mechanisms are race conscious but do not lead to different treatment based on a classification that tells each student he or she is to be defined by race, so it is unlikely any of them would demand strict scrutiny to be found permissible. . . . Executive and legislative branches, which for generations now have considered these types of policies and procedures, should be permitted to employ them with candor and with confidence that a constitutional violation does not occur whenever a decisionmaker considers the impact a given approach might have on students of different races. Assigning to each student a personal designation according to a crude system of individual racial classifications is quite a different matter; and the legal analysis changes accordingly.<sup>44</sup>

From this excerpted discussion, it is clear that the key distinction is between policies that identify individuals for different treatment based on their race and policies that may have racial goals or use racial techniques but do not classify individuals.

An example of an “individualized preference” applied to fair housing programs might be a special housing mobility program that is limited to participants of one race. If the same analysis is used to assess such a program as was used in *Parents Involved*, the policy would have a significant hurdle to overcome (though not, as Kennedy indicates, an insurmountable one).

A classic example of nonindividualized, race-conscious policies in the housing context are HUD’s “site and neighborhood standards,” which govern the location of some types of assisted housing based on neighborhood racial demographics.<sup>45</sup> Justice Kennedy’s opinion makes it clear that such policies will be evaluated more leniently than individually targeted programs. But just how leniently? And must policymakers play it safe by avoiding all mention of race in their rules? For example, consider whether there is a constitutional distinction among the following three policies:

A: Race-Explicit Policy	B: Race-Implicit Policy	C: Race-Neutral Alternative Policy
School must be sited in a neighborhood with a 10–60% African American and Latino population	School must be sited in one of the following eligible neighborhoods (list by name)	School must be sited in a neighborhood where fewer than 10% of residents have incomes below the federal poverty level

Under all three policies, the goal is a certain level of racial integration or equilibrium in the school. The first policy selects a neighborhood location openly based on race. The second policy selects the same neighborhoods without listing race as the formal selection criterion. The third policy has the same goal but uses a race-neutral criterion, which may produce slightly different results than policies A and B (and will likely be less efficient in achieving racial integration).

Justice Kennedy, in listing acceptable alternatives to racial classifying, does not seem to differentiate between race-explicit, race-implicit, or race-“neutral” policies. Although he also later refers to these techniques as “facially race neutral,” the techniques he lists are not race neutral. For example, “tracking enrollments, performance, and other statistics by race” is clearly race explicit, as are “targeting resources” to certain schools based on race, or recruiting from among specific racial or ethnic groups—and these all are acceptable approaches for Justice Kennedy. Similarly, the “drawing of attendance zones with general recognition of the demographics of neighborhoods” cannot be accomplished without careful assessment of prospective students’ race.<sup>46</sup>

The race-conscious education techniques cited approvingly by Justice Kennedy have obvious analogs in housing policy. For example, “strategic site selection of new schools” based on the neighborhood’s racial demographics is indistinguishable from the racially targeted site selection challenged in *City of Mesquite*. “Drawing attendance zones with general recognition of the demographics of neighborhoods” is analogous to affirmative marketing of new units aimed at residents of a predominantly black neighborhood, without regard to the individual applicant’s race.<sup>47</sup> It is also analogous to a geographically targeted recruitment policy for housing mobility programs—drawing applicants from racially isolated geographic areas and placing them voluntarily in integrated or predominantly white areas to encourage racial integration. Justice Kennedy’s reference to “recruiting students and faculty in a targeted fashion” could also be analogized to affirmative marketing of new units aimed specifically at African American or Latino applicants—not as a selection device, but as a way of ensuring a balanced application pool.<sup>48</sup> And “tracking enrollments, performance, and other statistics by race” is no different than the collection of racial demographics of housing applicants and occupants that has been mandated in most federal housing programs under the Fair Housing Act for several decades.

The only uncertainty in these formulations is Justice Kennedy's reference to acceptable race-conscious education techniques as "facially race neutral." Although the phrase cannot be taken literally, based on the nature of the techniques that Kennedy describes, it adds a layer of uncertainty for policymakers in designing racially targeted programs. Should race be openly used in the program's mechanics? Or should race only be referenced as a goal that the program's nonracial factors are intended to achieve? The ambiguity in Justice Kennedy's opinion on this point may encourage some courts to look somewhat more skeptically at housing programs that are racially explicit, even if they do not treat individual applicants differently. But Justice Kennedy's opinion suggests that such race-explicit policies are constitutionally permissible if reasonably well supported.

The following chart groups some common race-based housing policies into the categories suggested above. While this chart is far from scientific, it helps to highlight some differences among policy alternatives.

Policies that may be subject to strict scrutiny	Policies likely subject to more lenient standards	Policies likely subject to the most lenient review
<ul style="list-style-type: none"> <li>▪ Affirmative admissions practices (preference to applicants from racial and ethnic groups "least likely to apply" to the housing development)</li> <li>▪ Housing set-asides for specific racial/ethnic groups</li> <li>▪ Preferable loan/security deposit/rent terms based on race, to encourage integration</li> </ul>	<ul style="list-style-type: none"> <li>▪ Site and neighborhood standards for housing location (selection of sites based on racial composition of the neighborhood)</li> <li>▪ Race-based neighborhood targeting for portable housing vouchers</li> <li>▪ Affirmative marketing (targeted recruitment to racially identifiable individuals to achieve balanced applicant pool)</li> </ul>	<ul style="list-style-type: none"> <li>▪ Site and neighborhood standards for housing location (selection of sites using more nuanced factors to achieve racial goal)</li> <li>▪ Poverty-based neighborhood targeting for portable housing vouchers—or use of multiple factors</li> <li>▪ Affirmative marketing (targeted recruitment from racially identifiable neighborhoods or publications)</li> <li>▪ Collection of racial/ethnic data on applications and occupancy</li> </ul>

### Individual Racial Preferences

For the types of policies listed in the first column above—the policies that, in Justice Kennedy's words, "classify individuals by race and allocate benefits and burdens on that basis,"<sup>49</sup> there will be a high hurdle

to overcome. Although individually race-targeted approaches (such as explicit racial selection criteria for admission to a housing mobility program or into formerly segregated projects) should still be permissible as part of a court-ordered remedy to intentional race discrimination,<sup>50</sup> under the *Parents Involved* framework, racial preferences or set-asides for admission would be subject to strict scrutiny if adopted as part of a general voluntary government policy. This approach is consistent with the Second Circuit Court of Appeals decision in *U.S. v. Starrett City*,<sup>51</sup> where black families had waited longer on the waitlist than whites because of a white admission preference designed to maintain racial integration in the development.<sup>52</sup>

After *Parents Involved*, defending a housing program that "classifies individuals by race and allocates benefits and burdens on that basis" will be significantly more difficult, but not impossible. The key questions, again, are, Is the racial preference necessary to achieve the program's goals? Can the goals be achieved reasonably efficiently using nonindividualized racial criteria? Will there be harms to "innocent" third parties, and have steps been taken to minimize those harms? Is the program time-limited and does it contain reasonable waiver provisions for unforeseen circumstance and hardship? Does the program "discriminate more than necessary" to achieve its stated goal?

In addition to these basic questions drawn from the *Paradise* case, the Court is now placing particular emphasis on whether the racial classification looks at race one-dimensionally or as part of an array of considerations governing selection to the program, and whether the classification also takes into account the presence of multiple racial and ethnic groups (not just blacks and whites).<sup>53</sup> The *Parents Involved* Court is also now demanding a serious consideration of race-neutral alternatives—though it is unclear whether such alternatives need to have been actually attempted or simply "modeled" to determine their efficacy<sup>54</sup>—and a showing that the policy will significantly affect achieving the goal advanced.

The need to show "necessity" of an individual race classification to achieve racial integration will likely be the most serious challenge to these types of programs. One important research approach here would be to create a descriptive model to predict and explain why non-racially based remedies to segregation do not efficiently yield integration. Thus, in the *Parents Involved* case, at least one friend-of-the-court brief demonstrated that in many districts, socioeconomic selection factors alone lead to more segregated educational results than the use of racial criteria in school assignment.<sup>55</sup> However, it may be more difficult to demonstrate such

“necessity” in the housing context because the degree of segregation that exists in most metropolitan areas may make it easy to target all low-income residents of certain racially isolated neighborhoods for program eligibility and still efficiently reach desegregation goals. The ultimate answer to this question will depend on the local context.

### Nonindividualized Race-Conscious Housing Policies

A basic message of this commentary is that race-conscious fair housing policies, so long as they do not single out individuals for differential treatment, may have earned a kind of future “safe harbor” in the logic of Justice Kennedy’s concurrence. At the same time, it is important to recognize that the analysis set out above is somewhat optimistic—it posits that the key concurring opinion of Justice Kennedy in *Parents Involved* will remain a fixed star of constitutional interpretation, and that its meaning will not be misconstrued by the lower courts. Thus, in anticipating future challenges to race-based housing policies—even those that seem permissible today under Kennedy’s formulation—we need to be ready to answer the kind of searching questions directed at the challenged policies in Louisville and Seattle.

As discussed above, the most common race-conscious, but not individually targeted, housing policies currently in use include “affirmative marketing” policies that seek to recruit a diverse applicant pool for a specific housing development, “site and neighborhood standards” that use race as one factor in identifying neighborhoods eligible for the placement of low-income assisted housing, and “housing mobility programs” that recruit families from racially isolated minority neighborhoods to relocate voluntarily to integrated or predominantly white communities. The discussion that follows will look at the questions that will need to be answered if some form of strict scrutiny or even a similar, more relaxed review standard is applied to these types of nonindividualized, race-based policies.

### Is the Racial Classification “Necessary”?

For many fair housing professionals, it is axiomatic that only race-conscious housing remedies will lead to desegregated outcomes. Evidence for this view can be found in the Mount Laurel program in New Jersey—where a purely income-based inclusionary requirement led to a

largely segregated suburban affordable housing program (Payne 1996)<sup>56</sup>—and in the well-known contrast between the Gautreaux assisted housing mobility program, which created substantial racial desegregation for 7,000 Chicago families, and MTO, which, without race-based rules, moved many families to lower-poverty but still racially segregated communities (Hendrickson 2002).

But one or two examples could be characterized as merely anecdotal. Where is the proof that non-race-based classifications are doomed to recreate segregation? One essential, initial research task will be to collect as many of these examples and counterexamples as can be marshaled. This careful marshalling of specific examples is the classic kind of “evidence” that is relied on by Congress and the courts.

In this context, the *Walker v. City of Mesquite* court’s “common sense” notions that Section 8 vouchers are interchangeable with new construction—and that a socioeconomically based targeting requirement will work as well as a racial one in achieving racial integration—need to be carefully examined. As was done in *Parents Involved*, different approaches could be modeled in specific metropolitan areas to show the efficacy of race-based versus non-race-based approaches.

The question of whether a particular racial classification is “necessary” is closely related to, if not the mirror image of, the next question: are there any workable alternatives to racial classifications that will achieve the remedial results fair housing professionals are seeking?

In the *City of Mesquite* litigation, after the court of appeals rejected the race-conscious remedy adopted by the U.S. District Court, the parties and the court were forced to find alternatives to remedy the constitutional violation of intentional racial segregation. The alternative they identified, which was approved by the district court and later upheld on appeal, was a poverty concentration standard that provided the same remedy to participating families: the opportunity to live in a non-racially segregated, higher-opportunity community. As noted earlier, this alternative approach in Dallas led to siting the proposed scattered-site housing development on the same site that was originally challenged in the *City of Mesquite* litigation. But this fortuitous story in Dallas may have had more to do with the availability of a developable parcel than the new standard. To avoid a repetition of the impacts of purely income-based requirements like those used in MTO, it will be valuable to assess the comparative outcomes of race- versus income-based programs in advance.

Are there other, workable, nonracial standards in the HOPE VI context that will generate true racial integration? John Powell's (2003) use of an "opportunity housing" analysis to select areas for placement of new housing or vouchers is potentially promising in this regard. Professor Powell's approach maps an entire metropolitan area using indicators of opportunity in housing, education, employment, health, and so on, and identifies census tracts that are low, medium, and high opportunity. Some maps created by Powell and his colleagues for Chicago and Baltimore<sup>57</sup> suggest that this multifaceted analysis generates results similar to (though not identical to) a traditional desegregation analysis. This result is not surprising, as a central goal of desegregation litigation and policy has always been to remedy denial of access to opportunity for minority families, not just to achieve an abstract racial "balance."

The challenge of Powell's approach, and the reason it may not be a sufficient across-the-board substitute for race-conscious remedies, is that it is labor intensive and requires local-area data on employment and labor markets, racial and economic composition of schools, transportation, parks, recreation, shopping, municipal services, neighborhood amenities, and the like. No easily available national data (such as census data) could be used to replicate this analysis across the board.

### Harms to Third Parties

One factor set out in *Paradise* and similar cases is an assessment of the "impact of the relief on the rights of third parties." In *City of Mesquite*, the court of appeals disagreed with the detailed factual findings of the district court that property values would not be diminished, and it found several "harms" that might be imposed on local white residents:

Despite this finding, we cannot conclude, having reviewed the record, that the Homeowners did not put forth adequate evidence at trial to confer standing upon them. The district court did not hold that the Homeowners lack standing, as he was well aware of the potential for neighborhood disruption traceable to improperly managed public housing projects. HUD and DHA cite no cases in which standing has been denied to homeowners who asserted their quality of life and property values would be diminished by a next-door public housing or other HUD project. The caselaw is to the contrary.<sup>58</sup>

Third-party impacts of affordable housing on property values and neighborhood quality have certainly been studied before,<sup>59</sup> but it would be valuable now to marshal the strongest current research in order to assess any gaps that exist and any future research that may be needed.

### Flexibility, Duration, and Waiver

*Paradise* and similar "reverse discrimination" cases demonstrate a preference—at least where whites are harmed—for flexible, short-duration programs that minimize impacts on third parties and offer waivers for situations of particular hardship for members of the nonadvantaged group.<sup>60</sup> In the context of a housing mobility program or a HOPE VI relocation plan, these factors would tend to support a neighborhood-targeting requirement that has multiple exceptions, that is time limited (perhaps to the first year of a voucher lease), and that can be waived for good cause. The experience of some advocates is that such "flexibility" can lead to severe dilution of desegregation objectives, particularly in a market where families are so desperate for housing that they will agree to make an initial move to a lower-poverty area simply to acquire a voucher.

This is an area where further research is essential. How "flexible" can policymakers make relocation requirements without undermining their effectiveness? What is the minimum duration of a geographic targeting requirement that will enable a move to succeed—and discourage applicants who are interested only in the voucher and not in the move that accompanies it? What waivers should be allowed, and what performance standards can be put into place to obviate the need for waivers?

### The Relationship between the Numerical Goal of the Relief and the Relevant Market

In the employment context, it has been important to demonstrate to the courts that where a race-conscious remedy is chosen, it be carefully calibrated to local market conditions—that it not discriminate more than necessary either in its methods or its goals.

In the housing context, this background suggests two important lines of research and program design. First, the integration goal should take into account the characteristics of the specific metropolitan region (the housing market). This includes not only the specific integration goal—roughly corresponding to the market's racial demographics—but also an analysis of how sharply segregated the region is: how much movement of families across racial and class lines is already occurring in the region without the need for expressly race-conscious programs?

Second, the question of demand for integrated housing will be an important calibrating factor. Although housing market studies are

common in the private sector, in the assisted housing arena researchers have rarely done market studies of poor families of color, exploring, for example, the factors that might lead families to choose housing in lower-poverty, integrated areas. Far more research is needed on this issue generally, but specific local-market studies that assess demand in this way could be a powerful justification for race-conscious preferences in a particular development.

Finally, as the *Parents Involved* opinions stress, future programs should take into account the multiracial character of American metropolitan areas and may also seek to consider factors other than race and ethnicity in program design. Further, policymakers will want to spell out the relation of a program's legal mechanisms to its goals and ensure that the program's decisionmaking rules and procedures are transparent.<sup>61</sup>

## Conclusion

Concentrated poverty and racial isolation persist in American cities. Recent data show that while the proportion of poor black and Latino families living in high-poverty neighborhoods declined between 1960 and 2000 (to a still unacceptably high rate of over 30 percent for poor African Americans), the relative isolation of these groups, compared to whites, increased during the same period. For example, The Opportunity Agenda (2007, 199) recently observed that "while poor African American families were 3.8 times more likely than poor white families to live in high-poverty neighborhoods in metropolitan areas in 1960, they were 7.3 times more likely than whites to live in high-poverty neighborhoods in 2000."

The persistence of highly segregated neighborhoods, the government's well-documented role in their creation and perpetuation,<sup>62</sup> and the harms associated with concentrated poverty and racial isolation<sup>63</sup> all point to the importance of a renewed effort to confront the legacy of segregation, both with compensatory, neighborhood-based interventions and with programs to encourage voluntary desegregation. Programs to promote residential mobility, which were expanded in the 1990s to positive effect, all but disappeared after 2000,<sup>64</sup> and HUD's "site and neighborhood standards," once used to limit expansion of low-income housing in the most segregated areas, are now largely overlooked.<sup>65</sup>

It is time to reinstate the national commitment to racial and economic integration and a shared vision of community. It is certainly true that we

need new tools to pursue this goal, but we need also to reinvigorate the existing race-conscious housing policies derived from the 1968 Fair Housing Act. The Court's decision in *Parents Involved* suggests that policymakers do not have to hide the ball as they try to counter residential racial segregation. There may be more cases like *City of Mesquite*, but if policies are well designed and properly documented, policymakers need not fear the courts.

## NOTES

Philip Tegeler is executive director of the Poverty and Race Research Action Council, Washington, D.C. The author is grateful for the research assistance of Tamica Daniel and Arash Jahanian, law students at Georgetown University Law Center. Thanks also to Olatunde Johnson, Florence Roisman, Elizabeth Julian, and Anne Goldstein for their helpful review and comments on this essay. This analysis should not be construed as offering legal advice on how to design a specific program to withstand constitutional scrutiny.

1. *Walker v. City of Mesquite*, 169 F.3d 973, 987 (5th Cir. 1999).
2. *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 127 S.Ct. 2738 (2007).
3. *Id.* at 2797, 2792.
4. See Julian (2005).
5. For powerful recent treatments of this theme, see Adams (2006) and Cashin (2004).
6. See, for example, Squires (2007).
7. *Grutter v. Bollinger*, 539 U.S. 306, 324–27 (2003).
8. While the two cases relied on somewhat different government interests, and where *Grutter* upheld a racial preference and *Parents Involved* did not, the analysis applied by a majority of the Court in the two cases is essentially the same.
9. See Weiss (2007). Weiss's argument draws creatively on Jane Jacobs, the Supreme Court case of *Trafficante v. Metropolitan Life Insurance Co.*, and theories of democracy and local government to argue that diversity is as important in housing and communities as it is in higher education. Weiss's analysis is primarily aimed at defending race-conscious remedies imposed in litigation, not those voluntarily adopted by government, but it can easily be adapted to the voluntary context.
10. 42 U.S.C. §3601.
11. The precise language of 42 U.S.C. §3608 requires HUD and other federal agencies to "administer the programs and activities relating to housing and urban development in a manner affirmatively to further the policies of this title."
12. See Larkin (2007).
13. See Roisman (2007) for an extensive discussion of the legislative history of the "affirmatively furthering" provisions of the Fair Housing Act—and the broader context of executive branch statements and actions at the time, which reflect on congressional intent. See also Schwemm, *Housing Discrimination Law & Litigation*, § 21:1 (2007).

14. For example, the Second Circuit Court of Appeals described "affirmatively furthering" in 1973 as "the goal of open, integrated residential housing patterns and to prevent the increase of segregation, in ghettos, of racial groups whose lack of opportunities the Act was designed to combat." *Otero v. New York City Hous. Auth.*, 484 F.2d 1122 (2d Cir. 1973). See Roisman (2007) for a summary of the leading cases, including *Trafficante v. Met. Life Ins. Co.*, 409 U.S. 205 (1972) and *Hills v. Gautreaux*, 425 U.S. 284 (1976).

15. Exec. Order No. 12,892, 59 Fed. Reg. 2,939 (Jan. 17, 1994).

16. *U.S. v. Starrett City*, 840 F.2d at 1100 (citing *Williams v. Matthews Co.*, 499 F.2d 819, 825 (8th Cir.), *cert. denied*, 419 U.S. 1021 & 1027 (1974); *United States v. Bob Lawrence Realty, Inc.*, 474 F.2d 115, 120–21 (5th Cir.), *cert. denied*, 414 U.S. 826 (1973); and *United States v. Hunter*, 459 F.2d 205, 214 (4th Cir.), *cert. denied*, 409 U.S. 934 (1972)).

17. PL 100–430, Sept. 13, 1988, 102 Stat. 1619.

18. See, generally, Gordon (2006).

19. See, for example, *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 148 (1803).

20. *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265, 305–15 (1978).

21. Brief of 553 Social Scientists as Amici Curiae in Support of Respondents at 5–10, App. 2–28, *Parents Involved in Community Schools v. Seattle Sch. Dist. No. 1*, 127 S. Ct. 2738 (2007) (Nos. 05–908 & 05–915).

22. See Turner and Acevedo-Garcia (2005) (summarizing recent research).

23. See Hendrickson (2002).

24. See Roisman (2007) 347, for a partial listing of Gautreaux-related research. See, generally, Rubinowitz and Rosenbaum (2000) and Pettigrew and Tropp (2006).

25. *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 227 (1995). *Adarand* was a case involving required minimum minority hiring and purchasing set-asides for minority contractors in government jobs.

26. *Id.* at 237; see also *Richmond v. J. A. Croson Co.*, 488 U.S. 469, 493 (1989) (plurality opinion).

27. *Grutter v. Bollinger* at 326–27.

28. 480 U.S. 149, 171 (1987).

29. Although, it should be pointed out, neither case directly cites *Paradise*.

30. *Walker v. HUD*, 912 F.2d 819 (5th Cir. 1990).

31. For a parallel discussion of *City of Mesquite* from a "critical race perspective," see Mahoney (2000).

32. *Walker v. HUD*, 734 F. Supp. 1231 (N.D.Tex. 1989); Order Regarding Facts Established by Plaintiffs Motion for Partial Summary Judgments against DHA and HUD (unreported opinion, May 26, 1994); Findings of Fact and Conclusions of Law: HUD Motion to Modify Remedial Order Affecting HUD (unreported opinion entered June 12, 1996).

33. *Walker v. HUD, et al.* 734 F.2d 1289 (N.D.Tex. 1989); *Walker v. City of Dallas*, Consent Decree entered September 24, 1990 (unreported); Remedial Order Affecting DHA (unreported opinion entered February 7, 1995); and Remedial Order Affecting HUD (April 16, 1996).

34. *Walker v. HUD*, 1997 WL 33177466 (N.D.Tex. 1997).

35. *Walker v. City of Mesquite*, 169 F.3d 973 (5th Cir. 1999).

36. *Id.* at 982–83 (citations omitted).

37. *Id.* at 984.

38. *Id.* at 987–88.

39. *Id.* at 985.

40. *Id.* at 980.

41. *Walker v. HUD*, 326 F.Supp.2d 780 (N.D.Texas 2004); *Walker v. City of Mesquite*, 402 F.3d 532 (5th Cir. 2005).

42. Even before the decision in *Parents Involved*, the *City of Mesquite* decision was inconsistent with other Court of Appeals precedent, notably *United States v. Sec'y of HUD*, 239 F.3d 211, 219 (2d Cir. 2001). See Weiss (2007).

43. 127 S.Ct. at 2752 (Roberts, J) ("Seattle public schools have not shown that they were ever segregated by law, and. . . [Jefferson County] does not rely upon an interest in remedying the effects of past intentional discrimination in defending its present use of race in assigning students.")

44. *Parents Involved*, 127 S. Ct. at 2792 (Kennedy, J., concurring) (citation omitted).

45. See, for example, 24 CFR § 941.202 (c). See, generally, Tegeler (2005).

46. Justice Kennedy's reference to a voting rights district line-drawing case in this section underscores this point. 127 S. Ct. at 2792.

47. Adams (1998) also distinguishes this type of "soft" affirmative action from preferential admissions requirements, discussing a Boston affirmative marketing case, *Raso v. Lago*, 135 F.3d 11 (1st Cir. 1998) and earlier cases.

48. See, for example, 24 C.F.R. §§ 108.1 et seq.

49. 127 S.Ct. at 2789.

50. See, for example, *United States v. Sec'y of HUD*, 239 F.3d 211, 218–20 (2d Cir. 2001).

51. *U.S. v. Starrett City*, 840 F.2d 1096, *cert. den.* 488 U.S. 946 (1988).

52. *Starrett City* was not a constitutional case, since it did not involve a "government action," but rather a private landlord's decision about how to racially balance his property consistent with the Fair Housing Act. The court's finding that the prointegration requirements of the Fair Housing Act did not trump its antidiscrimination provisions is similar to the majority's approach in *Parents Involved*.

53. 127 S.Ct. at 2797.

54. See Ancheta (2008).

55. See Brief of 553 Social Scientists at 12–14, App. 41–54.

56. "The data present a hard challenge to the underlying premise of the original Mount Laurel case, in which the New Jersey Supreme Court emphasized economic exclusion over racial exclusion. . . . Despite good intentions (on the part, at least, of the public interest plaintiffs in Mount Laurel cases) racial equalization has not followed in the wake of economic equalization." See also Weiss (2007) (citing Peter Schuck,

*Diversity in America: Keeping Government at a Safe Distance* [Cambridge, MA: Belknap Press, 2003], 231–57).

57. See <http://www.kirwaninstitute.org>.

58. *City of Mesquite*, 169 F.3d at 980.

59. See, for example, Xavier de Souza Briggs, Joe T. Darden, and Angela Aidala, "In the Wake of Desegregation: Early Impacts of Scattered Site Public Housing on Neighborhoods in Yonkers, NY," *Journal of American Planning Association* 71, no. 2 (1999); and George Galster et al., *Why NOT in My Back Yard? The Neighborhood Impacts of Assisted Housing* (New Brunswick, NJ: Center for Urban Policy Research Press, Rutgers University, 2003).

60. Because so much of this jurisprudence is geared toward protecting the interests of whites, in the context of housing mobility programs, one important question would be whether whites (or other racial groups) are permitted to participate. Depending upon the type of program, and how closely race and class are aligned in the program design, if this kind of direct racial exclusion can be avoided, the program will be more defensible.

61. See generally, 127 S.Ct. at 2790.

62. For an overview of the government's role, see de Leeuw et al. (2008).

63. See, for example, Turner and Acevedo-Garcia (2005).

64. See Julian (2005).

65. See Tegeler (2005).

## REFERENCES

- Adams, Michelle. 1998. "The Last Wave of Affirmative Action." *Wisconsin Law Review* 1998:1395.
- . 2006. "Radical Integration." *California Law Review* 94:261.
- Ancheta, Angela. 2008. "A Constitutional Analysis of Parents Involved in Community Schools v. Seattle School District No. 1 and Voluntary School Integration Policies." Legal Studies Working Paper 08-50. Santa Clara, CA: Santa Clara University.
- Boger, John Charles. 2000. "Willful Colorblindness: The New Racial Piety and the Resegregation of Public Schools." *North Carolina Law Review* 78:1719, 1722–24.
- Cashin, Sheryll. 2004. *The Failures of Integration: How Race and Class Are Undermining the American Dream*. New York: PublicAffairs.
- Gordon, Adam. 2006. "Making Exclusionary Zoning Remedies Work: How Courts Applying Title VII Standards to Fair Housing Cases Have Misunderstood the Housing Market." *Yale Law & Policy Review* 24:437.
- Hendrickson, Cara. 2002. "Racial Desegregation and Income Deconcentration in Public Housing." *Georgetown Journal on Poverty Law & Policy* 9(35): 69.
- Julian, Elizabeth. 2005. "Housing Mobility as a Civil Right." In *Keeping the Promise: Preserving and Enhancing Housing Mobility in the Section 8 Housing Choice Voucher Program*, edited by Philip Tegeler, Mary Cunningham, and Margery Austin Turner (51–52). Washington, DC: Poverty and Race Research Action Council.
- Larkin, Brian Patrick. 2007. "The Forty-Year 'First Step': The Fair Housing Act as an Incomplete Tool for Suburban Integration." *Columbia Law Review* 107:1617.
- de Leeuw, Michael B., Megan K. Whyte, Dale Ho, Catherine Meza, and Alexis Karteron. 2008. "The Current State of Residential Segregation and Housing Discrimination: The United States' Obligations under the International Convention on the Elimination of all Forms of Racial Discrimination." *Michigan Journal of Race & Law* 13(2): 337.
- Mahoney, Martha R. 2000. "Whiteness and Remedy: Under-Ruling Civil Rights in Walker v. City of Mesquite." *Cornell Law Review* 85:1309.
- Opportunity Agenda, The. 2007. *The State of Opportunity in America* (2007 update). New York: The Opportunity Agenda. Available at <http://www.opportunityagenda.org>.
- Payne, John M. 1996. "Norman Williams, Exclusionary Zoning, and the Mount Laurel Doctrine: Making the Theory Fit the Facts." *Vermont Law Review* 20:665–75.
- Pettigrew, Thomas F., and Linda R. Tropp. 2006. "A Meta-Analytic Test of Intergroup Contact Theory." *Journal of Personality & Social Psychology* 90:751.
- powell, john a. 2003. "Opportunity-Based Housing." *Journal of Affordable Housing & Community Development Law* 12:188.
- Roisman, Florence Wagman. 1997. "The Role of the State, the Necessity of Race-Conscious Remedies, and Other Lessons from the Mount Laurel Study." *Seton Hall Law Review* 27:1386.
- . 2007. "Affirmatively Furthering Fair Housing in Regional Housing Markets: The Baltimore Public Housing Desegregation Litigation." *Wake Forest Law Review* 42(333): 371–88.
- Rubinowitz, Leonard L., and James E. Rosenbaum. 2000. *Crossing the Class and Color Lines: From Public Housing to White Suburbia*. Chicago: University of Chicago Press.
- Squires, Gregory. 2007. "The Supreme Denial of Integration." *Shelterforce* Fall(151).
- Tegeler, Philip. 2005. "The Persistence of Segregation in Federal Housing Programs." In *The Geography of Opportunity: Race and Housing Choice in Metropolitan America*, edited by Xavier de Souza Briggs (197–217). Washington, DC: Brookings Institution Press.
- Turner, Margery Austin, and Dolores Acevedo-Garcia. 2005. "The Benefits of Housing Mobility: A Review of the Research Evidence." In *Keeping the Promise: Preserving and Enhancing Housing Mobility in the Section 8 Housing Choice Voucher Program*, edited by Philip Tegeler, Mary Cunningham, and Margery Austin Turner (9–24). Washington, DC: Poverty and Race Research Action Council.
- Weiss, Adam. 2007. "Grutter, Community, and Democracy: The Case for Race-Conscious Remedies in Residential Segregation Suits." *Columbia Law Review* 107(5): 1195–1233.