STILL SEPARATE AND UNEQUAL:

THE STATE OF FAIR HOUSING IN AMERICA

PRESENTED BY…

The National Commission on Fair Housing and Equal Opportunity

WITH

NFHA National Fair Housing Alliance

LC CR Education Fund™

LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW

LDF DEFEND EDUCATE EMPOWER

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National Commission on Fair Housing and Equal Opportunity

Forty years after the passage of the Fair Housing Act in 1968 and twenty years after the Fair Housing Amendments Act of 1988, the National Commission on Fair Housing and Equal Opportunity has been convened to address the significant and ongoing national catastrophes of housing discrimination and residential segregation. Although their antecedents are found in our country's deliberate history of establishing separate neighborhoods for black and white Americans, these issues are not merely historical. Today, they continue to play an active and significant role in the real estate rental, sales, lending and insurance markets. Furthermore, continuing practices of discrimination and segregation affect not only African-Americans, but also Latinos, Arab-Americans, Asian-Americans, families with children, and people with disabilities.

The National Commission will be co-chaired by two leaders in the area of housing policy and former Secretaries of the Department of Housing and Urban Development: Henry Cisneros and Jack Kemp. Other Commissioners will include Okianer Christian Dark, Associate Dean for Academic Affairs at the Howard University College of Law; Gordon Quan, Houston, Former Mayor Pro Tem and Chair of the Housing Committee for the City of Houston; Pat Combs, past President of the National Association of Realtors; Myron Orfield, Professor at the University of Minnesota School of Law; and I. King Jordan, President-Emeritus of Gallaudet University.

The Commission will conduct four daylong regional hearings – in Chicago, Los Angeles, Boston, and Atlanta, and one half day hearing – in Houston – to collect information and hear testimony about the nature and extent of illegal housing discrimination and its origins, its connection with government policy and practice, and its effect on our communities. The first hearing will be held in Chicago on July 15. The other hearings will be held in Los Angeles on September 9, Boston on September 22 and Atlanta on October 17. The half-day Houston hearing will be held on July 31 in conjunction with the annual conference of the National Bar Association. It will focus on housing discrimination and re-segregation on the Gulf Coast since the hurricanes and federal housing programs that have failed to promote residential integration.

Each hearing will open with a statement from one or more of the commissioners that will recognize local and regional issues of discrimination and segregation, historically and structurally. At every hearing, witnesses will be included that can speak to the role that government policy, private discrimination, and housing industry practices play in perpetuating housing discrimination and segregation.

The first hearing was in Chicago on July 15, will focused on the history of residential racial segregation and the nature and scope of housing discrimination. Witnesses will examined the extent of private actions of housing discrimination in various aspects of the housing market, focused on

the demonstrable evidence that racial segregation still exists in our country, and identifed some of the negative consequences of discrimination and segregation and the positive consequences of integration. In addition, witnesses reviewed the connections between the actions of federal agencies that have fostered segregation and the failures of the federal government to enforce the federal Fair Housing Act to address housing discrimination systematically and systemically.

The second regional hearing will be held in Los Angeles. Witnesses at that hearing will look at today's foreclosure crisis, its linkage to acts of discrimination and its connection to segregated communities. In addition, witnesses will examine whether or not the federal government is providing vigorous fair housing enforcement and education for the public, for the housing industry, and for victims or potential victims of discrimination. Community decision-making in areas such as zoning, its consideration of affordable housing proposals and the expenditure of federal grants continues to play a major role in how communities are sustained and grown,. Witnesses will testify about opportunities to advance fair housing in local communities and at the state level. The nature and extent of discrimination based on disability and on ethnic and language minorities will also be examined.

The third regional hearing, in Boston, will focus on some of the key players in advancing fair housing, and the failures, and strengths, of those players. Witnesses will look at the role of housing choice, consistent with fair housing law and policy, in establishing vibrant and integrated communities, the connections between integrated communities and the quality of life for residents, and ways federal programs can be used to achieve these communities. Because effective enforcement of fair housing laws is a critical component of ensuring that communities and especially their schools are integrated, two panels will examine the ways in which stronger fair housing enforcement at the local and national level can be used to confront discrimination and segregation, and what is needed to make fair housing enforcement by non governmental entities and by the government more effective.

The final regional hearing, in Atlanta, will look at the track record of the federal government in enforcing fair housing laws and the ways in which it has failed our country, both in individual cases and in overlooking opportunities to address discrimination systemically. There are federal enforcement actions that can be taken to make fair housing enforcement a reality, and witnesses will testify about their vision of an effective federal, state and local enforcement system.

The hearings will culminate with the release of a report in Washington, DC in December, 2008 which will detail the testimony provided at the hearings and outline recommendations for action in the future.

The hearings will be held at accessible locations and sign language interpretation will be available. Streaming video presentations of the hearings

will be available at http://www.ustream.tv/channel/national-commission-on-fair-housing

Maps demonstrating the extent of residential segregation in key communities across the region will be available at each hearing.

A photo exhibit, produced by photographer and civil rights icon Bernie Kleina, on the 1960s Chicago Freedom Movement will be featured at the Chicago hearing, along with videos showing some of the ways that discrimination occurs, and its effect on its victims.

The Commission was created through the partnership of four leading national civil rights organizations: the Leadership Conference on Civil Rights Education Fund (LCCR/EF); the Lawyers' Committee for Civil Rights under Law (LCCRUL); the National Fair Housing Alliance (NFHA); and NAACP Legal Defense and Educational Fund (LDF). These organizations are uniquely qualified to carry out this project. All four organizations share a commitment to fair housing carried out over decades and have worked together collaboratively on several initiatives. NFHA, LCCRUL and LDF serve on the executive committee of the LCCR, the sister organization to LCCR/EF, a coalition of nearly 200 national organizations. The LCCRUL, whose mission is to involve the private bar in providing legal services to address racial discrimination, implemented a National Commission on Voting Rights in 2005 and staged ten hearings across the country providing the entire record to the US Congress leading to the reauthorization of that seminal civil rights law in 2007. LCCR/EF, LDF and LCCRUL worked in collaboration with several other organizations to implement a public education campaign about the ongoing need for stronger enforcement of voting rights. The NAACP LDF is America's legal counsel on issues of race. Through advocacy and litigation, LDF pursues racial justice to move our nation toward a society that fulfills the promise of equality for all Americans. NFHA, the leading voice for fair housing, is the only national organization dedicated solely to ending discrimination related to housing in the United States. It is a consortium of more than 220 private, non-profit fair housing organizations, state and local civil rights agencies, and individuals from throughout the United States.

The Poverty and Race Research Action Council, along with fair housing consultant Sara Pratt and the Raben Group, LLC, are providing staff/consulting support to the Commission, along with pro bono assistance of several cooperating law firms recruited by the Lawyers' Committee for Civil Rights Under Law.

Biographies

Commissioners

Co-Chairman Henry Cisneros

Henry Cisneros is Executive Chairman of the CityView companies, which funds homebuilders across the nation to create homes priced within the range of average families. CityView is a partner in building more than 40 communities in 12 states, incorporating more than 7,000 homes with a value of over $2 billion.

After serving three terms as a City Councilmember, in 1981, Mr. Cisneros became the first Hispanic-American mayor of a major U.S. city, San Antonio, Texas. During his four terms as Mayor, he helped rebuild the city's economic base and spurred the creation of jobs through massive infrastructure and downtown improvements, marking San Antonio as one of the nation's most progressive cities. A scholarly study of America's Mayors, The American Mayor, ranked Mr. Cisneros as one of the fifteen best mayors in the nation in a period that spanned the 20th Century. After completing four terms as Mayor, Mr. Cisneros formed Cisneros Asset Management Company, a fixed income management firm operating nationally and ranked at the time as the second fastest growing money manager in the nation.

In 1992, President Clinton appointed Mr. Cisneros to be Secretary of the U.S. Department of Housing and Urban Development. He is credited with initiating the revitalization of many of the nation's public housing developments, with formulating policies which contributed to achieving the nation's highest ever homeownership rate, and with upgrading the nation's strategies to reduce homelessness. After leaving HUD in 1997, Mr. Cisneros became president and chief operating officer of Univision Communications.

Mr. Cisneros has also has been author, editor or collaborator in several books including: Interwoven Destinies: Cities and the Nation. His book project with former HUD Secretary Jack Kemp, Opportunity and Progress: A Bipartisan Platform for National Housing Policy, was presented the Common Purpose Award for demonstrating the potential of bipartisan cooperation and Casa y Comunidad: Latino Home and Neighborhood Design and was awarded the Benjamin Franklin Silver Medal in the category of best business book of 2006. His most recent collaboration with former HUD Secretary Jack Kemp, Our Homes, Our Communities, is a guide for local leaders in designing comprehensive housing policies.

Mr. Cisneros holds a Bachelor of Arts and a Master's degree in Urban and Regional Planning from Texas A&M University. He earned a Master's degree in Public Administration from Harvard University, studied urban economics at the Massachusetts Institute of Technology, holds a Doctorate in Public Administration from George Washington University, and has been awarded more than 20 honorary doctorates from leading universities. He served as an infantry officer in the United States Army. He is married to Mary Alice P. Cisneros, who in 2001 was elected to San Antonio's City Council, and is the father of three children – Teresa, Mercedes, and John Paul – and has three grandchildren.

Co-Chairman Jack Kemp

Jack Kemp is Founder and Chairman of Kemp Partners, a strategic consulting firm which seeks to provide clients with strategic counsel, relationship development, and marketing advice, helping them to accomplish business and policy objectives.

From January 1993 until July 2004 Mr. Kemp was the co-director of Empower America, a Washington, D.C.-based public policy and advocacy organization he co-founded with William Bennett and Ambassador Jeane Kirkpatrick.

Mr. Kemp received the Republican Party's nomination for Vice President in August of 1996 and since then has campaigned nationally for reform of taxation, Social Security and education.

In 1995, Jack Kemp served as chairman of the National Commission on Economic Growth and Tax Reform, which promoted major reform and simplification on our tax code in order to unleash the American entrepreneurial spirit, increase economic growth and expand access to capital for all people.

Prior to founding Empower America, Mr. Kemp served for four years as Secretary of Housing and Urban Development. He was the author of the Enterprise Zones legislation to encourage entrepreneurship and job creation in urban America and continues to advocate the expansion of home ownership among the poor through resident management and ownership of public and subsidized housing.

Before his appointment to the Cabinet, Mr. Kemp represented the Buffalo area and western New York for 18 years in the United States House of Representatives from 1971-1989. He served for seven years in the Republican Leadership as Chairman of the House Republican Conference.

Before his election to Congress in 1970, Mr. Kemp played 13 years as a professional football quarterback. He was captain of the San Diego Chargers from 1960-1962. He was also the captain of the Buffalo Bills, the team he quarterbacked to the American Football League Championship in 1964 and 1965, when he was named the league's most valuable player. He co-founded the American Football League Players Association and was five times elected president of that Association. In 2006 Mr. Kemp was named as one of the NCAA's "100 Most Influential Student-Athletes". He was also recognized by Sporting News as one of the Top 50 Quarterbacks of All Time in 2005.

Mr. Kemp was born and raised in Los Angeles and educated in the LA public schools. He is married to the former Joanne Main of Fillmore, CA. Both are graduates of Occidental College. They have four children (Jeffrey, Jennifer, Judith and Jimmy) and seventeen grandchildren. The Kemps reside in Bethesda, Maryland and have a home in Vail, Colorado. They are also founding members and Honorary Board members of the Yellowstone Private Ski & Golf Club in Big Sky, Montana.

Commissioner Pat Combs

Pat V. Combs, a REALTOR® from Grand Rapids, Mich., is the 2008 Immediate Past President of the National Association of Realtors® (NAR). NAR is America's largest professional association, representing more than 1.3 million members involved in all aspects of the residential and commercial real estate industries.

Pat served as NAR President in 2007 and NAR President-Elect in 2006. In 2005, she was NAR First Vice President. She served as NAR Regional Vice President in 1997 of Region VI, composed of Michigan and Ohio.

A REALTOR® since 1971, Pat is the Vice President of Coldwell Banker-AJS-Schmidt, the second largest real estate company in Michigan. She holds the professional designations of Accredited Buyer Representative (ABR®); Certified Residential Specialist (CRS®); Graduate, REALTOR® Institute (GRI); and Performance Management Network (PMN).

Pat is a member of the NAR Leadership Team. In 2003, she served as National Fundraising Chair for the REALTORS® Political Action Committee and is an RPAC "Golden R." She has been chair of three major NAR committees: Education, Equal Opportunity, and Public Policy. Pat also served as committee liaison for three years.

At the state level, Pat was President of the Michigan Association of REALTORS® in 1995, and was chosen by her peers as Michigan "REALTOR® of the Year" in 2002. She was Michigan President of the Women's Council of REALTORS® in 1986. Active in her community, she served as chairman of the Michigan Real Estate Commission in 2002.

In 1990, Pat served as President of the Grand Rapids Association of REALTORS® .

Pat V. Combs, and her husband, Guy Combs, have a combined family of six children and four grandchildren.

Commissioner Okianer Christian Dark

Ms. Dark is the Associate Dean of Academic Affairs and Professor of Law at Howard University School of Law. Associate Dean Dark joined the faculty at the Howard University School of Law in the fall of 2001 where she teaches Torts, Products Liability, Advanced Torts and Health Law. She has been Associate Dean for Academic Affairs since July 2005 and also serves on a teaching team on Bioethics at the Howard University Medical School.

Associate Dean Dark served in the United States Attorney's Office (USAO) in Portland, Oregon, where she was an Assistant United States Attorney in the Civil Division and Supervisor of the Community Relations Unit. Prior to joining the USAO, Professor Dark was on the faculty of the T.C. Williams School of Law at the University of Richmond, in Richmond, VA. She joined the T.C. Williams faculty in 1984, where she taught Torts, Products Liability, Antitrust and Gender and the Law. She was the recipient of the University of Richmond's Distinguished Educator Award in 1990 and 1993 and the Distinguished Faculty Award by the Virginia Women Attorneys Association Foundation in 1991. At Howard, she received the Warren Rosmarin Professor Of Law Excellence Award in Teaching and Service and the Graduate Students Award for faculty of the year.

Associate Dean Dark has worked on Fair Housing issues for many years. She has offered her personal story as a victim of housing discrimination in a videotape titled "Who Can Ever Get Used to This?" In 1997, she was one of the recipients of the National Fair Housing Alliance's Awards for Excellence in recognition of her role in the promotion of equal housing opportunity for all. She also received a Hope for People Award in 1991 for her work on Fair Housing Matters from Hope Fair Housing.

Associate Dean Dark is very active in her community. In Portland, Oregon, she established a Saturday School Program for primary school-age children at the Urban League of Portland. She also established a Children's Book Fair (directed at preschool and school age children up to 8th grade) for the Urban League's annual event known as "Do The Right Thing" Day, which encourages children who are in school and are doing the right thing. This Book Fair continues on an annual basis in Portland now sponsored by the Multnomah County Library.

In the field of health, she was a founding member of the Board of Trustees of the Northwest Health Foundation in Portland, Oregon. She also was the Chair of the Grants committee for that foundation which gave out about $2 million dollars in grants to nonprofit and governmental organizations to improve the health of Oregon and Southwest Washington residents. Presently, she is Chair of the Montgomery County Commission on Health which is the only citizen commission in Montgomery County concerned with public health.

Associate Dean Dark is a member of the Pennsylvania and New Jersey Bars and an associate member of the Virginia Bar. She received her Bachelor of Arts Degree Magna Cum Laude from Upsala College, in East Orange, New Jersey and her Juris Doctor from Rutgers University School of Law in Newark, New Jersey. At Rutgers University, Associate Dean Dark was the recipient of the Alumni Senior Prize (awarded to a graduating senior exhibiting the highest achievement in the law school and potential for success in the legal profession).

Commissioner I. King Jordan

King Jordan is the President Emeritus of Galludet University, the world's only university with all programs and services designed specifically for students who are deaf or hard of hearing.

In 1988, Gallaudet students, with support from many alumni, faculty, staff and friends of the University, protested the Board of Trustees' appointment of a hearing person to the presidency. Called Deaf President Now (DPN), the week-long protest was a watershed event in the lives of deaf and hard of hearing people all over the world. At its conclusion, the Board reversed its decision and named I. King Jordan, one of three finalists for the position, the eighth president of Gallaudet and the first deaf president since the institution was established in 1864.

Since DPN, I. King Jordan's leadership has heightened public awareness of the important educational contributions Gallaudet makes to the nation and the world. He serves as an international spokesperson for deaf and hard of hearing people, as well as an advocate for all persons with disabilities. Much sought after as a public speaker, Dr. Jordan continues to challenge the American public to examine their attitudes toward people with disabilities and to open their minds, hearts and workplaces to them.

Dr. Jordan is a native of Glen Riddle, Pennsylvania, a small town near Philadelphia. After graduating from high school, he enlisted in the Navy and served four years. An automobile accident left him profoundly deaf at age 21.

Dr. Jordan earned a B.A. in psychology from Gallaudet in 1970. The following year he earned an M.A., and in 1973 a Ph.D., both in psychology and both from the University of Tennessee. Upon receiving his doctorate, Dr. Jordan joined the faculty of Gallaudet's Department of Psychology. In 1983 he became chair of the department; three years later he was appointed dean of the College of Arts and Sciences.

As professor, department chair, dean, and president, Dr. Jordan made numerous scholarly contributions to his field. In addition, he has been a research fellow at Donaldson's School for the Deaf in Edinburgh, Scotland, an exchange scholar at Jagiellonian University in Krakow, Poland, and a visiting scholar and lecturer at schools in Paris, Toulouse, and Marseille, France.

Dr. Jordan holds eleven honorary degrees and is the recipient of numerous awards, among them: the U.S. Presidential Citizen's Medal, the Washingtonian of the Year Award, the James L. Fisher Award from the Council for Advancement and Support of Education (CASE), the Larry Stewart Award from the American Psychological Association, and the Distinguished Leadership Award from the National Association for Community Leadership. In 1990, President George Bush appointed Dr. Jordan Vice Chair of the President's Committee on Employment of People with Disabilities (PCEPD). In 1993, President Clinton reappointed Dr. Jordan Vice Chair of PCEPD.

Dr. Jordan and his wife, Linda have two grown children, I. King III, an associate professor of bioinformatics at Georgia Institutes of Technology, and Heidi, an administrator at the Florida School for the Deaf.

Dr. Jordan stepped down as Gallaudet president on December 31, 2006.

Commissioner Myron Orfield

Professor Myron Orfield is the Executive Director of the Institute on Race & Poverty, a non-resident senior fellow at the Brookings Institution in Washington, D.C., and an affiliate faculty member at the Hubert H. Humphrey Institute. He teaches and writes in the fields of civil rights, state and local government, state and local finance, land use, questions of regional governance, and the legislative process. For 2005-06, Professor Orfield served as the Fesler-Lampert Chair in Urban and Regional Affairs.

Professor Orfield graduated, summa cum laude, from the University of Minnesota, was a graduate student at Princeton University, and has a J.D. from the University of Chicago, where he was a member of the University of Chicago Law Review. Following law school, he clerked for the United States Court of Appeals for the 8th Circuit and then returned to the University of Chicago Law School as a Research Associate and Bradley Fellow at the Center for Studies in Criminal Justice. After working as an associate at Faegre & Benson in Minneapolis, he served as a Special Assistant Attorney General of Minnesota in the Solicitor General's Division.

In 1990, Professor Orfield was elected to the Minnesota House of Representatives, where he served five terms, and to the Minnesota Senate in 2000, where he served one term. There he was the architect of a series of important changes in land use, fair housing, and school and local government aid programs. His first book, Metropolitics: A Regional Agenda for Community and Stability (Brookings 1997), a study of local government structure and demographic, relates to these efforts.

For over a decade, Professor Orfield has been president of a nationally respected regional research organization undertaking studies involving the legal, demographic and land use profiles of various American metropolitan areas. His second book, American Metropolitics: The New Suburban Reality (Brookings 2002), is a compilation of his work involving the nation's 25 largest regions. Orfield’s third book, Region: Law, Policy and the Future of the Twin Cities is forthcoming (2008, University of Minnesota Press).

Commissioner Gordon Quan

Gordon Quan is the former Mayor Pro Tem and Chair of the Housing Committee for the City of Houston. Mr. Quan has had a long history of community activism. Thee first Asian American elected citywide to the Houston City Council and first to serve as Mayor Pro Tem, Gordon believes each person can make a difference.

Born in China but raised in Houston, Gordon was a founding member of the Asian American Bar Association of Houston and the Asian American Coalition. He has served in leadership positions with several organizations – President, Houston Foundation; President, East Downtown Tax Increment Redevelopment Zone; Chair, Blue Ribbon Commission to End Chronic Homelessness in Houston; Chair, Plan for Affordable Housing in Houston; President, Asian American Democrats of Texas; President, Asian Pacific American Municipal Official of the National League of Cities.

Professionally, Gordon is the founder and managing partner of Quan, Burdette and Perez, P.C., one of the largest and most respected U.S. immigration law firms in America with offices in Houston, San Antonio, The Rio Grand Valley and Mexico City. He has been selected for Best Lawyers in America, Texas Super Lawyers, Best Lawyers in Houston, and is AV Rated by Martindale-Hubbell.

Gordon continues his community service as a member of the board of directors of the Coalition for the Homeless (Houston), the South Texas College of Law, Catholic Charities, and Neighborhood Center, Inc. He also chairs the Asian Chamber of Commerce and is Vice-chair of the Asia Society, Texas Center.

Gordon has been recognized as a “Trailblazer” by the National Asian Pacific American Bar Association, “Spirit of America” by the National Chinese American Citizen Alliance, a “Bridge Builder” by the Masons Society (the highest honor given to a non-Mason), “Friend of the Homeless” by the Coalition for the Homeless, “Councilmember of the Year” by the Houston Police Officers Union, a “Voice for Children” by Children at Risk among many others.

Mr. Quan earned degrees from the University of Texas (B.A. 1970), the University of Houston (M.Ed. 1973) and the South Texas College of Law (J.D. 1977).

Above all, Gordon Quan has always been a person who cares deeply about others and has tried to make life better for all. Married to the former Sylvia Lau for more than 30 years, they are the parents of three daughters, Caroline and husband Patrick Long, Kristen and husband Hunter Hammill, Katherine and grand-daughter Victoria Long

Co-Sponsoring Organizations

Leadership Conference on Civil Rights Education Fund

Founded in 1969 as the education and research arm of the civil rights coalition, the Leadership Conference on Civil Rights Education Fund (LCCREF) uses its research and education campaigns to promote an understanding of the need for national policies that support civil rights and social and economic justice. LCCREF initiatives are grounded in the belief that an informed public is more likely to support effective federal civil rights and social justice policies.

Through its public education campaigns on critical policy issues such as voting rights, judicial nominations, education reform, and affirmative action, LCCREF accentuates the vital relationship between the movement's storied past and contemporary civil rights issues. Our work presents the different perspectives of the constituencies of the coalition, thus providing policy makers, the press, and the public a broader context for the discussion of policy issues than would be available from any one organization.

Lawyers' Committee for Civil Rights Under Law

The Lawyers' Committee for Civil Rights Under Law, a nonpartisan, nonprofit organization, was formed in 1963 at the request of President John F. Kennedy to involve the private bar in providing legal services to address racial discrimination. The principal mission of the Lawyers' Committee is to secure, through the rule of law, equal justice under law.

The Committee's major objective is to use the skills and resources of the bar to obtain equal opportunity for minorities by addressing factors that contribute to racial justice and economic opportunity. Given our nation's history of racial discrimination, de jure segregation, and the de facto inequities that persist, the Lawyers' Committee's primary focus is to represent the interest of African Americans in particular, other racial and ethnic minorities, and other victims of discrimination, where doing so can help to secure justice for all racial and ethnic minorities.

National Fair Housing Alliance

Founded in 1988 and headquartered in Washington DC, the National Fair Housing Alliance (NFHA) is the only national organization dedicated solely to ending discrimination in housing. NFHA works to eliminate housing discrimination and to ensure equal housing opportunity for all people through leadership, education and outreach, membership services, public policy initiatives, advocacy and enforcement.

Today NFHA is a consortium of more than 220 private, non-profit fair housing organizations, state and local civil rights agencies, and individuals from throughout the United States. NFHA recognizes the importance of "home" as a component to the American Dream and hopes to aid in the creation of diverse, barrier free communities across the nation.

NAACP Legal Defense and Educational Fund, Inc.

The NAACP Legal Defense & Educational Fund, Inc. is the nation's oldest civil rights law firm. Founded by Thurgood Marshall in 1940, we have represented African Americans in most of the country's major racial discrimination cases. In many respects, LDF is legal counsel to America on issues of race.

Although LDF works primarily through the courts, its strategies include advocacy, educational outreach, monitoring of activity in the executive and legislative branches, coalition building and policy research. LDF focuses on issues of education, voter protection, economic justice and criminal justice. LDF pursues racial justice to move our nation toward a society that fulfills the promise of equality for all Americans.

ACKNOWLEDGMENTS

The sponsoring organizations would like to thank the many organizations and individuals who have provided financial and in-kind assistance to the National Commission on Fair Housing and Equal Opportunity. The important work of the Commission would not be possible without their support. Each of our sponsors is committed to an open and honest dialogue on the importance of fair housing and strategies to fulfill the promise of the Fair Housing Act. The opinions expressed at the hearings and final recommendations do not necessarily reflect their views.

We are deeply appreciative for the support of Access Living; Dechert LLP; DLA Piper; Fannie Mae; Freddie Mac; Jim Hanna, Hanna Reporting & Video Services; Bernie Kleina, HOPE Fair Housing (IL); MALDEF; Justin Massa, MoveSmart.org; Jim McCarthy and David Laurie, Miami Valley Fair Housing Center, Inc. (OH) webcasting; Mitchell, Silberberg and Krupp; National Association of Realtors; Rosenberg Foundation; Larry Silfen, Tsq Reporting; Wachovia,; Weil, Gotshal; and Winston & Strawn LLP.

Conference Agenda

Tuesday September 9, 2008

National Commission on Fair Housing and Equal Opportunity
The State of Fair Housing in America

Los Angeles
September 9, 2008

8:00 AM Breakfast and Registration

9:00 AM Welcome and Opening Remarks
Shanna Smith, National Fair Housing Association

9:30 AM Panel 1
The Importance of Fair Housing in Creating and Maintaining Diverse Communities

- Camille Charles, Professor of Sociology, Director, Center for Africana Studies, University of Pennsylvania
- John Wong, founding Chair, Asian Real Estate Association of America
- Chris Brancart, Brancart and Brancart
- Gary Orfield, Co-Director, the Civil Rights Project, UCLA Graduate School of Education and Information Studies

10:30 AM Break

11:00 AM Panel 2
Foreclosure Fallout: Lending Discrimination and its Continuing Effect on Communities

- Jesus Hernandez, Department of Sociology, University of California at Davis
- Melvin Oliver, Dean of Social Sciences, University of California at Santa Barbara
- John Relman, Relman and Dane, PLLC
- Blair Taylor, President and CEO, Los Angeles Urban League

12:00 PM Lunch
12:45 PM Press Availability
1:30 PM Panel 3
Is HUD meeting its enforcement responsibilities and mandate to promote racial integration and accessibility for people with disabilities?

- Roberta Achtenberg, Chair of the Board of Trustees, California State University, former HUD Assistant Secretary for Fair Housing
- Helmi Hisserich, Deputy Mayor for Housing and Economic Development Policy, City of Los Angeles
- Frances Espinoza, Executive Director, Housing Rights Center, Los Angeles
- Amy Nelson, Executive Director, Fair Housing of the Dakotas
- Bonnie Milstein, former Director, FHEO's Office of Civil Rights Compliance

2:30 PM Break

3:00 PM **Panel 4**
Land use and access to opportunity in metropolitan and rural communities

- John Powell, Executive Director, Kirwan Institute for the Study of Race & Ethnicity, Ohio State University
- Mike Rawson, directing attorney of the California Affordable Housing Law Project of the Public Interest Law Project
- Nancy Ramirez, Western Regional Counsel, MALDEF
- Jose Padilla, Executive Director, California Rural Legal Assistance

4:00 PM **Additional Commentary**

5:00 PM **Closing Remarks**
Shanna Smith, National Fair Housing Alliance

5:15 PM **Adjournment**

Biographies

Witnesses

Panel 1
The Importance of Fair Housing in Creating and Maintaining Diverse Communities

Camille Zubrinsky Charles: is Edmund J. and Louise W. Kahn Term Professor in the Social Sciences and Professor of Sociology and Education, at the University of Pennsylvania. She is author of *Won't You Be My Neighbor: Race, Class and Residence in Los Angeles* (Russell Sage, Fall 2006), which class- and race-based explanations for persisting residential segregation by race. She is also co-author of *The Source of the River: The Social Origins of Freshmen at America's Selective Colleges and Universities* (2003, Princeton University Press). More recently, she is co-author of the forthcoming book, *Taming the River: Negotiating the Academic, Financial, and Social Currents in Selective Colleges and Universities* (co-authored with Douglas S. Massey and colleagues; Princeton University Press), the second in a series based *the National Longitudinal Survey of Freshmen*, and "Race in the American Mind: From the Moynihan Report to the Obama Candidacy". She is also nearing completion of a sole-authored book on Black racial identity in the United States, tentatively titled, *The New Black: Race Conscious or Post-Racial?*

Professor Charles earned her Ph.D. in 1996 from the University of California, Los Angeles, where she was a project manager for the *1992-1994 Multi-City Study of Urban Inequality*. Her research interests are in the areas of urban inequality, racial attitudes and intergroup relations, racial residential segregation, minorities in higher education, and racial identity; her work has appeared in *Social Forces*, *Social Problems*, *Social Science Research, The DuBois Review*, *the American Journal of Education* and the *Annual Review of Sociology*.

John Yen Wong: graduated from Yale University in 1975 with a degree in Biology. He began his real estate career in 1981, and has been both a salesperson in and an owner of real estate companies. In 2003, Realtor Magazine named John as one the 25 most influential people in real estate and is the Asian Real Estate Association of America's 2006 "Real Estate Person of the Year."

John has been the broker owner of an independent real estate company, a Mason-McDuffie trademark licensed company, and a Prudential Real Estate franchise. John is currently a broker associate in a Prudential California Realty office in San Francisco.

Throughout his career, John has been active in organized real estate. He was the 2004 national President of the Council of Real Estate Brokerage Managers (CRB) organization and the 2005 President of the San Francisco Association of Realtors. In the emerging markets arena, John is the Founding Chairman of the Asian Real Estate Association of America, which he helped to form in 2002. In 2005, John served as the Chairman of Freddie Mac's Affordable Housing Advisory Council and is a member of Chase Home Finance's National Housing Advisory Council. John also has experience in the regulatory side of the real estate industry and was appointed by Governor Pete Wilson to serve on the California Department of Real Estate's Advisory Commission with DRE Commissioner Jim Antt.

Christopher Brancar: is a partner in Brancart & Brancart, a law firm located in Pescadero, specializing in fair housing litigation.

Mr. Brancart graduated with honors from the University of Texas School of Law in 1985. Following law school, he clerked for the Honorable Vincent L. McKusick, the Chief Justice of the Maine Supreme Judicial Court, and then taught appellate advocacy and administrative law at Western State University College of Law.

From 1987 to 1989, he worked as a staff attorney and later as the supervising attorney at the Legal Services Program in Pomona. Mr. Brancart entered private practice in 1989 and since then has specialized in federal fair housing litigation.

In addition to representing plaintiffs in several leading cases, Mr. Brancart has conducted fair housing training courses for attorneys throughout the nation.

Gary Orfield: is a Professor of Education, Law, Political Science and Urban Planning at UCLA. Professor Orfield is interested in the study of civil rights, education policy, urban policy, and minority opportunity. He was co-founder and director of the Harvard Civil Rights Project and is now co-director of the UCLA Civil Rights Project/Proyecto Derechos Civiles. Orfield's central interest has been the development and implementation of social policy, with a central focus on the impact of policy on equal opportunity for success in American society. Recent works include six co-edited books since 2004 and numerous articles and reports. Recent books include, *Lessons In Integration: Realizing the Promise of Racial Diversity in America's Public Schools* (with E. Frankenberg), *Dropouts in America: Confronting the Graduation Rate Crisis, School Resegregation: Must the South Turn Back?* (with John Boger), and *Higher Education and the Color Line* (with Patricia Marin and Catherine Horn). In addition to his scholarly work, Orfield has been involved in the development of governmental policy and served as expert witness in several dozen court cases related to his research, including the University of Michigan Supreme Court case, which upheld the policy of affirmative action in 2003. He has been called to give testimony in civil rights suits by the United States Department of Justice and many other civil rights, legal services, and educational organizations. He was awarded the American Political Science Association's Charles Merriam Award for his "contribution to the art of government through the application of social science research." He was also honored with the 2007 Social Justice in Education Award by the American Educational Research Association for “work that has had a profound impact on demonstrating the critical role of education research in supporting social justice.” He is a member of the National Academy of Education. A native Minnesotan, Orfield received his Ph.D. from the University of Chicago and travels extensively in Latin America.

Panel 2
Foreclosure Fallout: Lending Discrimination and its Continuing Effect on Communities

Jesus Hernandez: is a real estate broker practicing in the Sacramento area with over 20 years of experience in residential sales and financing. He is currently completing his Ph.D in sociology at the University of California at Davis. Most recently he was invited to present his work at the Open Research Conference on Globalization at Musashi University in Tokyo, Japan, the International Sociological Association Conference on Urban Justice and Sustainability in Vancouver, British Columbia, and the National Fair Housing Alliance Annual Conference in Washington, D.C. His research connects the current subprime loan crisis to historical processes of mortgage redlining and residential segregation and demonstrates how racialized lending practices reproduce long-standing patterns of inequality. His testimony for the commission hearing focuses on the historical connection between segregation, housing credit, and foreclosures in the city of Sacramento.

Blair Hamilton Taylor: is the President and CEO of the Los Angeles Urban League, an affiliate of one of the nation's leading civil rights organizations with offices in more than 100 cities. With a staff of over 300 and a budget in excess of $26 million, the 86-year-old Los Angeles Urban League is one of America's largest civil rights entities. Taylor most recently served as the Executive Vice President of College Summit, a national college access initiative with a track record of nearly doubling the college enrollment rates of low income students in the communities it serves. During his tenure, College Summit achieved the fastest growth in the organization's history, quadrupling its student outreach to more than 6,000 students in 2005. Taylor's entrepreneurial background includes four years as the President and CEO of COI/ICD, a leading retail franchising company focused on low income communities in the U.S. and the Caribbean. For his pioneering efforts, Taylor was named California's Mass Mutual Blue Chip "Entrepreneur of the Year" in 1999. Taylor earned his BA in Economics from Amherst College in Amherst, Massachusetts and his MBA in Marketing and Entrepreneurial Studies from UCLA's Anderson Graduate School of Management. He has received numerous awards, including the UCLA Black Alumni Association's distinguished Tom Bradley Award, their highest honor. He is also a recipient of the 2007 Greater Los Angeles African American Chamber of Commerce (GLAAACC) Service Award, and the LA NAACP 2006 Man of Valor Award. Taylor has authored numerous articles and frequently lectures on the topics of urban development and community empowerment. He resides in Los Angeles with his wife Bridgette Taylor, Esq., a partner in the law firm Dreier Stein Kahan Browne Woods George, LLP, and their four children.

John P. Relman: is the founder and director of Relman & Dane PLLC. From 1989 to 1999, Mr. Relman served as project director of the Fair Housing Project at the Washington Lawyers' Committee for Civil Rights and Urban Affairs. Under his leadership the project achieved national recognition, winning some of the largest housing, lending, and public accommodations discrimination jury verdicts and settlements obtained in the country.

From 1986 to 1989, Mr. Relman worked as a staff attorney at the National Office of the Lawyers' Committee. Prior to joining the Committee, he clerked for the Honorable Sam J. Ervin III of the U.S. Court of Appeals for the Fourth Circuit and the Honorable Joyce Hens Green of the U.S. District Court for the District of Columbia. Mr. Relman's better-known cases include *Timus v. William J. Davis, Inc.* ($2.4 million jury verdict for housing discrimination against families with children); *Dyson v. Denny's Restaurants* ($17.725 million class settlement for racial discrimination against customers); *Pugh v. Avis Rent-A-Car* ($5.4 class settlement for racial discrimination in the rental of cars); and *Gilliam v. Adam's Mark Hotels* ($2.1 million class settlement for racial discrimination against guests).

Mr. Relman has written and lectured extensively in the areas of fair housing and fair lending law and practice and has provided numerous training classes and seminars for plaintiffs' lawyers, fair housing organizations, the real estate industry, and lending institutions. He is the author of *Housing Discrimination Practice Manual,* published by the West Group. Mr. Relman teaches public interest law at Georgetown University Law Center, where he serves as an adjunct professor. He received his law degree from the University of Michigan and undergraduate degree from Harvard.

Panel 3
Forty Years After the Fair Housing Act: Is the Federal Government Living Up to its Mandate?

Roberta Achtenberg: is an economic and workforce development consultant and has served in senior policy-making roles with the San Francisco Chamber of Commerce and the San Francisco Center for Economic Development from 1998-2004. She serves as a director of the Bank of San Francisco and the San Francisco-based software company, Andrew J. Wong, Inc.

Previously, Ms. Achtenberg served in the Clinton Administration, first as Assistant Secretary of Fair Housing and Equal Opportunity at the Department of Housing and Urban Development (HUD), and later as Senior Advisor to then HUD Secretary Henry G. Cisneros. A former member of the Board of Supervisors for the City and County of San Francisco from 1990-1993, she also represented San Francisco as a Director for the Bay Area Air Quality Management District.

She earned her B.A. in history from UC Berkeley in 1972 and her J.D. from the University of Utah, College of Law in 1975. She was a teaching fellow at the Stanford Law School and was Dean of the New College of California's School of Law. She practiced law with Equal Rights Advocates and founded the National Center for Lesbian Rights.

She has been recognized both locally and nationally for her community and public service.

Helmi Hisserich: is Deputy Mayor of Housing and Economic Development Policy for the City of Los Angeles. In that capacity, Ms. Hisserich is responsible for guiding the Mayor's Strategic Plan for Economic Development. She is the Mayor's advisor on policy matters such as workforce initiatives, industry sector growth, affordable housing, homelessness and positioning Los Angeles as a hub for lucrative trade flows and as a visitor destination.

In September 2003, Helmi joined the Los Angeles Community Redevelopment Agency as Regional Administrator in charge of the Hollywood & Central Region. During her tenure at the CRA/LA, Ms. Hisserich organized the CRA Hollywood & Central Region into a strong team of Redevelopment Professionals with a work program that includes an aggressive effort to expand the supply of affordable housing, as well as, a focus on catalytic commercial projects. Prior to joining the Redevelopment Agency Ms. Hisserich worked as a Manager for Keyser Marston Associates, a Real Estate and Economic Development Advisory Firm specializing in redevelopment economics. Helmi was a Senior Economic Development Deputy in the Administration of Los Angeles Mayor, Richard J. Riordan where she led the Mayor's efforts on Hollywood revitalization. Helmi played an integral role during an intense period of change and renewal, working diligently to retain or introduce businesses to Hollywood and to secure private development. During her tenure, both the Hollywood & Highland and Cinerama Dome Entertainment Center projects were completed. In 1999, Ms Hisserich was appointed by Richard Riordan to the Northeast Los Angeles Area Planning Commission, and reappointed by Mayor Hahn in 2001. Serving as the Commission President, Helmi helped make critical decisions on permit and development issues that shape the City of Los Angeles.

A native of Los Angeles, Ms. Hisserich earned an MBA from Cornell University, and a bachelors of arts from the University of Southern California. In 1993 Cornell University awarded Helmi the Central and Eastern European Development (CEED) Fellowship where she assisted with the formation of business tax policies in Estonia during their transition from the Soviet Union to an independent State.

Amy S. Nelson: is the Executive Director of the Fair Housing of the Dakotas (FHD) which works to eliminate housing discrimination and to ensure equal housing opportunities for all. The FHD is a non-profit, grassroots organization serving North and South Dakota with an office located in Bismarck, ND. Prior to the FHD, Nelson worked for Hauck & Associates, Inc., a professional association management firm located in Washington, DC.

Nelson was appointed by Mayor Warford of Bismarck, ND to the Mayor's Committee on Human Relations and continues to serve. She is an elected member of the Board of Directors of the National Fair Housing Alliance and also serves as a member of the North Dakota Human Rights Coalition, the North Dakota Disabilities Advocacy Consortium, the North Dakota Women's Network, the Bismarck-Mandan League of Women Voters, the South Dakota Coalition of Citizens with Disabilities and the South Dakota Advocacy Network for Women.

Nelson graduated from Moorhead State University in Moorhead, MN, with Bachelor of Science degrees in International Business and Political Science. She also holds a Master of Business Administration from Averett College in Danville, VA. Nelson is a native of Driscoll, ND.

Bonnie Milstein: has practiced poverty and civil rights law for almost 40 years. Beginning as a legal services lawyer, Ms. Milstein provided civil and criminal defense legal services in Connecticut's Legal Services programs. She has since represented Connecticut women in abortion rights litigation, challenged federal prison programs, and enforced Title IX, Title VI, Section 504, ADA, and Age Discrimination Act requirements in two federal civil rights programs. Ms. Milstein participated in the enactment of the Fair Housing Amendments Act of 1988 and the Americans with Disabilities Act of 1990. She has conducted civil rights training seminars around the country and has written extensively, primarily on Fair Housing and disability rights issues.

Panel 4
Land Use and Access to Opportunity in Metropolitan and Rural Communities

john a. powell: is an internationally recognized authority in the areas of civil rights and civil liberties and a wide range of issues including race, structural racism, ethnicity, housing, poverty and democracy. He is Executive Director of the Kirwan Institute for the Study of Race and Ethnicity at The Ohio State University and he holds the Gregory H. Williams Chair in Civil Rights & Civil Liberties at the University's Michael E. Mortiz college of Law.
Professor powell has written extensively on a number of issues including structural racism, racial justice and regionalism, concentrated poverty and urban sprawl, opportunity based housing, voting rights, affirmative action in the Unites States, South Africa and Brazil, racial and ethnic identity, spirituality and social justice, and the needs of citizens in a democratic society.

Previously, he founded and directed the Institute on race and Poverty at the University of Minnesota. He also served as Director of Legal Services in Miami, Florida and was National Legal Director of the American civil Liberties Union where he was instrumental in developing educational adequacy theory.

Professor powell has worked and lived in Africa, where he was a consultant to the governments of Mozambique and South Africa. He has also lived and worked in India and one work in South America and Europe. He is one of the co-founders of the Poverty & Race Research Action council and serves on the board of several national organizations. Professor powell has taught at numerous law schools including Harvard and Columbia University. He joined the faculty at The Ohio State University in 2002.

Mike Rawson: has dedicated his 27 years has a lawyer to advocacy on behalf of lower income persons in need of affordable housing. He began at the Legal Aid Society of Alameda County, where he established the California Affordable Housing Law Project. In 1996, he and co-director Steve Ronfeldt founded PILP to provide litigation and other advocacy support for California legal services and public interest law offices. Mike focuses on state and federal land use, community redevelopment, fair housing and tenant-landlord law. He has litigated many cases with legal services programs and has drafted many California land use and tenant-landlord statutes. His litigation includes suits addressing the adequacy of local housing elements, displacement of lower income families and discriminatory housing practices. Mike also has authored many articles, book chapters and manuals on these issues.

Nancy Ramirez: is the Western Regional Counsel for the Mexican American Legal Defense and Educational Fund (MALDEF), the nation's leading Latino civil rights law firm. As Regional Counsel, she helps to determine the litigation and public policy priorities for the Western region, which includes California, Oregon, Washington, Nevada, Arizona, Idaho, Montana, Alaska and Hawaii. With a staff of four attorneys and five non-attorneys, the regional office represents Latinos in education, employment, voting rights, immigrants' rights and public resource equity cases. Ms. Ramirez also served as a voting rights staff attorney with MALDEF from 1991 - 1997.

From 2005 to 2007, Ms. Ramirez was the Executive Director of the Los Angeles Center for Law and Justice (LACLJ), a nonprofit community law office in Boyle Heights that provides free legal services to indigent residents of Los Angeles County. She managed a staff of 17 and a budget of $1.1 million. From 2001 to 2005 she was the LACLJ's Managing Attorney for the Consumer Unit representing victims of consumer fraud. She also represented victims of domestic violence in their family law cases.

Ms. Ramirez was the Director of Congresswoman Loretta Sanchez's Orange County and Washington D.C. offices from 1997 to 1999 and Director of Outreach for California's 2000 Census Campaign. In addition, she taught legal writing at the University of Southern California Law School in 2003-2004. She is a 1990 graduate of Harvard Law School and 1987 graduate of U.C. Berkeley.

Witness Testimony Summaries

Panel 1
The Importance of Fair Housing in Creating and Maintaining Diverse Communities

Camille Charles, University of Pennsylvania

Scholars and policymakers have long viewed residential segregation as a core aspect of racial inequality. Students of racial inequality believe that segregation is a major barrier to equality, asserting that racial segregation undermines the social and economic well being of individuals and groups, irrespective of personal characteristics. As one of the most racially ethnically and culturally diverse cities in the world, Los Angeles offers important lessons for understanding patterns of residential segregation by race as well as other factors--both individual and structural—that influence aggregate-level neighborhood patterns. L.A.'s school system, for example, offers instruction in nearly 100 languages, and L.A. is also is one of nearly 40 majority minority metros. In terms of racial residential segregation since 1980, Los Angeles is one of a very few large metros that embodies several national trends. This testimony examines data associated with real estate preferences of individuals and groups based on racial and social expectations and prejudices. Neighborhood racial composition preferences—and in particular the factors that motivate preferences—are critical for understanding not only aggregate housing patterns, but the role that fair housing legislation can play in creating and maintaining stable, racially/ethnically integrated communities in light of current patterns and trends in racial attitudes (including preferences).

Chris Brancart, Brancart and Brancart

Chris Brancart is a partner in the firm of Brancart and Brancart in Pescadero, California and has litigated some of the most important fair housing cases in the country. His firm works closely with private fair housing groups across the country. His testimony will focus on the challenges of bringing fair housing cases in diverse communities. He will also address some of the significant issues in fair housing enforcement and policy at HUD.

Panel 2
Foreclosure Fallout: Lending Discrimination and its Continuing Effect on Communities

Jesus Hernandez, University of California at Davis

Mr. Hernandez' testimony shows how historically race-based patterns of residential segregation and suburbanization are intrinsically connected to the subprime loan and foreclosure crisis we see today. To demonstrate this connection, he presents a case study of mortgage lending patterns in Sacramento, California, a metropolitan area noted for its diverse population but a place that is currently experiencing one of the highest foreclosure rates in the nation. Mr. Hernandez makes three critical points: First, highly influenced by the real estate industry, federal housing policy created the institutional framework necessary for both residential segregation and contemporary subprime lending to take place via market structures. Second, housing policy created a series of structural conditions that isolated some communities from social, political and economic networks, thus leaving them vulnerable to economic disaster. Finally, this case study of Sacramento shows that the roots of the current housing crisis are found in both residential segregation and bank deregulation. The case study identifies three critical periods of change, in the housing credit industry, from 1930 to 2004, that led to episodes of mortgage redlining in Sacramento. Subprime lending, a seemingly place-less and colorblind market phenomenon, plays an important but potentially divisive role in reorganizing space initially shaped by race-based housing policies. A combination of historical and contemporary housing policies created a set of structural conditions in neighborhoods that made them vulnerable to capital extraction and the resulting economic catastrophes brought on by the meltdown of the globally leveraged deregulated subprime loan industry in 2007.

John Relman, Relman and Dane, PLLC

In his testimony, John Relman, Managing Partner of Relman & Dane, PLLC, discusses the potential for litigation under the Fair Housing Act to address reverse redlining, the practice of extending credit on unfavorable and often predatory terms to residents of communities of color. Relman is currently litigating a suit for the City of Baltimore against the financial institution Wells Fargo. Wells Fargo is alleged to have engaged in reverse redlining in violation of the Fair Housing Act. As a result, in Baltimore, Wells Fargo's African American borrowers are substantially more likely to be in foreclosure proceedings than either Wells Fargo's white borrowers in the city or the city's African Americans who have borrowed from other financial institutions. Relman establishes the ways in which the city has been adversely affected by Wells Fargo's actions, citing many of the effects of foreclosure on municipalities, including loss of property tax base, loss of real estate transfer tax revenue, increased demands on administrative and court services, and increased risk of crime and fire. The city has standing to sue under the Fair Housing Act because the city is a municipal corporation. The act protects all aggrieved persons, including corporate persons.

Relman connects reverse redlining and the present foreclosure crisis to the legacy of racial discrimination in this country and to long-term aspirations for integration and

strengthened communities. He argues that the ease with which financial institutions, including Wells Fargo, got homebuyers to agree to mortgages that were not in the buyers' long term interests is reflective of an inherited lack of financial literacy in low-income communities of color that has been passed down from the days when redlining precluded racial and ethnic minorities from obtaining credit. The long-term residential mobility of homeowners of color in this country is dependent, in part, upon the stable growth of their primary investment, growth which the foreclosure crisis has radically undermined. Relman argues that the damages that could be won from financial institutions that have exacerbated the foreclosure crisis could be used to strengthen predominantly minority communities in ways that would increase residential mobility and economic opportunity.

Blair Taylor, Los Angeles Urban League

Poor and minority urban communities have often been the hardest hit by economic shocks, and it seems as if they are also areas of least concern to economic policy makers. These policies are implemented with no regard to the negative impact they might have on various groups, constituencies, and consumers. The recent economic down turn and foreclosure crisis are but recent examples of the intersection between de facto and de jure segregation serving to undermine the prosperity and stability of poor minority communities. As the organization with one of the longest histories of organizing to protect urban minority communities from such discrimination, the Urban League has toiled both nationally as well as locally within Los Angeles to protect the rights and liberties of urban minority communities. In this testimony Blair Taylor examines several of the most important topics for the future of fair housing for its constituencies. This examination includes the barriers to fair housing faced by UL constituents, how those barriers led to increasingly fewer opportunities for prime lending in minority communities, the consequences of this decrease in prime lending, including the explosion in payday lending and check cashing businesses in communities with high minority composition, and the consequences to minority wealth caused by the foreclosure crisis. Mr. Taylor will provide answers to these concerns, and he will also suggest policies that might prevent these negative forces from impacting minority urban communities in the future.

Panel 3
Is HUD meeting its enforcement responsibilities and mandate to promote racial integration and accessibility for people with disabilities?

Roberta Achtenberg, California State University

Roberta Achtenberg is former Assistant Secretary for Fair Housing and Equal Opportunity at HUD. She has most recently served as a member of the Board and Chair of the Board of Trustees of California State University.

Ms. Achtenberg will testify about challenges to fair housing enforcement caused by HUD's structure, including the powerful internal constituencies and the inherent conflict in enforcing the law against entities that funded by the same agency. She will also speak to the two key requirements for fair housing enforcement: adequate staffing and adequate resources, both of which were often lacking given the multiple priorities within HUD and the restrictions on HUD itself.

Ms. Achtenberg will also address the unfulfilled opportunities available for national leadership of fair housing compliance through the President's Fair Housing Council which could provide strong interdisciplinary leadership for fair housing work through and within local communities. Finally, she will testify about the importance of fair housing work which is both responsive to a variety of constituencies and not politicized. She will describe the critical need for strong and effective leadership at the national level from the Executive Branch and Congress to assure that the promise of fair housing is met.

Frances Espinoza, Housing Rights Center of Los Angeles

Frances Espinoza is Executive Director of the Fair Housing Rights Center in Los Angeles. She will testify about the failures of cities and counties to take actions consistent with the obligation to affirmatively furthering fair housing. She will also discuss the importance of complying with this obligation and strategies to assure that it is met.

Amy Nelson, Fair Housing of the Dakotas

Amy Nelson is Executive Director of Fair Housing of the Dakotas. She will testify about the challenges of assuring compliance with the obligation to affirmatively further fair housing in a mostly rural service area. She will also address difficulties in advocating for fair housing enforcement in a service area that spans two of HUD's fair housing enforcement regions and how inconsistencies and lack of policy leadership adversely affects enforcement. Finally, Ms. Nelson will testify about the inadequacy of funding for fair housing enforcement agencies.

Bonnie Milstein, former Director, FHEOS's Office of Civil Rights Compliance

Bonnie Milstein is the former Director of HUD FHEO's Office of Program Civil Rights Compliance and has served in four administrations working on civil rights issues. She will testify about the difficulties of collaborative work within HUD to ensure civil rights compliance and the ways in which HUD's failure to advance civil rights compliance as an agency has created conflicts and failures in compliance. Ms. Milstein will also speak to HUD's failure to give clear and comprehensive guidance to its grantees about program compliance over the years and the consequences of that failure. Finally, she will address the significant lack of housing opportunities for people with disabilities.

Panel 4
Land use and access to opportunity in metropolitan and rural communities

Mike Rawson, California Affordable Housing Law Project

Michael Rawson is the Director of the California Affordable Housing Law Project of the Public Interest Law Project. He will address the potential of California's Housing Element Law to open up new opportunities for low income families in a wider range of high opportunity communities throughout California. He will discuss the California law as a potential national model, in the context of similar fair share housing requirements in New Jersey ("Mount Laurel") and other states, and will make recommendations for improvements in the law – including the need for complementary state incentives for integrated housing opportunities. Mr. Rawson will also discuss the potential of "inclusionary zoning" more generally, to promote racially and economically integrated housing in areas of opportunity.

Jose Padilla, California Rural Legal Assistance

California Rural Legal Assistance, Inc. (CRLA) is a non-profit legal services organization seeking to ensure that all low income rural communities have access to justice and the provision of human rights. Operating throughout the state of California, CRLA targets the most underserved regions of the state – the border region, Central Valley and Central Coastal Regions. CRLA's client communities confront poverty and housing discrimination in rural areas throughout California. Land use and housing decisions by local government often discriminate against CRLA clients on the basis of race, national origin, language, their status as farmworkers, or large families; or because they are recent immigrants or belong to other protected classes. Similarly, across the nation, four million households in non-metro areas were classified as housing poor, with non white households more likely to be in housing poverty. The special importance of rental housing stock and the needs of rural households are often overlooked, and thus rental-occupied households in rural areas are twice as likely to live in substandard housing as their owner counterparts. This testimony demonstrates that poverty, race, and place are integrally related, but they reveal only a portion of the experience of rural poverty and discrimination in areas of especially concentrated minority populations. Substandard housing has become the norm and rural colonias exist far beyond the traditionally recognized southwest borders.

Witness Testimony

TESTIMONY OF CAMILLE ZUBRINSKY CHARLES
(Panel 1)

To

The National Commission on Fair Housing and Equal Opportunity
Still Separate and Unequal: The State of Fair Housing in America

Los Angeles, CA

9 September 2008

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Introduction

Scholars and policymakers have long viewed residential segregation by race as a core aspect of racial inequality, implicated in both intergroup relations and in larger processes of individual and group social mobility. Indeed more than a century ago, W.E.B. DuBois (1903) recognized the importance of neighborhoods—the "physical proximity of home and dwelling-places, the way in which neighborhoods group themselves, and [their] contiguity"—as primary locations for social interaction, lamenting that the "color line" separating black and white neighborhoods caused each to see the worst in the other (1990, pp. 120-21). Indeed, students of racial inequality, from Myrdal (1944) to Taeuber & Taeuber (1965), believed segregation was a major barrier to equality, asserting that it "inhibits the development of informal, neighborly relations," "ensures the segregation of a variety of public and private facilities (Taeuber & Taeuber 1965, p. 1) and permits prejudice "to be freely vented on Negroes without hurting whites" (Myrdal 1944, p. 618). More recently, Douglas Massey and Nancy Denton (1993) illustrate how racial residential segregation "undermines the social and economic well-being" of individuals and groups, irrespective of personal characteristics (pp. 2-3).

Whether by choice or by constraint, persisting racial residential segregation has serious implications for both present and future mobility opportunities. Where we live affects our proximity to good job opportunities, educational quality, and safety from crime, as well as the quality of our social networks and our physical and mental health. And, more than one hundred years later, we remain a nation separated by "color lines" that enhance perceptions of groups as "different," "alien," and "undeserving," while at the same time reinforcing the perception that "their" problems are not "ours."

As one of the most racially, ethnically, and culturally diverse cities in the world, Los Angeles offers important lessons for understanding patterns of residential segregation by race as well as the factors—both individual and structural—that influence aggregate-level neighborhood patterns. There is a long history of African American settlement here. Moreover, as a top destination for new immigrants, the school system here offers instruction in nearly 100 languages, boasts the largest Latino/a and Korean populations in the country, and is home to first majority-Chinese suburb (Monterey Park). As one of nearly 40 majority-minority metros, Los Angeles offers a glimpse of the future of America.

Rapid changes in population composition associated with massive immigration from Latin America and Asia (e.g., in 2000, about one-third of LA County residents were foreign-born, up from 22 percent in 1980); economic restructuring and persistent economic inequality along racial-ethnic lines (e.g., in 2000, nearly one-quarter of blacks and Latinos lived in poverty, compared to less than 10% of whites and 14% of Asians); and patterns of intergroup tensions and often negative racial attitudes (e.g., uprisings in 1965 and 1992, increasing black-brown tensions) all contribute to—and are consequences of—persisting residential segregation by race.

In terms of trends in racial residential segregation since 1980, Los Angeles is one of a very few large metros that embodies several national trends. A newer city located in the West–where segregation tends to be lower–it is among the most diverse, thanks to high-volume immigration. Still, like many older cities of the Midwest and Northeast, blacks are hypersegregated –exhibiting extreme isolation on at least four of five standard measures of residential distribution.[1] And, in a new twist, Los Angeles is one of only two cities (New York is the other) as of the 2000 Census to see its Latino population become hypersegregated.[2] Equally important, despite reports of declining black-white segregation since 1980, there has been virtually no increase in blacks' exposure to whites in their neighborhoods; both Latinos and Asians have experienced substantial declines in their exposure to whites since 1980 as well. To the extent that racial residential segregation is deeply implicated in persisting racial economic inequality and tenuous intergroup relations, and in as much as trends in Los Angeles point to our national future, it is an optimal location for a consideration of the future of fair housing.

[TABLE 1]

In general, social scientists debate the relevant importance of three factors–real and/or perceived social class disadvantage, neighborhood racial composition preferences, and housing market discrimination–as primary contributors to persisting racial residential segregation. While economic inequality between racial/ethnic groups remains a pressing problem, objective differences in social class status cannot account for persisting racial residential segregation. Analyses of the housing market also reveal persisting discrimination against African Americans, Latinos, and Asians in both the owner and rental markets.[3] Here, I focus on the role of neighborhood racial composition preferences–and in particular the factors that motivate preferences–as critical for understanding not only aggregate housing patterns, but the role that fair housing legislation can play in creating and maintaining stable, racially/ethnically integrated communities in light of current patterns and trends in racial attitudes (including preferences).

[1] Massey, Douglas S. and Nancy A. Denton. 1989. "Hypersegregation in U.S. Metropolitan Areas: Black and Hispanic Segregation Along Five Dimensions." *Demography* 26(3): 373-91. Studies of residential segregation generally rely on one or more of six measures, each of which captures a different dimension of the spatial distribution of groups. *Evenness*, measured as the index of dissimilarity (*D*), describes the degree to which a group is evenly distributed across neighborhoods or tracts. A score over 60 is interpreted as extreme segregation between two groups, indicating the percentage of either group that would have to move to another neighborhood or tract to achieve within-tract population distributions that mirror those of the metro area. *Isolation* (measured as P^*_{xx}) is interpreted as the percentage of the same race in the average group member's neighborhood or tract; scores of 70 or more, indicating that the average person lives in an area that is at least 70 percent same-race, are considered extreme. The inverse of isolation is *exposure* (P^*_{xy}), interpreted as the average probability of contact with a person of an other-race comparison group (usually whites). These are the most commonly reported measures. On three other measures—*concentration* (a group's degree of density), *clustering* (proximity to the central business district), and *centralization* (the contiguity of their neighborhoods)—a group is extremely segregated if it scores over 60. A group is hypersegregated if it scores in the high range on at least four of these measures.

[2] Wilkes, Rima and John Iceland. 2004. "Hypersegregation in the Twenty-first Century: An Update and Analysis." *Demography* 41(1): 587-606.

[3] National Fair Housing Alliance. 2006. *Unequal Opportunity—Perpetuating Housing Segregation in America.* Washington, DC. Turner, Margery Austin and Stephen L. Ross. 2003. *Discrimination in Metropolitan Housing Markets: National Results from Phase II HDS 2000*. Washington, DC: US Department of Housing and Urban Development. Turner, Margery Austin, Stephen L. Ross, George C. Galster, and John Yinger. 2002. *Discrimination in Metropolitan Housing Markets: National Results from Phase I HDS 2000*. Washington, DC: US Department of Housing and Urban Development.

Neighborhood Racial Composition Preferences: A Brief Summary[4]

Over the last two and a half decades, there has been meaningful change in the neighborhood racial composition preferences of whites, shifting toward increased tolerance for sharing neighborhoods with more than token numbers of blacks and other minorities. At the same time, a clear majority of blacks remain willing to live in areas where their group is in the minority, and show a clear preference for 50/50 neighborhoods. Nonetheless, substantial differences remain in both the meaning and preferred levels of racial integration across racial categories. For many whites, a racially integrated neighborhood is one that is majority-white. To put it plainly, whites are *willing* to live with small numbers of blacks, Latinos, and/or Asians, but *prefer* to live in predominantly same-race neighborhoods. Non-whites, on the other hand, all prefer substantially more racial integration and are more comfortable as a numerical minority compared to whites. Still, the same-race preferences of non-whites exceed whites' preferences for integration. Moreover, patterns of neighborhood racial composition preferences follow a predictable racial hierarchy: whites are always the most-preferred out-group and blacks the least-preferred; Asians and Latinos, usually in that order, are located in between these two extremes.

As part of the *1993-1994 Los Angeles Survey of Urban Inequality,*[5] I developed a major innovation on existing methods of testing preferences by using a single item in which all respondents are asked to draw their ideal multiethnic neighborhood.[6] An important task in the development of the project–and this experiment–was the ability to tap attitudes toward residential integration in a truly multiracial-multiethnic environment. To accomplish this goal, we presented all respondents with a blank neighborhood showcard and asked them to specify the racial composition of their ideal neighborhood.

[FIGURE 1]

The measures of preferences resulting from this experiment–percentage white, percentage black, and so on–are simply the sum of each group represented on a respondent's completed card, divided by the total number of houses (including the respondent's own), and then multiplied by 100.

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[4] This section is adapted from Charles, Camille Zubrinsky. 2006. *Won't You Be My Neighbor? Race, Class, and Residence in Los Angeles.* New York: Russell Sage.

[5] The Los Angeles Survey of Urban Inequality is a large, multifaceted survey research project designed to examine crosscutting explanations for racial inequality broadly defined and to provide fresh data from one of the largest and most racially diverse metro areas in the country. A major goal of the project was capitalize on the multiracial character of Los Angeles in three important ways: 1) large numbers of respondents from each of the four major racial/ethnic groups were included; 2) content moved beyond the traditional black-white dichotomy; and 3) survey-based experimental design allowed the examination of various types of integrated living arrangements and permitted a direct assessment of whether individuals react in uniformly racially discriminatory ways. Interviews were conducted in English, Spanish, Korean, Mandarin, and Cantonese to capture the attitudes, perceptions, and experiences of the large immigrant population. For more details, see Charles (2006, chapter 1).

[6] The original Farley-Schuman methodology asks a different series of questions depending upon the race of the respondent. Whites are asked about 1) their comfort with and 2) willingness to enter neighborhoods with varying degrees of integration with blacks. Black respondents are asked 1) to rate neighborhoods of various racial compositions from most to least attractive and 2) to indicate their willingness to enter each of the areas. In both cases, scenarios represent realistic assumptions regarding the residential experiences and options of both groups (For details, see Farley et al. 1978, 1993).

Table 2 summarizes responses for all respondent- and target-group pairings; results are broken down by nativity-status for Latinos and Asians due to their markedly different attitudes and experiences. Patterns of neighborhood racial composition preferences suggest that Los Angeles-area residents would tolerate more racial residential integration than they currently experience, while simultaneously expressing substantial aversion to integration with certain groups. All of the racial and nativity-status groups tend to prefer both substantial integration and same-race representation exceeding that of any single out-group. Other distinct patterns are also evident. First, while all groups prefer neighborhoods dominated by coethnics, this preference is strongest among whites: their average ideal neighborhood was over half same-race (53%). Following just behind whites, however, were foreign-born Latinos and foreign-born Asians (48 and 46 percent, respectively). The ideal neighborhoods of blacks and native-born Latinos were just over 42 percent same-race, and native-born Asians seem least interested in coethnic neighbors, expressing a preference for an average ideal neighborhood that is just over one-third same-race.

[TABLE 2]

Whites also stand out as the group most likely to prefer an entirely same-race neighborhood (12%)—a rate three to four times that of native-born Latinos (4%) and African Americans (3%), and more than 16 times that of native-born Asians (less than one percent). Only the foreign-born groups come close to having same-race preferences similar to those of whites, however this may have more to do with immigrant-specific needs for the comfort and familiarity of compatriots (and chain migration patterns) than with anti-out-group sentiments. Note too that blacks are always the least-preferred out-group neighbors. This is seen in two ways. First, blacks were the most likely to be completely excluded from the ideal neighborhoods of other groups. One-fifth of whites and nearly as many native-born Latinos preferred neighborhoods without any blacks; native-born Asians were least likely to do so, yet still nearly 15% did. Still, this is not nearly as startling as the 38% of foreign-born Latinos and 44% of foreign-born Asians who drew ideal neighborhoods without a single black household. Latinos also appear to be less desirable neighbors, particularly among whites and foreign-born Asians—more than 18% of the former and about 30% of the latter exclude Latinos entirely, compared to less than 10% of blacks and native-born Asians. And, despite their status as least-preferred neighbors, blacks are among the most open to integration with all other groups, rivaled only by native-born Asians. Finally, all non-white groups, irrespective of nativity-status, prefer integration with whites to other-race minorities.

What Drives Preferences—Classism, Ethnocentrism, or Prejudice?[7]

A variety of factors shape residential decision-making: cost and affordability, the quality of the housing stock, preferences for particular dwelling amenities, proximity to work or other important destinations, stage in the life course, the quality of the public schools. Consequently, aggregate-level residential outcomes are the result of a multitude of individual-level attitudes and behaviors. In analyses of patterns of racial residential preferences, however, three hypotheses are typically considered:

1. ***Classism.*** Perceived differences in socioeconomic status that heavily coincide with racial-ethnic boundaries contribute to racial residential preferences.
2. ***Ethnocentrism.*** Members of all social groups tend to be ethnocentric, that is, to prefer to associate with coethnics.

[7] This section is adapted from Charles, Camille Zubrinsky. 2006. *Won't You Be My Neighbor? Race, Class, and Residence in Los Angeles.* New York: Russell Sage.

3. ***Prejudice.*** More active out-group avoidance is at the root of neighborhood racial composition preferences.

The expression of prejudice can take a variety of forms, including negative racial stereotypes, perceptions of social distance, and the belief that one or more groups pose a competitive threat to one's own groups. Also important, though not typically considered, are minority-group beliefs about the prevalence of discrimination; these beliefs may influence the preferences of minority-group members for whites or for same-race neighbors.[8] The patterns of neighborhood racial composition preferences presented in Table 2 are not evidence of classism, ethnocentrism or racial prejudice in and of themselves. To understand what drives neighborhood racial composition preferences requires systematic testing of the various hypotheses, preferably the simultaneous examination of said explanations.

Tables 3 through 6 present–for whites, blacks, Latinos, and Asians respectively– selected results from a detailed, multivariate analysis of the extent to which classism, ethnocentrism, and/or racial prejudice explain neighborhood racial composition preferences. Results are shown for all respondent and target group combinations. *Classism* is measured as perceived "social class disadvantage," and measures the degree to which an out-group is believed to be economically disadvantaged relative to one's own group. The *ethnocentrism* ("birds of a feather flock together") hypothesis is tested using a measure of "in-group attachment" or common fate identity: the extent to which respondents believe that "what happens to my group happens to me."

[8] For important exceptions, see Krysan, Maria. 2002. "Whites Who Say They'd Flee: Who Are They, and Why Would They Leave?" *Demography* 39(4): 675-96. See also, Timberlake, Jeffrey M. 2000. "Still Life in Black and White: Effects of Racial and Class Attitudes on Prospects for Residential Integration in Atlanta." *Sociological Inquiry* 70(4): 420-45.

Three items capture variants of *prejudice*. Racial stereotyping is an important aspect of traditional prejudice or simple, out-group hostility. The measure used here is a summary of four traits–intelligence, preference for welfare dependence, English-language ability, and involvement in drugs and gangs. Social distance is the degree to which respondents believe that an out-group is "difficult to get along with socially" relative to his or her own group. Both are difference scores: ratings of out-groups relative to respondents' perceptions of their own group; as such, these measures capture another dimension or type of prejudice: prejudice as a sense of group position. Rather than simple out-group hostility, this form of prejudice is fueled by a commitment to a specific group status or relative group position rather than simple out-group hostility. What matters most is the magnitude or degree of difference from particular out-groups that in-group members have socially learned to expect and maintain. Beliefs about racial-group threat or competition offer another lens through which to examine feelings of racial hostility–the degree to which an individual believes that more opportunities (economic and/or political) for an out-group results in fewer opportunities for one's own group. Finally, minority-group members' beliefs about whites' attitudes toward them and/or the prevalence of racial discrimination is captured in a general perception of whites as "tending to discriminate" against minority groups.[9] In each instance, positive scores reflect "more" of the attitude under consideration (e.g., more classism, more negative stereotypes, more ethnocentrism), and a negative association confirms the hypothesis: as each attitude becomes more salient, preferences for neighborhood racial integration with a target-group decline. In the case of preferences for same-race neighbors, the result is a positive association: increasingly negative attitudes and perceptions of out-groups (positive) result in increasing preferences for same-race neighbors. **Results indicate that classism and ethnocentrism play, at best, marginal roles in individuals' residential decision-making–with the clear exception of Asians, but even for this group class concerns appear to be much more salient for immigrants than for the native-born. In most cases, any evidence that supports these explanations pales in comparison to evidence that supports explanations rooted in the various forms of racial prejudice.**

[TABLE 3]

[9] Scores for the social class disadvantage, racial stereotyping, and social distance measures range from -6 to +6: negative scores indicate the perception that an out-group is economically advantaged relative to one's own group; positive scores represent the perception of an out-group as economically disadvantaged relative to one's own group; a score of 0 means a respondent perceives no difference in the economic position of an out-group and his or her own group. Scores for common fate identity range from 0 (no sense of common fate) to 3 (a strong sense of common fate). Perceived racial group competition is a scaled item indicating respondents' beliefs that more 1) economic opportunity and/or 2) political power for an out-group (black, Latino, or Asian) means less for their own group; scores range from 0 (no threat) to 8 (substantial threat). The perception of whites as "tending to discriminate" is an absolute measure ranging from 1 (whites tend to treat members of other groups equally) to 7 (whites tend to discriminate against members of other groups).

Table 3 summarizes multivariate models of whites' preferences for black, Latino/a, Asian and same-race neighbors, testing the relative importance of classism (perceived social class disadvantage), ethnocentrism (in-group attachment), and the three measures of racial hostility. Results clearly illustrate two main points: First, classism and ethnocentrism play no meaningful role in understanding the neighborhood racial composition preferences of whites. This is true irrespective of the race of the target-group–out-group or same-race. Second, negative racial attitudes exert consistently significant effects on preferences, and in the anticipated direction– reducing preferences for residential integration (negative coefficients) and increasing preferences for residential isolation (positive coefficients).[10] To the extent that whites perceive non-whites as relatively economically disadvantaged, this perception has no meaningful effect on their neighborhood racial preferences. Nor does ethnocentrism significantly impact whites' preferences. It should also be noted that almost none of the social background characteristics (not shown here) exert any consistent impact on preferences. **Simply put, whites' preferences for neighborhood racial integration are best understood as motivated by prejudice, not classism or ethnocentrism.**

[TABLE 4]

Table 4 presents results from comparable models of blacks' neighborhood racial composition preferences. Again, results offer no support for the influence of perceived social class disadvantage or ethnocentrism. Class attitudes are very marginally significant regarding blacks' preference for white neighbors, and more strongly associated with preferences for same-race neighbors. In each case however, the impact of "classism" contradicts the hypothesized relationship, increasing preferences for white neighbors and decreasing preferences for same-race neighbors. Together, the marginal statistical significance and low relative importance (based on the beta values) leads to the conclusion that classism is unimportant for understanding blacks' neighborhood racial composition preferences. The influence of ethnocentrism also runs counter to expectations. Those blacks with a moderate amount of ethnocentrism prefer significantly more white neighbors and significantly fewer same-race neighbors. This association between ethnocentrism and preferences is consistent with what has been called an "assimilationist" orientation. That is, "making it" in America is associated with moving "up and out" of segregated communities and into the predominantly white suburbs. Although a high degree of ethnocentrism is associated with slightly higher preferences for same-race neighbors, this association is, again, only marginally significant. Overall, results suggest that, if anything, ethnocentrism enhances blacks' preference for white neighbors and dampens preferences for same-race neighbors.

[10] To interpret, the slope values (B), one would multiply the coefficient by a score on the independent variable. The result represents the change in preferences (measured as a percentage) for every one-unit change in the measure of prejudice. The standardized coefficients (Beta) allow a comparison of the relative importance of each variable, since they are measured in similar units across explanatory variables that are measured in different units.

Out-group directed racial attitudes stand out as powerful predictors of blacks' neighborhood racial preferences. When potential neighbors are white or Asian, each of the prejudice-based measures–stereotyping, social distance, and the perception of whites as discriminatory–exhibit the anticipated effect on preferences (as attitudes become more negative, preferences decline). Negative stereotypes and perceived social distance also significantly increase preferences for same-race neighbors. Perceptions of competitive threat from Asians is marginally associated with decreased preferences for this group as neighbors; perceived racial competition also slightly increases blacks' preference for same-race neighbors. Once again, the most powerful predictors of **blacks' neighborhood racial composition preferences is racial prejudice–whether negative racial stereotypes, the perception of whites and Asians as socially distant, the perception of whites as tending to discriminate against them, or the fear that more jobs and political power for Asians means less for them. Neither concerns about avoiding poverty or some "innate" desire to stay "with my own kind" are influential.**[11]

Tables 5 and 6 summarize similar analyses for Latinos and Asians, respectively. An important difference, however, is the careful consideration of immigration-related characteristics–national origin, nativity status, length of time in the US, and English language proficiency. These characteristics are particularly important for understanding preferences for same-race neighbors, as well as the role of racial attitudes.

[TABLES 5 AND 6]

Latinos' neighborhood racial composition preferences (Table 5) are intricately linked to their immigration-related traits. Among the foreign-born, both the accumulation of time in the US and the acquisition of English-language skills increase preferences for integration with whites and diminish desires for close residential proximity to co-ethnics; this is particularly true for the most recent arrivals. In addition, racial attitudes are influential. In some instances, the impact of racial attitudes is mediated by immigrant characteristics. Specifically, negative racial attitudes (stereotyping and social distance) are less influential for the most recently arrived and in-group attachment is more so. These patterns are consistent with models of immigrant adaptation and the notion that internalizing a US-specific racial ideology is part of the acculturation process. For Latinos, the 5-year mark is an important one: at that point, immigrant and native-born Latinos are similar with respect to associations between racial attitudes and preferences. Finally, it is evident that, despite the importance of immigration, Latinos have much in common with blacks, particularly when potential neighbors are white or same-race. That is, **Latinos' neighborhood racial composition preferences are motivated primarily by prejudice and perceptions of whites as discriminatory; perceptions of blacks as economically disadvantaged play a very minor role, as does ethnocentrism when potential neighbors are Asian or same-race**.

[11] For more on this, see Maria Krysan and Reynolds Farley (2002) "The Residential Preferences of Blacks: Do They Explain Persistent Segregation?" Social Forces 80:937-980.

Finally, Table 6 shows selected results for Asian respondents. For this group, out-group-directed racial attitudes are generally less influential, but still matter in important ways for understanding their neighborhood racial composition preferences. Racial stereotyping and perceived social distance are consistently important when potential neighbors are other minority groups; each of these attitudes, in addition to perceptions of whites as discriminatory, motivates Asians' preferences for white neighbors as well. Overall, and contrary to the view of immigrant adaptation that includes the internalization of a specifically American racial ideology , the influence of these attitudes do not vary much by nativity status. And, although class-based attitudes emerge as and important factor among Asians, clearly racial attitudes matter as well, particularly when potential neighbors are other-race. Yet none of the attitudinal characteristics was as important as immigration-related characteristics for understanding Asians' neighborhood integration preferences. Clearly, understanding neighborhood racial composition preferences is more complicated for groups characterized by massive immigration and a "one-size-fits-all" approach should be avoided.

In summary, neighborhood racial composition preferences are primarily a function of racial prejudice; for blacks, Latinos and, to a lesser extent, Asians there is the added concern about hostility directed toward them by whites. Assertions that preferences are driven primarily by either "classism" or ethnocentrism are simply not supported by the evidence. These results are entirely consistent with several previous multivariate analyses detailing whether and how race matters at the individual level.[12] Moreover, the current analysis improves upon prior studies, with the inclusion of multiple indicators of prejudice that capture several dimensions of out-group hostility as well as minority-group concerns about white hostility toward them. Along with measures of ethnocentrism and beliefs about social class differences, this is the most thorough analysis of the factors that motivate neighborhood racial composition preferences to date.

Where do we go from here?[13]

My goal here was to elucidate patterns of neighborhood racial composition preferences and the forces that drive them, and to situate racial preferences within the broader context of historic and contemporary American race relations. The good news for the future of public policy related to housing opportunity, housing choice, and inequality more broadly is that whites are increasingly *willing* to live in close proximity to racial minorities and a sizable number of blacks, Hispanics, and Asians, remain *willing* to live in predominantly white areas. To capitalize on this willingness, however, requires being always mindful of the way that race continues to shape both our day-to-day interactions and our overall worldview.

The bad news, both for public policy and the nation, is that most whites still prefer predominantly or overwhelmingly white neighborhoods, while most nonwhites prefer more same-race neighbors than most whites are willing to tolerate. Most Americans–irrespective of race, ethnicity, or nativity status–continue to embrace anti-minority stereotypes, including many who are willing to share residential space with racial minorities. Conversely, most blacks,

[12] Farley et al (1994). "Stereotypes and Segregation: Neighborhoods in the Detroit Area." Timberlake, Jeffrey M. (2000). "Still Life in Black and White: Effects of Racial and Class Attitudes on Prospects for Residential Integration in Atlanta." Sociological Inquiry 70(4):420-445. Bobo, Lawrence D. and Camille L. Zubrinsky (1996). "Attitudes on Residential Ingegration." Charles, Camille Zubrinsky (2000). "Neighborhood Racial Composition Preferences." Charles, Camille Zubrinsky (2003). "The Dynamics of Racial Residential Segregation."

[13] Adapted from Charles, Camille Zubrinsky. 2006. *Won't You Be My Neighbor? Race, Class, and Residence in Los Angeles* (New York: Russell Sage), and Charles, Camille Zubrinsky. 2005. "Can We Live Together? Racial Preferences and Neighborhood Outcomes," chapter 3 in *The Geography of Opportunity: Race and Housing Choice in Metropolitan America*, edited by Xavier de Souza Briggs (Washington, DC: Brookings Institution Press).

Hispanics, and Asians have a keen sense of their subordinate positions relative to whites, and of whites' negative attitudes; this often leaves them suspicious of overwhelmingly white areas (a sort of "better safe than sorry" mentality).

Across racial groups, patterns of neighborhood racial composition preferences reveal a clear and consistent racial rank-ordering of out-groups as potential neighbors: whites are always the most preferred out-group neighbors, and the most likely to prefer entirely same-race neighborhoods and/or only limited contact with nonwhites—especially blacks. Blacks are always the least-preferred out-group neighbors, and the most open to substantial integration with all other groups. Asians and Hispanics, respectively, are in between these extremes. To varying degrees, all groups express preferences for *both* meaningful integration and a strong coethnic presence, yet preferences for the latter appear to depend on the race of potential neighbors, and are strongest when potential neighbors are black.

Available evidence indicates that active, present-day racial prejudice plays a particularly important role in driving preferences, always more important than either social class concerns or ethnocentrism. In many instances neither of these factors matters at all. And, although the evidence supports both variants of racial prejudice, it is particularly persuasive with respect to the sense of group position hypothesis. This is especially true for whites, the group at the top of the status hierarchy: maintaining their status advantages and privilege necessitates a certain amount of social distance from nonwhites—particularly blacks and Hispanics, who occupy the lowest positions on the aforementioned hierarchies. More than token integration with these groups signals an unwelcome change in status relationships. Indeed, the racial pecking order is so widely know that Hispanics and Asians—many of them unassimilated immigrants—mirror (and, arguably exaggerate) it in their preferences for integration.

Conversely, with whites clearly in the most privileged positions of the economic, political, and prestige hierarchies in American society, nonwhites have traditionally associated upward social mobility with proximity to them. That many nonwhites hold negative stereotypes of whites but are still interested in sharing residential space with them is indicative of this orientation. At the same time, nonwhites' beliefs about discrimination and hostility from whites, combined with an awareness that whites are not "on the same page" may cause some minority homeseekers to limit their housing searches to areas where they feel welcome, or to decide not to search at all.[14] Thus, a neighborhood's racial composition acts as a signal for homeseekers: areas with substantial coethnic representation are viewed as welcoming; overwhelmingly white neighborhoods can evoke concerns for nonwhites about hostility, isolation, and discomfort—both psychological and, sometimes, physical; and, for whites, racially mixed or majority-minority neighborhoods signal at least a perceptual loss of relative status advantage, particularly when there is a sizable black and/or Latino community. Thus, for all groups, preferences for same-race neighbors have more to do with aversion to others than with in-group solidarity.

These clearly racial concerns cut across class lines. Indeed, studies of the attitudes and experiences of middle class blacks suggest that, paradoxically, this subset of blacks may be 1) most pessimistic about the future of race relations, 2) most likely to believe that whites have negative attitudes toward them, and 3) increasingly less interested in predominantly white neighborhoods.[15] Thus, the most upwardly mobile blacks may be among the most suspicious of whites and least interested in sharing residential space with them. For this group, affordability is

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[14] Charles, Camille Zubrinsky. 2001. "Processes of Residential Segregation." *In Urban Inequality: Evidence from Four Cities*, edited by Alice O'Connor, Chris Tilly, and Lawrence Bobo (New York: Russell Sage). Yinger, John. 1995. *Closed Doors, Opportunities Lost: The Continuing Costs of Housing Discrimination* (New York: Russell Sage).

[15] See, for examples: Feagin, Joe R. and Melvin P. Sikes. 1994. *Living with Racism: The Black Middle-Class Experience* (Boston: Beacon); Hochschild, Jennifer. 1995. *Facing Up to the American Dream: Race, Class, and the Soul of the Nation* (Princeton, NJ: Princeton University Press); Sigelman, Lee and Steven A. Tuch. 1997. "Metastereotypes: Blacks' Perceptions of Whites' Stereotypes of Blacks." *Public Opinion Quarterly* 61:87-101.

not nearly the obstacle that whites' racial prejudice is, and this is due, in no small measure, to the fact that most whites–irrespective of their own social class status–adhere to negative racial stereotypes, deny the persistence of pervasive racial prejudice and discrimination, and are quite likely to oppose race-targeted social policies.

Whites' racial prejudice–and minority responses to it–poses a more obvious, but equally difficult challenge for improving the housing options of the poor, including those who participate in public housing programs. For many, the obvious material benefits clearly outweigh concerns about and/or day-to-day experiences of prejudice and discrimination.[16] For a nontrivial few, however, fears of isolation and hostility will prevail and participants will return to the ghetto and others will opt out entirely when confronted with the reality of moving to a potentially hostile environment.[17] While not at the bottom of the status hierarchy, Asians and Hispanics are also subordinate groups grappling with similar racial issues. As we increase our knowledge of Asian and Hispanic racial attitudes, a similar paradox may emerge within these groups as well.

As we move headstrong into the 21st century and continue to struggle with racial inequality in all areas of American life, we must be ever mindful that race still matters, and it matters over and above social class characteristics. In so doing, we must also be mindful of how and why race matters. White objections to race-targeted social policy point to the necessity for well-crafted, universal housing policies that will gain widespread public support but also manage to address issues more directly tied to race. Potentially useful strategies for encouraging whites and nonwhites to share residential space come from studies documenting the characteristics of stably integrated neighborhoods. Residents of these communities often work together on community betterment projects (e.g., building playground equipment for a park or working to have street lights installed) or general community building efforts that bring people of varied racial backgrounds together, working toward a common goal. Such activities, particularly when they become part of the larger neighborhood culture, can fundamentally alter attitudes on both sides of the racial divide by highlighting what residents share in common, helping to build trust, and potentially reducing stereotypes.

Another common strategy emphasizes aggressive public relations campaigns that sing the praises of particular communities. Some of these may stress the value added by diversity; others highlight desirable neighborhood amenities, services, and community events that make the area generally attractive, those that do both might ultimately be the most successful.[18] Aggressive marketing strategies seem particularly beneficial when neighborhoods can be advertised as among "the best" in a particular metropolitan area. Positive marketing might also help to attract blacks, Hispanics, and Asians, to overwhelmingly white communities by informing these groups that they are open to and interested in creating stable, friendly, and racially diverse communities.

Active, diligent enforcement of antidiscrimination laws is also both appropriate and necessary. This, however, is likely to be a far more difficult and potentially less rewarding task. As it stands, the burden of proving discrimination is placed on the victim, yet empirical evidence suggests that present-day discrimination is often so subtle that few victims are likely to suspect that their housing choices are being constrained.[19] Add to this the gulf of racial

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[16] Briggs, Xavier de Souza. 2005. *The Geography of Opportunity: Race and Housing Choice in Metropolitan America* (Washington, DC: Brookings Institution Press).

[17] Rubinowitz, Leonard S. and James E. Rosenbaum. 2000. *Crossing the Class and Color Lines: From Public Housing to White Suburbia* (Chicago, IL: University of Chicago Press).

[18] See Ellen (2000).

[19] See Yinger (1995), and Galster, George C and Erin Godfrey. 2003. "By Words and Deeds: Racial Steering by Real Estate Agents in the US in 2000." Paper presented to the annual meetings of the Urban Affairs Association, Cleveland, OH (March).

misunderstanding separating whites and racial minorities: where blacks see "a racist moment," whites see "an isolated incident," or a "misinterpretation of events," or, even worse, they argue that blacks are "overreacting." In response, blacks become increasingly distrustful of a system that is supposed to protect them, pessimistic about the future of race relations, and increasingly less inclined to incur the psychic costs associated with filing a complaint.

To give teeth to antidiscrimination enforcement, we need "a new enforcement strategy that builds the capacity of local, state, and federal civil rights agencies to conduct widespread, ongoing" audit studies as a credible deterrent.[20] Tests could be of randomly selected real estate agencies and of those suspected of discrimination; those agencies found to consistently evince fair treatment could be publicly rewarded, while those shown to discriminate could be sanctioned, both publicly and financially. In the lending market, where audit studies are more difficult, regular analysis of Home Mortgage Disclosure Act (HMDA) data presents a method for charting the practices of lenders. Such strategies have the potential to create meaningful deterrents. Furthermore, with regular monitoring, there are published records of documented discrimination that could 1) help to alter whites' beliefs about inequality and discrimination and 2) be used by victims as evidence in complaints, documenting systematic mistreatment. Together, these benefits could help move us toward better racial understanding as whites have the "proof" they need to believe what blacks and other racial minorities "just know".[21]

Without such efforts, and given the state of race relations more generally, it seems unlikely that we can "live together" in the near future. It has been argued that increasing racial diversity might create a "buffer" for blacks, creating opportunities for residential mobility and contact with whites. Yet Hispanics and Asians are at least as likely to hold negative stereotypes of blacks as whites are, and more likely to object to the prospect of sharing residential space with them. Furthermore, while whites hold negative stereotypes of both Hispanics and Asians, they tend to be less severe than their stereotypes of blacks. Thus, whites are likely to view blacks as culturally deficient, while perceiving largely immigrant Hispanic and Asian populations as culturally distinct. Similarly, stereotypes of immigrants working hard at menial jobs and complaining less may further fuel anti-black sentiment, fostering the belief that blacks "push too hard" or "are always looking for a handout." Hence, rather than operating as a "buffer" or source of greater options and acceptance for blacks, increasing racial diversity may simply add to the climate of resistance to blacks as neighbors, and further complicate efforts at achieving either greater racial understanding or more equitable housing outcomes.

[20] Galster and Godfrey (2003), pg. 24.

[21] Briggs (2005).

APPENDIX A

Table 1. **Black, Latino/a, and Asian Segregation From Whites in Los Angeles and for the 50 Largest Metro Areas by Regions, 1980-2000**

	BLACKS			LATINOS			ASIANS		
Metro Area	Dissimilarity (80-00 Δ)	Isolation (80-00 Δ)	Exposure (80-00 Δ)	Dissimilarity (80-00 Δ)	Isolation (80-00 Δ)	Exposure (80-00 Δ)	Dissimilarity (80-00 Δ)	Isolation (80-00 Δ)	Exposure (80-00 Δ)
Los Angeles/Long Beach	**68(-14)**	**34 (-26)**	**16 (0)**	**63 (+6)**	**63 (+13)**	**17 (-17)**	**48 (+1)**	**29 (+14)**	**31 (-17)**
Western Area Averag									
Midwestern Area Average									
Southern Area Average									
Eastern Area Average	**72 (-6)**	**46 (-8)**	**33 (-2)**	**57 (+3)**	**28 (+10)**	**48 (-14)**	**42 (+3)**	**12 (+7)**	**68 (-13)**
Overall Average	**62 (-10)**	**41 (-12)**	**37 (+1)**	**48 (+6)**	**27 (+10)**	**51 (-16)**	**40 (+3)**	**11 (+6)**	**62 (-16)**

Source: U.S. Bureau of the Census and The Lewis Mumford Center for Comparitive Urban and Regional Research.
Notes: Due to space limitations, indices and changes are rounded to the nearest whole number.

Table 2. **Summary Statistics, Neighborhood Racial Composition Preferences by Respondent and Target-Group Race**

			Respondent Race/Nativity Status			
			NB	FB	NB	FB
Target Group Race	**Whites**	**Blacks**	**Latinos**	**Latinos**	**Asians**	**Asians**
White Neighbors						
Mean %	----	21.52%	26.18%	24.50%	27.52%	30.62%
No Whites	----	8.71	5.67	15.81	0.74	8.34
Black Neighbors						
Mean %	14.91%	----	15.39%	11.74%	16.29%	9.38%
No Blacks	20.04	----	18.97	38.07	14.83	44.44
Latino/a Neighbors						
Mean %	15.82%	19.83%	----	----	19.76%	13.54%
No Latinos	18.46	9.36	----	----	8.76	29.38
Asian Neighbors						
Mean %	16.29%	16.25%	16.05%	15.71%	----	----
No Asians	17.78	16.78	18.61	25.12	----	----
Same-Race Neighbors						
Mean %	52.97%	42.39%	42.37%	48.04%	36.43%	46.46%
All Same-Race	12.35	3.02	3.84	8.39	0.74	8.13

Source: 1993-94 Los Angeles Survey of Urban Inequality
Notes: $p < .001$.

Table 3. **Selected OLS Regression Coefficients, Effects of Various Racial Attitudes on Whites' Preferences for Black, Latino/a, Asian, & Same-Race Neighbors**

	Black Neighbors			Latino/a Neighbors			Asian Neighbors			Same-Race Neighbors		
	B	SE	Beta	B	SE	Beta	B	SE	Beta	B	SE	Beta
Racial Attitudes												
Social Class Disadvantage	0.44	0.30	0.05	-0.14	0.28	-0.02	-0.42	0.47	-0.04	0.35	0.89	0.02
In-Group Attachment												
None/Low (ref)	----	----	----	----	----	----	----	----	----	----	----	----
Medium	0.17	0.89	0.01	0.68	0.39	-0.03	-0.89	0.83	-0.04	0.66	2.00	0.01
High	0.30	0.85	0.01	-1.19	0.85	-0.05	-0.89	0.74	-0.04	1.66	1.61	0.03
Racial Stereotyping	-1.92***	0.46	-0.19	-1.36***	0.34	-0.15	-2.23**	0.71	-0.15	5.00***	1.11	0.18
Social Distance	-0.75**	0.27	-0.11	-0.69*	0.31	-0.10	-1.15**	0.36	-0.15	1.95**	0.68	0.11
Racial Group Threat	-0.56*	0.22	-0.10	-0.62**	0.18	-0.12	-0.61**	0.21	-0.11	1.83***	0.40	0.16
Constant	25.12***	2.87		18.53***	2.72		18.67***	2.56		28.63***	5.23	
R-Squared		0.28***			0.16***			0.16***			0.23***	
N						705						

Notes: Models control for sex, age, education, income, political ideology, home ownership status, public housing experience, household structure, and the presence of target-group members in actual neighborhoods. *** $p < .001$. ** $p < .01$. * $p < .05$.

Table 4. **Selected OLS Regression Coefficients, Effects of Various Racial Attitudes on Blacks' Preferences for White, Latino/a, Asian, & Same-Race Neighbors**

	White Neighbors			Latino/a Neighbors			Asian Neighbors			Same-Race Neighbors		
	B	SE	Beta	B	SE	Beta	B	SE	Beta	B	SE	Beta
Racial Attitudes												
Social Class Disadvantage	0.33†	0.19	0.06	-0.09	0.35	-0.01	0.51**	0.15	0.10	-1.11**	0.33	-0.09
In-Group Attachment												
None/Low (ref)	----	----	----	----	----	----	----	----	----	----	----	----
Medium	1.82**	0.60	0.08	-0.14	0.65	0.01	-0.00	0.56	-0.00	-1.97*	0.97	-0.05
High	-1.20	0.76	-0.05	-0.60	0.88	-0.02	-0.50	0.82	-0.02	2.47†	1.61	0.06
Racial Stereotyping	-0.72*	0.35	-0.08	-1.06*	0.46	-0.09	-0.53*	0.26	-0.06	2.68***	0.60	0.13
Social Distance	-0.73***	0.19	-0.14	-0.32	0.20	-0.05	-0.54**	0.14	-0.12	1.11**	0.34	0.11
White Discrimination	-0.50*	0.26	-0.07	----	----	----	----	----	----	0.26	0.34	0.02
Racial Group Threat	----	----	----	-0.16	0.13	-0.04	-0.28†	0.15	-0.07	0.45†	0.24	0.06
Constant	20.37***	2.02		19.00***	2.15		13.97***	1.47		43.92***	4.33	
R-Squared		0.12***			0.06***			0.09***			0.13***	
N	1,038											

Notes: Models control for sex, age, education, income, political ideology, home ownership status, public housing experience, household structure, and the presence of target-group members in actual neighborhoods. *** $p < .001$. ** $p < .01$. * $p < .05$. † $p < .10$.

Table 5. **Selected OLS Regression Coefficients, Effects of Immigration-Related Characteristics and Various Racial Attitudes on Latinos' Preferences for White, Black, Asian, & Same-Race Neighbors**

	White Neighbors			Black Neighbors			Asian Neighbors			Same-Race Neighbors		
	B	SE	Beta	B	SE	Beta	B	SE	Beta	B	SE	Beta
Immigration-Related Characteristics												
Mexican (reference)	----	----	----	----	----	----	----	----	----	----	----	----
Central American	3.53*	1.42	0.09	0.89	0.78	0.03	-0.34	1.00	-0.01	-3.74*	1.44	-0.07
US-Born (reference)	----	----	----	----	----	----	----	----	-----	----	----	----
FB—5 years or less in US	6.28*	2.84	0.14	-0.78	1.96	-0.02	-3.68*	1.65	-0.11	13.97***	3.40	0.24
FB—6-10 years in US	5.33*	2.05	0.12	-2.65	1.85	-0.08	-0.02	1.76	-0.00	2.46	3.13	0.04
FB—Over 10 years in US	4.59**	1.40	0.14	-2.92*	1.24	-0.12	0.44	1.38	0.02	6.65	3.77	0.15
English Proficiency	0.89	0.52	0.08	0.94**	0.33	0.11	0.10	0.43	0.01	-0.26	1.06	-0.02
Racial Attitudes												
Social Class Disadvantage	0.18	0.29	0.02	-0.65*	0.32	-0.07	-0.21	0.21	-0.03	-0.18	0.47	-0.01
In-Group Attachment												
None/Low (ref)	----	----	----	----	----	----	----	----	----	----	----	----
Medium	0.00	1.18	0.00	0.19	0.89	0.01	2.35*	0.33	0.09	-2.79†	1.46	-0.06
High	-0.63	1.05	-0.02	0.36	0.86	0.01	-0.96	0.92	-0.04	2.63†	1.46	0.06
Racial Stereotyping	-1.40**	0.49	-0.11	-0.50	0.34	-0.04	-0.81*	0.36	-0.07	0.65	0.52	0.03
Social Distance	-0.72***	0.21	-0.11	-0.90***	0.22	-0.18	-0.44**	0.18	-0.08	1.17***	0.32	0.10
White Discrimination	-0.66*	0.27	-0.08	----	----	----	----	----	----	0.74*	0.33	0.06
Racial Group Threat	----	----	----	0.06	0.20	0.01	-0.32	0.24	-0.05	0.31	0.44	0.03
Interactions												
5yrs or less in US*English	2.82*	1.35	0.09	----	----	----	----	----	----	-5.61***	1.08	-0.13
GT 10yrs in US*English	----	----	----	----	----	----	----	----	----	-2.80**	1.06	-0.15
5yrs or less*Stereotyping	3.21***	0.91	0.17	----	----	----	----	----	----	----	----	----
5yrs or less*Class Disadv.	----	----	----	1.55*	0.61	0.09	----	----	----	----	----	----
5yrs or less*High In-Grp	----	----	----	-5.60**	1.80	-0.15	----	----	----	----	----	----
5yrs or less*Social Distance	----	----	----	0.98*	0.44	0.11	----	----	----	----	----	----
Constant	13.27***	3.91		13.15***	2.58		10.43***	2.59		41.62***	6.95	
R-Squared		0.19***			0.15***			0.14***			0.23***	
N	908											

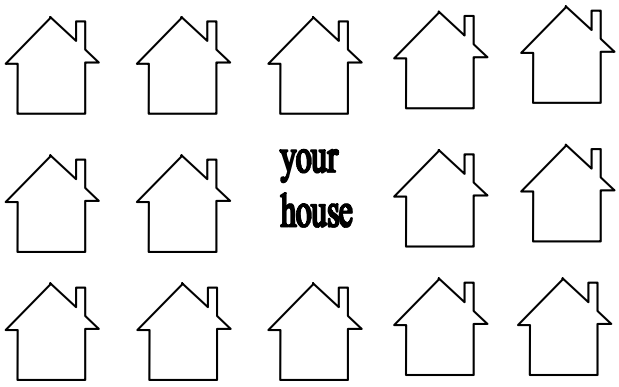
Notes: Models control for sex, age, education, income, political ideology, home ownership status, public housing experience, household structure, and the presence of target-group members in actual neighborhoods. *** $p < .001$. ** $p < .01$. * $p < .05$. † $p < .10$.

Table 6. **Selected OLS Regression Coefficients, Effects of Immigration-Related Characteristics and Various Racial Attitudes on Asians' Preferences for White, Black, Latino/a, & Same-Race Neighbors**

	White Neighbors			Black Neighbors			Latino/a Neighbors			Same-Race Neighbors		
	B	SE	Beta	B	SE	Beta	B	SE	Beta	B	SE	Beta
Immigration-Related Characteristics												
Japanese (reference)	----	----	----	----	----	----	----	----	----	----	----	----
Chinese	-2.92	2.16	-0.08	-1.42	1.02	-0.08	-2.31*	1.07	-0.11	2.70	2.15	0.06
Korean	16.68*	6.74	0.43	-9.44***	2.56	-0.49	-11.86**	4.21	-0.54	6.97*	2.95	0.14
US-Born (reference)	----	----	----	----	----	----	----	----	----	----	----	----
FB—5 years or less in US	0.79	4.37	0.02	-3.42*	1.54	-0.15	-2.76†	1.49	-0.10	7.91†	4.73	0.14
FB—6-10 years in US	8.35**	3.16	0.18	-3.34*	1.62	-0.14	-6.08***	1.75	-0.23	5.42	3.40	0.09
FB—Over 10 yrs in US	6.62**	2.30	0.18	-4.05**	1.33	-0.22	-3.62**	1.35	-0.17	-4.25	2.92	-0.09
English Proficiency	0.82	0.81	0.06	0.38	0.39	0.06	0.73	0.40	0.10	-1.94*	0.87	-0.12
Racial Attitudes												
Social Class Disadvantage	0.47	0.57	0.03	-0.82***	0.23	-0.12	-0.44†	0.25	-0.05	1.21**	0.48	0.05
In-Group Attachment												
None/Low (ref)	----	----	----	----	----	----	----	----	----	----	----	----
Medium	1.40	1.23	0.04	-1.02†	0.57	-0.05	0.05	0.82	0.00	-0.13	1.51	-0.00
High	-2.78†	1.46	-0.07	1.09	0.67	0.06	-0.81	0.70	-0.04	3.40*	1.31	0.07
Racial Stereotyping	-0.15	0.78	-0.01	-0.79**	0.29	-0.08	-0.89*	0.39	-0.08	0.53	0.90	0.02
Social Distance	-0.70†	0.38	-0.07	-0.41**	0.14	-0.08	-0.96**	0.31	-0.16	0.36	0.53	0.02
White Discrimination	-0.83†	0.45	-0.07	----	----	----	----	----	----	0.70	0.46	0.04
Racial Group Threat	----	----	----	-0.25	0.18	-0.05	-0.08	0.22	-0.01	0.05	0.35	0.00
Interactions												
Korean*5yrs or less in US	-15.56*	7.34	-0.23	10.41***	2.81	0.30	11.31*	4.41	0.29	-8.98*	4.18	-0.10
Korean*6-10 yrs in US	-20.66**	7.59	-0.34	12.87***	2.47	0.42	15.64***	4.37	0.45	-11.10**	4.27	-0.15
Korean*GT 10 yrs in US	-19.72**	7.11	-0.39	9.92***	2.75	0.40	12.02**	4.36	0.42	----	----	----
Chinese*GT 10 yrs in US	----	----	----	----	----	----	----	----	----	8.03*	3.10	0.15
5yrs or less*English Ability	3.61*	1.47	0.17	----	----	----	----	----	----	-4.16**	1.46	-0.15
6-10 yrs in US*High In-Grp.				-4.25**	1.35	-0.16	----	----	----	----	----	----
6-10yrs in US*Social Dist.	----	----	----	----	----	----	1.00*	0.47	0.08	----	----	----
GT 10yrs in US*Social Dist.	----	----	----	----	----	----	0.91*	0.46	0.11	----	----	----
Constant	27.51***	4.93		18.41***	2.54		17.58***	2.82		34.26***	6.02	
R-Squared		0.22***			0.20***			0.15***			0.31***	
N						1,014						

Notes: Models control for sex, age, education, income, political ideology, home ownership status, public housing experience, household structure, and the presence of target-group members in actual neighborhoods. *** $p < .001$. ** $p < .01$. * $p < .05$. † $p < .10$.

Figure 1. Multiethnic Neighborhood Experiment Showcard



*Source:*1993-94 Los Angeles Survey of Urban Inequality

Still Separate and Unequal:

A Public Hearing on the State of Fair Housing in America

Testimony by:
John Yen Wong
(Panel 1)
Founding Chairman, Asian Real Estate Association of America (AREAA)

"Son, you ain't got a Chinaman's Chance." This phrase from some cowboy movie which title I have long forgotten, has stuck with me for over 45 years. At first hearing, I did not think much about it. After all, I was a child, and since the statement was coming from the big screen, I just assumed that there was such a thing as a "Chinaman's Chance," and learned subliminally that, this kind of chance was not as good as other kinds of chances.

Growing up in the 50s and 60s as the eldest son of Chinese immigrant parents in San Francisco's Chinatown reinforced this "distinction in opportunities." My father worked the 6:00pm to 4:00am shift as a waiter in a Jackson Street restaurant that catered to the "late night snack after the bars close" crowd. He knew that the tips would be better on this late night shift and made the decision to trade off earning a bit more money with his being asleep while his family lived their lives during the day. My mother worked as a seamstress and balanced cooking for the kids, making sure we were dressed for school, while sewing thousands of pieces of dresses which would be sold in stores where she would never shop. These stores were situated in downtown San Francisco, separated from Chinatown by only the short 4 block long "Stockton Tunnel," but which to the residents of Chinatown was a land that they were not part of.

Why did my parents work this hard in this finite world within a broad world in which they did not really belong? My sisters and I have asked my parents this question and they have always answered their kid's "Why" with "we want you kids to have the chance to go to a good school and we want our family

to be able to live in our own home." They worked hard because they were seeking the American Dream.

For my parent's generation, hard work was not necessarily enough to achieve this dream. There was a time; a time within memory, when Chinese were not allowed to own homes in many parts of San Francisco. I am a Past President of the Chinese Real Estate Association of America. In an article written by Corrie Anders, at the time, the real estate editor for the San Francisco Examiner Newspaper, for the CREAA's 25th Anniversary Commemorative Booklet, he writes:

"The eyes of Charlie Lum have seen a lot since he was a fledgling real estate agent in 1971. That was a time when he found racism as tough as making a sale. Lum worked for a non-Chinese real estate firm and one of his rookie duties was to answer the office telephone when potential clients called. Far too often, white callers would hang up as soon as he uttered his name.

Another obstacle often confronted Lum, who is now semi-retired but maintains his real estate license. Asian families were reluctant to search for housing outside of Chinatown because of racial discrimination … many whites refused to sell to Asians. That slowly started to change in the 1970's, however, thanks to stricter application of civil rights laws and as Asian buyers began using sympathetic whites to make purchases for them."

Stricter application of civil rights laws is one important reason that my parents are now homeowners. Mr. Anders points to one other important factor: "using sympathetic whites to make purchases for them." I interpret this to mean folks who understood the value of living in diverse communities. Americans who knew in their hearts that communities are richer and more fun to live in and when there are lots of difference kinds of folks living in it.

I also know that a viable Fair Housing strategy must involve actions on both these fronts. First, and in my opinion the most critical is generating opportunities for the understanding to emerge that within the framework of maintaining the richness of ethnic identity, there is a far greater value return on living in communities that have access to the experiences of a broad spectrum of people. The most bang for the buck in Fair Housing will come when communities want it. Second, there must be strict

enforcement for violators of the laws that includes requirements for experiential learning. There is great efficacy to having the experience of being in a diverse setting when compared to hearing someone just talk about it.

I am and have been a working Realtor for over 27 years. I take the experience of living through my parent's quest for homeownership into every relationship I have ever had with my clients. Each transaction is business, but each transaction is also very personal. I, and other real estate professionals like me, do not say that homeownership is an absolute entitlement. What we feel to our core is that which is core is the "absolute right to compete fairly and equally for the opportunity to own one's home.

I have also been active in the National Association of Realtors for over 20 years and am the Founding Chairman of the Asian Real Estate Association of America. I understand the critical role that Realtors play in making Fair Housing a reality. We are on the front line interacting with communities and use Fair Housing Regulations and training as tools to educate consumers about the value to them of being in diverse communities. Realtors provide a vehicle for experiencing diversity.

There is an additional perspective we should not ignore. The "Chinaman's Chance" phrase has evolved in some areas to mean "too good of a chance." For many, the Asian Pacific American community is perceived as one with endless dollars that materialize spontaneously in suitcases hidden under magic beds.

This "model minority" myth masks the great number of newer immigrants from Southeast Asia, South Asia, and other countries who encounter the same challenges faced by my parents.

The work of Realtors working together with non-profit agencies, and government regulators to get rid of the "Un" in the "Unequal" continues. And for all of us in this sector, it is "Always Personal."

Its business and it's all personal.

Connecting Segregation to Contemporary Housing Credit Practices and Foreclosures: A Case Study of Sacramento

Written Testimony Submitted to the National Commission on Fair Housing and Equal Opportunity

Los Angeles Hearing

September 9, 2008

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(Panel 2)

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Connecting Segregation to Contemporary Housing Credit Practices and Foreclosures: A Case Study of Sacramento

Introduction

I would like to begin by thanking the commission for extending the invitation to talk to you today about the housing crisis in the US and to submit this written testimony. We know from testimony presented to you at the July 15, 2008 hearing in Chicago by John Logan and Thomas Sugrue that segregation still exists in cities across the US. Hearing testimony from Margery Turner and Lisa Rice also confirmed that access to housing credit today still remains in part contingent upon the racial characteristics of borrowers.

We also know that for quite some time, housing activists and urban analysts have acknowledged the concentration of subprime loans in US neighborhoods highly populated with non-White residents (Bradford 2002; ACORN 2005), and the targeting of non-White borrowers by subprime lenders (Immergluck and Wiles 1999; Squires and Kubrin 2006; Wyly (2006) The racial and geographic concentration of subprime loans suggests that contemporary lending patterns may be repeating the punitive mortgage redlining practices of past years that aided the decline of many inner cities throughout the US. Squires (2005) notes that the exploitative terms of subprime loans and the concentration of subprime usage in non-White neighborhoods may be just as harmful as the race- and place-based withdrawal of financial services previously imposed on formerly redlined neighborhoods. This "reverse redlining" referred to by Squires, and the accompanying concentration of mortgage defaults and foreclosures, suggests a long-standing relationship between geography, race and contemporary housing and credit markets.

Subprime lending can be simply described as mortgage credit with interest rates substantially higher than those for conventional financing. Generally, subprime lenders target borrowers who have poor credit histories with mortgage products that bring an unusually high yield to lending institutions and their investors. Such excessive profit margins, realized through a pricing structure that includes periodic interest rate increases, prepayment penalties, and balloon payments, place a heavy financial burden on borrowers. Consequently, subprime borrowers are six to nine times more likely to be in foreclosure (Renuart 2004; Schloemer et al 2006; Girardi et al 2007). Because homeowner equity remains the largest component of wealth for low-income and non-White households in the US (Oliver and Shapiro 1995; Conley 1999), subprime lending, with its higher propensity for foreclosures, undermines and discourages the wealth building capacity of affected homeowners and targeted communities (Farris and Richardson 2004). Contemporary lending patterns in cities, therefore, continue to reflect the uneven distribution of wealth in US communities while giving local racialized geographies an intergenerational quality. Consequently, the concentration of loans with high foreclosure rates brings a social and financial vulnerability to targeted neighborhoods leaving them highly unstable in times of economic crisis.

Accordingly, the focus of this testimony is to show how historically race-based patterns of residential segregation and suburbanization are intrinsically connected to the subprime loan and foreclosure crisis we see today. To demonstrate this connection, I present a case study of mortgage lending patterns in Sacramento, California, a metropolitan area noted for its diverse population but a place that is currently experiencing one of the highest foreclosure rates in the nation.

In Sacramento, four key practices established the racial geography that now defines the metropolitan area: the explicit use of racially restrictive covenants, the informal enforcement of those covenants, central city urban renewal programs, and mortgage redlining. Preliminary observations suggest that subprime loan activity is highly concentrated in neighborhoods with high ratios of non-Whites resulting from long-standing practices of housing segregation in the city. Moreover, housing

industry information service providers, e.g. RealtyTrac and DataQuick, report that these neighborhoods currently experience some of the highest mortgage default and foreclosure rates in the US.

These observations suggest that there is a tendency to racialize the flow of housing finance capital and that housing finance capital flows are geographically related to historically racialized housing policies. Sacramento, therefore, provides a unique opportunity to understand contemporary housing credit markets as part of a larger historical process that takes form socially as well as spatially. This case study, therefore, demonstrates how the fusion of both explicit and supposedly race-neutral or "colorblind" housing market practices set the stage for present-day subprime mortgage activity in Sacramento.

Historically, we know that race has long been associated with property value in the US. During the 1920s, real estate professionals tied property values to color as a means to legitimize racial exclusion and protect racial boundaries. Realtors actively promoted the use of racial categories in property valuation and promoted differential treatment as an industry standard during an early and critical stage of US suburban growth (Helper 1969). Working from the notions that the racial integration of a neighborhood can lead to a very rapid decline in property value (McMichael and Bingham 1923, 1928), and that the value of land partially depends on the racial heritage of the people living on it (Babcock 1924, 1932; Hoyt 1933), New Deal housing finance programs institutionalized the use of racial categories in assigning space and allocating social goods (Freund 2006).

Two major features were used in operationalizing New Deal housing programs during the period 1930 – 1950. The state-sponsored mandates of racially restrictive covenants prohibited non-White occupancy of homes in White neighborhoods, and mortgage redlining prohibited the use of federally insured mortgages in racially integrated neighborhoods (Freund 2006). Consequently, lenders seriously considered the racial composition of a neighborhood before a loan application was approved. Under the pretext of reducing the risk exposure to lending institutions, the Federal Housing Administration (FHA) systematically excluded non-Whites from obtaining home loans and openly used racial categories to exclude minorities from suburban areas of growth (Stuart 2003; Freund 2006). As a result, the use of race to determine eligibility for housing credit became both an accepted and expected business practice.

Acknowledging the historical racialization of US housing markets at an early and critical stage in the development of US cities helps us understand how social context informs the construction of risk as a factor in accessing housing credit (Stuart 2003). Accordingly, we can see how race-based differential treatment in housing was simply reduced to a matter of risk assessment and, as a result, an acceptable business practice formalized under the pretext of protecting investment capital from perceived risk. This perception of risk remains the cornerstone of housing finance policy and guides the uneven allocation of urban space. Moreover, it is this socially constructed relationship between race and risk has produced the extensive history of race-based housing in the US. Consequently, race maintains a powerful role in the shape and opportunities of US cities, remains an integral factor in urban development, and must be placed at the center of serious urban analysis (Feagin 1998).

This testimony focuses on the preexisting conditions that contributed to the concentration of subprime lending in specific localities and within specific populations. I will show how these conditions work over time to contribute to the current housing crisis in the US and reproduce the

geography of racialized space. Although decades of housing finance reform have managed to improve levels of minority homeownership and access to mortgage credit, inequities in housing credit somehow remain concentrated in those geographies characterized by past forms of deliberate racial segregation. Therefore, this study of contemporary housing credit markets in Sacramento provides some insight to an emerging intergenerational quality of race-based housing inequity and its potential impact on neighborhoods in crisis.

Method and Data

I use a case study approach to investigate possible reasons for the concentration of subprime mortgage lending within areas predominantly populated by non-White residents in Sacramento. I rely on original Home Owners Loan Corporation (HOLC) Residential Security maps and appraisal data collected in 1938 by HOLC, census data from 1950 to 1970, interviews with residents, and local government records to identify historically race-based market practices. I also utilized a series of oral histories captured by community activists to document racialized housing practices of real estate professionals in Sacramento from 1950 to 1980. Newspaper articles, records from the Sacramento County Recorder's Office, and conversations with real estate agents and escrow officers were used to compile a preliminary list of census tracts with racially restrictive covenants. The number of tracts with such covenants identified by my research appears conservative. The Sacramento County Assessor estimates over 2,500 subdivisions with such covenants. The extensive use of these covenants throughout the county requires a more comprehensive research effort to develop an accurate list. The possibility exists that any failure to identify all tracts with restrictive covenants may unintentionally skew the findings of this research.

I use the 2004 Home Mortgage Disclosure Act (HMDA) data for Sacramento County consisting of 273,286 loan applications for the calendar year. The collected information includes loan type and purpose, loan amount, property location, loan disposition, loan fees, and applicant demographic information required for federal monitoring of lending activity throughout the U.S. Similar to previous research on subprime lending, I use the Department of Housing and Urban Development's (HUD) annual list of HMDA reporting lenders that specialize in subprime loans to identify subprime lenders and their activity in the Sacramento County. Although problems exist with the HUD subprime lender list that may result in understating the actual influence of the subprime market (Lax et al 2004; Calem, Hershaff, and Wachter 2004), a review of the pertinent literature indicates that the HUD subprime lender list, when used with HMDA data, still represents the most widely accepted method in terms of identifying subprime loan activity. Finally, I compare ratios of subprime activity by census tract with the geographies of restrictive covenants and redlining. The use of multiple data sources in the case study helps us to properly contextualize the settings in which the subprime loan industry operates in Sacramento

The remainder of this testimony is organized as follows. Three sections discuss critical periods of change in the housing credit industry. The period 1930-1950 reveals the initial period of redlining initiated by FHA and the official use of racial categories in determining access to housing credit that established racial segregation as an accepted practice in US cities. The period 1950-1980 describes the effects of urban renewal programs, highway construction projects, the resulting mass relocation of non-White communities, the subsequent redlining of neighborhoods integrated as a result of these projects, and the actions of local real estate professionals. The period 1980-2004 describes the development of the subprime loan market and the concentration of these loans in racialized space created by national housing policy and private actions. In each of these sections, I provide a brief overview of how national housing policies set the conditions for housing markets to operate, for market participation, and for private actions of exclusion. I present data for each period to describe the effects of national housing policy in creating the necessary conditions for the subprime mortgage market to take hold in Sacramento. These sections are followed by a cartographic summary of 2004 HMDA data and concluding remarks.

Redlining Phase I: Racializing Housing Credit (1930-1950)

Racially restrictive covenants in Sacramento reflected the long-established use of overt discriminatory institutional actions to establish separate residential spaces for Whites. Developers of new suburban tracts used overtly racial covenants as a means to attract buyers, assuring the safety of their investment through the use of "wise restrictions." Hence, property value in Sacramento became associated with race as early as 1920. New Deal housing programs, initiated in the 1930s, subsequently mandated the use of racially restrictive covenants as a condition of loan approval (Weaver 1948; Jackson 1985) to avoid introducing "incompatible" racial groups into White residential enclaves (Freund 2006). Immediately after these federal mandates, developers of new communities throughout Sacramento actively used racially restrictive property covenants to exclude Blacks and other non-Whites from housing tracts in elite neighborhoods and areas adjacent to the northern part of the city such as Arden Arcade and Carmichael. Government housing policy during this period created an accepted institutional practice of racial segregation in new suburban housing tracts throughout the city and county.

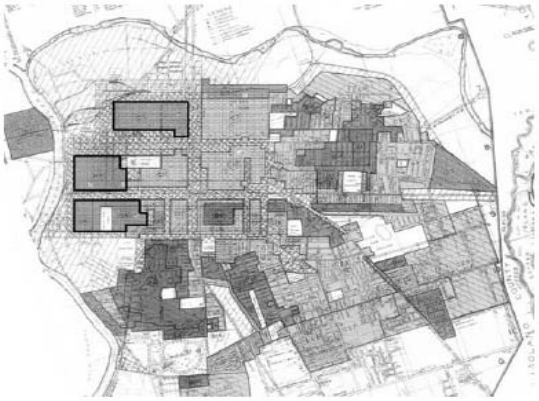
Recent estimates by the County Assessor's Office state that by 1960, over 2,500 subdivisions in the Sacramento region had restrictive covenants that prohibited homeownership for Blacks and other non-Whites (Maganini 2006). The distinct dual geographies of the city were clearly evident. Racial restrictions on Sacramento residential real estate controlled the location of ethnic groups according to a perceived risk on property values and became a method of risk containment and maintenance of the value of White residential space. Consequently, a racial divide grew that concentrated non-Whites in older, 'non-restricted' residential tracts. Despite the US Supreme Court overturning the use of such restrictions (Shelly v. Kraemer) in 1949, local records show new housing tracts in Sacramento recorded racially restrictive covenants as late as 1976.

During this same period, federal housing policy also restricted the flow of housing capital into racially integrated neighborhoods (Jackson 1985). In Sacramento, the HOLC Residential Security Map of 1938 identified the Sacramento neighborhood known as the "West End," the area of downtown Sacramento between the State Capitol building on 10thStreet to the east and the Sacramento River to the west, as the location that presented the primary risk to lenders (see Figure One). The redlining of the West End severely altered the property owners' ability to finance repairs and maintain their property. Moreover, with redlining preventing buyers from obtain financing, West End property owners were unable to sell their property through conventional real estate market practices. Redlining essentially denied property owners the opportunity to participate in normal property exchanges and consequently led to a drastic decline in the value of West End real estate. From 1938, the beginning of West End redlining by FHA, to 1949, property in the city of Sacramento experienced a 46% increase in value. But property in the redlined area of the West End decreased in value by 30% (Sacramento City Planning 1950). Clearly, the city's racialized geography took shape around the ability to participate in housing markets. While FHA actively protected the property rights of the new homogeneous White suburban communities, it prohibited non-Whites access to wealth accumulation opportunities gained only through housing credit and homeownership.

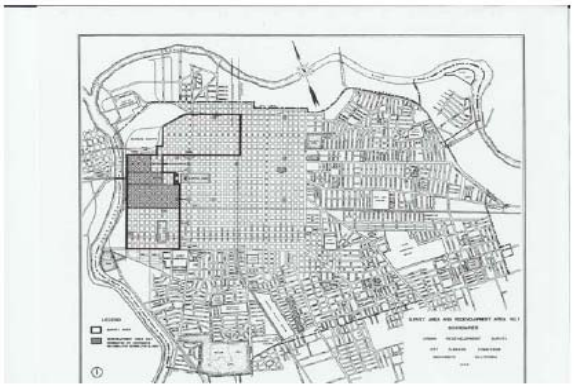
West End property owners resorted to converting homes into multiple units and obtaining more rents to compensate for lost value (Sacramento City Planning 1950). When coupled with the great depreciation of assessed property value in the West End, net incomes from rental properties

remained high as a result of multiple rents and low property taxes. This transformed a neighborhood designed for single-family occupancy to one of conversions for multiple family tenant use and hastened deterioration of properties and the residential quality of the area. The enforcement of restrictive covenants in the city for the most part contained non-White residents within the boundaries of the West End. These strategically enforced racial restrictions on residency led absentee landlords to capitalize on market constraints by renting converted units to non-Whites unable to leave the neighborhood (Sacramento City Planning 1950). City redevelopment planning documents indicate that the greatest concentration of non-Whites in the city were in the West End. Some city blocks in the West End were reported as having 90 to 99% of dwelling units occupied by non-Whites in 1940, a fact that planning documents attributed in part to the housing restrictions imposed by racial restrictive covenants (Sacramento City Planning 1950).

Figure One: Comparison of 1938 Sacramento Residential Security Map and 1950 Sacramento Redevelopment Survey Area.



1938 Home Owners Loan Corporation Residential Security Map of Sacramento. Redlined areas of the West End are identified by the highlighted borders. Map courtesy of T-Races: Testbed for the Redlining Archives of California's Exclusionary Spaces



1949 Redevelopment Survey Area Map of Sacramento. Highlighted border identifies West end area impacted by urban renewal programs and are strikingly similar to areas redlined by FHA in the above Residential Security Map. Source: Sacramento City Planning (1950).

Adding to the racial concentration of the West End was the importing of Mexican labor via the Labor Importation Program of 1942, better known as the Bracero Act, to compensate for labor shortages caused in part by Japanese internment during World War II. Originally intended specifically for agricultural support, Braceros soon found themselves in a number of varied industries as agriculture capitalized on improvements in transportation technology. As farmers began to transport products to various locations throughout the nation, Mexican labor soon migrated to the city to meet the demands of local food processing canneries making up almost 50% of all employment in Sacramento canneries during the 1940s. Soon Mexican labor was extended to Sacramento's Southern Pacific rail yards located on the northern border of the city and contributed to the large Mexican presence in the West End (Avella 2003). Census data provides further evidence of how

racial covenants and redlining helped shape city neighborhoods. By 1950, almost 70% of the city's minority population was located in the West End with 87% of the city's Mexican residents, 75% of the city's Asian population, and 60% of the city's Black population residing there.

Finally, the age of the housing stock in the West End and improvements in transportation technology also contributed to its decline. Because the city took form at a time when water transportation was critical to import and export activities, the riverfront developed as a dock and warehouse area. The movement of business and employment to the city's outer rings, along with the containment function of restrictive covenants and the prohibition of housing capital, fueled the rapid decline of the West End. This state-sponsored decline now set the stage for the devastating urban renewal phase of city building and the forced exodus of entire non-White communities from the West End.

Redlining Phase II: Redevelopment and Relocation (1950-1980).

The Federal Housing Act of 1949 focused on eliminating substandard living conditions through the clearance of slum areas and provided federal subsidies for cities attempting to fix the serious housing shortage in US cities. Although originally centered on improving the housing stock in "blighted" communities, the direction of the Federal Housing Act changed in 1954 when amendments to the Act weakened the requirement for predominantly residential construction in redevelopment sites (Gelfand 1975). The revisions to this Act significantly changed the approach to urban renewal and greatly contributed to racializing Sacramento's social and physical geography. Despite objections from local residents regarding the shortage of housing proposed by the 1950 redevelopment plan, Sacramento city planners seized the opportunity to alter proposed housing plans that initially accommodated low-income minority residents and turned to private commercial development as the mechanism to generate tax dollars and encourage the return of business to the West End.

Public highway construction also affected Sacramento's physical and social geography and became the perfect complement to redevelopment. Federal transportation funds covered up to 90% of the construction costs for expressways that would soon connect the new racially homogenous suburban tracts in the northeast, eastern and southwest parts of the county to the planned redevelopment that brought employment and commercial centers to the West End. But the placement of these roads also created a physical barrier between neighborhoods with restrictive covenants and areas soon to be racially integrated by forced West End migration. These massive transportation thoroughfares would accelerate changes to the city's racial landscape and ultimately the way Sacramentans would organize their lives and communities. Figure One shows how urban renewal projects were located in precisely the same areas previously redlined by FHA in the 1938 Residential Security Maps. These projects triggered a population shift that created an immediate need for affordable housing for those exiled from the newly created Redevelopment Survey Area.

Other national events also altered the racial mix of the city's population and intensified the already urgent housing need of non-Whites in Sacramento. The signing of Executive Order 8802 by President Roosevelt in 1942 allowed Blacks to work in military installations and initiated a flow of Black labor to Sacramento that increased with each episode of military involvement. The military buildup in response to the Korean and Vietnam Wars brought a new civilian and military workforce of approximately 25,000 to Sacramento's three military installations. Black employees constituted 10% of this new workforce (Mueller 1966). Bracero labor continued to flow into the city beyond the official end of the program in 1964. Finally, the expansion of statewide administrative agencies during the

1960s, now centralized in newly constructed state office buildings in the redeveloped West End, also triggered a sudden increase in non-White employment opportunities with the State of California following strict enforcement of new employee discrimination laws. These workers now sought new housing opportunities beyond segregated space.

Together, these politically produced market pressures threatened the homogeneous quality of traditionally restricted neighborhoods throughout the Sacramento area. The demand on housing now included approximately 2,500 Black households from military installations and another 3,000 Blacks residing in the Redevelopment Survey Area and in the path of the W/X Freeway Interchange. Another 4,900 non-Whites (predominantly Asian) and 3,500 Mexican residents classified as White Spanish Surname in the 1950 US Census also resided in the Redevelopment Survey Area. The combination of military involvement, migrant labor and government-sponsored construction projects that pushed Blacks and other non-Whites out of the West End brought an immediate need to house thousands of non-White residents in a city actively engaged in, and shaped by, segregationist housing policies.

By the late 1950s, residents in the path of West End renewal and freeway construction projects reported the push by landlords and the city to relocate. Many non-Whites moved out of the affected areas years ahead of actual construction upon hearing of pending evictions. Others waited until eviction, while still others moved to different parts of downtown where construction was scheduled for later years. The lack of available documentation from the city makes it difficult to calculate the number of residents who actually moved as a result of government construction projects. But for the most part, these changes to the city's population during this period increased housing demands for Blacks and other non-Whites that necessitated their movement beyond racially designated boundaries. The potential spillover to White neighborhoods threatened the homogeneity of restricted suburban space and prompted the informal actions of White Realtors and homeowners to protect established racial boundaries.

Accordingly, the period 1960–1967 shows housing market principals engaged in organized housing segregation. The demand for suburban tract housing by non-Whites revealed a resistance on the part of local developers, real estate professionals, and property owners to open traditionally White housing tracts to non-White buyers. Racial steering and the refusal to sell or rent to non-Whites by real estate professionals and property owners, a direct response to increased non-White housing demands, effectively halted integration of White neighborhoods. Local housing activists documented discriminatory actions on the part of area real estate professionals. Surveys, housing audits, and oral histories revealed that Realtors routinely discouraged and denied purchase offers from non-Whites attempting to move into new suburban tracts in Land Park and in northeast Sacramento such as Arden and Carmichael. More than 90% of the rental market in the area remained closed to non-Whites (Duff 1963; Mueller 1966) as non-White military personnel were forced to live in predominantly low-income, non-White communities following multiple refusals from property managers in White neighborhoods (Mueller and Crown 1965). Finally, Realtors actively participated in legislative and statewide referendum processes to overturn fair housing laws that prohibited racial discrimination in real estate sales and rentals (Cain 1964). These unconcealed organized and deliberate acts of protecting racial boundaries helped maintain the segregated geographies created by restrictive covenants despite the groundbreaking federal and state fair housing laws of the 1960s.

However, residential tracts without restrictive covenants reflected a distinctly different racial composition. While downtown urban renewal projects pushed non-Whites out of the West End, Realtors, property managers, and private property owners directed the flow of non-White residents into racially unrestricted neighborhoods, locations deemed a suitable distance from White investment. The forced exodus from downtown redevelopment areas coupled with restricted housing opportunities saw non-Whites quickly fill available housing units in older neighborhoods without racially restrictive covenants.

Census data for the period 1950-1970 provides us with the best indication of how quickly redevelopment and racial restrictions can radically alter the urban landscape. As the first stage of downtown redevelopment neared completion, the percentage of non-Whites in the West End dropped remarkably from 42.6% in 1950 to 5.4% in 1970. But in Oak Park for example, a neighborhood without restrictive covenants located less than three miles southeast of the West End, the exact opposite occurred. In 1950, 6.5% of the neighborhood's residents were non-White. By 1970, non-Whites made up close to 48% of Oak Park's residents. While Oak Park experienced drastic changes to its population, the adjacent racially restricted neighborhoods remained consistently homogeneous, even to this day. Urban redevelopment in the redlined West End amounted to a process of ethnic cleansing displacing non-Whites to areas without restrictive covenants while the city's redevelopment agency assembled and transferred valuable real estate to private commercial investment.

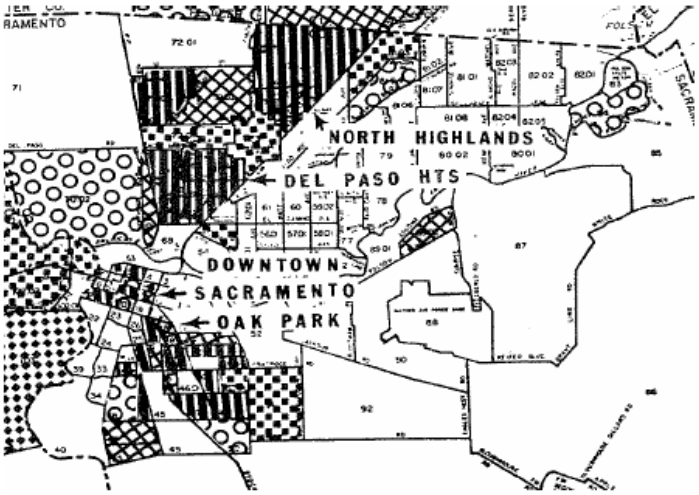
Fears of high risks for lenders, based on rapidly changing demographics, led to a systematic divestment by financial institutions from older communities, now integrated as a result of West End migration, and initiated their eventual decline. Race-based mortgage underwriting guidelines, concealed as risk management practices, denied mortgage credit to borrowers in these racially integrated neighborhoods created by city housing policies. With access to mortgage capital still contingent upon borrower racial characteristics and neighborhood racial composition, the rapid ethnic shift in Sacramento's population brought concern to local mortgage lenders. By the 1970s, mortgage redlining was an accepted practice throughout Sacramento in neighborhoods experiencing rapid integration. According to community leaders, racial tensions between White and Black residents during the summer of 1969 were fueled in part by housing and lending discrimination and led to civil unrest and riots in the Oak Park community.

Local and statewide agencies held a series of public hearings to address the lack of housing credit and the continued neglect of predominantly non-White neighborhoods by savings and loan corporations throughout the city and the state (California State Legislature 1976). Lenders associated the growing numbers and concentrations of non-Whites in certain communities with increased financial risk to mortgage funders (State of California 1992). The subsequent "redlining" by lenders in Sacramento, displayed in Figure Two, increasingly limited the access to mortgage products for inner city residents and, as a result, older neighborhoods rapidly became economically and socially unstable. In Sacramento, redlining meant the steady flow of capital to historically restricted neighborhoods and the end of capital investment in neighborhoods without racially restrictive covenants.

Building upon long-standing segregationist housing policies and the informal actions of Realtors, ostensibly race-neutral or colorblind institutional actions worked to safeguard and maintain Sacramento's racial boundaries. Thus the racially oriented organization of the city's social, political, and economic actions resulted in resettlements of racial segregation, relations

of powerlessness that immobilized certain groups, and constrained free market participation based on their racial groupings (Iglesias 2000).

Figure Two: Mortgage Deficient Areas in Sacramento in 1974. Source: 1977 California Department of Savings and Loan Fair Lending Report No. 1, Vol. II.



Redlining Phase III: Lending Deregulation and the Subprime Mortgage Market (1980-2004)

State policy-makers, responding to the push by institutional lenders and banks for federal deregulation of lending activity, unknowingly laid the foundation for the subprime market crisis we see today under the guise of opening credit opportunities to financially starved redlined neighborhoods. Thus, a series of what appeared to be abstract administrative financial regulations actually had very localized implications. As we shall see, lending deregulation provided the market conditions necessary for disparate lender activity in low-income, racialized neighborhoods while institutionalizing the subprime mortgage industry.

In 1980, the Depository Institutions Deregulatory and Monetary Control Act eliminated all usury controls on first lien mortgage rates, permitting lenders to charge higher rates of interest to borrowers with presumed higher credit risks. Subsequently, the Alternative Mortgage Transaction Parity Act of 1982 permitted the use of variable interest rates and balloon payments while specifically overriding local government restrictions on alternative lending products. Together, these regulatory changes encouraged the development and use of credit scoring in the mortgage arena to better gauge risk and enabled lenders to establish price differentials (interest rates) for higher-risk borrowers (Gramlich 2004). Rather than just rejecting high-risk applicants with poor credit as in the prime mortgage market, lenders could now select loan terms that reflect their exposure to risk by adjusting interest rates, loan fees, and imposing balloon payments. Thus high interest rates and adjustable interest rates, two important characteristics of the subprime mortgage, resulted directly from federal responses to the housing finance industry's push to create new opportunities for profit.

The Tax Reform Act of 1986 (TRA) increased the demand for subprime mortgage debt by eliminating the interest deduction for consumer credit. Homeowners quickly moved to consolidated consumer debt by refinancing home mortgages and taking advantage of interest deductions lost in TRA. Consequently, high-cost mortgage debt became cheaper than consumer debt (Chomsisengphet and Pennington-Cross 2006). The TRA also created the Real Estate Mortgage Investment Conduit (REMIC) to facilitate the issuance of Collateralized Debt Obligations (CDO), also known as Mortgage Backed Securities (MBS), which redirected the cash flows of trusts, or bonds, based on mortgage assets. These new securities featured varying maturities issued according to different risk characteristics (Cowan 2003). Hence, REMIC provided MBS investors the option of selecting the level of credit risk and the accompanying rate of return. The options created by REMIC attracted a new pool of secondary market investors to purchase subprime mortgage-backed securities.

The 1980s thus signaled the formalizing of the subprime market and the beginning of a dramatic shift in the mortgage market away from the traditional fixed rate loan to nontraditional loans such as adjustable rate mortgages (ARM) (Gruenberg 2007). Federal policies were the mechanisms that removed mortgage interest rate limits, facilitated the use of adjustable interest rates, and enhanced opportunities for recycling mortgage funds via securitization. We can see that the state assumed an active and important role in establishing the necessary market conditions for rapid subprime growth.

Subprime loan originations rose 25% per year over the 1994-2003 period, nearly a ten-fold increase in just nine years (Gramlich 2004). In 2001 subprime mortgages accounted for 5% of total mortgage originations but by 2006, the subprime mortgage market accounted for over 20% (Gruenberg 2007). In 2003, the Federal Reserve Board (FED), monitoring the steady

rise in subprime lending activity, became aware of deteriorating credit standards used by lenders in approving loan applications. The FED then collected data that clearly indicated lenders had started to ease lending standards by 2004 (Dodd 2007). But Congressional Hearing testimony further revealed that despite these early warning signs of subprime market problems, the FED in February 2004 actually promoted the use of ARMs and encouraged lenders to develop and market alternative ARM products while the FED was preparing to raise short term interest rates. Shortly thereafter, the FED raised interest rates 17 times taking the FED funds rate from 1% to 5.25% (Dodd 2007). The low start rates of ARMs now became more attractive to consumers and fueled the demand for subprime mortgages. Thus federal regulators actually set the stage for intense subprime usage that occurred during the period 2003-2006.

The combination of ARMs, relaxed underwriting guidelines, and steady pools of lending capital made available through securitization, intensified both investor activity in the MBS market and consumer use of subprime mortgage products. By June 2005, former FED chair Alan Greenspan warned that 25% of loans originated were "interest only" (Dodd 2007). In 2006, the lax underwriting guidelines used in the subprime mortgage market became alarmingly clear as over 40% of loan approvals did not consider the applicant's income (stated income) (Western Asset 2007). In 2005 and in 2006, annual subprime loan volume was well over $600 billion (Schloemer et al 2006).

But this rapid growth also came with problems. Community activists and urban analysts discovered that a large portion of subprime loan activity throughout the US was concentrated among Black and Latino borrowers (Bradford 2002; ACORN 2005), and in the neighborhoods in which they live (Wyly et al 2006). Federal acknowledgement of this concentration came in 2006 when the FED, relying on HMDA data from 2005, revealed that 55% of Blacks and 46% of Latinos received subprime loans with interest rates exceeding the Treasury rate by 3 percentage points (Avery et al 2006).

In Sacramento, the first signs of subprime loan concentration appeared in 2000. Complaints of excessive subprime activity in South Sacramento began to surface when borrowers held "sit-in" protests in local branches of the Household Finance Corporation (now a part of HSBC), one of the largest subprime originators in the area (Casa 2000). The concentration of subprime loans in South Sacramento became so pervasive that local city council members proposed in October 2001 a city ordinance that would ban the city from doing business with entities that engage in predatory lending practices. Thus the combination of demographic targeting of non-White neighborhoods by subprime lenders and the exploitative terms of such products resulted in subprime loan concentrations and high rates of foreclosures even before the housing crisis of 2007 occurred (Immergluck and Wiles 1999; Renuart 2004, ACORN 2005; Dymski 2007).

But problems with segregated space did not end here. The Sacramento real estate boom beginning in 2000 also aided the racial concentration of subprime loans. The influx of investors and new residents from the San Francisco Bay Area and other California areas seeking affordable housing created a rush on Sacramento property. Recent estimates suggest that Bay Area buyers purchased up to 40% of new homes in the Elk Grove and Natomas communities (Sadovi 2005). Sacramento soon became one of the least affordable US real estate markets (Woolsey 2007). Home prices quickly inflated throughout the entire region, even in areas concentrated with non-White residents, making home buying more difficult for

residents in neighborhoods initially shaped by racialized housing policy. While home prices escalated, employment wages lagged behind leaving those in segregated space outside of the housing boom.

Consistently low FHA maximum loan limits added to the demand for subprime loans as they failed to keep pace with the area's escalating prices. Moreover, FHA mortgages usually consisted of fixed rate loans with high credit requirements. Consequently, "teaser rate" adjustable loans and the low- or no-income requirements of many subprime loan products made qualifying for subprime loans significantly easier than qualifying for FHA loans. For many, subprime financing became the only alternative to participate in the housing market. However, in Sacramento, subprime loan activity remained concentrated in areas previously redlined and shaped by state sponsored segregation. These housing trends, when coupled with the long-established relationship between racialized space and credit availability, show that the geography of credit remains racialized in a manner that continues to influence access to capital and housing in Sacramento.

Spatial Comparisons

In the US, we know that the use of subprime loans is higher for Black and Latino borrowers when compared to Whites, and also in the neighborhoods they reside (ACORN 2005; Wyly 2006). As expected, 2004 HMDA data show similar patterns of subprime activity in Sacramento. But not well known is how the seemingly place-less economic and regulatory functions associated with contemporary housing credit markets remain linked to spaces shaped by historically racialized housing policy. To demonstrate the dramatic relationship between long standing spatial patterns of racial inequality and contemporary housing policy, I map out the geographic history of racialized space and housing policy. Figure Three summarizes the geography of racialized space in Sacramento by overlaying census tracts redlined by lenders during the 1970s with census tracts that used racially restrictive covenants providing an image of how housing policy shaped the Sacramento social and physical landscape. Historical patterns of redlining appear in the northern and southern parts of the city while areas with restrictive covenants show a west to east geography.

Figure Four below shows the percentage of loan denials by census tract. Wyly and colleagues (2006) found that loan applicants who are denied are five times as likely to approach a subprime lender. Therefore, denials could conceivably provide some evidence of increased subprime activity as well as neighborhoods excluded from the prime mortgage market. The geography of loan denial activity in Sacramento bears a strikingly similar pattern to the geography of redlined areas and racially restrictive covenants identified in Figure Three. Redlined neighborhoods located to the north and south of the central business district contain the highest proportion of loan denials. Also, high concentrations of loan denials appear near former military installations where high concentrations of non-Whites formed during the period 1950-1970. Conversely, census tracts with racially restricted covenants and those areas previously protected by private actions in the northeast area of the county incurred significantly lower rates of loan denial activity.

Figure Three: Preliminary Map of Areas with Racially Restrictive Covenants and Mortgage Deficient Areas in Sacramento.

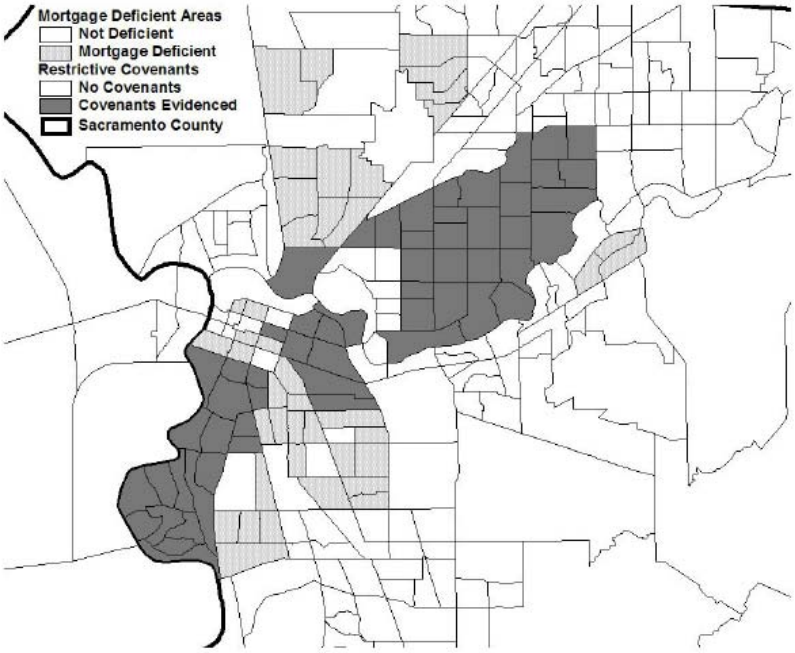
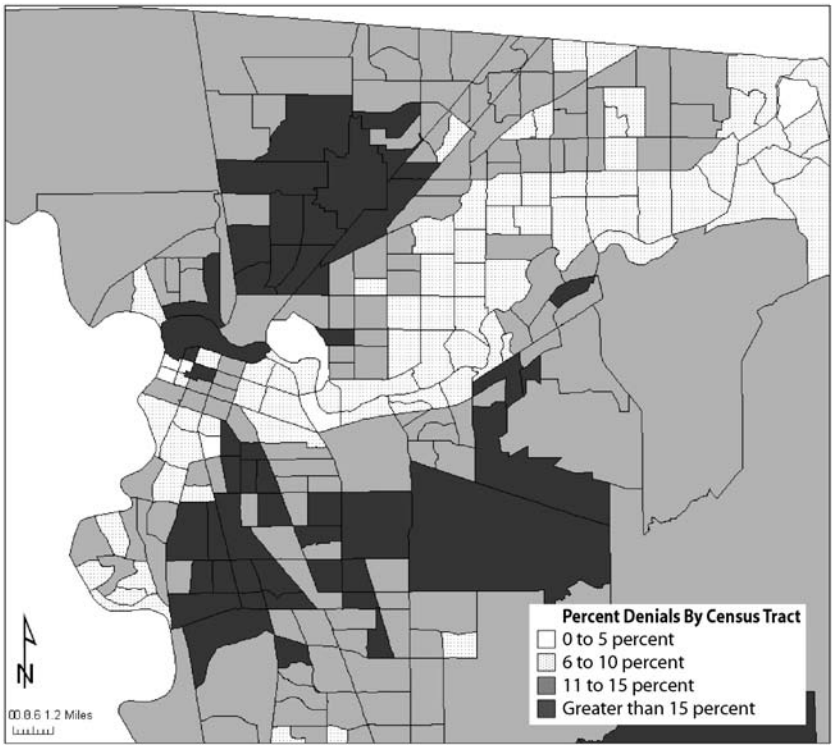
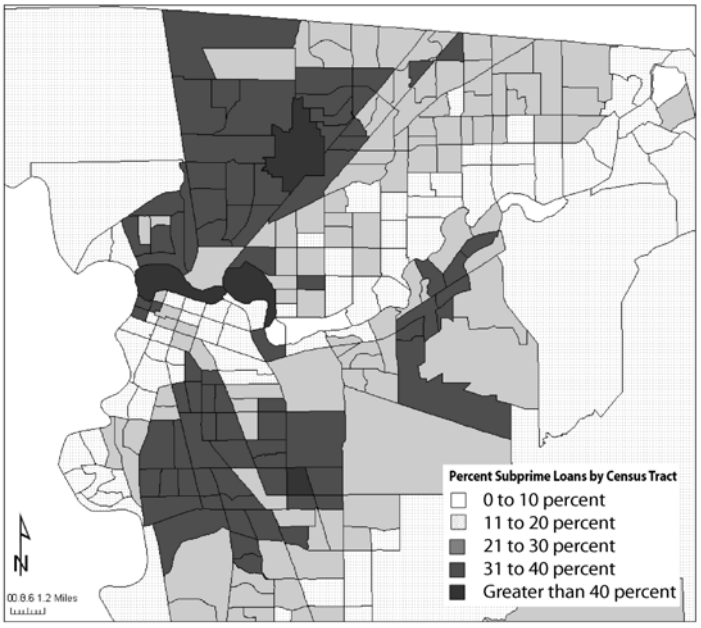


Figure 4: Percent Loan Denials by Census Tract for Sacramento County
Source: 2004 HMDA Raw Data



Finally, Figure Five shows the percent of subprime loan activity by census tract and clearly indicates that neighborhoods with a history of restricted access to lending products, or redlined areas, received a disproportionate share of subprime loans. A critical point here is that newer development (between 1960 and 1980) located in areas without racially restrictive covenants also show high concentrations of subprime activity in addition to high loan denial rates. These integrated housing tracts experienced significant economic decline during the redlining of the 1970s and remain unstable to this date. South Sacramento, an area highly populated with low-income and non-White residents, serves as a prime example of this decline.

Figure 5: Percent Subprime Loans by Census Tract for Sacramento County
Source: 2004 HMDA Raw Data



But suburban tracts with restrictive covenants built during the same period and adjacent areas to the northeast previously protected by the actions of Realtors show a much lower rate of subprime usage and loan denials. As expected, these neighborhoods remain economically stable and for the most part, racially homogeneous. Similarly, we can see that subprime loan distribution and loan denials approximates the geography shaped by housing policies captured in Figure Three. The data show that census tracts with racially restrictive covenants today experience a lower rate of subprime activity than non-protected communities (tracts without racially restrictive covenants). Hence, this spatial comparison provides some evidence that access to mortgage financing remains consistently positive for neighborhoods over time once restraints on residency are in place. Conversely, the higher rate of subprime financing in tracts without restrictive covenants means those property owners incur higher risks, pay a higher price to finance the purchase of their home, and have more difficulty accessing their equity when seeking financial and social mobility.

We have yet to see the full effects of high-cost subprime lending in Sacramento's targeted neighborhoods. The expansion of subprime mortgage products occurred at a time when interest rates were at their lowest while housing prices were at record highs. A good portion of these recently obtained adjustable rate mortgages, or ARMs, are now reaching their first adjustment date. As these ARMs adjust upward and housing prices now begin to dip, many borrowers face difficulty in refinancing their mortgages. This trend results in higher loan-to-value ratios for borrowers making refinance qualifying difficult especially when applying for a fixed rate loan.

The sudden loss in equity from declining values coupled with higher mortgage payments means we now see higher rates of payment delinquencies, mortgage defaults, lender repossessions, "short sales," and foreclosures in areas with concentrations of subprime loan activity. In fact, South Sacramento neighborhoods currently experience some of the highest

foreclosure rates in the US (Christie 2007, see also Realtytrac.com press releases). Moreover, in these neighborhoods, we should also expect to see a growing racial gap in homeownership and increased neighborhood instability as non-Whites convert from homeowners to renters. As property values decline in these neighborhoods, homebuyers looking to establish a sense of community and earn equity are less inclined to purchase in unpredictable locations. Neighborhood renters, the most likely to buy in distressed areas, are unable to afford the purchase of foreclosed property. Consequently, devalued property is transferred to non-resident investors who in turn convert formerly owner-occupied homes to rentals leaving the neighborhood vulnerable to even further decline.

Conclusion

Subprime lending, a seemingly place-less and colorblind market phenomenon, plays an important but potentially divisive role in reorganizing space initially shaped by race-based housing policies. We now can see that the combination of historical and contemporary housing policies created a set of structural conditions in neighborhoods that made them vulnerable to capital extraction and the resulting economic catastrophes brought on by the meltdown of the globally leveraged deregulated subprime loan industry in 2007. As the patterns of foreclosures in Sacramento begin to mirror subprime activity, these vulnerabilities clearly produce racially disparate social and economic outcomes for residents experiencing stress and change.

By showing how contemporary lending patterns in Sacramento are tied to past housing practices that shaped the social geography of the city, subprime lending continues historical practices of exclusion. We need to pay more attention to how past practices and public policies shape and influence markets. This will help us understand and identify the embeddedness of social relations in allocating public resources so that social and economic inequities are not seen as solely the result of free market practices and individual deficiencies. As we continue to rely on market practices to solve problems of urban planning and fix racialized inner-city space, we must recognize how urban policy implemented through market structures can perpetuate inequality in the US. The way we regulate and control access to housing credit sets the conditions for who wins or loses in our cities.

References

Association of Community Organizations for Reform Now (ACORN). 2005. *Separate and Unequal: Predatory Lending in America*. ACORN Fair Housing.

Avella, Steven. 2003. *Sacramento Indomitable City*. San Francisco: Arcadia Publishing.

Babcock, Frederick. 1924. *The Appraisal of Real Estate.* New York: Macmillan.

_____, 1932. *The Valuation of Real Estate.* New York: McGraw-Hill.

Bradford, Calvin. 2002. *Risk or Race? Racial Disparities and the Subprime Refinance Market*. Neighborhood Revitalization Project, Center for Community Change.

Cain, Leonard, Jr. Absolute Discretion? The California Controversy Over Fair Housing Laws. Research Bulletin No. 7. Sacramento Committee for Fair Housing. April 1964

Calem, Paul, Jonathan Hershaff, and Susan Wachter. 2004. "Neighborhood Patterns of Subprime Lending: Evidence from Disparate Cities." *Housing Policy Debate*, 13(3).

California State Legislature. Summary of Interim Hearings: Redlining in California. Senate Local Government Committee. October 1976.

Casa, Kathryn. "Preying on Predators: Nonprofits fight Back Against Predatory Lending Practices." Sacramento News and Review. August 23, 2000.

Chomsisengphet, Souphala and Anthony Pennington-Cross. 2006. The Evolution of the Subprime Mortgage Market. The Federal Reserve Bank of St. Louis. January/February 2006. 88(1), pp. 31-56.
Christie, Les. "Foreclosures drift to Sun Belt from Rust Belt." CNNMoney.com. August 13, 2007.
Conley, Dalton. 1999. *Being Black, Living in the Red: Race, Wealth, and Social Policy in America*. Berkeley: University of California Press.
Cowan, Cameron. Testimony before the Subcommittee on Housing and Community Opportunity, United States House of Representatives, Hearing on Protecting Homeowners. November 5, 2003.
Dodd, Christopher. Opening Statements Hearing on Mortgage Market Turmoil. US Senate Committee on Banking, Housing and Urban Affairs. March 22, 2007.
Duff, Edgar. Federal Employee Sues for Blocked Home. Sacramento Committee for Fair Housing. May 1963.
Dymski, Gary. 2007. From Financial Exploitation to Global Banking Instability: Two Overlooked Roots of the Subprime Crisis. Paper presented at the Open Research Project Conference, Musashi University, Tokyo, Japan. December 15, 2007.
Farris, John and Christopher Richardson. 2004. "The Geography of Subprime Mortgage Prepayment Penalty Patterns." *Housing Policy Debate*, 15(3).
Feagin, Joe. 1998. *The New Urban Paradigm: Critical Perspectives on the City*. Boulder: Rowman and Littlefield.
Freund, David. 2006. "Marketing the Free Market: State Intervention and the Politics of Prosperity in Metropolitan America" in *The New Suburban History*. Eds. Kevin Kruse and Thomas Sugrue. Chicago: University of Chicago Press.
Gelfand, Mark. 1975. *A Nation of Cities: The Federal Government and Urban America, 1933-1965*. New York: Oxford University Press.
Girardi, Kristopher, Adam Shapiro, and Paul Willen. 2007. Subprime Outcomes: Risky Mortgages, Homeownership Experiences, and Foreclosures. Working Paper 07-15. Federal Reserve Bank of Boston.
Gramlich, Edward. Federal Reserve Board Governor. Remarks at the Financial Services Roundtable Annual Housing Policy Meeting. Chicago, Illinois. May 21, 2004.
Gruenberg, Martin. Vice Chairman, Federal Deposit Insurance Corporation. Remarks to the American Banker's Association Stonier Graduate School, University of Pennsylvannia. June 11, 2007.
Helper, Rose 1969. *Racial Policies and Practices of Real Estate Brokers*. Minneapolis: University of Minnesota Press.
Hoyt, Homer. 1933. *One Hundred Years of Real Estate in Chicago.* Chicago: University of Chicago Press.
Iglesias, Elizabeth. 2000. "Global Markets, Racial Spaces and the Role of Critical Race Theory in the Struggle for Community Control of Investments: An Institutional Class Analysis." *45 Villanova Law Review, pp. 1037-1073.*
Immergluck, Daniel and Marti Wiles. 1999. *Two Steps Back: The Dual Mortgage Market, Predatory Lending, and the Undoing of Community Development*. Chicago: Woodstock Institute.
Jackson, Kenneth. 1985. *Crabgrass Frontier: The Suburbanization of the United States*. New York: Oxford University Press.
Lax, Howard, Michael Manti, Paul Raca and Peter Zorn. 2004. "Subprime Lending: An Investigation of Economic Efficiency." *Housing Policy Debate* Vol 15,3.
Magagnini, Stephen. "Racist Housing Clauses Stricken: Arden Park neighbors inspired new law to eliminate dated codes excluding nonwhites, then put it to use" Sacramento Bee. January 13, 2006.
McMichael, Stanley and Robert Bingham. 1923. *City Growth and Values*. Cleveland: The Stanley McMichael Publishing Organization.
McMichael, Stanley and Robert Bingham. 1928. *City Growth Essentials*. Cleveland: The Stanley McMichael Publishing Organization.

Mueller, Paul. Effects of Housing Discrimination on Residential Segregation Patterns in Sacramento 1960-1966. The Sacramento Community Integration Project. February 1966.
Mueller, Paul and Meredith Crown. McClellan Air Force Base Area Rental Survey. Research Bulletin No. 9. Sacramento Committee for Fair Housing. October 1965.
Oliver, Melvin and Thomas Shapiro. 1995. *Black Wealth/White Wealth*. New York: Routledge.
Renuart, Elizabeth. 2004. "An Overview of the Predatory Mortgage Lending Process." *Housing Policy Debate*, 15(3):467-502.
Sacramento City Planning. Sacramento Urban Redevelopment: Existing Conditions in Blighted Areas. October 1950.
Sadovi, Maura. "Home Buyers See Value in Sacramento." Real Estate Journal.com. July 20, 2005
Schloemer, Ellen, Wei Li, Keith Ernst, and Kathleen Keest. Losing Ground: Foreclosures in the Subprime Market and Their Cost to Homeowners. Center for Responsible Lending. December 2006.
Squires, Gregory. 2005. "Predatory Lending: Redlining in Reverse." *Shelterforce Online*. Issue 139.

Squires, Gregory and Charis Kubrin. 2006. *Privileged Places: Race, Residence and the Structure of Opportunity*. Boulder: Lynne Rienner.

State of California. "Evaluating the Availability of Mortgage Credit in the Inner Cities." Department of Real Estate, Business, Transportation and Housing Agency. October 1992.
Stuart, Guy. 2003. *Discriminating Risk: The US Mortgage Lending Industry in the Twentieth Century*. Ithaca: Cornell University Press.

US Department of Housing and Urban Development. 2004. Subprime and Manufactured Home Lender List. World Wide Web page http://www.huduser.org/datasets/manu.html (accessed December 2005).
Woolsey, Matt. "Least Affordable US Real Estate Markets." Housing Trends, Forbes.com. July 23, 2007.
Weaver, Robert. 1948. *The Negro Ghetto*. New York: Harcourt, Brace and Company.
Western Asset Management. "Subprime Mortgages." Commentary/ Insights. March 22, 2007.
Wyly, Elvin, Mona Atia, Holly Foxcroft, Daniel Hammel and Kelly Phillips-Watts. 2006. "American Home: Predatory Mortgage Capital and Neighborhood Spaces of Race and Class Exploitation in the United States." *Geografiska Annaler* B 88(1), 105-132.

FORECLOSURES, INTEGRATION, AND THE FUTURE OF THE FAIR HOUSING ACT

JOHN P. RELMAN*

INTRODUCTION

In their seminal work, *American Apartheid*, Douglas Massey and Nancy Denton compellingly chronicle the way in which residential spatial segregation in America's cities has contributed to the growth of an African-American underclass that threatens to make urban poverty and racial injustice a permanent fixture of American society.[1] Central to their argument is the evidence that "hypersegregation," or the extreme concentration of poor blacks in inner city neighborhoods, has left many minority communities vulnerable to a socio-economic "downward spiral" at the slightest turn in the economy.[2] Relying on empirical data, Massey and Denton convincingly explain the precise manner in which spatial segregation combines negative social and economic conditions to push poor black neighborhoods beyond the threshold of stability.[3]

As we mark the fortieth anniversary of the passage of the Fair Housing Act ("FHA"), [4] the lesson of Massey and Denton's study could not be more timely. It is beyond argument that four decades after the death of Dr. Martin Luther King, we have yet to achieve anything close to the integrated living patterns that were central to both his dream and the purposes of that historic law.[5] It is equally clear, with the advent of the subprime mortgage foreclosure crisis, that we now face an economic tsunami with the potential to destroy decades of tentative progress in America's inner city black and Hispanic communities. This is true both because of the exacerbating effect of hypersegregation and because of the legacy of discrimination that has left underserved minority communities particularly vulnerable to the predatory practices of subprime lenders and the devastating consequences of foreclosure that follow close on the forced abandonment of countless homes.

Contrary to those who point to the lack of progress in achieving integration

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1. *See generally* DOUGLAS S. MASSEY & NANCY A. DENTON, AMERICAN APARTHEID: SEGREGATION AND THE MAKING OF THE UNDERCLASS (1993).

2. *See id.* at 74-78, 118-30.

3. *Id.* at 118-30.

4. 42 U.S.C. § 3601-3619 (2000).

5. *See* LYNETTE A. RAWLINGS ET AL., URB. INST., RACE AND RESIDENCE: PROSPECTS FOR STABLE NEIGHBORHOOD INTEGRATION 2 (2004).

as evidence of a failure of fair housing litigation, the current economic crisis underscores the need to redouble our efforts to use creative litigation strategies to break down barriers to spatial and racial mobility, and shore up transitional minority neighborhoods struggling to hang on in the face of rising foreclosures. This is true because the problems we now face are uniquely suited—perhaps as never before—to a litigation response.

As a general matter, litigation works both as a tool for reform and as a remedy where there is a clearly identifiable pattern of illegal behavior, and the entity responsible for the violation has the means to contribute to the solution. Both of those conditions are met here. The foreclosure crisis has had a disparate effect on black and Latino neighborhoods precisely because of the illegal reverse redlining practices of clearly identifiable financial institutions who targeted these communities as a means to maximize short term profits. Those responsible for undermining the stability of these communities through their predatory lending practices have the means to provide much needed financial assistance to America's cities to help fix the problem.

The FHA is an especially effective legal weapon for attacking this problem. The four requirements for a successful outcome are all present: standing (as broad as Article III will allow);[6] liability (FHA case precedent clearly recognizes both redlining and reverse redlining or "targeting" claims);[7] powerful remedies (unlimited compensatory and punitive damages are both available, to be determined by a jury if desired);[8] and a generous statute of limitations (two years, in addition to a continuing violations theory allowing claims to stretch back indefinitely to cover the full time period of a continuing pattern of illegal conduct).[9]

More importantly, an opportunity has arisen now to harness the FHA in a way that has not been fully utilized before to promote integration. For the first time, America's cities—mayors and their city councils—have begun to recognize the power of the FHA to bring irresponsible financial institutions, the very ones who have profited at the expense of inner city black and Latino communities, to the table to remedy the injury that the *cities* have suffered.

Recently, Baltimore became the first city to bring suit against a major lender for targeting its minority communities for discriminatory lending practices that it alleges have resulted in unnecessarily high rates of foreclosure.[10] These

6. *See, e.g.*, Havens Realty Corp. v. Coleman, 455 U.S. 363, 372 (1982) (citing Gladstone Realtors v. Vill. of Bellwood, 441 U.S. 91, 103 n.9 (1979)).

7. *See, e.g.*, Hargraves v. Capital City Mortgage Corp., 140 F. Supp. 2d 7, 20 (D.D.C. 2000).

8. *See* 42 U.S.C. § 3613(c)(1) (2000) (damages); Curtis v. Loether, 415 U.S. 189, 194 (1974) (entitlement to jury trial); *see also* Preferred Props., Inc. v. Indian River Estates, Inc., 276 F.3d 790, 802 (6th Cir. 2002) (affirming jury verdict in favor of plaintiff in FHA case).

9. *See* 42 U.S.C. § 3613(a)(1)(A) (2000) (two-year statute of limitations); *Havens Realty Corp.*, 455 U.S. at 380-81 (applying continuing violation theory).

10. Complaint for Declaratory and Injunctive Relief and Damages ¶ 6,Mayor&City Council of Balt. v. Wells Fargo Bank, N.A., No. L08CV062 (D. Md. Jan. 8, 2008), 2008 WL 117894

foreclosures, it contends, are destroying minority neighborhoods and costing the city millions of dollars in out of pocket costs and damages.[11] One can reasonably assume other cities are now contemplating similar actions.[12] This development is possible because standing under the FHA is uniquely suited to permit cities the ability to sue as an "aggrieved person" in their own right.

This legal development has the power to be truly transformative, not simply in terms of its ability to reform an industry, but in its potential to promote integration through the stabilization of transitional minority neighborhoods. Lowering the barriers to integration requires, in the first instance, stopping the downward socio-economic spiral of hypersegregated communities. The racial mobility that Massey and Denton have shown is critical to integrated living patterns cannot take place until segregated minority neighborhoods have achieved levels of stability (and ultimately prosperity) that only remedial investment can bring. The impending wave of municipal lawsuits has the potential to bring that investment and, with it, renewed hope for progress on the integration front.

As with any new litigation strategy, the tendency exists to overstate the possibilities when the ideas are fresh and untested. That risk exists here as well. What makes this moment different is the ample evidence of powerful outcomes when public bodies pool their resources to attack a problem. America's mayors have the ability to do now what State Attorneys General have many times shown to be possible when they have come together to fight a common foe—whether it be tobacco, drugs, or guns.[13]

The purpose of this Article is to discuss and explore the opportunity this new litigation initiative creates to deal with the unresolved problem of integration. The context for this discussion is Baltimore, where the first of the municipal suits has been filed.[14] Part I sets out the factual background for the Baltimore suit. Part II discusses the specific allegations against the defendant Wells Fargo and the basis for the FHA violations alleged. Part III discusses the injury to the city and the methodological means by which any city faced with similar facts can both prove and quantify the injury. Finally, Part IV explores the implications that the remedies sought by Baltimore have for the broader struggle to promote integration.

It is this last connection—that between the litigation objective and unresolved FHA objective of integration—that remains the most difficult to unravel. Explaining our failure to achieve integrated living patterns forty years after the passage of the FHA requires an understanding of American history and

[hereinafter Balt. Complaint].

11. *Id.* ¶ 5.

12. *See, e.g.*, Complaint ¶ 9, City of Cleveland v. Deutsche Bank Trust Co., No. CV-08-646970 (Ohio Ct. Com. Pl. Jan. 10, 2008) [hereinafter Cleveland Complaint] (asserting public nuisance, not fair housing, claim).

13. *See, e.g.*, STATE CANCER LEGISLATIVE DATABASE PROGRAM, NAT'L CANCER INST., TOBACCO SETTLEMENT (2000), http://www.scld-nci.net/factsheets/pdf/FactSht1-00.pdf.

14. Balt. Complaint, *supra* note 10.

race relations that could fill volumes. What is clear is that the subprime mortgage foreclosure crisis has presented us with a new opportunity to take critically important steps through litigation toward stabilizing badly damaged minority neighborhoods in a way that will promote integration. They may be first steps, but they are essential if we are to continue to make progress in fulfilling Dr. King's dream, and the noble purpose of our fair housing laws.

I. BALTIMORE AS CASE STUDY: FACTUAL BACKGROUND OF *BALTIMORE V. WELLS FARGO*

A. The Foreclosure Crisis and Baltimore

Like many cities across the country, Baltimore faces an unprecedented crisis of residential mortgage foreclosures. There have been more than 33,000 foreclosure filings since 2000, [15] and the Maryland Department of Housing and Community Development reported in October 2007 that the number of foreclosure-related events in Baltimore—notices of default, foreclosure sales, and lender purchases of foreclosed properties—increased an extraordinary five-fold from the first to the second quarter of last year.[16]

Nationwide, the foreclosure crisis is worsening rapidly and is expected to deteriorate further. The number of foreclosure filings nearly doubled from the third quarter of 2006 to the third quarter of 2007.[17] One out of every seventeen mortgage holders is no longer able to make payments on time, the highest rate in over twenty years.[18] Delinquent payments are a strong indicator of near-term foreclosure filings. Equally important, approximately 150,000 adjustable rate loans are resetting to higher interest rates every month.[19] In 2008, $362 billion in subprime loans will reset to higher rates.[20] As the housing market continues to decline, many of these adjustments will result in foreclosures. The Joint Economic Committee of Congress predicts that from 2007 to 2009 there could be nearly two million foreclosures nationwide on homes purchased with subprime loans.[21]

15. Balt. Complaint, *supra* note 10, ¶ 1.

16. MD. DEP'T OF HOUS. & CMTY. DEV., PROPERTY FORECLOSURES IN MARYLAND SECOND QUARTER2007,at12(2007),http://www.dhcd.state.md.us/Website/home/document/PropForeclos EventsMaryland100407.pdf.

17. Editorial, *Spreading the Misery*, N.Y. TIMES, Nov. 29, 2007, at A30.

18. Balt. Complaint, *supra* note 10, ¶ 16; *see* Sudeep Reddy, *Home Foreclosures Surge to a New High*, WALL ST. J., Dec. 6, 2007, at 2 (5.59% delinquency rate is highest since 1986).

19. Ruth Simon, *Rising Rates to Worsen Subprime Mess—Interest Payments Set to Grow on $362 Billion in Mortgages in 2008*, WALL ST. J., Nov. 24, 2007, at A1.

20. *Id.*

21. MAJORITY STAFF OF THE JOINT ECON. COMM., 110TH CONG., THE SUBPRIME LENDING CRISIS:THE ECONOMIC IMPACT ON WEALTH, PROPERTY VALUES AND TAX REVENUES, AND HOW WE GOT HERE 12 (2007) [hereinafter THE SUBPRIME LENDING CRISIS]. Of the forty-four million active mortgages throughout the country currently tracked by the Mortgage Bankers Association

Foreclosures have multiple and far-reaching impacts on cities like Baltimore, especially when they are concentrated in distressed neighborhoods that are already struggling with issues of economic development and poverty. Foreclosures in these neighborhoods frequently lead to abandoned and vacant homes.[22] Estimates of the number of vacant homes in Baltimore range from 16,000 to 30,000.[23] Concentrated vacancies driven by foreclosures cause neighborhoods, especially ones already struggling, to decline rapidly.[24]

As discussed in Part III below, one example of how foreclosures and consequent vacancies harm neighborhoods is by reducing the property values of nearby homes. [25] In Baltimore, as in other cities, foreclosures are responsible for the loss of hundreds of millions of dollars in the value of homes. This, in turn, reduces the city's revenue from property taxes.[26] It also makes it harder for the city to borrow funds because the value of the property tax base is used to qualify for loans.

Cities with high rates of foreclosure, like Baltimore, must spend additional funds for services related to foreclosures, including the costs of securing vacant homes, holding administrative hearings, and conducting other administrative and legal procedures.[27] The funds expended also include the costs of providing

("MBA"), approximately 343,000 entered foreclosure during the third quarter of 2007. Balt. Complaint, *supra* note 10, ¶ 15; *see* Mortgage Bankers Ass'n, National Delinquency Study, http://www.mortgagebankers.org/ResearchandForecasts/ProductsandSurveys/NationalDelinquencySurvey.htm (listing MBA sample as forty-four million) (last visited Apr. 12, 2008); Press Release, Mortgage Bankers Ass'n, Delinquencies and Foreclosures Increase in Latest MBA National Delinquency Survey (Dec. 6, 2007), http://www.mortgagebankers.org/NewsandMedia/PressCenter/58758.htm (discussing MBA survey that found 0.78% of loans entered foreclosure in third quarter). This is the highest rate of foreclosures in more than thirty-five years. *Compare* DavidS. Hilzenrath& Dina ElBoghdady, *QuarterlyForeclosure Rate Again Sets Record—Defaults May Hurt Home Prices, Overall Economy*, WASH. POST, Sept. 7, 2007, at D1 (stating that second quarter rate of 0.65% was highest since MBA began survey in 1972). Overall, over 740,000 properties tracked by the MBA were in some stage of foreclosure during the third quarter of 2007, up 21% from the second quarter. Press Release, *supra* (discussing MBA survey that found 1.69% of loans in the foreclosure process, up 29 basis points).

22. Dan Immergluck & Geoff Smith, *The External Costs of Foreclosure: The Impact of Single-Family Mortgage Foreclosures on Property Values*, 17 HOUSING POL'Y DEBATE 57, 57 (2006).

23. *See* Joe Milicia, *Cities Fight Glut of Vacant Houses: Baltimore Among Cities Losing Millions in Taxes on Abandoned Homes*, BALT. SUN, Feb. 11, 2008, http://www.baltimoresun.com/business/realestate/bal-foreclosure0211,0,5826159.story (16,000);Editorial, *TakingItto the Bank*, BALT. SUN, Oct. 14, 2007, at 16A (30,000). Estimates of abandoned and vacant housing in other cities are likely even higher. In Cleveland, for example, the rate of foreclosures for 2007 has been estimated at twenty per day. Cleveland Complaint, *supra* note 12, ¶ 57.

24. Immergluck & Smith, *supra* note 22, at 59.

25. *See infra* note 110 and accompanying text.

26. *See* THE SUBPRIME LENDING CRISIS, *supra* note 21, at 16.

27. *See* ELLEN SCHLOEMER ET AL., CTR. FOR RESPONSIBLE LENDING, LOSING GROUND:

additional police and fire protection as vacant properties become centers of dangerous and illicit activities.[28]

B. The Role of Subprime Lending

The growing crisis of foreclosures in Baltimore and across the nation is due in large part to the rapid expansion of subprime lending. Subprime lending developed in the mid-1990s as a result of innovations in risk-based pricing and in response to the demand for credit by borrowers who were denied prime credit by traditional lenders.[29]

Prior to the emergence of subprime lending, most mortgage lenders made only "prime" loans.[30] Prime lending offered uniformly priced loans to borrowers with good credit.[31] Individuals with "blemished credit" were not eligible for prime loans.[32] Although borrowers with blemished credit might still represent a good mortgage risk at the right price, prime lending did not provide the necessary flexibility in price or loan terms to serve these borrowers.[33]

In the early 1990s, technological advances in automated underwriting allowed lenders to predict with improved accuracy the likelihood that a borrower with blemished credit will successfully repay a loan.[34] This gave lenders the ability to adjust the price of loans to match the different risks presented by borrowers whose credit records did not meet prime standards.[35] Lenders found that they could now accurately price loans to reflect the risks presented by a particular borrower.[36] When done responsibly, this made credit available much more broadly than had been the case with prime lending.

As the technology of risk-based pricing developed rapidly in the 1990s, so did the market in subprime mortgages. Subprime loans accounted for only 10% of mortgage loans in 1998, but within eight years grew to 23% of the market.[37] Currently, outstanding subprime mortgage debt stands at $1.3 trillion, up from

FORECLOSURES IN THE SUBPRIME MARKET AND THEIR COST TO HOMEOWNERS 24 (2006), http://www.responsiblelending.org/pdfs/FC-paper-12-19-new-cover-1.pdf.

28. *See* Immergluck & Smith, *supra* note 22, at 59.

29. *See* John P. Relman, *Taking it to the Courts; Litigation and the Reform of Financial Institutions*, in ORGANIZING ACCESS TO CAPITAL: ADVOCACY AND THE DEMOCRATIZATION OF FINANCIAL INSTITUTIONS 55, 65 (Gregory D. Squires ed., 2003).

30. *See id.*

31. *See id.*

32. *See id.*

33. *See id.*

34. *See* William B. Senhauser & John P. Relman, *Reflections on the Airlie Conference*, *in* THE ROLE OF AUTOMATED UNDERWRITING IN EXPANDING MINORITY HOMEOWNERSHIP: CONFERENCE PROCEEDINGS 9, 11-12, 16 (Fannie Mae ed., 2001).

35. *See id.* at 17-18.

36. *Id.* at 15-18.

37. *See* SCHLOEMER ET AL., *supra* note 27, at 7.

$65 billion in 1995 and $332 billion in 2003.[38] These subprime loans have allowed millions of borrowers to obtain mortgages, at marginally increased prices, even though their credit profiles do not qualify them for lower-cost prime loans.[39] They have opened the door to homeownership to many people, especially low- to moderate-income and minority consumers, who otherwise would have been denied mortgages.[40] At the same time, subprime lending has created opportunities for unscrupulous lenders to engage in irresponsible lending practices that result in loans that borrowers cannot afford.[41] This, in turn, has led directly to defaults and foreclosures.

Enticed by the prospect of short-term profits resulting from exorbitant origination fees, points, and related pricing schemes, many irresponsible subprime lenders took advantage of a rapidly rising real estate market to convince borrowers to enter into loans that they could not afford. Often this was accomplished with the help of deceptive practices and promises to refinance at a later date.[42] These abusive subprime lenders did not worry about the consequences of default or foreclosure to their business because once made, the loans were sold on the secondary market.[43]

As the subprime market grew, the opportunities for abusive practices grew with it. These practices include: (a) enticing borrowers into adjustable rate loans with low "teaser rates" that would automatically reset to much higher market rates after an introductory period, often with false promises to refinance the loan before the introductory period ended; (b) encouraging borrowers to refinance loans unnecessarily for the purpose of collecting closing costs, fees, and higher interest rates;(c) charging "yield spread premiums" that allow the lender to profit from interest rates that are higher than the rate the borrower qualifies for and can actually afford; (d) ignoring traditional underwriting criteria such as debt-to-income ratio, loan to value ratio, FICO score, cash reserves, and work history, against the borrower's best interest, all for the purpose of maintaining the short term profit that comes from high loan volumes, closing costs, and transaction fees; (e) charging excessive points and fees; and (f) requiring substantial prepayment penalties to prevent borrowers with improved credit or equity from moving from a subprime to prime loan.[44]

38. JOINT ECON. COMM., 110TH CONG., SHELTERING NEIGHBORHOODS FROM THE SUBPRIME FORECLOSURE STORM 4 (2007) [hereinafter SHELTERING NEIGHBORHOODS].

39. *See id.* at 3.

40. SCHLOEMER ET AL., *supra* note 27, at 7.

41. *See infra* note 44 and accompanying text.

42. *See* Hargraves v. Capital City Mortgage Corp., 140 F. Supp. 2d 7, 16-21 (D.D.C. 2000).

43. *See* SCHLOEMER ET AL., *supra* note 27, at 6; THE SUBPRIME LENDING CRISIS, *supra* note 21, at 20.

44. *See, e.g.*, SCHLOEMER ET AL., *supra* note 27, at 5-6; SHELTERING NEIGHBORHOODS, *supra* note 38, at 1-3; THE SUBPRIME LENDING CRISIS, *supra* note 21, at 10, 20-22; U.S. DEP'T OF HOUS. & URB. DEV. & U.S. DEP'T OF TREASURY, CURBING PREDATORY HOME MORTGAGE LENDING: A JOINT REPORT 2 (2000), http://www.huduser.org/Publications/pdf/treasrpt. pdf [hereinafter CURBING PREDATORY HOME LENDING]; *see generally* John P. Relman et al., *Designing Federal*

As long as housing prices continued to rise, the deleterious effect of these practices was delayed and, thus, hidden.[45] When the real estate bubble burst earlier in 2007, the inevitable occurred, and foreclosure rates began their dramatic rise.[46] Bent on maximizing short-term profits and protected by the ability to sell their loans on the secondary market, irresponsible subprime lenders left countless homeowners saddled with mortgage debts they cannot afford and no way to save their homes in a declining housing market.[47]

C. Foreclosure Disparities in Baltimore's African-American Neighborhoods

Nationwide, the impact of the foreclosure crisis is felt most acutely in minority communities. According to one recent report, nationwide, subprime borrowers of color will lose between $164 billion and $213 billion as a result of loans made in the past eight years, reflecting the fact that "people of color are more than three times" as likely as whites to have high cost, subprime loans.[48] The same is true in Baltimore. Citywide census tracts that are above 80% African-American account for 49% of Baltimore's foreclosure filings, even though these same tracts account for only 37% of the City's owner-occupied households.[49] Many housing advocates point to the practice of "reverse redlining" as a major cause of this disparity.[50]

As used by Congress and the courts, the term "reverse redlining" refers to the practice of targeting residents in certain geographic areas for credit on unfair terms due to the racial or ethnic composition of the area.[51] In contrast to "redlining," which is the practice of denying *prime* credit to specific geographic areas because of the racial or ethnic composition of the area, reverse redlining involves the targeting of an area for the marketing of deceptive, predatory or otherwise deleterious lending practices because of the race or ethnicity of the area's residents.[52] This practice has repeatedly been held to violate the Federal Fair Housing Act.[53]

Reverse redlining typically flourishes in cities where two conditions are met.

Legislation that Works: Legal Remedies for Predatory Lending, *in* WHY THE POOR PAY MORE: HOW TO STOP PREDATORY LENDING 153 (Gregory D. Squires ed., 2004).

45. THE SUBPRIME LENDING CRISIS, *supra* note 21, at 2.

46. *See* CURBING PREDATORY HOME LENDING, *supra* note 44, at 1; SCHLOEMER ET AL., *supra* note 27, at 3-4.

47. SCHLOEMER ET AL., *supra* note 27, at 3-4.

48. AMAAD RIVERA ET AL., UNITED FOR A FAIR ECONOMY, FORECLOSED: STATE OF THE DREAM 2008, at vii (2008), http://www.faireconomy.org/files/StateOfDream_01.16.08_Web.pdf.

49. Balt. Complaint, *supra* note 10, ¶ 34.

50. *See, e.g.*, *id.*

51. *See, e.g.*, Hargraves v. Capital City Mortgage Corp., 140 F. Supp. 2d 7, 20 (D.D.C. 2000).

52. *See, e.g.*, *id.*

53. *See, e.g.*, Barkley v. Olympia Mortgage Co., 2007 WL 2437810, at *13-15 (E.D.N.Y. Aug. 22, 2007); *Hargraves*, 140 F. Supp. 2d at 20.

First, the practice afflicts cities where minorities historically have been denied access to credit and other banking services. The legacy of historic discrimination, or redlining, often leaves the residents of minority communities desperate for credit, and without the knowledge or experience required to identify loan products and lenders offering products with the most advantageous terms for which they might qualify. Instead, residents of underserved minority communities often respond favorably to the first offer of credit made, without regard to the fairness of the product. This makes them especially vulnerable to irresponsible subprime lenders who, instead of underwriting carefully to ensure that the loans they offer are appropriate for their customers, engage in the unscrupulous lending practices.[54]

Second, reverse redlining arises in cities where there are racially segregated residential living patterns. This means that the people who are most vulnerable to abusive lending practices are geographically concentrated and therefore easily targeted by lenders.

Both of these conditions are present in Baltimore. First, Baltimore's minority communities historically have been victimized by traditional redlining practices. Through much of the twentieth century the federal government, mortgage lenders, and other private participants in the real estate industry acted to deny homeownership opportunities and choices to the city's African-Americans.[55] The practice and effects of widespread redlining in Baltimore persisted for decades.[56] An analysis of data from the 1980s, long after much of the institutionalized governmental and corporate apparatus of discrimination had been dismantled, found that the more African-American residents in a Baltimore neighborhood, the fewer mortgage loans and dollars the neighborhood received.[57] The same study also found that while 73% of majority white census tracts received a medium or high volume of single family mortgage loans, the same was true of only 5% of majority African-American tracts.[58]

Second, the city is highly segregated between African Americans and whites. Even though Baltimore is 64% African-American and 32% white, many neighborhoods have a much higher concentration of one racial group or the

54. *See supra* note 44 and accompanying text.

55. The Secretary of the United States Department of Housing and Urban Development admitted in 1970 that the federal government had "refus[ed] to provide insurance in integrated neighborhoods, promot[ed] the use of racially restrictive covenants," and engaged in other methods of redlining. Thompson v. HUD, 348 F. Supp. 2d 398, 466 (D. Md. 2005). The federal governmentevenpublishedamapin1937titled"ResidentialSecurity Map for Baltimore" designed to facilitate private red lining by mortgage providers. *Id.* at 471. Mortgage lenders actively engaged in redlining for decades, treating "black and [the few] integrated neighborhoods as unstable and risky." Garrett Power, *Apartheid Baltimore Style: The Residential Segregation Ordinances of 1910-1913*, 42 MD. L. REV. 289, 319 (1983).

56. Power, *supra* note 55, at 320.

57. ANNE B. SHLAY,MD.ALLIANCE FOR RESPONSIBLE INV., MAINTAINING THE DIVIDED CITY: RESIDENTIAL LENDING PATTERNS IN THE BALTIMORE SMSA 44 (1987).

58. *Id.* at 36.

other.[59]

II. BALTIMORE'S ALLEGATIONS AGAINST WELLS FARGO

Against this backdrop of mounting foreclosures and damage to Baltimore's African-American neighborhoods, in January 2008 the City of Baltimore filed suit against one particular lender with a large presence across the city—Wells Fargo.[60] At the heart of the complaint rests the allegation that Wells Fargo has "engaged in a pattern and practice of unfair, deceptive and discriminatory lending [practices]," targeted at Baltimore's African-American neighborhoods, that has resulted in disproportionately high rates of foreclosure and consequent financial damage in these communities, as well as direct and continuing financial harm to the City of Baltimore.[61] Wells Fargo, in short, is alleged to have engaged in a practice of "reverse redlining" that violates the FHA.[62]

A. Wells Fargo's Foreclosure Rates

Baltimore's complaint raises a number of specific factual allegations about Wells's lending practices based on the type and location of its loans. First, the City contends that, as one of Baltimore's largest lenders, Wells Fargo "has made at least 1285 mortgage loans in Baltimore in each of the last three years, with a collective value of over $600 million."[63] In each of these years, it has been one of the top two mortgage lenders in the City, making loans in both the white and African-American neighborhoods of Baltimore. [64] Wells Fargo is also alleged to have "the largest number of foreclosures in Baltimore of any lender—at least 135 from 2005 to 2006."[65]

The City further alleges, however, that "[h]alf of Wells Fargo's foreclosures from 2005 to 2006 were in census tracts that are more than 80% African-American and two-thirds were in tracts that are over 60% African-American, but

59. Balt. Complaint, *supra* note 10, ¶ 33. In its complaint against Wells Fargo, the City of Baltimore alleges, for example, that "the African-American population exceeds 90% in East Baltimore, Pimlico/Arlington/Hilltop, Dorchester/Ashburton, Southern Park Heights, Greater Rosemont, Sandtown-Winchester/Harlem Park, and Greater Govans. It exceeds 75% in Waverly and Belair Edison." *Id.* The complaint also alleges that "the white population of Greater Roland Park/Poplar, Medfield/Hampden/Woodberry, and South Baltimore exceeds 80%, and the white population of Cross-Country/Cheswolde, Mt. Washington/Coldspring, and North Baltimore/ Guilford/Homeland exceeds 70%." *Id.*

60. Balt. Complaint, *supra* note 10.

61. *Id.* ¶¶ 4-5.

62. *Id.* ¶¶ 2, 4.

63. *Id.* ¶¶ 10, 35.

64. *Id.*

65. *Id.* ¶ 38. The City's complaint alleges that "[o]nly two other lenders had more than 100 foreclosures during this period"; that "[w]ith at least seventy foreclosures during the first half of 2007, thepaceof Wells Fargo's foreclosures is increasing"; and that "at least 108Wells Fargo loans in Baltimore resulted in foreclosure from 2000 to 2004." *Id.*

only 15.6% were in tracts that are 20% or less African-American."[66] According to the complaint,

> [t]he figures are virtually identical for Wells Fargo's foreclosures from 2000 to 2004, with more than half in tracts that are more than 80% African-American, 64% in tracts that are over 60% African-American, and only 14.8% in tracts that are 20% or less African-American. Wells Fargo's foreclosures during the first half of 2007 reflect a similar pattern.[67]

The complaint alleges that "[a]lmost half are in tracts that are more than 80% African-American, while only 11.4% are in tracts that are 20% or less African-American."[68]

In terms of foreclosure rates, the numbers set out in Baltimore's complaint are stark:

> While 8.2% of Wells Fargo's loans in predominantly African-American neighborhoods result in foreclosure, the same is true for only 2.1% of its loans in predominantly white neighborhoods. In other words, a Wells Fargoloan in a predominantly African-American neighborhood is nearly four times as likely to result in foreclosure as a Wells Fargo loan in a predominantly white neighborhood.[69]

In contrast, the foreclosure rate for all lenders in Baltimore is 4.5%.[70] Thus, the City alleges, "Wells Fargo's foreclosure rate for loans in African-American neighborhoods is nearly double the overall City average, while the ratio for its loans in white neighborhoods is less than half the average."[71]

B. Types of Loans Made

The disparity in foreclosure rates, the complaint argues, is explained by the manner in which Wells Fargo has targeted African-American neighborhoods in Baltimore for improper and irresponsible lending practices.[72] The City alleges that the bank's"[p]atternorpracticeof failing tofollow responsibleunderwriting practices . . . is evident from the type of loans that result in foreclosure filings in those neighborhoods."[73]

According to the complaint, approximately 70% of Wells Fargo's Baltimore loans that result in foreclosure are fixed rate loans. This ratio is the same in both

66. *Id.* ¶ 37.
67. *Id.*
68. *Id.*
69. *Id.* ¶ 39.
70. *Id.* ¶ 40.
71. *Id.*
72. *Id.* ¶¶ 41-60.
73. *Id.* ¶ 42.

> [u]nlike adjustable rate loans, where the price may fluctuate with changing market conditions, the performance of fixed rate loans is relatively easy to predict using automated underwriting models and loan performance data because monthly payments do not vary during the life of the loan. Using these sophisticated risk assessment tools, and relying on traditional under writing criteria such as FICO scores, debt-to-income ratios, loan-to-value ratios, and cash reserves, any lender, [Baltimore argues], engaged in responsible underwriting practices designed to identify qualified borrowers can predict with statistical certainty the likelihood of default and/or delinquency. Lenders engaged in marketing fixed rate loans in a fair and responsible manner should have no difficulty sifting out unqualified borrowers, or borrowers whose loans would likely result in delinquency, default or foreclosure.[75]

Baltimore contends proper underwriting by Wells Fargo should result in comparable rates of foreclosure in both communities

> [b]ecause the percentage of fixed rate loans is so high and the same in both African-American and white neighborhoods . . . . The fact that Wells Fargo's underwriting decisions result in foreclosure nearly four times as often with respect to African-American than white neighborhoods means that it is not following fair or responsible underwriting practices with respect to African-American customers.[76]

C. Loan Characteristics and Practices

Baltimore's complaint identifies four additional aspects of Wells Fargo's loans and lending practices that it alleges support the inference that the foreclosure disparity is the result of improper targeting and irresponsible underwriting. Each is consistent with the conclusion that Wells Fargo has effectively placed an unlawful "thumb on the scale" when it underwrites loans in Baltimore's African-American neighborhoods. Moreover, according to the City, each of these factors is consistent with the conclusion that Wells Fargo is engaged in unfair and discriminatory practices in the city's black community that have the "effect and purpose" of placing inexperienced and underserved borrowers in loans they cannot afford without regard to the borrower's best interest, the borrower's ability to repay, or the financial health of underserved minority neighborhoods.[77]

First, publicly available data reported by Wells Fargo to federal regulators pursuant to the Home Mortgage Disclosure Act shows that in 2006 Wells Fargo

74. *Id.*

75. *Id.* ¶ 43.

76. *Id.* ¶ 44.

77. *Id.* ¶¶ 4, 46.

made high-cost loans (*i.e.*, loans with an interest rate that was at least three percentage points above a federally-established benchmark) to 65% of its African-American mortgage customers in Baltimore, but only to 15% of its white Customers in Baltimore. [78] In2005, the respective rates were 54% and 14%; while in 2004, the respective rates were 31% and 10%.[79] The proportion of refinance loans that are high cost is especially pronounced. In 2004, 2005, and 2006, a Wells Fargo refinance loan to an African-American borrower was 2.5times more likely to be high cost than a refinance loan to a white borrower.[80]

While the fact that Wells Fargo's high cost loans are more heavily concentrated in Baltimore's African-American neighborhoods does not prove price discrimination, it is consistent with such practices, as well as other types of improper underwriting often found where there is reverse redlining. [81] Within the subset of high-cost loans, however, the fact that a disproportionately large percentageofWellsFargo'shigh-costloansinAfrican-Americanneighborhoods are refinance loans is particularly significant, for it is both consistent with and indicative of a deceptive and predatory subprime practice that involves encouraging minority borrowers who already have loans to refinance at excessive cost with little benefit.[82] This practice, Baltimore alleges, "increases the likelihood of foreclosure and, upon information and belief, has contributed to the disproportionately high rate of foreclosures in Baltimore's African-American communities."[83]

Second, according to a Wells Fargo pricing sheet from 2005, the bank requires a 50 basis point *increase* in the loan rate for loans of $75,000 or less, a 12.5 basis point *decrease* for loans of $150,000 to $400,000, and a 25 basis point *decrease* for loans larger than $400,000.[84] These charges and discounts are applied after Wells Fargo has supposedly priced the borrower based on creditworthiness. The City alleges that these pricing rules have a clear and foreseeable disproportionate adverse impact on African-American borrowers. Loans originated by Wells Fargo in Baltimore from 2004 through 2006 in the amount of $75,000 and less were nearly twice as likely to be in census tracts where the population is predominantly African-American than intracts where the population is predominantly white.[85] By contrast, loans originated by Wells Fargo in Baltimore of more than $150,000 were nearly six times as likely to be in tracts that are predominantly white than in tracts that are predominantly African-American.[86] This too, the City contends, "is consistent with unfair practices associated with reverse redlining and has contributed significantly to

78. *Id.* ¶ 47.
79. *Id.*
80. *Id.*
81. *Id.* ¶ 49.
82. *Id.*
83. *Id.*
84. *Id.* ¶ 50.
85. *Id.* ¶ 51.
86. *Id.*

the disproportionately large number of foreclosures found in Baltimore's African-American communities."[87]

Third, Baltimore alleges that inferences about price discrimination based on Wells Fargo's Baltimore loan data are "consistent with findings drawn from data obtained in litigation brought against Wells Fargo in Philadelphia."[88] In that case, an expert report in a pending lawsuit based on Wells Fargo's Philadelphia loans concluded that Wells Fargo's African-American borrowers, and borrowers residing in African-American neighborhoods, paid more than comparable white residents of predominately white communities.[89]

Fourth, the complaint alleges that there is "a marked disparity with respect to the speed with which [Wells Fargo] loans in African-American and white neighborhoods move into foreclosure."[90] In Baltimore's African-American neighborhoods, the average time to foreclosure is 2.06 years. In white neighborhoods it is 2.45 years, or 19% longer.[91] The City contends that this "disparity in time to foreclosure [further] demonstrates that Wells Fargo is engaged in irresponsible underwriting in African-American communities."[92] If Wells Fargo were applying the same underwriting practices in Baltimore's African-American and white neighborhoods, and underwriting borrowers with equal care and attention to proper underwriting practices, the City argues, borrowers in African-American communities would not find themselves in financial straits significantly sooner during the life of their loans than borrowers in white communities.[93] According to the City, "[t]he faster time to foreclosure in African-American neighborhoods is consistent with underwriting practices in the African-American community that are less concerned with determining a borrower's ability to pay and qualifications for the loan than they are in maximizing short-term profit."[94]

Finally, the complaint alleges that while "2/28" and "3/27" adjustable rate loans do not represent the bulk of the Wells Fargo loans that went to foreclosure in Baltimore, a significant portion (30%) of the bank's foreclosures in African-

87. *Id.* ¶ 52.

88. *Id.* ¶ 53.

89. *Id.* (quoting Affidavit of L. Goldstein ¶ 7, Walker v. Wells Fargo Bank, N.A., No. 05-cv-6666 (E.D. Pa. July 20, 2007)).

90. *Id.* ¶ 61.

91. *Id.*

92. *Id.* ¶ 62.

93. *Id.*

94. *Id.* The City points out that

> [t]his difference in time to foreclosure is especially important because foreclosures occur more quickly in Baltimore than in neighboring jurisdictions. For all lenders, the average time from loan origination to foreclosure in Baltimore is three years, while in Philadelphia it is four years and in New Castle County, Delaware (which includes Wilmington) it is 4.3 years. This means that the injuries that result from foreclosures in Baltimore are compounded, and therefore grow, at a faster pace.

Id. ¶ 63.

American neighborhoods involved these unusually risky and deceptive loan products.[95] The City contends that "Wells Fargo [did] not properly underwrite these loans when made to African Americans, and . . . [did] not adequately consider the borrowers' ability to repay these loans, especially after the teaser rate expires and the interest rate increases."[96] As a result, these loans resulted in delinquency, default, and foreclosure for many African-American borrowers—a result that was, or should have been, clearly foreseeable to Wells Fargo at the time the loans were made.[97]

As with the other practices identified above, Baltimore contends that the use of these risky adjustable rate mortgage products "is consistent with the practice of reverse redlining, has subjected African-American borrowers to unfair and deceptive loan terms, and has contributed significantly to the high rate of foreclosure found in Baltimore's African-American neighborhoods."[98]

III. QUANTIFYING INJURY TO THE CITY

A. Municipal Standing

As noted in Part II above, the FHA provides a clear cause of action for the lending practices in which Wells Fargo is alleged to have engaged. Since Judge Joyce Hens Green's landmark decision in *Hargraves v. Capital City Mortgage Corp.*[99], numerous courts across the country have held that reverse redlining violates the FHA.[100] Thus, if Wells Fargo has done what Baltimore alleges, it

95. *Id.* ¶ 55.

96. *Id.* ¶ 56.

97. *Id.*

98. *Id.* ¶ 57. With respect to the adjustable rate mortgage loan products, the City further alleges that Wells Fargo had discretion to apply different caps on the interest rates charged. *Id.* ¶ 58. "The cap is the maximum rate that a borrower can be charged during the life of an adjustable rate loan." *Id.* According to the complaint, "[t]he average cap on a Wells Fargo adjustable rate loan that was subject to foreclosure in 2005 or 2006 in predominantly African-American neighborhoods was 14.13%. The cap on such loans in predominantly white neighborhoods was only 13.61%." *Id.* ¶ 59. This disparity, the City alleges, is further evidence of a pattern or practice of unfair and improper lending in Baltimore's African-American neighborhoods that has contributed to an unnecessarily high rate of foreclosure. *See id.* ¶¶ 4, 60.

99. 140 F. Supp. 2d 7 (D.D.C. 2000).

100. *See* Munoz v. Int'l Home Capital Corp., No. C 03-01099 RS, 2004 WL 3086907, at *4 (N.D. Cal. May 4, 2004); Matthews v. New Century Mortgage Corp., 185 F. Supp. 2d 874, 886-87 (S.D. Ohio 2002); Johnson v. Equicredit Corp. of Am., No. 01 C 5197, 2002 WL 448991, at *5-6 (N.D. Ill. Mar. 22, 2002); Eva v. Midwest Nat'l Mortgage Bank, Inc., 143 F. Supp. 2d 862, 868 (N.D. Ohio 2001); *see also* Assocs. Home Equity Servs., Inc. v. Troup, 778 A.2d 529, 537 (N.J. Super. Ct. App. Div. 2001) (holding that reverse redlining violates New Jersey's Law Against Discrimination); McGlawn v. Pa. Human Relations Comm'n, 891 A.2d 757, 761 (Pa. Commw. Ct. 2006) (holding that reverse redlining violates fair housing provisions of Pennsylvania Human Relations Act).

will be held liable for violating the Act.

In this sense, the FHA provides a unique legal vehicle for attacking the practices that are of such current concern to cities across the country, like Baltimore, whose minority communities are bearing the brunt of the foreclosure crisis. The FHA, however, is uniquely positioned in other ways as well—ones that concern the related issues of standing and remedies.

Standing to sue under the FHA extends as broadly as Article III of the Constitution will allow; Congress and the courts have determined that there are no prudential limitations on standing.[101] The statute itself provides that any "person" aggrieved by conduct made illegal by the Act may bring suit.[102] The FHA defines "person" to include corporations.[103] Many cities, like Baltimore, are incorporated and thus fall directly within the definition of "person" for purposes of standing. Indeed, the plaintiff in one of the Supreme Court's relatively few FHA cases was a municipal corporation.[104] This means that where a city claims injury from the reverse redlining practices of a given lender, it has standing to pursue a federal fair housing claim against that entity.

B. Damages

When it comes to remedies, the FHA is equally useful to municipal plaintiffs like Baltimore. As originally drafted in 1968, the FHA permitted aggrieved persons to recover unlimited compensatory damages, but capped punitive damages at $1000.[105] In 1988, the Act was amended to remove the cap on punitive damages.[106] Any municipality, therefore, that brings a reverse redlining

101. *See* Havens Realty Corp. v. Coleman, 455 U.S. 363, 372 (1982); Gladstone Realtors v. Vill. of Bellwood, 441 U.S. 91, 103 n.9, 109 (1979); Trafficante v. Metro. Life Ins. Co., 409 U.S. 205, 209 (1972).

102. 42 U.S.C. § 3613(a)(1)(A) (2000).

103. *Id.* § 3602(d).

104. *See* Gladstone, Realtors v. Vill. of Bellwood, 441 U.S. 91, 93 (1979). In the decision under review, the Seventh Circuit held that a village, as a municipal corporation, had standing as a "person" under the FHA. Vill. of Bellwood v. Gladstone Realtors, 569 F.2d 1013, 1020 n.8 (7th Cir. 1978), *aff'd in part*, 441 U.S. 91 (1979). The Supreme Court noted the Seventh Circuit's holding, but did not addressthe issue becauseithadbeen raised belatedly. *Gladstone Realtors*, 441 U.S. at 109 n.21; *see also* City of Chi. v. Matchmaker Real Estate Sales Ctr., Inc., 982 F.2d 1086, 1095 (7th Cir.1992) (finding Chicago had standing underFHA);Vill. of Bellwood v. Dwivedi, 895 F.2d 1521, 1525 (7th Cir. 1990) (Village of Bellwood had standing under FHA); Heights Cmty. Cong. v. Hilltop Realty, Inc., 774 F.2d 135, 138-39 (6th Cir. 1985) (finding Cleveland Heights had standing under FHA).

105. *See* N.J. Coal. of Rooming & Boarding House Owners v. Mayor & Council of City of Asbury Park, 152 F.3d 217, 223 (3d Cir. 1998) (discussing limitation on punitive damages as FHA was originally enacted).

106. *See id.* at 223-24 (discussing 1988 amendment whereby Congress removed the $1000 ceiling on punitive damages); Fair Housing Amendments Act of 1988, § 8, 42 U.S.C. § 3613(c)(1) (2000) ("[T]he court may award to the plaintiff actual and punitive damages . . . .").

claim may seek unlimited punitive damages against a defendant lender—subject only to constitutional due process limitations having to do with the ratio of the size of punitive to compensatory damages.[107]

Damages, of course, must be proven. However, here too, the empirical and methodological foundation is strong for cities, like Baltimore, that seek to show the precise harm in dollar terms that they have suffered from the current wave of foreclosures.

As a general matter, foreclosures caused by discriminatory reverse redlining practices produce multiple types of injuries to a city like Baltimore. Foreclosures result in a dramatic increase in the number of abandoned and vacant homes.[108] Frequently concentrated in compact, clearly defined geographic areas, these abandoned properties become centers for squatting, drug use, drug distribution, prostitution, and other illegal activities.[109] The costs to the city are enormous: increased expenditures to secure the newly abandoned and vacant homes; increased expenditures for police and fire protection; additional expenditures to acquire and rehabilitate vacant properties, where possible; and new outlays of tax dollars to fund social programs to stabilize the affected neighborhoods and deal with the homelessness, job loss, and educational needs that inevitably flow from the displacement and relocation of residents who have lost their primary (and often only) investment.[110]

Foreclosures result in two other forms of financial damage to the city as well. First, abandoned and vacant properties in a neighborhood produce a clearly identifiable decline in the value of nearby homes, resulting in a significant decrease in property tax revenue. Cities also lose revenue from real estate transfer taxes because foreclosures depress the market for home sales. Second, there are large costs to a city associated with the processing of foreclosed properties through the city or county legal or administrative system.

Most, if not all, of these costs are fully capable of empirical quantification. Recent studies have pioneered new methodologies for calculating these damages. A study published by the Fannie Mae Foundation, using Chicago as an example, determined that each foreclosure is responsible for an average decline of approximately 1% in the value of each single-family home within an eighth of a mile.[111] A second study in Philadelphia found that each home within 150 feet of an abandoned home declined in value by an average of $7627; homes within 150 to 299 feet declined in value by $6810; and homes within 300 to 449 feet

107. *See, e.g.*, State Farm Mut. Auto. Ins. Co. v. Campbell, 538 U.S. 408, 416-29 (2003); BMW of N. Am., Inc. v. Gore, 517 U.S. 559, 574-86 (1996).

108. Immergluck & Smith, *supra* note 22, at 57.

109. *Id.* at 59.

110. *See* WILLIAM C. APGAR ET AL., HOMEOWNER PRESERVATION FOUND., THE MUNICIPAL COST OF FORECLOSURES: A CHICAGO CASE STUDY 20-29 (2005), http://www.995hope.org/content/pdf/Apgar_Duda_Study_Full_Version.pdf;Immergluck & Smith, *supra* note 22,at58-59.

111. *See* Immergluck & Smith, *supra* note 22, at 58.

declined in value by $3542.[112]

Likewise, the costs of increased municipal services that are necessary because of foreclosures have also been analyzed empirically. A recent study commissioned by the Homeownership Preservation Foundation isolated twenty-six types of costs incurred by fifteen government agencies in response to foreclosures in Chicago.[113] It then analyzed the amount of each cost based on different foreclosure scenarios, such as whether the home is left vacant, whether and to what degree criminal activity ensues, and whether the home must be demolished.[114] The study found that the total costs ran as high as $34,199 per foreclosure.[115]

The point to be made here is a simple one. For litigation purposes, the damages caused by a company like Wells Fargo's reverse redlining practices are not—as defense lawyers routinely charge—speculative or hypothetical. Baltimore has alleged that Wells Fargo's unlawful targeting practices resulted in unnecessary and avoidable foreclosures in African-American neighborhoods.[116] Expert analyses similar to the studies conducted in Philadelphia and Chicago are capable of showing the precise dollar damage resulting from these discriminatory practices by focusing on the costs that can be empirically tied to a foreclosure and then multiplying that by the number of foreclosures attributable to a given company, like Wells Fargo.

In terms of the size of the damages, the stakes for offending companies are high. Baltimore alleges that the damages and costs caused by Wells Fargo's discriminatory lending practices "are in the tens of millions of dollars."[117] There are several reasons for this. Although the statute of limitations for FHA claims is two years, the Supreme Court has applied a continuing violations theory where a pattern or practice of discriminatory acts extends into the limitations period.[118] This means that a defendant engaged in an ongoing pattern of illegal conduct will be held liable for discriminatory acts extending as far back in time as the evidence leads. Cities like Baltimore, therefore, are free to pursue damages for illegal conduct that has resulted in foreclosures over many years—in many cases going back to the incipient stages of the subprime mortgage market frenzy.

Damages are high for a second reason as well, but not one necessarily related to the absolute number of foreclosures. In many cities the foreclosures caused

112. ANNE B. SHLAY & GORDON WHITMAN, RESEARCH FOR DEMOCRACY: LINKING COMMUNITY ORGANIZING AND RESEARCH TO LEVERAGE BLIGHT POLICY 20 (2004), http://comm-org.wisc.edu/paper2004/shlay/shlay.htm.

113. APGAR ET AL., *supra* note 110, at 1.

114. *See id.* at 23-27.

115. *Id.* at 28.

116. Balt. Complaint, *supra* note 10, ¶ 64.

117. *Id.* ¶ 70.

118. *See* Havens Realty Corp. v. Coleman, 455 U.S. 363, 380 (1982); *see also, e.g.*, Silver State Fair Hous. Council, Inc. v. ERGS, Inc., 362 F. Supp. 2d 1218, 1221-22 (D. Nev. 2005) (applying continuing violation doctrine to design and construction of multiple apartment buildings in violation of FHA's accessibility requirements for people with disabilities).

by reverse redlining are particularly injurious because they are concentrated in distressed and transitional neighborhoods. These are frequently communities with high vacancy rates, low rates of owner occupancy, substantial housing code violations, and low property values. These characteristics make transitional neighborhoods most vulnerable to the deleterious effects of foreclosures.

The Supreme Court has often held that the FHA "sounds basically in tort."[119] As with a personal injury cause of action, defendants must take their plaintiffs as they find them, even if the consequent injury is worse as a result of a pre-existing condition.[120] Such is the case here. If minority neighborhoods are particularly vulnerable to a company's predatory practices, with the resulting injury to the city being greater as a function of increased programmatic costs required to stabilize these transitional neighborhoods, the defendant remains liable for damages regardless of size or extent.

Suffice it to say that the potential scope of damages in municipal foreclosure cases brought under the FHA is both large and provable. The Act's generous standing and statute of limitations provisions, and the manner in which they have been interpreted by the Supreme Court—coupled with the methodological advances for proving damages highlighted in recent studies—means that this law is capable of providing cities with a powerful remedy for the destructive practices that have so badly hurt minority neighborhoods.

The extent to which these remedies will also be able to address the goal of promoting integrated living patterns is a more complicated question, but one of vital importance for the future of the FHA. It is to this question that the discussion now turns.

IV. FORECLOSURES AND INTEGRATION: THE FIGHT TO SAVE A NOBLE GOAL

A. Integration and Non-discrimination

Two broad remedial objectives underlie the FHA: non-discrimination and integration. Evidence of these twin goals can be found throughout the statute itself, the legislative history of the 1968 Act, and in Supreme Court decisions interpreting the law.

The Act's preface declares in sweeping language that "[i]t is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States."[121] The Supreme Court has interpreted this language to make clear "the broad remedial intent of Congress embodied in the Act,"[122] which in turn reflects "a strong national commitment to promot[ing] integrated housing."[123] These purposes are also reflected in the broad range of

119. Curtis v. Loether, 415 U.S. 189, 195 (1974), *see also* Meyer v. Holley, 537 U.S. 280, 285 (2003).

120. *See, e.g.*, Richman v. Sheahan, 512 F.3d 876, 884 (7th Cir. 2008).

121. 42 U.S.C. § 3601 (2000).

122. *Havens Realty Corp.*, 455 U.S. at 380.

123. Linmark Assocs., Inc. v. Twp. of Willingboro, 431 U.S. 85, 95 (1977) (citing Trafficante

discriminatory practices that the FHA outlaws,[124] and in the virtually unanimous agreement among the circuit courts of appeal that the Act, like Title VII, includes a disparate impact cause of action.[125]

For the most part these goals were viewed by the FHA's legislative sponsors as complementary. Congress adopted the Act in the wake of the highly publicized report by the National Advisory Commission on Civil Disorders, commonly known as the Kerner Report, which had warned that the "[N]ation is moving toward two societies, one black, one white—separate and unequal."[126] Removing barriers to discrimination (the non-discrimination goal), it was thought, would inevitably lead to the eradication of segregation (the integration goal). Thus, the Act's principal sponsor, Senator Mondale, explained that blacks were unable to move to white suburbs because of the "refusal by suburbs and other communities to accept low-income housing. . . . An important factor contributing to exclusion of Negroes from such areas, moreover, has been the policies and practices of agencies of government at all levels."[127] Similarly, Senator Brooke noted that blacks could not move to better neighborhoods Because they were "surrounded by a pattern of discrimination based on individual prejudice, often institutionalized by business and industry, and Government practices."[128]

Forty years after passage of the FHA, achieving the goal of integration has met with mixed results. Despite countless successful litigation challenges to discriminatory practices brought by both private parties and the government, studies show that "achieving and sustaining widespread stable racial integration remains an unmet challenge."[129] This is not to say there has not been progress; indeed, some empirical evidence supports the conclusion that "more neighborhoods in metropolitan America are shared by blacks and whites [as of 2004]than [in prior decades], and many racially integrated neighborhoods appear reasonably stable."[130] For every study showing progress, there are others that describe a continuing pattern of entrenched—and in some cases, worsening—

v. Metro. Life Ins. Co., 409 U.S. 205 (1972)).

124. *See* Jones v. Alfred H. Mayer Co., 392 U.S. 409, 417 (1968).

125. *See, e.g.*, Macone v. Town of Wakefield, 277 F.3d 1, 5, 7-8 (1st Cir. 2002); Bangerter v. Orem City Corp., 46 F.3d 1491, 1501 (10th Cir. 1995); Jackson v. Okaloosa County, 21 F.3d 1531, 1543 (11th Cir. 1994); Keith v. Volpe, 858 F.2d 467, 482-84 (9th Cir. 1988); Huntington Branch, NAACP v. Town of Huntington, 844 F.2d 926, 934-36 (2d Cir.), *aff'd per curiam*, 488 U.S. 15 (1988); Hanson v. Veterans Admin., 800 F.2d 1381, 1386 (5th Cir. 1986); Betsey v. Turtle Creek Ass'ns, 736 F.2d 983, 986-88 (4th Cir. 1984); United States v. City of Parma, 661 F.2d 562, 564-65, 576 (6th Cir. 1981); Resident Advisory Bd. v. Rizzo, 564 F.2d 126, 146-49 (3d Cir. 1977); Metro. Hous. Dev. Corp. v. Vill. of Arlington Heights, 558 F.2d 1283, 1288-90 (7th Cir. 1977); United States v. City of Black Jack, 508 F.2d 1179, 1184-85 (8th Cir. 1974).

126. REPORT OF THE NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS 13 (1968).

127. 114 Cong. Rec. 2277 (1968).

128. *Id.* at 2526.

129. RAWLINGS ET AL., *supra* note 5, at 2.

130. *Id.*

segregation.[131]

The reasons for such limited progress are many and complicated. Indeed, on anniversaries of the FHA such as this, advocates regularly spend much time debating the likely causes and the conclusions to be drawn. Some of the failure is undoubtedly attributable to continuing discrimination by landlords and other housing providers. Some of it is likely due to facially neutral practices and policies of local governments that have the effect of reinforcing pre-existing residential segregation. Finally, some of the failure is clearly due to a chronic insufficiency of resources (regardless of political administrations in Washington) available for government enforcement and prosecution of the fair lending laws that both the Congress and state legislatures have worked hard over the last four decades to pass.

Dr. King himself clearly understood the unique challenges posed by the goal of integration. In a sermon he gave in 1962 entitled "The Ethical Demands for Integration," he explored the role that law could play in "legislating" an end to segregation:

> Let us never succumb to the temptation of believing that legislation and judicial decrees play only minor roles in solving this problem. Morality cannot be legislated, but behaviour can be regulated. . . . Let us not be misled by those who argue that segregation cannot be ended by the force of law.[132]

At the same time, he also understood the limitations of law in achieving integrated living patterns. Ultimately, integration would require fulfillment of an "unenforceable obligation":

> [T]he ultimate solution to the race problem lies in the willingness of men to obey the unenforceable. Court orders and federal enforcement agencies are of inestimable value in achieving desegregation, but desegregation is only a partial, though necessary step toward the final goal which we seek to realize, genuine intergroup and interpersonal living. . . . True integration will be achieved by true neighbors who are willingly obedient to unenforceable obligations.[133]

Put differently, much of the work of integration requires voluntary steps by persons of good will. The work is hard, takes time, and requires a change not just in law, but in the human heart, before it can take hold and produce results in a form that all can see.

131. *See, e.g.*, Eric Schmitt, *Segregation Growing Among U.S. Children*, N.Y. TIMES, May 6, 2001, at 28 (citing study performed by researchers at the State University of New York at Albany showing that segregated living patterns of children worsened significantly from 1990 to 2001 in many large Northeastern and Midwestern metropolitan areas).

132. Martin Luther King, Jr., The Ethical Demands for Integration (Dec. 27, 1962), *in* A TESTAMENT OF HOPE: THE ESSENTIAL WRITINGS OFMARTIN LUTHER KING, JR. 117, 124 (James M. Washington ed., 1986).

133. *Id.*

B. Foreclosures and Integration

Charting a full remedial course from segregation to integration is beyond the scope of this Article. That said, and recognizing the limitations of law in legislating a solution to this problem, it is still important to understand the unique role that the FHA can play at the present moment of economic crisis to preserve the gains toward integration that have been made, and position our cities for future progress.

It is here that one must return to Massey and Denton's seminal insight about the effects of hypersegregation on underserved communities.[134] Massey and Denton's work focuses on the compounding destructive effect that spatial segregation has on distressed inner city neighborhoods. Concentrated segregation, they argue, makes it far less likely that transitional neighborhoods will be able to withstand a downward spiral should economic growth flatten or slow.[135]

Reverse redlining, in the form described in Parts II and III above, contributes significantly to that effect. Targeting minority communities for discriminatory and irresponsible lending practices depletes those neighborhoods of vitally needed capital. These practices make it even less likely that communities of color will be able to survive an economic downturn. They increase the likelihood that the spiral will be steep and difficult to stop once it begins.

The current foreclosure crisis takes this problem to a new level. As noted above, recent studies suggest that subprime borrowers of color may lose over $200 billion as a result of foreclosures generated by loans taken in the last eight years.[136] This massive drain of equity from minority neighborhoods will have the effect of reinforcing barriers to integration by deepening and worsening spatial segregation. An economic downturn under these conditions could lead to a downward spiral of catastrophic proportions for many distressed and transitional communities of color.

There are two primary reasons why loss of equity will worsen spatial segregation. First, achieving integrated living patterns depends not just on the eradication of legal barriers to mobility, but on having the economic means to pursue housing choice. The current foreclosure crisis threatens to strip thousands of minority homeowners of the very equity and asset that—in a rising market—would allow them to move out of poorer, segregated neighborhoods into areas that show promise as stable, integrated communities.

At the same time that foreclosures strip those caught in segregated neighborhoods of the mobility to move out, they also raise barriers to the movement of much needed capital into segregated communities. Foreclosures mean abandoned homes; increased risks of fire, crime, and drugs; increases in homelessness and job loss; deterioration of schools; and a crippling shortage of

134. *See generally* MASSEY & DENTON, *supra* note 1.

135. *Id.* at 74-78, 118-30.

136. RIVERA ET AL., *supra* note 48, at 1.

city funds for existing social programs.[137] Foreclosures turn these communities into a "third rail" for private investment dollars, effectively shutting down mobility of both residential buyers and business equity into these neighborhoods. Where rising property values increase the likelihood that investors will break the color line, falling property values ensure the opposite. Less mobility into transitional neighborhoods accelerates the downward spiral in a way that reinforces existing lines of racial separation.

C. The Path Forward

America's mayors and city councils see all too well what is happening to their communities of color. The foreclosure rate in most cities is expected to grow worse, not better, over the next eighteen months.[138] Taxpayer monies that have been invested in social programs designed to stabilize transitional neighborhoods over the last decade are at risk.[139] City budgets, faced with lost revenues and foreclosure-related expenses, are at risk. Most important, decades of tentative progress toward integrated living patterns are at risk. Once erased, these gains will take decades to restore.

The first step in addressing this crisis is to stop the hemorrhaging by stabilizing communities of color that have been hit the hardest. This requires an immediate investment of capital in these communities to prevent the declining spiral from accelerating. If transitional neighborhoods can ride out the foreclosure storm without succumbing to complete economic collapse, hope remains. The danger, of course, is that foreclosures will reach a tipping point in certain communities that will place them beyond repair and leave them hopelessly hypersegregated and economically deprived for years to come.

It is here, on the fortieth anniversary of its passage, that the FHA has an opportunity to play a vitally important role in furthering its noble goal of integration. The Baltimore litigation provides a template for America's cities to take the all important first step toward stabilizing communities of color that have been victimized by reverse redlining and unnecessarily high rates of foreclosure.

In a declining economy, America's cities face mounting budget deficits. Severely damaged by the foreclosure crisis, most cities do not have the funds to plow back into damaged neighborhoods. By focusing on lenders who have engaged in practices that violate the FHA, litigation of the type being pursued by the City of Baltimore has the ability to force private corporations who profited

137. *See supra* notes 108-15 and accompanying text.

138. *See The Looming Foreclosure Crisis: How to Help Families Save Their Homes: Hearing Before the S. Comm. on the Judiciary*, 110th Cong. (2007) (written testimony of Mark Zandi, Chief Economist, Moody's Economy.com) ("[R]esidential mortgage loan defaults and foreclosures are surging and without significant policy changes will continue to do so through the remainder of the decade.").

139. *See* John Leland, *Baltimore Finds Subprime Crisis Snags Women*, N.Y. TIMES, Jan. 15, 2008, at A1; Louis Uchitelle, *For Baltimore, Housing Slump Slows A Revival*, N.Y. TIMES, Oct. 4, 2007, at A1.

at the expense of taxpayers to contribute much needed capital back to the cities who have been left with the financial bill. A litigated solution is particularly just, because it precisely targets only those corporations who can be shown to have enriched themselves wrongfully at the expense of cities and their taxpayers. To the extent that America's mayors find a way to work together in addressing this problem, collective litigation efforts present powerful reasons for large financial institutions to come to the table not as adversaries looking to fight, but as partners trying to help. Some lenders clearly face the risk of exposure in multiple cities and states; the potential cost to these companies of a litigated solution—both reputational and financial—is enormous.

New investment, of course, does not guarantee integrated living patterns. It merely represents a starting point for addressing a larger problem, and at a minimum, a firewall against further losses. The lesson from Baltimore is clear: The FHA provides the standing, the cause of action, and the remedies needed for cities to play a significant role in fighting to save Dr. King's dream. We have reached a critical moment for communities of color. After forty years, it is still not too late. The moment must be seized now, or it will be lost.

Fair Housing Commission Hearing Testimony
Frances Espinoza, Executive Director, Housing Rights Center
September 9, 2008

Forty years ago, our nation committed to ending housing discrimination. In the years since, our government provided several tools for achieving truly fair housing, none more important than the requirement that municipalities "affirmatively further fair housing." This tool, however, is AWOL. It will remain on leave until our governments (local, state, and federal) recommit themselves to the original vision of discrimination-free housing.

Before I explain what it means to "affirmatively further fair housing," let me introduce myself. I am Frances Espinoza, Executive Director, of the Southern California Housing Rights Center (HRC). We, like many fair housing organizations throughout the county, provide fair housing services to local jurisdictions, usually cities and counties. HRC's services include (1) intake and investigation of housing discrimination complaints, (2) housing rights counseling, (3) education and outreach, and (4) legal services. We serve the residents of over 50 cities throughout Los Angeles and Ventura Counties and have assisted more than a 100,000 clients in the past five years.

HRC would not exist if not for support from HUD and local municipalities. HUD provides funding to local jurisdictions for fair housing programs that, in turn, fund HRC to provide fair housing services for its residents.

But this funding is cover for a fiction. The fiction is that our municipalities are achieving discrimination-free housing; it is a fiction because our governments are woefully under funding fair housing programs and, at the same time, making legal claims that they to be doing all they can to achieve discrimination free housing.

Let me explain how this fiction plays itself out.

The U. S. Department of Housing and Urban Development (HUD) requires "actions to affirmatively further fair housing" of all jurisdictions that receive funds from HUD. These funds,

most notably known through the Community Development Block Grant (CDBG), can be significant and many municipalities depend on them for various program. To receive these funds, HUD requires each jurisdiction to ***certify*** that it "will engage in fair housing planning by: (1) conducting an analysis of impediments to fair housing choice at the beginning of each five-year cycle; (2) Carrying out actions to overcome the effects of identified impediments; (3) Maintaining records and making available information and reports, including the analysis of impediments, and to document actions undertaken to eliminate identified impediments."

HRC has worked with many cities in drafting these plans, as cities are required to do every five years. The studies identify impediments to fair housing choice and recommend actions to address the identified impediments. But this is where the work ends.

The vast majority of plans sit on the shelf and collect dust. Put simply, cities take absolutely no action based on the plan. The impediments remain impediments. Why? Because any action requires funding and resources not already allocated to develop and carry out plans that would actually address the impediments to fair housing.

In short, the status quo continues. In the 10 years I have worked in fair housing, I have never worked with a local jurisdiction that has funded anything more that basic fair housing services. Yet study after study identifies many impediments far beyond basic services, such as conducting studies on segregation, coordinating advertising efforts, conducting systemtic testing in sales and mortgage lending, and coordinating widespread outreach efforts to non-English speaking communities.

Let me give you some examples.

<u>EXAMPLE #1:</u> In October 2003, the City of El Monte completed an Analysis of Impediments Study which recommended the City continue to provide basic services such as the ones HRC provides. In addition, the AI recommended that the City conduct: (1) a study of housing segregation trends in the City of El Monte, (2) a study on patterns of discrimination against families with children in El Monte, (3) an examination of the housing concerns of female headed households, and (4) an examination of mortgage lending patterns in El Monte. The City has never done anything to address the recommendations made in the AI study.

EXAMPLE #2: Los Angeles' 2005 AI identified two relevant impediments. It recommended the City expand the scope of its fair housing services to address "discriminatory practices in the homebuyer process. Specifically, audits/testing may need to be performed periodically for home sales and lending." It also recommended the City continue the Don't Borrow Trouble campaign, which provides counseling to those in troublesome loans facing default. The City has not provided additional funding to conduct sales or lending testing or to continue the Don't Borrow Trouble Campaign.

Many AI studies make recommendations similar to those above. Since nothing is done following the studies, simply going through the motion of completing the study must be enough. Nor have I heard of HUD requesting a plan to address the impediments, or for documentation showing what was done to address each impediment. These plans should address funding and a cost plan for how these impediments will be addressed. The amount of funding needed to address identified impediments should be determined independently by each jurisdiction since each jurisdiction will have different impediments.

I know the counter argument. In the constant battle to fund necessary social services on typically declining budgets, why would fair housing stand out among the rest of competing concerns?

Well, I'll give you one reason that may surprise you coming from me. I won't argue that we've made far too little progress in 40 years of combating housing discrimination, although it's true. Or that this failure by our government leaves literally thousands of discrimination victims with nowhere to turn, although that's true, too. Or that housing is one of the most basic needs of Californians, although that's true, too.

Here's a different reason: it's the law. The law requires not just that cities identify impediments, but that cities do something to overcome these impediments. Those cities who take no action, but who certify they are "affirmatively furthering fair housing" in order to obtain their HUD-money, are breaking the law by making false claims to the government. HUD is the government agency who could force compliance, but chooses not to.

Fair housing organizations are starting to take matters into their own hands, however. With the federal government abstaining from prosecuting cities' rampant law-breaking, a fair housing

organization in New York is suing the county for millions of dollars in connection with the county's false certifications to HUD about what it was doing to combat housing discrimination in its jurisdiction.

Other than the weather and a tremble or two, I see nothing different here than in New York. Southern California's cities better take note.

The National Commission on Fair Housing and Equal Opportunity
Los Angeles, September 9, 2008
Testimony of Bonnie Milstein
(Panel 3)
Former Director, FHEO Office of Program Civil Rights Compliance

Honorable Commission Members:

I have been invited to testify before you today because of my work in civil rights as a federal government employee and as an advocate for the rights of individuals with disabilities. I have served four Administrations in two federal agencies. From 1976 to 1982, I was Deputy Assistant General Counsel for the Office for Civil Rights in the U. S. Department of Health, Education and Welfare under Presidents Ford, Carter and Reagan. From 1994 to 1996, I was Director of FHEO's Office of Program Civil Rights Compliance in the U.S. Department of Housing and Urban Development under President Clinton. In 1996, I became Regional Director of FHEO's Office of Program Civil Rights Compliance in San Francisco.

As the Commissioners know, the money flowing from HUD to states, cities, businesses, institutions and housing providers throughout the country comes with civil rights responsibilities. My job was to enforce those responsibilities primarily through

- Title VI of the Civil Rights Act (42 U.S.C. Sec. 2000 et seq.),
- Age Discrimination Act of 1975 (42 U.S.C. Sec 6101, et seq.),
- Section 504 of the Rehabilitation Act (29 U.S.C. Sec. 794),
- Title II of the Americans with Disabilities Act (42 U.S.C. 12131, 12132, 24 CFR 35.190[b][4]),
- Architectural Barriers Act (42 U.S.C. 4151 et seq.),
- Executive Order 12892, Leadership and Coordination of Fair Housing in Federal Programs: Affirmatively Furthering Fair Housing (59 Fed. Reg. 2939, 1/20/1994),
- CDBG Civil Rights Certifications (42 U.S.C. 5304(b)(2), 24 CFR 91.225[a][1]), and
- Section 109 of the Housing and Community Development Act of 1974 (42 U.S.C. 5309).

The laws prohibit recipients of the funds from using them to establish or perpetuate discrimination. It is HUD's task, as it is of each federal agency, to ensure that its funding recipients understand and comply with this mandate. To fulfill this task, HUD, as grantor, must also be HUD, the civil rights enforcer. The Department must convey this message to its staff and to its recipients if it is serious about being effective. It is much easier to give money than it is to withhold it. Secretary Cisneros and Secretary Kemp, both of you forcefully and consistently reinforced HUD's civil rights role. You did so through enforcement of the laws, but you also did by making FHEO an equal partner with the program offices that manage and distribute HUD funds.

One of the many examples of enforcement successes involved the country's second largest Housing agency, the New York City Housing Authority (NYCHA). A group of public interest organizations had sued NYCHA in 1995 for failing to provide the required numbers of accessible apartment to tenants with disabilities and for failing to comply with other Section 504 requirements. HUD was not a party to the suit, and could have waited for years of litigation to resolve the complaint. Instead, we formed a team consisting of the Offices of General Counsel (OGC), Public and Indian Housing (PIH), Policy, Development and Research (PD&R), and Office of Program Civil Rights Compliance, that I was directing. We travelled to New York together for several months, meeting with NYCHA officials.

NYCHA contended that the number of tenants, applicants, and members of the eligible population who had qualifying disabilities, did not justify Section 504's requirement that 5% of the units be accessible and 2% be useable by tenants with hearing and vision disabilities. They insisted that enough of their 181,000 apartments were accessible to meet the need and that the New York FHEO and PIH Offices had given them many waivers over the years, even though the Section 504 regulations make no mention of waivers. NYCHA also had an undisputed backlog of more than 13,000 requests for reasonable accommodations from current tenants.

Although PIH and FHEO had collaborated on several Section 504 guidance and enforcement matters, the Office of General Counsel had never taken as active a role, nor had statisticians from PD&R. HUD's statistician and NYCHA's conducted simultaneous analyses that convinced NYCHA that it needed a minimum of 9,000 fully accessible units. The age of the buildings and the size of the elevators led to more disputes that required a specific elevator accessibility study. That study's results led to NYCHA's agreement to expand the number of accessible units in nearby buildings when the original buildings were too old or too narrow to generate the required 5%.
Similar issues arose during the course of nearly a year of negotiation, study, surveys, and policy clearance within HUD. The effort resulted in a 1996 Voluntary Compliance Agreement that put NYCHA on firm management reform and construction/rehabilitation schedules, and that included modification and accommodation tenant request forms that other housing authorities have since adopted. Our HUD team hoped that we would be able to replicate our successful team approach that included FHEO, OGC, PD&R, and the appropriate program office. Unfortunately, the Administrations changed, HUD's budgets and staff were downsized, and the Department chose not to adopt the strategy. See, National Council on Disability, *Reconstructing Fair Housing*, November 2001.
In the past 8 years, HUD's failure to address its civil rights responsibilities as meaningfully as its funding responsibilities has generated civil rights conflicts in HUD programs and among its recipients. It has increased FHEO's workload. It has undermined FHEO's credibility and strength within the agency and in public. The following are some examples.

<u>Accessible Public Housing Units</u>
For the populations of extremely low income, very low income and low income homeseekers, housing developed through HUD programs is often the best source of housing. For those who require accessible housing, HUD subsidized housing is often the only source of housing. *See, "Accessible Homes? Not Really, Say Disabled Residents," New York Times, 8/27/08.* Yet, the Department and the Administration have not only requested inadequate budgets but have stymied the production of adequate supplies of affordable and accessible housing by failing to enforce civil rights mandates and by issuing guidance that was misleading and harmful.

Under HOPE VI and other HUD programs, thousands of accessible and adaptable public housing units have been razed. The buildings were often blighted beyond recovery, and should have been replaced. But HUD failed to adopt the former "one-for-one" requirement of earlier Administrations or

to prioritize the replacement of accessible housing. Many new units have been built as townhomes, simply adding to the housing crisis faced by disabled individuals and families, and particularly distressing in light of the elderly population bulge.

Even those who are public housing tenant continue to face continuing discrimination from Housing Authority staff unfamiliar with the civil rights requirements. PIH issued an excellent Occupancy Guidebook in 2003, and, more recently, Accessibility Notices. Unfortunately, the Department chose not to support the publication with adequate and on-going notification and training for both HUD and Housing Agency staff. Too often, tenant advocates have been the first to bring the Guidebook and other HUD Notices to Housing Agency staff attention during affirmative litigation and eviction actions.

Homeownership and Section 504

The Section 504 regulations unambiguously apply to the homeownership programs that were funded the year that the regulations were published, 1988. Until this Administration, HUD applied its program related civil rights requirements to the current version of the program. Instead, HUD has promoted ambiguity about 504's continuing applicability to the newer Homeownership regulations and has published advice that is inconsistent with the un-amended 504 regulations and misleading. Because of this, HUD is responsible for the construction of inaccessible homes that were required to meet Section 504 accessibility mandates.

The 504 regulations require a percentage of newly constructed housing to be built as accessible to individuals with mobility and sensory impairments. "New multifamily housing projects . . . shall be designed and constructed to be readily accessible to and usable by individuals with handicaps." 24 C.F.R. 8.22(a). A minimum of five percent of the total dwelling units or at least one unit in a multifamily housing project, whichever is greater, shall be made accessible for person with mobility impairments. An additional two percent of the units (but not less than one unit) in such project shall be accessible for persons with hearing or visual impairments. 24 C.F.R. 8.22(b)
Similarly, 24 C.F.R. 8.23 imposes similar minimum unit requirements when existing housing undergoes substantial renovation. In both new construction and substantial alteration, the Department may prescribe a higher percentage based on local needs. A "multifamily housing project" is defined as a project containing five or more dwelling units. 24 C.F.R. 8.3. Thus, HUD funded single family homes that are built as part of a single project and that produce more than 5 homes, must include 5%, or at least one home, that is accessible to wheelchair users and 2%, or at least one home that meets the needs of occupants with hearing or vision disabilities.

Notice CPD-00-9 (12/26/2000), issued by HUD's Office of Community Planning and Development (CPD), advised HOME and CDBG recipients that "with respect to Section 504, this Notice does not address the applicability of Section 504's physical accessibility requirements to homeownership programs financed with HOME/CDBG assistance." CPD's more recent 2005 Homeownership Accessibility Notice -05-09 repeats the same Note and mischaracterizes Section 504's applicability to homeownership programs by stating, "For purposes of this Notice, the references to multifamily housing projects covered by Section 504 only apply to multifamily *rental* housing projects" (emphasis added). In effect, the current HUD Administration is telling recipients that Section 504 does not apply to Homeownership programs. The Administration is well aware of the firestorm that would ensue if they opened the Section 504 regulations to change through the Administrative Procedures Act. Instead, HUD has chosen to accomplish its goal of limiting the applicability of Section 504 by using Departmental Notices as its back door route.

The Office of Public and Indian Housing similarly denies that Section 504 applies to its homeownership program. In guidance to Housing Agencies for homeownership projects funded through HOPE VI, HUD states, "The HOPE VI Program *encourages* PHAs to include 5% of for-sale units accessible for people with mobility impairments and 2% for people with hearing and vision impairments." Notice PIH 2002-01 (1/22/2002), "Program Specific Compliance/Activities, Section B(2) HOPE VI. In fact, the 504 regulations require, rather than encourage Housing Agencies using HOPE VI for new construction to ensure that five percent of the units are accessible for people with mobility impairments and two percent are accessible for people with hearing and vision impairments. 24 C.F.R. 8.3, 8.22(b).

The result of HUD's incorrect interpretation of the civil rights law is serious. Given the growing numbers of elderly Americans, and housing crisis that has faced elderly and younger home seekers with disabilities for years, HUD is funding the construction of more *inaccessible* housing. HUD is not fulfilling its Section 504 federally conducted responsibility to prevent the use of our tax dollars to perpetuate the type of disability discrimination addressed by the Supreme Court in *Olmstead v. L.C.* , 527 U.S. 581.

In 1999, the Supreme Court decided that the unnecessary institutionalization of individuals with disabilities, when home and community-based care would meet their needs, violated the Americans with Disabilities Act (ADA) and constituted discrimination based on disability. The Court rejected the State of Georgia's defense that it didn't have enough housing in the community to be able to release patients who were ready for release. Disability and civil rights advocates demanded that the Federal government address barriers that Federal agencies posed to the creation of adequate numbers of affordable, accessible housing. The President responded with the "New Freedom Initiative," Executive Order, E.O. 13217. It directed six federal agencies, the Departments of Justice, Health and Human Services, Education, Labor and Housing and Urban Development and the Social Security Administration to "evaluate the policies, programs, statutes and regulations of their respective agencies to determine whether any should be revised or modified to improve the availability of community-based services for qualified individuals with disabilities" and to report back to the President with their findings.

In a less than candid response to the White House "New Freedom Initiative" request for information on how the agency was assisting individuals with disabilities secure housing in their communities. HUD listed, as an "[e]xample of how its CDBG Program address the needs of persons with disabilities…[a]ssistance to support homeownership for persons with disabilities and promote full access to community life." Notice CPD-05-03, 6/3/2005, and, www.hud.gov/offices/fheo/disabilities/eorder13217.cfm. Of course, the opposite is true. HUD has clearly communicated to recipients of all of its Homeownership funds that they need not worry about complying with Section 504's accessibility requirements. (The Fair Housing Act does not require single family homes to include the Act's universal design requirements for new construction.)

Designated Housing

In the "Designated Housing" program, HUD's guidance to Public Housing Agencies also reduced housing resources for individuals with disabilities. Since 1992, federal law has permitted public and private HUD assisted housing providers to restrict or exclude people with disabilities under age 62 from residing in "elderly" public housing and in Section 8 project -based apartments "for the elderly." 42 U.S.C. 13,611. Prior to the 1992 law, these units were available on an equal basis to both elderly and disabled applicants. In 1996, Congress amended the law to require less documentation from

housing providers that the allocation plans designating housing as elderly-only would not disproportionally and negatively affect non-elderly individuals with disabilities.

HUD altered its mandated review of the allocation plans first by removing their review from Headquarters to the Strategic Applications Center in Chicago. When HUD transferred review authority to Regional Offices, the Department's website also eliminated data showing the number of designated units, applications, replacement subsidies and other nation-wide information. Finding designated projects now requires a Housing Agency by Housing Agency review. See, Notice PIH 2005-2 (1/5/2005). At the same time, HUD published new procedures that ignored HUD's own public participation regulations in, "Review of Designated Housing Plans: A HUD Processing Guidebook for Public Housing Headquarters and Field Staff (undated)." The regulations required that Housing Agencies notify the public of their draft Allocation Plan, provide a 30 day comment period, hold a public hearing, and make available free and accessible copies of the Plan. The final Plan must identify the groups consulted and comments submitted. 24 CFR 945.203(b), (c). The Guidebook contains none of these requirements.

HUD's Budget and Discrimination

HUD, research institutions and non-profit housing and disability organizations all agree that individuals with disabilities are among the worst housed people in our country. HUD's Worst Case Housing Need studies consistently highlight elderly households, families with children and non-elderly disabled households without children as having the most difficulty finding and retaining adequate housing. HUD estimates that 542,000 of the 6 million renters with worst case housing needs are individuals who have disabilities, are not elderly and have no children.

The Technical Assistance Collaborative (www.tacinc.org) reports that the more accurate number of this population numbers 1.3 – 1.4 million households. The Consortium of Citizens with Disabilities (www.ccd.org) estimates that the number rises to 2.3 - 2.4 million households when disabled families with children are added. In other words, 50% of all non-elderly households with worst case housing needs include adults with disabilities. See, Ann O'Hara, et al, *Priced Out in 2006: People with Disabilities Left Behind and Left Out of National Housing Policy,* www.tacinc.org. Given these statistics, HUD's failure to include accessibility considerations into all of its construction and demolition policies, especially in public housing, makes the Department complicit in this housing and civil rights crisis.

Finally, the saddest housing issue has been the country's lack of commitment to decent, safe, affordable housing. Cushing Dolbeare and Sheila Crowley graphically demonstrate how "1976 was the high watermark of subsidized housing assistance, a level never previously achieved and never duplicated." *Changing Priorities: The Federal Budget and Housing Assistance, 1976-2007*, National Low Income Coalition, August 2002, p.9. We now have more families in "worst case housing" situations than in subsidized housing. HUD and the Administration have contributed to this tragedy. Each year, the Department has submitted budget requests for less funding than the year before. Even as it touts its support for accessible housing, the Department has requested Congress to reduce funding for rental subsidies. It has repeatedly proposed to eliminate the development of new units under the Section 811 Supportive Housing for Persons with Disabilities program – the federal program specifically created to house tenants with disabilities who lost their housing when it was designated for elderly only and which is also intended to enable thousands of people to move from institutions into their communities. See, Ann O'Hara, et al, "Opening Doors: Priced Out in 2006: People with Disabilities Left Behind and Left Out of national Housing Policy," www.tacinc.org, July 2007.

For Fair Housing and civil rights purposes, the loss of funding for HUD programs and the decreasing supply of housing means that Housing Agencies struggle with meeting the accessibility needs of their ageing populations when, year after year, they receive less than 100% of their approved budgets. HUD's response has been to tell Housing Agencies across the country that they haven't operated efficiently. As an example of how the agencies can save money, HUD has told them to review all of the reasonable accommodations that the Housing Agencies provided to their tenants, often only after protracted litigation. Tenants have had to try to prove, once again, that they need a second bedroom to house their medical equipment or their personal care attendant. These tenants are often the least likely to have private health care professionals whom they can call for the written confirmation that the requested accommodation is necessary.

HUD's message has not been lost on Public Housing directors. When I recently presented Fair Housing and Section 504 training to public housing staff at the request of their director, she thanked me, saying that her staff needed to know the law. Then she added, "But you know, all these so-called disabled tenants are just trying to get one over on us."

Public housing providers are not the only ones struggling to provide affordable housing. Private developers compete for the low income housing tax credits that are now, by default, the largest source of affordable housing. LIHTC housing rarely if ever creates housing affordable to extremely and very low income home seekers. The fact that the Department of the Treasury refuses to define the credits as federal assistance, and therefore not required to meet Title VI or Section 504 mandates is a separate scandal.
The scramble for affordable housing and rental subsidies becomes real when thousands stand in line for a chance to win the lottery for one of 50 new apartments. Policy makers pit one protected group against another for scarce housing resources, resulting in non-elderly individuals with disabilities fighting elders for too few, accessible and affordable apartments. Nursing homes and jails were never meant to substitute for affordable housing, and administrators continue to hold thousands of people who are ready to move back to their communities because of the absence of affordable housing.

Thank you for the opportunity to appear before this Commission.

FAIR HOUSING & "FAIR SHARE" PLANNING
California's Housing Element Law & Inclusionary Zoning

Testimony of Michael Rawson (Director, California Affordable Housing Law Project/ Public Interest Law Project)
- Before the National Commission on Fair Housing & Equal Opportunity -
September 9, 2008, Los Angeles, California

Members of the Commission:

I am Michael Rawson, director of the California Affordable Housing Law Project of the Public Interest Law Project, a state litigation support and policy center for California legal services and public interest firms. Today I will talk about the critical importance of regional "fair share" planning for affordable housing, focusing on California's Housing Element Law, an area on which I have concentrated for much of my career. I also will touch upon inclusionary zoning– the primary tool available to state and local governments to ensure the development of affordable housing on the foundation laid by fair share planning.

Land Use and Equal Opportunity–from Exclusion to Inclusion

As Professor powell and others have explained so eloquently, housing is the key to opportunity. Where people live determines their *access* to schools, jobs, health care, transportation, places of worship, recreation and opportunities for interaction with folks from diverse backgrounds. It determines their *security* from pollution and crime. It is central in determining quality of life. And land use laws are central to determining where people live.

Prejudice and economic inequality loom largest, of course, as factors limiting equal opportunity to live in the community of one's choice, but land use laws are the instrument of the exclusion, sometimes intentionally so, sometimes unwittingly. Since the advent of zoning in the early 20th Century, communities have zoned out or segregated apartments and multifamily high density housing from areas with the best jobs, schools and transportation options. This "exclusionary zoning," as it came to be called, is in some ways more insidious than base discrimination by sellers and landlords, for it creates citadel communities surrounded by motes of restrictive zoning that insulate the inhabitants from integration, deprive the excluded of opportunity and entrench patterns of segregation.

The road to inclusion and integration, then, necessarily requires a rethinking of the role of traditional zoning in determining residential land use. Inherent in the power to exclude land uses and the people that go along with them is the power to include. But, just as it took federal and state housing discrimination legislation to seriously challenge the ingrained discriminatory practices in housing sales and rentals, getting local governments to look beyond the parochialism and prejudice embodied in local zoning practices requires similar state and federal mandates.

"Fair Share" Planning for Affordable Housing–Essential Response to Exclusion

State courts took the lead in mandating local planning for affordable housing beginning with the landmark case of *Southern Burlington County N.A.A.C.P. v. Township of Mt. Laurel*.[22] The court held that the New Jersey Constitution obligated local governments to use their land use powers to affirmatively plan for and make available the reasonable opportunity for development of low and moderate income housing to meet needs of people desiring to live within the community.

State Legislature's also acted, adopting legislation prohibiting discriminatory land use practices and mandating that communities affirmatively plan for inclusion of affordable housing. California went first, requiring all communities to adopt a housing element[23] that makes "adequate provision" for the locality's "fair share" of the housing needs of the region for all income categories. This year the United Nations Committee on the Elimination of Racial Discrimination recognized California's Housing Element Law as model legislation addressing racial discrimination.[24]

California's Housing Element Law–Significant Aspects[25]

A. Preparation and Contents

- *Allocation of Fair Share Needs.* Every five years,[26] the California's Department of Housing and Community Development (HCD) determines the housing need for each region for *very low, low, moderate and above moderate* income households. Next, the regional planning agency–the council of governments (COG)–allocates to each community a share of the need for each income category.

- *Assessment of Housing Needs and Constraints to Development*. The element must first include a detailed inventory sites available, including an analysis zoning densities and sewer and water service and analysis of constraints to development.

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[22] 336 A..2d 713, *appeal dismissed and cert. denied,* 423 U.S. 808 (1975) (*Mt. Laurel I*)

[23] California Government Code §§ 65580 – 65589.8 (the "Housing Element Law").

[24] UN Committee on the Elimination of Racial Discrimination, *Concluding Observations-United States,* CERD/C/USA/CO/6, p. 2 (Geneva, February 2008). The Committee meets regularly to review the progress of nations party to the Convention On the Elimination of all Forms of Racial Discrimination (CERD). The Housing Element five year plan system also served as the model for HUD's five year Consolidated Plan system.

[25] *See* the detailed overview of the law excerpted from the *California Housing Element Manual: Law, Advocacy and Litigation* (California Affordable Housing Law Project (2nd Edition, April 2008)) included in the materials for today's hearing.

[26] The five year cycle will become eight years for some communities beginning in 2011 as the housing element cycle and regional transportation planning cycles are brought into sync. *See* California Senate Bill 375 (Steinberg) (2007-2008 Legislative Session) now awaiting the Governor's signature.

- *Special Housing Needs.* The element must also assess the special needs for housing, including the need for emergency shelters and the needs of farmworkers and persons with disabilities.

- *Program of Actions.* After the assessments, the element must incorporate specific actions to rezone adequate sites that will be available for development during the five year planning period to accommodate the unmet needs.

    - The sites rezoned for very low and low income households needs must be available for development "*by right*" at *multifamily* densities (*i.e.* developable without the issuance of discretionary permits such as conditional use permits).
    - The program must also identify sites, developable by right, for unmet need for *farmworker housing* and *emergency shelters*.

B. Enforcement & Incentives

Administrative & Judicial Review. HCD reviews all draft housing elements. If found out of compliance, the locality must make changes *or* it may adopt the substandard element but risk litigation in which the element is not entitled to a presumption of validity. Failure to adopt or implement an adequate housing element exposes the community to litigation.[27] If a court finds the element does not substantially comply with the statute, the court *must* order revision of the element *and* restrict the authority of the community to approve development until it adopts an adequate element. The possibility of this remedy has proven a powerful incentive for local government compliance.

Incentives. A finding of compliance by HCD is generally included as a rating and ranking criteria in housing and community development programs administered by the state, including the State CDBG and HOME programs.

C. Critical Complementary Laws

Affordable Housing Anti-Discrimination Law.[28] This law prohibits discrimination by local government against affordable housing developments. Communities may not deny or impose conditions or development standards on a development based on its receipt of subsidy or because of occupancy by lower income households.

"Anti-NIMBY" Law.[29] This statute requires approval of affordable housing developments on sites designated for residential development in the local general plan, including the housing element, unless the development would have a specific adverse and unavoidable impact on objective health and safety standards that cannot be mitigated.

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[27] *See* California Government Code § 65750 *et seq.* and § 65584.09

[28] California Government Code § 65008.

[29] California Government Code § 65589.5

D. Results[30]

Results are hard to measure because the necessary rezoning doesn't necessarily coincide with the necessary funding. But, anecdotally, our experience is that when sites are rezoned as part of the housing element process, affordable housing will always follow on some of them. And, HCD's analysis of the impact of the law at the end of 2007 found:

- 80% of California's 535 local governments have adopted elements found in compliance by the department.
- 98% of the multifamily housing permits issued in California are issued in jurisdictions with approved housing elements–communities that have rezoned sites to accommodate their fair share of affordable multifamily housing.

Other States [At least 25 states require some level of planning for affordable housing][31]

New Jersey. One difference between California's Housing Element Law and New Jersey's implementation of the *Mt. Laurel* decision is the availability of an express "builders remedy" in New Jersey. A developer in a community without a state certified fair share plan may bring a suit if denied approval of an affordable housing development.

Massachusetts, Connecticut, Rhode Island and Illinois. These states have so-called "anti-snob" laws that provide affordable housing developers with an administrative or judicial appeal that can overturn a decision by a local government.

Recommendations for Legislative Action

1. State fair share planning statutes should combine the attributes of the laws of California and other states, including *regularly updated housing plans, mandatory zoning for by-right development of multifamily housing, judicial remedies that include suspension of development approval powers, a builder's remedy and an appeals process outside of the jurisdiction.*

2. Amend the Fair Housing Act and state fair housing laws to a) prohibit discrimination against affordable housing developments and b) prohibit the exclusion of multifamily housing from any community.

3. Federal Consolidated Plan statute should condition CDBG funding on local governments zoning sufficient multifamily land to accommodate their very low and low income housing needs.

Inclusionary Zoning–Important and Proven Companion to Fair Share Planning

[30] From HCD's *2007 Report to the Legislature—Status of California Housing Elements.*

[31] ABA, *The Legal Guide to Affordable Housing Development*, Chapter 1 (2005)

To borrow from the global warming crisis lexicon, we are approaching the "tipping point" at this stage of land use in America. As we strive to hold the line on the development footprint and land and resources dwindle, we risk raising the drawbridge on the road to inclusionary communities and acceptance of permanent exclusion–acceptance of systemic segregation. *It is absolutely critical that further housing development, whether it be in new neighborhoods or urban infill, include housing affordable at below market prices and rents*.

A. Inclusionary Housing

Inclusionary or "mixed income" housing requirements generally have been adopted on the local government level, although there are also some regional and statewide requirements. The require that a percentage (usually for 10% to 20%) of units in all new construction (and often redeveloped or converted units) be affordable to persons of lower and moderate incomes. Most allow alternatives to onsite development of the affordable units, including off-site development, payment of "in lieu" fees and land dedication.

B. Proven Effective

Successful inclusionary zoning programs have been in place in Maryland, California and other parts of the country for over 30 years. In Montgomery County, Maryland, over 13,000 were produced through a program up to 15% of the units in new developments to be affordable.[32] By June 2007 in California, over 170 communities had adopted inclusionary zoning requirements.[33] Since 1999 alone, these programs had produced over 29,000 units of affordable housing in California.

C. Chosen Tool of Fair Share Compliance

The phenomenal increase in inclusionary zoning ordinances in California can be attributed to a convergence of the dire need for affordable housing in California's escalating housing market and the obligation to comply with the Housing Element Law. When updating their housing elements, many communities, confronting the cost of producing affordable housing and the dwindling supply of land, concluded that inclusionary programs were critical to ensure supply of below market rate housing.

Recommendation: Amend HUD's Consolidated Plan statute to condition CDBG funding on proof that communities require lower income housing in all new projects.[34]

[32] Brunick, Nicholas, *Practice Inclusionary Zoning*, 9 Zoning Practice 2 (American Planning Association, Sept. 2004).

[33] Nonprofit Housing Association of Northern California, *Affordable By Choice: Trends in California Inclusionary Housing Programs* (June 2007).

[34] The ConPlan's Analysis of Impediments must already certify removal of building and zoning barriers.

Informational Materials

Articles and Summaries

Examining Racial and Ethnic Residential Segregation Statistics for Denver, Los Angeles, Phoenix, Portland, San Francisco, and Seattle

Introduction

Neighborhood integration has been a long-standing goal of public policy and public opinion. The 1960s brought with it promise of improved African-American-white relations and decreased disparity between African-Americans and whites in key socioeconomic characteristics such as income, occupation, and education. The Civil Rights Acts of 1964 and 1968, plus a variety of legislation at all governmental levels gave expression to the hope of achieving the American ideal of equal opportunity.[35] Forty years after the passage of the Fair Housing Act in 1968, we examine trends in residential segregation to assess progress towards achieving the goal of residential integration. This memorandum focuses on trends in residential segregation in the West since 1940, in the cities of Denver, Los Angeles, Phoenix, Portland, San Francisco, and Seattle.

Executive Summary

From 1940 to 2000 the West saw steady declines in overall residential segregation. By 2000, the region was the most integrated part of the country.[36] While this general trend gives cause for optimism, a closer examination indicates that the declines were not registered equally across the region or for all minority groups.

In spite of steady declines over the past 60 years, the overall level of African-American residential segregation remains high, especially in Los Angeles and San Francisco. African-Americans continue to be the most segregated minority group in the West.

Hispanic segregation was initially moderate, on average only a quarter to half that of African-Americans. By 2000, however, the level of Hispanic segregation surpassed that of African-American populations, particularly in Los Angeles, Phoenix, and Denver.

Asians are generally less segregated than either African-Americans or Hispanics. The west coast has the largest concentrations of Asian populations and well-known Asian

[35] Thomas L. Van Valey, Wade Clark Roof & Jerome E. Wilcox, *Trends in Residential Segregation: 1960-1970*, 82 AMERICAN JOURNAL OF SOCIOLOGY 826 (1977).

[36] *See*, Edward L. Glaeser, Jacob L. Vigdor, *Racial Segregation in the 2000 Census: Promising News* (April 2001), *available at* http://www.brookings.edu/es/urban/census/glaeser.pdf.

enclaves have developed ("Chinatown," "Koreatown," "Little Vietnam," etc.). The highest levels of Asian segregation occurred in metropolitan areas on the west coast. Since 1970,[37] residential segregation has increased slightly for Asians across the West, but remained relatively low.

Trends in Racial and Ethnic Residential Segregation

Examining 1940-1960

The systematic study of residential segregation in cities and metropolitan areas begins with Census data from 1940.[38] This section focuses on what is perhaps the most comprehensive study of segregation for the period of 1940-1960: *Indexes of Racial Residential Segregation for 109 Cities in the United States, 1940 to 1970* by Annemette Sorensen, Karl E. Taeuber & Leslie J. Hollingsworth, Jr.[39] This study determined levels of segregation by examining evenness, which is the most common measure of segregation. Evenness is measured using the dissimilarity index, which ranges from 0 (complete integration) to 1 (complete segregation) and captures the percentage of a group's population that would have to move for each neighborhood to have the same percent of that group as the metropolitan area overall.[40]

During the 1940s, a high degree of residential segregation existed in virtually all American cities, including western cities.[41] In 1940, the West region had a mean dissimilarity index score of 82.7. That mean index score rose slightly in 1950 to 83.0. By 1960, the West's score had declined to 76.4. Although the West region had the lowest mean indexes among the four regions in each of these periods, index scores of 76.4 to 83.0 are still quite high. The dissimilarity index scores for Denver, Los Angeles, and

[37] The first comprehensive analysis of Asian residential segregation was published in 1987 and analyzed trends based on 1970 census data. *See* Douglas S. Massey & Nancy A. Denton, *Trends in the Residential Segregation of Blacks, Hispanics, and Asians: 1970-1980*, 52 AMERICAN SOCIOLOGICAL REVIEW 802.

[38] The 1940 Census was the first decennial census to provide information on the number of white and nonwhite households residing in each city block. The census did not start accounting for black or African-American races until 1970; thus, study of 1940 to 1960 compares white and nonwhite populations. *See*, Annemette Sorensen, Karl E. Taeuber & Leslie J. Hollingworth, Jr., *Indexes of Racial Residential Segregation for 109 Cities in the Untied States, 1940 to 1970*, 8 SOCIOLOGICAL FOCUS 125, 126-127 (1975).

[39] *See*, Annemette Sorensen, Karl E. Taeuber & Leslie J. Hollingworth, Jr., *Indexes of Racial Residential Segregation for 109 Cities in the Untied States, 1940 to 1970*, 8 SOCIOLOGICAL FOCUS 125-42 (1975).

[40] *Id*. at 126-127.

[41] *Id*. at 132 [see Tab 3].

Seattle[42] generally followed the same trend. San Francisco was an exception with its dissimilarity index consistently decreasing each decade. Ultimately, however, the scores show that the high levels of segregation evident in these cities in 1940 were not significantly altered by 1960.

Denver

In 1940, Denver had a dissimilarity index number of 87.9. In 1950, it registered a small increase to 88.9, consistent with the regional trend during this period. In 1960, Denver again followed the regional trend with its index number falling slightly to 85.5. Overall, Denver's dissimilarity index score dropped 2.4 points from 1940 to 1960, falling from 87.9 to 85.5. This was the highest level of segregation among the four western cities examined in this memo.

Los Angeles

In 1940, Los Angeles had a dissimilarity index number of 84.2. In 1950, Los Angeles also followed the regional trend, its index increasing to 84.6. In 1960, the dissimilarity index for Los Angeles decreased to 81.8. Overall, Los Angeles experienced the same modest decrease as Denver, falling 2.4 from 84.2 to 81.8. Los Angeles' index score shows that it was highly segregated in 1960.

San Francisco

In 1940, San Francisco had a dissimilarity index of 82.9. Unlike other cities in the region, San Francisco's segregation actually decreased in 1950 to 79.8. In 1960, its index fell further, to 69.3. Overall, San Francisco showed a significant decline in segregation, dropping 13.6 from 82.9 to 69.3. This decrease made it one of only five cities among the 109 included in the study that was below 70.0 in 1960.

Seattle

In 1940, Seattle had a dissimilarity index of 82.2. In 1950, like Denver and Los Angeles, Seattle's index increased slightly to 83.3. Following the regional trend, in 1960 it showed a decrease in segregation, falling to 79.7. Overall, Seattle experienced a 2.5 drop in its dissimilarity index score between 1940 and 1960, falling from 82.2 to 79.7.

Examining 1960-1970

The 1960s brought with it promise of improved African-American-white relations and decreased disparity between African-Americans and whites in key socioeconomic characteristics such as income, occupation, and education.[43] Yet these social and political changes did not translate into significant shifts in residential segregation in the West by the 1970 Census. While studies of residential segregation trends of the

[42] Sorensen et al. did not include Phoenix and Portland in their study.

[43] Thomas L. Van Valey, Wade Clark Roof & Jerome E. Wilcox, *Trends in Residential Segregation: 1960-1970*, 82 AMERICAN JOURNAL OF SOCIOLOGY 826 (1977).

1960s report general declines in western cities, these declines were not equal among the cities or minority groups.[44]

This section derives from two key studies of 1960s residential segregation. The first study, by Sorensen et al.,[45] compared two separate calculations for 1970: white vs. nonwhite and white vs. black or African-American. In Denver, Los Angeles, San Francisco, and Seattle, the study found the index scores for white vs. nonwhite dissimilarity dropped an average of 8.9 points during the 1960s. At the same time, the white vs. African-American index score was an average of 5 points higher than that for nonwhites in 1960. Even more striking is the study's finding that the average 1970 dissimilarity index for African-Americans (84.2) was 14 points higher than the average 1970 nonwhite score (70.2). This indicates that the African-American populations in these cities not only experienced much higher levels of segregation than other nonwhites, but that perhaps African-American segregation had even increased.

The second study referenced for this section is *Trends in Residential Segregation: 1960-1970* by Van Valey, Roof, & Wilcox.[46] They compared two sets of dissimilarity scores in their study, those for Central Cities ("CCs") and those for Standard Metropolitan Statistical Areas ("SMSAs"). Furthermore, their 1960 data were based upon white vs. nonwhite, while their 1970 data were based upon white vs. black or African-American. The study found that overall segregation scores had declined during the 1960s, with the greatest average decreases (11 points) occurring in the West. Moreover, the average West region 1970 SMSA score (65.8) and CC score (62.9) were about equal, indicating that minority groups were generally dispersed throughout the metropolitan areas rather than concentrated in the central cities.

Denver

According to Sorensen et al., Denver had a dissimilarity index score of 85.5 in 1960. They found that in terms of white vs. nonwhite, Denver's dissimilarity score had

[44] This memo focuses on two studies that generally agree to an overall decrease in segregation during the 1960s. *See* Thomas L. Van Valey, Wade Clark Roof & Jerome E. Wilcox, *Trends in Residential Segregation: 1960-1970*, 82 AMERICAN JOURNAL OF SOCIOLOGY 826 (1977); Annemette Sorensen, Karl E. Taeuber & Leslie J. Hollingsworth, Jr., *Indexes of Racial Residential Segregation for 109 Cities in the Untied States*, 1940 to 1970, 8 SOCIOLOGICAL FOCUS 125-45 (1975). A third study of 10 metropolitan cities conducted in the mid-1960s found decreased segregation in Sacramento, the only West region city included in the study. *See* Theodore G Clemence, *Residential Segregation in the Mid-sixties*, 4(2) DEMOGRAPHY 562-68 (1967).

[45] *Id*. Sorensen et al. did not include Phoenix and Portland in their study.

[46] *Id*.

decreased to 77.6. In terms of white vs. African-American, however, the authors found a much higher score of 88.9.

Van Valey et al., found that segregation in Denver increased slightly during the 1960s. In the Denver SMSA, the study reported that the city's dissimilarity index score rose from 84.6 in 1960 to 84.7 in 1970. Likewise, in the Denver CC, they found that the index score rose from 83.4 to 84.6.

Los Angeles

Sorensen et al. recorded a dissimilarity index score of 81.8 for Los Angeles in 1960. In 1970, they found this score decreased to 78.4 for white vs. nonwhite. The score for white vs. African-American was much higher, at 90.5. This was the highest African-American dissimilarity score reported by Sorensen et al. for a western city and was among the highest in the nation. Thus, while overall segregation appeared to have declined in Los Angeles during the 1960s, African-American segregation remained extremely high.

Van Valey et al. also found that overall levels of segregation decreased in Los Angles during the 1960s. The study reported that in the Los Angeles SMSA the dissimilarity index score fell from 89.2 in 1960 to 88.5 in 1970. The Los Angeles CC registered a slight increase from 85.4 in 1960 to 88.6 in 1970. Despite the overall decline, Van Valey et al. reported that Los Angeles was one of the top 10 most segregated cities in the United States in both 1960 and 1970.

Phoenix

According to Van Valey et al., segregation in Phoenix declined during the 1960s. In the Phoenix SMSA, the dissimilarity score fell 5.7 points, from 81.1 in 1960 to 75.4 in 1970. The Phoenix CC saw an even greater decline, dropping 7.7 points from 85.4 to 77.7. Contrary to the trend in most West region cities, Phoenix had more segregation in its CC that it did in its SMSA during 1970.

Portland

Van Valey et al. found that segregation decreased slightly in Portland during the 1960s. The Portland SMSA dissimilarity score fell from 81.3 in 1960 to 80.2 in 1970. The Portland CC also registered a decline during the decade, from 79.6 in 1960 to 77.4 in 1970. The slightly lower segregation in the Portland CC is consistent with the general trend observed in the West region at the time.

San Francisco

Sorensen et al. recorded a 69.3 dissimilarity index score for San Francisco in 1960. In 1970, Sorenson et al. noted the largest difference in the segregation levels of nonwhites and African-Americans among the cities examined in this memo. Nonwhite segregation scored 55.5, while African-American segregation scored 75.0. The 19.5 point difference in dissimilarity index indicates a significant difference in the housing situations between African-Americans and other nonwhites.

Van Valey et al. found that overall residential segregation decreased in San Francisco during the 1960s. The San Francisco SMSA fell from 79.4 in 1960 to 77.3 in 1970. The San Francisco CC also registered a decline, from 71.1 to 67.8. Similar to other western cities, minority groups do not appear to have been concentrated in the San Francisco CC in 1970.

Seattle

Sorensen et al. recorded a 79.7 dissimilarity index score for Seattle in 1960. In 1970, Sorensen et al. noted a large difference in the segregation levels of nonwhites and African-Americans. Nonwhite segregation scored 69.2, while African-American segregation scored 82.2.

The Van Valey et al. study also shows that segregation levels in Seattle generally declined during the 1960s. The Seattle SMSA score dropped by 5.2 points from 83.3 in 1960 to 78.1 in 1970. Likewise, the Seattle CC fell 5.5 points, from 82.2 to 76.7. Overall, Seattle trends were in line with those observed in other parts of the West: slight declines in overall segregation, while African-American segregation remained high.

Examining 1970-1980

During the 1970s, the west generally showed greater declines and lower overall residential segregation than other regions of the United States.[47] Still, segregation in some major western metropolitan areas remained high for African-Americans and actually increased for Hispanics.

Social and political changes begun in the preceding decades continued to influence conditions likely to affect racial segregation and isolation during the 1970s. Another important influence during the 1970s was the marked increase in immigration to the Untied States from Latin America and Asia. During the 1970's an estimated 4.5 legal immigrants and at least 20 million illegal immigrants entered the country.[48] These immigrants settled primarily in urban areas, such as Los Angles, New York, Chicago, and Miami. The rapid increase of minorities through immigration is relevant to residential segregation in two ways: first, it stimulates negative attitudes of natives towards those minorities, and, second, immigrants tend to concentrate in specific neighborhoods, where they have friends or relatives.[49]

Despite fair housing legislation, more tolerant white racial attitudes, and improved economic status among African-Americans, only modest declines in the level of African-

[47] *See* Douglas S. Massey & Nancy A. Denton, *Trends in the Residential Segregation of Blacks, Hispanics, and Asians: 1970-1980*, 52 AMERICAN SOCIOLOGICAL REVIEW 802; 813-817 (1987) [see Tabs 2 and 4].

[48] *Id*. at 803.

[49] *Id*.

American segregation were realized by 1980. The West had the strongest showing (-.182 on the dissimilarity index),[50] yet much of the decline occurred in rapidly growing, mid-sized metropolitan areas, such as Portland and Seattle, that contained relatively few African-Americans.[51] Residential segregation remained quite high in cities where the majority of urban African-Americans lived, including Los Angeles and San Francisco. Overall, African-Americans remained the most segregated minority group in the west.

Hispanic segregation was relatively moderate, although it rose markedly in areas with large Hispanic communities that experienced rapid growth through immigration.[52] Additionally, during the 1970s Hispanics became increasingly preponderant in many western metropolitan areas. For example, in Los Angeles, the Hispanic population exceeded 20 percent of the population while the percent of white population fell by 15 percentage points.[53] In contrast, little or no change in segregation was seen in other cities with large Hispanic populations, such as Denver and Phoenix that did not experience rapid growth through immigration.[54]

The level of Asian residential segregation remained low during the 1970s. This is generally attributed to the relatively low numbers of Asians in all metropolitan areas at the time.[55] Asians exceeded 5 percent of the metropolitan population in only 7 cities across the United States, all on the west coast, with San Francisco having the highest proportion (11 percent).[56] Because of the low concentrations of Asians, meaningful patterns were noted in only a few metropolitan areas. This memo will examine the trends in Asian residential segregation for Los Angeles and San Francisco.

This portion of the memo is based on results reported in *Trends in the Residential Segregation of Blacks, Hispanics, and Asians: 1970-1980* by Douglas S. Massey and Nancy A. Denton.[57] The authors used two methods of assessing segregation: evenness and exposure.[58] Evenness was measured using the dissimilarity index discussed above. Exposure was measured using the isolation index. Isolation index varies from 0 to 1 and

[50] *Id*. at 814 [see Tab 4].

[51] *Id*. at 812-813.

[52] *Id*. at 813-816.

[53] *Id*. at 806.

[54] *Id.* at 816.

[55] *Id.* at 814-816.

[56] *Id.* at 806.

[57] *Id*.

[58] *Id.* at 805-806.

measures the probability of contact between members of different races within census tracts of urban areas. Unlike the dissimilarity index, the isolation index takes into account the minority composition of the population.

Denver

BLACK OR AFRICAN-AMERICAN SEGREGATION

Residential dissimilarity between whites and African-Americans in Denver decreased significantly between 1970 (.876) and 1980 (.684). The -.192 change was more than twice the national average of -.098 and exceeded the regional average of -.182. Similarly, the level of African-American isolation also decreased, from .596 in 1970 to .411 in 1980.

HISPANIC SEGREGATION

Hispanic residential dissimilarity (.474) and isolation (.274) remained relatively low, showing little or no change during the 1970s. While Denver had a large Hispanic population, it did not experience the same rapid growth from immigration that affected segregation in other western cities.

Los Angeles

BLACK OR AFRICAN-AMERICAN SEGREGATION

Residential dissimilarity between African-Americans and whites decreased slightly between 1970 (.910) and 1980 (.811). Although the -.099 change was about equal to the national average of -.098, African-American segregation in Los Angeles remained among the highest in the nation.

Isolation also decreased slightly between 1970 (.703) and 1980 (.604), but remained significantly higher than the national average of .491. Moreover, the probability of African-American residential contact with whites in 1980 was only .165, one of the lowest in the country.

HISPANIC SEGREGATION

While African-American segregation decreased slightly during the 1970s, Hispanic segregation increased dramatically. Residential dissimilarity between Hispanics and whites increased from .468 in 1970 to .570 in 1980. This .102 change was the largest single increase among the metropolitan areas covered in this memo and far exceeded the national average of -.010. As discussed above, much of the increased Hispanic segregation in Los Angeles is attributed to the absolute and relative increase in the Hispanic population, particularly growth through rapid immigration.

Isolation also increased between 1970 (.378) and 1980 (.501). Even with this pronounced increase, the Hispanic isolation index still compares favorably to the African-

American index of .604. This is contrary to the expected result given the proportionality of each population. In 1980, Hispanics were 28 percent of the population compared to 12 percent African-American. Massey & Denton observed that, "other things equal, [the larger Hispanic population] should be more isolated than African-Americans."[59]

ASIAN SEGREGATION

Residential dissimilarity between Asians and whites in Los Angeles decreased slightly from .531 in 1970 to .431 in 1980. At the same time, isolation increased slightly, from .123 to .152. This is consistent with the pattern seen in other parts of the Unites States of small increases from a very low level of spatial isolation. Naturally, with the small relative numbers of Asians living in Los Angeles, Asians experience very low levels of isolation.

Phoenix

BLACK OR AFRICAN-AMERICAN SEGREGATION

The level of residential dissimilarity between African-Americans and whites decreased significantly during the 1970s (1970: .819; 1980: .594). The -.225 change was the largest change among all cities and groups examined in this memo and was more than twice the national average. Isolation also decreased significantly between 1970 (.385) and 1980 (.225).

HISPANIC SEGREGATION

Unlike Los Angeles, Phoenix saw very little change in Hispanic residential segregation during the 1970s. Dissimilarity increased by .009 to .494; isolation remained unchanged at .321. Although Phoenix had a large Hispanic population, it did not have the same rapid increase in immigration experienced by Los Angeles.

Portland

BLACK OR AFRICAN-AMERICAN SEGREGATION

Residential dissimilarity decreased between 1970 (.835) and 1980 (.685). Isolation also decreased, from .426 in 1970 to .316 in 1980. Notably, Portland experienced one of the greatest increases in probability of black-white interaction, .538 to .606.

The significant changes occurring in Portland's residential segregation are reflective of a general trend across the United States during the 1970s of lower levels of segregation in rapidly growing urban areas containing relatively few African-Americans.

[59] *Id.* at 813-814

HISPANIC SEGREGATION

Portland experienced modest changes in residential segregation among Hispanics. Residential dissimilarity decreased from .319 in 1970 to .250 in 1980. Hispanic isolation increased slightly (1970: .023; 1980: .028).

San Francisco

BLACK OR AFRICAN-AMERICAN SEGREGATION

Similar to Los Angeles, the level of residential dissimilarity between African-Americans and whites fell slightly in San Francisco, while the overall level remained high. Between 1970 and 1980, residential dissimilarity decreased from .801 to .717. African-American isolation also fell slightly during the 1970s, from .560 in 1970 to .511 in 1980.

African-Americans in San Francisco were nearly twice as segregated as Hispanics or Asians. Each group represented about 11 percent of the population in 1980. However, the probability of African-American contact with whites was only .299, compared to .582 for Hispanics and .564 for Asians. Similarly, black-white residential dissimilarity of .717 was significantly higher than Hispanics (.402) and Asians (.444).

HISPANIC SEGREGATION

Hispanic residential segregation levels increased between 1970 (.347) and 1980 (.402). Isolation also increased slightly from .192 to .193. While these are smaller increases than those registered in Los Angeles, they nonetheless reflect a pattern of increases in Hispanic segregation observed in major metropolitan areas experiencing rapid immigration during the 1970s.

ASIAN SEGREGATION

In 1980, San Francisco had the largest proportion of Asian population in the United States. Accordingly, it also had the highest level of Asian-white segregation, at .444. Yet, San Francisco still registered a modest decrease of -.042 in residential dissimilarity from its 1970 level of .486. Isolation increased slightly, from .210 to .232.

These statistics are consistent with the low levels of Asian segregation reported throughout the United States in 1980. Even in San Francisco, where the greatest level of Asian segregation was reported, dissimilarity was only half the level of the highest black-white dissimilarity index (in Chicago) and two thirds the highest Hispanic-white index (in New York).

Seattle

BLACK OR AFRICAN-AMERICAN SEGREGATION

Similar to Portland and Phoenix, African-American segregation in Seattle declined during the 1970s. Residential dissimilarity decreased .137, from .819 in 1970 to .682 in 1980.

Isolation also declined, from .427 to .294. Further, the probability of black-white residential interaction in Seattle was .544, which exceeded the national average of .376.

HISPANIC SEGREGATION

White-Hispanic residential dissimilarity decreased from .303 in 1970 to .213 in 1980. Isolation also decreased between 1970 (.031) and 1980 (.026).

Examining 1980-2000

The years 1980-2000 brought a general decline in African-American segregation to the west coast, but segregation was still higher in general for African-Americans than for other groups. African-American segregation levels remained particularly high in large metropolitan areas on the west coast, such as Los Angeles and San Francisco. The medium-sized metropolitan areas showed marked decreases in African-American segregation.

Though Hispanics are, in general, less segregated than African-Americans, increasing numbers due to immigration have resulted in an increasing level of segregation. This phenomenon has resulted in Hispanics living in far more isolated settings than they did in 1980. In particular, Hispanic segregation has surpassed that of African-American populations in the Southwest, particularly in Los Angeles, Phoenix, and Denver.

Asians are usually less segregated than either African-Americans or Hispanics. The highest levels of Asian segregation generally occur in the metropolitan areas on the coast, Los Angeles, San Francisco, and Seattle. The Asian population was not large enough in Denver and Phoenix for those metropolitan areas to be included in the 1980-2000 residential segregation studies.

Following the 2000 Census, several groups of researchers decided to examine the extent of change in racial and ethnic residential segregation for the period 1980-2000. This section focuses on what is perhaps the most comprehensive of these studies, which was conducted on behalf of the U.S. Census Bureau by John Iceland, Daniel Weinberg & Erika Steinmetz.[60] Their report examines five dimensions of segregation, focusing upon

[60] John Iceland, Daniel H. Weinburg & Erika Steinmetz, *Racial and Ethnic Residential Segregation in the United States: 1980–2000* (Aug. 2002), *available at* http://www.census.gov/hhes/www/housing/resseg/pdf/censr-3.pdf (hereinafter the "2000 Special Report"). Two other studies of residential segregation for the period 1980–1990 are: Lewis Mumford Center, State University of New York–Albany, *Ethnic Diversity Grows, Neighborhood Integration Lags Behind* (Dec. 18, 2001), *available at* http://mumford1.dyndns.org/cen2000/WholePop/WPreport/MumfordReport.pdf; Ralph and Goldy Lewis Center for Regional Policy Studies, The School of Public Policy & Social Research, University of California, Los Angeles, *Census 2000 Fact Sheet: Residential Segregation in United States Metropolitan Areas* (Apr. 27, 2001), *available at* http://lewis.sppsr.ucla.edu/special/metroamerica/factsheets/Census_FACTSHEET6.pdf.

one measure of segregation from each dimension.[61] The five dimensions are: evenness, exposure, concentration, centralization, and clustering.[62]

Evenness is the most common measure of segregation and refers to the differential distribution of the subject population. As discussed above, evenness is measured using the dissimilarity index, which ranges from 0 (complete integration) to 1 (complete segregation), and captures the percentage of a group's population that would have to move for each neighborhood to have the same percent of that group as the metropolitan area overall.

Exposure refers to the probability of contact between members of different races and is measured using the isolation index. The isolation index varies from 0 to 1 and captures the extent to which members of a subject group are exposed only to members of that same subject group.

Concentration refers to the relative amount of physical space occupied by the subject population and is measured by what is called the delta index. The delta index varies from 0 to 1, and measures the proportion of a group's population that would have to move to achieve uniform density across a metropolitan area.

Centralization is measured by the Absolute Centralization Index, which measures the degree to which a group is located at or near the center of a metropolitan area. The index varies from -1 to 1, whereby positive values indicate a tendency for group members to reside close to the city center and negative values indicate a tendency to live in outlying areas. A score of 0 means the subject group has a uniform distribution throughout the metropolitan area.

Clustering is measured by the Spatial Proximity Index, which indicates the degree to which subject group members live disproportionately in contiguous areas. Spatial proximity equals 1 if there is no differential clustering between the subject and control group members. A number greater than 1 indicates clustering of each group, and a number less than 1–which is extremely rare–indicates that members of the subject group lived nearer, on average to members of the control group than to members of their own group.

[61] For more information on the five dimensions of segregation, see Douglas S. Massey & Nancy A. Denton, *The Dimensions of Residential Segregation*, 67 SOCIAL FORCES 281–315 (1988) (originally proposing the methodology of measuring segregation along these five dimensions).

[62] Due to changes made in the U.S. Census between 1980 and 2000 and different methodology in calculating the dimensions of segregation between studies, the 1980 figures for the 2000 Special Report may differ slightly from the 1980 figures in earlier studies.

Several significant changes were made in the U.S. Census between 1980 and 2000. In 1980 and 1990, the census bureau expanded the racial classifications to include five distinct groups: White, Black or African-American, American Indian or Alaskan Native, Asian, and Native Hawaiian or Other Pacific Islander. In addition, the Census included one ethnicity: Spanish/Hispanic origin or descent. Moreover, beginning in 2000, the census allowed respondents to select more than one race. This section summarizes segregation trends regarding the Black or African-American, Asian, and Spanish/Hispanic categories.

Denver[63]

BLACK OR AFRICAN-AMERICAN SEGREGATION

Denver ranked 20th among the 43 metropolitan areas surveyed in the 2000 Special Report when averaging the 5 measures of segregation. In evenness and exposure, Denver was ranked 30th and 34th, respectively. Denver ranked 13th in centralization and 3rd in concentration, but 31st among the metropolitan areas surveyed in clustering for African-American populations in 2000.

Denver's dissimilarity index fell slowly from 1980 to 2000. In 1980, the city had a score of 0.689. During the 1980's this decreased by 0.049 to 0.640, and decreased during the 1990's by 0.035 to 0.605. Although African-American segregation is decreasing, these figures reflect Denver's generally high level of African-American segregation as compared with Hispanic or Asian segregation.

Denver's isolation index decreased over the same time period. In 1980, the city had an index of 0.496. This decreased by 0.086 to 0.410 in 1990, and then by 0.046 to 0.364 in 2000. In general, Denver followed the general trend on the west coast, with significant but declining African-American segregation.

HISPANIC SEGREGATION

Denver ranked 7th among the 36 metropolitan areas surveyed in the 2000 Special Report when averaging the 5 measures of segregation. In evenness and exposure, Denver was ranked 21st and 18th, respectively. Denver ranked 4th in centralization and 1st in concentration. Denver ranked 16th in clustering for Hispanic populations in 2000.

Denver's dissimilarity index rose slightly from 1980 to 2000. In 1980, the city had a score of 0.488. During the 1980's this decreased by 0.023 to 0.465, and increased during the 1990's by 0.035 to 0.500. While Denver is ranked 7th overall in Hispanic segregation, Denver's Hispanic dissimilarity index has not yet surpassed the dissimilarity index score for Denver's African-American population.

[63] Denver was not among the metropolitan areas included in the survey of Asian segregation.

Denver's isolation index steadily increased over the same time period. In 1980, the city had an index of 0.323. This increased by 0.060 to 0.383 in 1990, and then by 0.051 to 0.434 in 2000. In general, Denver followed the general trend on the west coast of increasing Hispanic segregation.

Los Angeles

BLACK OR AFRICAN-AMERICAN SEGREGATION

Los Angeles ranked 19th among the 43 metropolitan areas surveyed in the 2000 Special Report when averaging the 5 measures of segregation. In evenness and exposure, Los Angeles ranked 19th and 14th, respectively. Los Angeles ranked 32nd in centralization and 34th in concentration, but Los Angeles ranked 7th among the metropolitan areas surveyed in clustering for African-American populations in 2000.

Los Angeles's dissimilarity index steadily decreased from 1980 to 2000. In 1980, the city had a score of 0.808. During the 1980's this decreased by 0.080 to 0.728, and during the 1990's by 0.064 to 0.664. These figures generally reflect Los Angeles's relatively high, but decreasing, levels of African-American segregation.

Los Angeles's isolation index slowly decreased over the same time period. In 1980, the city had an index of 0.758. This decreased by 0.065 to 0.693 in 1990, and then by 0.041 to 0.652 in 2000. Thus, the decrease in segregation of African-American's in Los Angeles shows greater improvement over that of other very large metropolitan areas such as Chicago and New York. In general, Los Angeles followed the general trend on the west coast of decreasing African-American segregation.

HISPANIC SEGREGATION

Los Angeles ranked 4th among the 36 metropolitan areas surveyed in the 2000 Special Report when averaging the 5 measures of segregation. In evenness and exposure, Los Angeles ranked 5th and 2nd, respectively. Los Angeles ranked 22nd in centralization and 19th in concentration. Los Angeles ranked 5th among the metropolitan areas surveyed in clustering for Hispanic populations in 2000.

Los Angeles's dissimilarity index rose slowly from 1980 to 2000. In 1980, the city had a score of 0.573. During the 1980's this increased by 0.038 to 0.611, and increased during the 1990's by 0.020 to 0.631. These figures reflect Los Angeles's and the west coast's increasing level of Hispanic segregation. In particular, Los Angeles's Hispanic dissimilarity index is approaching the dissimilarity index score for Los Angeles's African-American population.

Los Angeles's isolation index steadily increased over the same time period. In 1980, the city had an index of 0.625. This increased by 0.109 to 0.734 in 1990, and then by 0.057 to 0.791 in 2000. In terms of isolation, Los Angeles's segregation score for Hispanics has surpassed its isolation score for African-Americans.

ASIAN SEGREGATION

Los Angeles ranked 4th among the 20 metropolitan areas surveyed in the 2000 Special Report when averaging the 5 measures of segregation. In evenness and exposure, Los Angeles ranked 4th and 3rd, respectively. The remaining measures of segregation were average for centralization and concentration, but Los Angeles ranked 1st among the metropolitan areas surveyed in clustering for Asian populations in 2000.

Los Angeles's dissimilarity index remained fairly static from 1980 to 2000. In 1980, the city had a score of 0.468. During the 1980's this decreased by 0.005 to 0.463, and then increased during the 1990's by 0.014 to 0.477. These figures generally reflect Los Angeles's relatively high level of Asian segregation as compared with the rest of the west coast.

Los Angeles's isolation index dramatically increased over the same time period. In 1980, the city had an index of 0.277. This climbed by 0.128 to 0.405 in 1990, and then by 0.097 to 0.502 in 2000. Thus, segregation of Asians in Los Angeles is comparable to that of other large metropolitan areas such a San Francisco and New York. In general, Los Angeles followed the general trend in the West, albeit greatly accelerated, of Asian populations becoming more isolated and clustered. Even so, the measures of Asian segregation in Los Angeles remain less than the measures of segregation for African-Americans and Hispanics.

Phoenix[64]

BLACK OR AFRICAN-AMERICAN SEGREGATION

Phoenix ranked 28th among the 43 metropolitan areas surveyed in the 2000 Special Report when averaging the 5 measures of segregation. In evenness and exposure, Phoenix ranked 41st and 40th, respectively. Phoenix ranked 4th in centralization and 5th in concentration, but Phoenix ranked 41st among the metropolitan areas surveyed in clustering for African-American populations in 2000.

Phoenix's dissimilarity index steadily decreased from 1980 to 2000. In 1980, the city had a score of 0.613. During the 1980's this decreased by 0.110 to 0.503, and during the 1990's by 0.070 to 0.433. These figures generally reflect relatively lower levels of African-American segregation in Phoenix, as compared with other cities on the west coast.

Phoenix's isolation index decreased over the same time period. In 1980, the city had an index of 0.355. This decreased by 0.116 to 0.239 in 1990, and then by 0.042 to 0.197 in 2000. Thus, Phoenix, like Portland, shows a rapidly decreasing isolation of African-Americans from 1980 to 2000, as compared with other metropolitan areas.

[64] Phoenix was not among the metropolitan areas included in the survey of Asian segregation.

HISPANIC SEGREGATION

Phoenix ranked 3rd among the 36 metropolitan areas surveyed in the 2000 Special Report when averaging the 5 measures of segregation. In evenness and exposure, Phoenix ranked 16th and 14th, respectively. Phoenix ranked 2nd in centralization and 2nd in concentration. Phoenix ranked 15th among the metropolitan areas surveyed in clustering for Hispanic populations in 2000.

Phoenix's dissimilarity index was essentially static from 1980 to 2000. In 1980, the city had a score of 0.522. During the 1980's this decreased by 0.036 to 0.486, and increased during the 1990's by 0.035 to 0.521. Phoenix's Hispanic dissimilarity index has surpassed the dissimilarity index score for Phoenix's African-American population.

Phoenix's isolation index steadily increased over the same time period. In 1980, the city had an index of 0.390. This increased by 0.014 to 0.404 in 1990, and then by 0.107 to 0.511 in 2000. Phoenix's isolation score for Hispanics has also surpassed Phoenix's isolation score for African-Americans.

Portland

BLACK OR AFRICAN-AMERICAN SEGREGATION

Portland tied with Phoenix with an overall 28th rank among the 43 metropolitan areas surveyed in the 2000 Special Report when averaging the 5 measures of segregation. In evenness and exposure, Portland ranked 38th and 41st, respectively. Portland ranked 10th in centralization and 2nd in concentration, but Portland ranked 40th among the metropolitan areas surveyed in clustering for African-American populations in 2000.

Portland's dissimilarity index steadily decreased from 1980 to 2000. In 1980, the city had a score of 0.686. During the 1980's this decreased by 0.056 to 0.630, and during the 1990's by 0.166 to 0.464. Thus, the 1990's saw a move toward a more even distribution of the African-American population in Portland. These figures generally reflect relatively lower levels of African-American segregation in Portland, as compared with other cities on the west coast.

Portland's isolation index decreased steadily over the same time period. In 1980, the city had an index of 0.350. This decreased by 0.052 to 0.298 in 1990, and then by 0.108 to 0.190 in 2000. Thus, Portland, like Phoenix, shows a rapidly decreasing isolation of African-Americans from 1980 to 2000, as compared with other metropolitan areas.

HISPANIC SEGREGATION

Portland ranked 26th among the 36 metropolitan areas surveyed in the 2000 Special Report when averaging the 5 measures of segregation. In evenness and exposure, Portland ranked 33rd and 32nd, respectively. Portland ranked 10th in centralization and 10th in concentration. Portland ranked 32nd among the metropolitan areas surveyed in clustering for Hispanic populations in 2000.

Portland's dissimilarity index increased from 1980 to 2000. In 1980, the city had a score of 0.208. During the 1980's this increased by 0.048 to 0.256, and increased during the 1990's by 0.087 to 0.343. Being farther north, Portland is less affected by the immigration of Hispanics from Central and South America. Nevertheless, if trends continue, Portland's Hispanic segregation will surpass that of its African-Americans.

Portland's isolation index steadily increased over the same time period. In 1980, the city had an index of 0.030. This increased by 0.035 to 0.065 in 1990, and then by 0.093 to 0.158 in 2000. Portland's isolation index confirms the Portland metropolitan area's trend toward increasing segregation of Hispanics.

ASIAN SEGREGATION

Portland ranked 14th among the 20 metropolitan areas surveyed in the 2000 Special Report when averaging the 5 measures of segregation. In evenness and exposure, Portland ranked 20th in the dissimilarity index and 18th in the isolation index. Portland was ranked 1st and 2nd, respectively, in concentration and centralization, but 18th in clustering.

Portland's dissimilarity index slowly increased from 1980 to 2000. In 1980, the city had a score of 0.284. During the 1980's this increased by 0.024 to 0.308, and during the 1990's by 0.003 to 0.311.

Portland's isolation index increasing over the same time period. In 1980, the city had an index of 0.032. This climbed by 0.027 to 0.059 in 1990, and then by 0.048 to 0.107 in 2000. In general, the measures in Portland show low levels of segregation of Asians, but Portland followed the general trend in the West of Asian populations becoming more isolated and centralized. Even so, the measures of Asian segregation in Portland remain less than the measures of segregation for African-Americans and Hispanics.

San Francisco

BLACK OR AFRICAN-AMERICAN SEGREGATION

San Francisco ranked 34th among the 43 metropolitan areas surveyed in the 2000 Special Report when averaging the 5 measures of segregation. In evenness and exposure, San Francisco ranked 31st and 32nd, respectively. San Francisco ranked 21st in centralization and 22nd in concentration. San Francisco ranked 38th among the metropolitan areas surveyed in clustering for African-American populations in 2000.

San Francisco's dissimilarity index slowly decreased from 1980 to 2000. In 1980, the city had a score of 0.675. During the 1980's this decreased by 0.037 to 0.638, and during the 1990's by 0.038 to 0.600.

San Francisco's isolation index slowly decreased over the same time period. In 1980, the city had an index of 0.514. This decreased by 0.036 to 0.478 in 1990, and then by

0.046 to 0.432 in 2000. Together with the dissimilarity index, the isolation index shows a slow decrease in the segregation of African-Americans from 1980 to 2000 in San Francisco.

HISPANIC SEGREGATION

San Francisco ranked 18th among the 36 metropolitan areas surveyed in the 2000 Special Report when averaging the 5 measures of segregation. In evenness and exposure, San Francisco ranked 15th in each category. San Francisco ranked 13th in centralization and 20th in concentration. San Francisco ranked 23rd among the metropolitan areas surveyed in clustering for Hispanic populations in 2000. While San Francisco's segregation of Hispanics' is increasing, it has not seen the dramatic increases of Hispanic segregation as the metropolitan areas in the Southwest.

San Francisco's dissimilarity index increased from 1980 to 2000. In 1980, the city had a score of 0.455. During the 1980's this increased by 0.043 to 0.498, and increased during the 1990's by 0.037 to 0.535. Like the trend in the West, San Francisco's Hispanic dissimilarity index is approaching the dissimilarity index score for San Francisco's African-American population.

San Francisco's isolation index steadily increased over the same time period. In 1980, the city had an index of 0.309. This increased by 0.102 to 0.411 in 1990, and then by 0.86 to 0.497 in 2000.

ASIAN SEGREGATION

San Francisco ranked 1st among the 20 metropolitan areas surveyed in the 2000 Special Report when averaging the 5 measures of segregation. In evenness and exposure, San Francisco ranked 2nd in both categories. Only New York ranked higher in evenness, and only the San Jose metropolitan area ranks higher in exposure. The remaining measures of segregation were in the top 6 of the 20 areas surveyed.

San Francisco's dissimilarity index slowly declined from 1980 to 2000. In 1980, the city had a score of 0.511. During the 1980's this decreased by 0.010 to 0.501, and during the 1990's by 0.016 to 0.484..

However, San Francisco's isolation index dramatically increased over the same time period. In 1980, the city had an index of 0.368. This climbed by 0.092 to 0.460 in 1990, and then by 0.063 to 0.523 in 2000. Thus, San Francisco followed the general trend in the West, albeit greatly accelerated in San Francisco, of Asian populations becoming more isolated, clustered, and centralized.

Seattle

BLACK OR AFRICAN-AMERICAN SEGREGATION

Seattle was ranked 37th among the 43 metropolitan areas surveyed in the 2000 Special Report when averaging the 5 measures of segregation. In evenness and exposure, Seattle was ranked 37th and 39th, respectively. Seattle ranked 16th in centralization and 23rd in concentration. Seattle ranked 39th among the metropolitan areas surveyed in clustering for African-American populations in 2000.

Seattle's dissimilarity index steadily decreased from 1980 to 2000. In 1980, the city had a score of 0.671. During the 1980's this decreased by 0.112 to 0.559, and during the 1990's by 0.070 to 0.489. These figures generally reflect the more rapid decrease in African-American segregation in mid-sized metropolitan areas on the west coast compared to Los Angeles or San Francisco.

Seattle's isolation index slowly decreased over the same time period. In 1980, the city had an index of 0.357. This decreased by 0.073 to 0.284 in 1990, and then by 0.060 to 0.224 in 2000.

HISPANIC SEGREGATION

Seattle ranked 30th among the 36 metropolitan areas surveyed in the 2000 Special Report when averaging the 5 measures of segregation. In evenness and exposure, Seattle ranked 35th and 34th, respectively. Seattle ranked 14th in centralization and 17th in concentration. Seattle ranked 34th among the metropolitan areas surveyed in clustering for Hispanic populations in 2000.

Seattle's dissimilarity index increased from 1980 to 2000. In 1980, the city had a score of 0.191. During the 1980's this increased by 0.016 to 0.207, and increased during the 1990's by 0.094 to 0.303.

Seattle's isolation index steadily increased over the same time period. In 1980, the city had an index of 0.031. This increased by 0.016 to 0.047 in 1990, and then by 0.065 to 0.112 in 2000. Seattle still has relatively low scores for Hispanic segregations as compared with other metropolitan areas in the West. However, in line with the general Hispanic segregation trends, Seattle's Hispanic population is becoming more segregated.

ASIAN SEGREGATION

Seattle ranked 7th among the 20 metropolitan areas surveyed in the 2000 Special Report when averaging the 5 measures of segregation. In evenness, however, Seattle ranked 19th, with the remaining measures of segregation in the top half of the cities measured.

Seattle's dissimilarity index slowly declined from 1980 to 2000. In 1980, the city had a score of 0.390. During the 1980's this by 0.026 to 0.364, and during the 1990's by 0.021 to 0.343. These figures reflect the overall trend of low Asian segregation as compared

with African-Americans and Hispanics. The figures in Seattle also show a decrease in the dissimilarity index while most other cities reflect a gradual increase in this index for Asians.

However, the isolation index increased over the same time period. In 1980, the city had an index of 0.160. This slowly climbed by 0.038 to 0.198 in 1990, and then by 0.042 to 0.240 in 2000. In 2000, Seattle was ranked 9th in the isolation index among the cities surveyed. Thus, Seattle followed the general trend, especially in the West, of Asian populations becoming more isolated and centralized.

Race and the Foreclosure Crisis

Introduction

The enormous number of foreclosures of residential properties has become a major concern in the United States. Some estimates show there will be more foreclosures than new homeowners in coming years.[65] Much of the foreclosure crisis stems from the proliferation of subprime loans, many of which are targeted towards minorities. The impact of the foreclosure crisis reaches beyond the individuals who lose their homes, extending to entire communities. For example, foreclosures cost municipal governments thousands of dollars in lost property taxes per property.[66] The resulting decrease in services naturally has the greatest impact on those communities with the fewest private resources, i.e., the communities that need the services most. Part of the reason why the foreclosure crisis has such an outsized impact on minority communities is that they have historically had fewer inherited family assets and, therefore, have a much steeper road to climb out of poverty, even if they have income comparable to those with inherited assets.[67]

Studies of subprime lending in recent years indicate widespread discriminatory lending practices. These practices and their disparate impact on minority families and communities can be traced in part to problems caused by slavery, pervasive discrimination, and the unenforceability of the Homestead Act. Some contemporary scholars have recommended a variety of steps to address these problems.

Historical and Pervasive Disparities in Wealth

There is abundant statistical and anecdotal research exploring the complex relationship between race and wealth and their interplay with income and creditworthiness.[68] For example, statistics reveal sharp disparities between whites and minorities in annual income, net worth, unemployment, and home equity.[69]

Central to the foreclosure crisis is the distinction between income and wealth. Although an increasing number of African-Americans are among the top income earners in America, a much smaller number are among the wealthiest. While middle class African-American

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[65] Delvin Davis, *Here Today, Gone Tomorrow: The Impact of Subprime Foreclosures on African-American and Latino Communities*, Poverty & Race, May/June 2007.

[66] *Id.*

[67] Melvin L. Oliver & Thomas M. Shapiro, *Creating an Opportunity Society*, The American Prospect, May 2007.

[68] MELVIN L. OLIVER & THOMAS M. SHAPIRO, BLACK WEALTH/WHITE WEALTH (Tenth-Anniversary ed. 2006).

[69] Davis, *supra*, footnote 1.

wealth has grown, it continues to fall behind the wealth of middle class whites.[70] African-Americans and Hispanics only own 7 to 9 cents for every dollar of worth that whites own.[71] African-American families often have significantly less wealth than white families even if they have comparable earnings and education. One of the reasons for this disparity is that much of Americans' wealth comes from inheritance and home value.[72]

The reasons why African-Americans, as a group, have less inherited wealth and lower home values than whites have deep roots in the history of this country. They include slaves' inability to own property, sharecroppers' lack of property ownership, the failure to enforce the 1862 Homestead Act, and, more recently, the "redlining" of housing appraisals.[73] Government programs such as the Homestead Act allowed middle class white families to expand wealth through home ownership. However, similar programs have not been afforded to African-Americans and Hispanics.[74] In addition, the tax policies in the United States have traditionally favored the wealthy while providing minimal benefit to the poor.[75]

One of the results of this disparity in wealth and, in particular, home equity is that African-Americans often pay higher interest rates than whites and their houses appreciate more slowly.[76] These practices perpetuate the disparity. The wealth disparity also has led to a wave of subprime mortgages targeted at minority communities, including African-Americans.

Subprime Lending and Foreclosure Problems Facing Minority Communities

Originally, subprime lending was meant to be used as a tool to bolster homeownership for those who could not afford traditional home loans, including African-Americans and Latinos. However, reckless and predatory lending practices have led to a wave of foreclosures in these communities.[77] In 2007, subprime loans were ten times more likely to result in foreclosure than prime loans. The proliferation of subprime loans and the resulting

[70] OLIVER & SHAPIRO, *supra*, footnote 4.

[71] Oliver & Shapiro, *supra*, footnote 3.

[72] Hal Logan, *Land Grab: The Connection Between Land Ownership And Wealth*, EbonyJet.com, December 12, 2007.

[73] *Id.*

[74] Oliver & Shapiro, *supra*, footnote 3.

[75] *Id.*

[76] OLIVER & SHAPIRO, *supra*, footnote 4.

[77] Davis, *supra*, footnote 1.

foreclosures continues to impede African-Americans from building wealth through home ownership.[78]

The problems with subprime or high-cost loans include lax underwriting standards, unsustainable and unreasonable loan terms, and broker dealings that are detrimental to, rather than supportive of, the borrower.[79] Adjustable rate mortgages with introductory teaser rates that later explode are particularly troublesome.[80]

African-Americans and Latinos are much more likely to receive subprime loans than whites, which has resulted in disproportionately higher foreclosure rates in minority communities.[81] Part of the reason may be that the historically higher levels of debt for minorities compared to whites lead to more pressure to tap into home equity for refinancing.[82]

In 2006 the rate of subprime mortgages made to Hispanics and African-Americans was nearly double that for whites. According to the Joint Center for Political and Economic Studies twenty six percent of mortgages to whites in 2006 were subprime, while forty seven percent of mortgages to Hispanics were subprime and fifty three percent to blacks were subprime.[83]

Hispanics and African-Americans were 30% more likely to receive higher rate subprime loans than whites, even for borrowers with comparable credit scores.[84] Moreover, a statistical report by the National Community Reinvestment Coalition that surveyed 219 metropolitan areas in the United States showed that minority consumers are most at risk of receiving high-cost home mortgage loans, regardless of income level. (The data was compiled from the Home Mortgage Disclosure Act from 2006, which showed millions of homes falling into foreclosure in the last two years.)[85] The report showed that minorities pay more for mortgages even as their income increases. Both loan price disparities and lending disparities increased over the last several years for African-American and Hispanics

[78] Logan, *supra*, footnote 8.

[79] Davis, *supra*, footnote 1.

[80] *Id.*

[81] *Id.*

[82] *Id.*; OLIVER & SHAPIRO, *supra*, footnote 4.

[83] Algernon Austin, *Subprime Mortgages Are Nearly Double For Hispanics And African Americans*, Economic Policy Institute: Economic Snapshots, June 11, 2008.

[84] *Id.*

[85] National Community Reinvestment Coalition, *Income is No Shield Against Racial Differences in Lending II: A Comparison of High-Cost Lending in America's Metropolitan and Rural Areas*, www.ncrc.org, July 2008.

compared to whites.[86] All of the top 20 metropolitan areas where overall loan price and lending disparities based on race were most pronounced were in the eastern or southern part of the United States. Four of the five cities with the smallest disparities in lending practices between low income African-Americans and low income whites were in Arizona and Texas.[87]

High-cost lending has impeded wealth-building in minority communities because minorities were already struggling with home-ownership. The foreclosure crisis has effectively wiped out hundreds of millions of dollars in mortgage equity. The prevalence of high-cost lending in minority communities regardless of income levels or creditworthiness suggests discriminatory behavior on the part of some lenders and brokers.[88]

Potential Solutions

Many scholars believe that policy-makers need to be more attentive to the problems faced by minority borrowers and must carefully regulate lending institutions to ensure fairness and compliance with anti-discrimination laws.[89]

To help curb the alarming foreclosure trend, some writers recommend a six month moratorium on subprime foreclosures along with new federal regulation, amendment of the bankruptcy code, and imposition of clear fiduciary obligations on brokers.[90]

Other recommendations include a national foreclosure prevention program, comprehensive anti-predatory lending legislation, and ensuring that Government Sponsored Enterprises like Fannie Mae and Freddie Mac abide by anti-predatory safeguards.[91]

More generally, a broad set of asset policies targeted to low income and minority groups to help them establish wealth in the way that whites were helped in the last century could help create wealth for minority communities. Some programs like Individual Development Accounts and Earned Income Credits have potential but do not approach the effectiveness of older government programs.[92] Even more fundamentally, higher education must be within financial reach for poor minority families, and tax subsidies must be used to help finance affordable mortgages in order to create wealth.[93]

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[86] *Id.*

[87] *Id.*

[88] *Id.*

[89] Austin, *supra*, footnote 19.

[90] Davis, *supra*, footnote 1.

[91] National Community Reinvestment Coalition, *supra*, footnote 21.

[92] Oliver & Shapiro, *supra*, footnote 3.

[93] *Id.*; OLIVER & SHAPIRO, *supra*, footnote 4.

California's Housing Element Law

Introduction

In the wake of the Civil Rights Movement of the 1960's, Congress and state legislatures began to recognize that racial integration and the provision of affordable housing would not improve so long as local governments had unrestrained discretion over land use. Accordingly, federal and state laws began to place significant statutory limitations on local power to exclude affordable housing; these laws were intended to battle exclusionary zoning policies and discriminatory housing practices.

California has been a frontrunner in this area. Through its housing element law, the state mandates that all local governments adopt a housing element as part of the general plan regarding land use decisions. Generally, the housing element must "make adequate provision for the housing needs of all economic segments of the community."[94] The housing element law is thus critical to fair housing in California, because it requires cities and counties to plan for present and future housing needs for the entire community, including low-income members of the community.[95]

Housing Element Law Overview

Every city and county in the state of California is required by law to adopt a "general plan" to manage its land use and planning decisions. A local government's general plan must include seven mandatory elements, one of which is a "housing element." Unlike the other general plan mandatory elements, the housing element is subject to detailed statutory requirements and mandatory review by the state Department of Housing and Community Development ("HCD").[96]

The housing element law requires local governments to adequately *plan* to meet their existing and projected housing needs; it does not *require* cities to actually build the housing. Pursuant to the law, communities must prepare a new housing element every five years. A regional council of governments ("COG") – or the HCD, if a locality is not governed by a COG – allocates to each city and county a number of new housing units for which the local government must plan. This number, known as the Regional Housing Needs Allocation ("RHNA"), is calculated based on a variety of factors including population growth, job

[94] CAL. GOV'T CODE § 65580 *et seq.*

[95] This memorandum summarizes the information in *California Housing Element Manual: Law, Advocacy and Litigation*, California Affordable Housing Law Project of the Public Interest Law Project (2nd Edition, April 2008), available at http://www.pilpca.org/www/publications.html (Public Interest Law Project web page).

[96] California's housing element law is codified in CAL. GOV'T CODE § 65000 *et seq.*

In preparing the housing element, cities are required to engage the community in the process, and must make drafts of the housing element available for public comment. After completing the housing element, localities must submit it to HCD for review. Courts will typically afford HCD great deference in interpreting whether a housing element is in compliance. If a locality fails to adopt an updated housing element or if it adopts a housing element that does not comply with the law, the entire general plan to which it belongs is invalidated. Under such circumstances, a locality may not proceed to make land use decisions or approve development until it has adopted a valid housing element. Courts may also order other remedies for non-compliance, such as curtailment of a locality's ability to approve subdivisions, make zoning changes, or issue building permits.

Components of a Locality's Housing Element

In general, a housing element must include the following components:

(1) *Housing Needs Assessment*. This portion of the element is a detailed analysis of a city's existing and projected housing needs. The analysis of the existing need usually includes the number of households overpaying for housing, the number of housing units that need rehabilitation, assisted affordable housing units at risk of being converted to market-rate units, the number of households living in overcrowded conditions, and the number of housing units with special housing needs (e.g. homeless, large families, the elderly). The analysis of projected needs is based upon the city or county's RHNA.

(2) *Land Inventory Analysis*. This part of the element must be a detailed land inventory including a specific list of properties, their zoning designation, general plan designation, size and existing uses. It should also include a general analysis of environmental constraints and the availability of infrastructure, as well as identification of land suitable for residential development, and the availability and development capacity of sites to accommodate the city's or county's share of RHNA.

(3) *Constraints Analysis*. The element must also include an analysis of local governmental constraints to the development of housing for all income levels, including land use controls, fees, building codes, permit and processing procedures, and potential constraints on development or improvement of housing for people with disabilities. The constraints analysis must demonstrate local efforts to remove governmental constraints that impede the locality's ability to meet its housing needs.

(4) *Action Plan.* The element must quantify its objectives by detailing a five-year program of action to address the identified housing needs, resources, and constraints. The action plan should aim to make sites available with appropriate zoning and infrastructure to accommodate the locality's portion of the RHNA that cannot be accommodated by sites in the land inventory without rezoning. The plan must identify sites that would be appropriate for a variety of housing for people of all income levels, and must include sites for multifamily rental housing,

factory-built housing, mobile homes, emergency shelters, transitional housing, and farmworker housing.

States with Similar Housing Element Laws

Although California's housing element law has been lauded as a model statute in the effort to reduce housing discrimination,[97] other states have also made significant strides in this regard.

New Jersey

In 1975, the New Jersey Supreme Court decided the case of *Southern Burlington County N.A.A.C.P. v. Township of Mount Laurel*.[98] In that case, the court held that zoning ordinances that make it physically and economically impossible to provide low and moderate income housing are in violation of the New Jersey Constitution. The court found that local governments are obligated to use their land use powers to affirmatively plan for and make available the reasonable opportunity for affordable housing to meet the needs of people who want to live in a given community. The state legislation passed to comply with *Mount Laurel* created the Council on Affordable Housing (COAH). Like the COGs or HCD in California, the COAH sets a jurisdiction's "fair share" requirement and reviews plans that localities submit to meet that requirement. Localities that fail to submit and obtain certification from COAH for their fair share plans are susceptible to builders' remedy lawsuits filed by developers denied approval for the construction of affordable homes.

Connecticut

In 1989, the Connecticut legislature enacted legislation to battle the practice of Connecticut towns using their zoning powers to exclude affordable housing. The Affordable Housing Appeals Procedure[99] changed the way that courts reviewed municipal zoning decisions by giving access to a special appeals process to an affordable housing developer whose housing application is denied. Reversing the long-held presumption that a locality's land use decision is valid, the appeals procedure instead requires a municipality to justify its decision. A judge determines whether a municipality's reasons for denying an affordable housing developer's application "clearly outweigh the need for affordable housing." Under this standard, zoning decisions based on insubstantial or inappropriate reasons, particularly those aimed at excluding affordable housing, are overturned. Local affordable housing advocates report that

[97] The United Nations Committee on the Elimination of Racial Discrimination ("CERD") cited California's housing element law as a national model for such laws. *Concluding Observations*, UN CERD/C/USA/CO/6 (March 7, 2008) p.2.

[98] 336 A.2d 713, *appeal dismissed and cert. denied*, 423 U.S. 808 (1975); this case is also known as *Mount Laurel I* to distinguish it from subsequent litigation.

[99] Codified at CONN. GEN. STAT. § 8-30g *et seq.*

the statute has been successful.[100] Moreover, at least three other states – Massachusetts, Rhode Island, and Illinois – have similar appeals statutes aimed at increasing the availability of affordable housing .[101]

Washington

In 1990, the Washington state legislature passed the Growth Management Act ("GMA") in response to rapid population growth and concerns with suburban sprawl, environmental protection, quality of life, and various related issues.[102] The GMA sets state goals on a number of parameters, including affordable housing, open space and recreation, environmental protection, economic development, and shoreline management. The statute requires the fastest growing counties to plan extensively to keep up with the state's goals on the various parameters. The counties' local comprehensive plans are required to include a number of elements, including a housing element. The GMA also provides for regional Growth Management Hearings Boards to resolve disputes about comprehensive plans. The Governor has the authority to impose sanctions on cities, counties, and state agencies that do not comply with the GMA, as determined by a hearings board. Although the GMA's housing element does not articulate the importance of affordable housing as strongly as California's housing element law, it is nonetheless an important step in requiring communities to plan for their local housing needs.

[100] *See* homepage for The Connecticut Housing Coalition, http://www.ct-housing.org/ahap.html.

[101] The Massachusetts law is called the Comprehensive Permit and Zoning Appeals act, codified at MASS. GEN. LAWS ch. 40B § 20, *et seq*. The Rhode Island law is called the Rhode Island Low and Moderate Income Housing Act, codified at R.I. GEN. LAWS § 45-53-1 *et seq*. The Illinois law is called the Affordable Housing Planning and Appeal Act, codified at 310 ILL. COMP. STAT. 67/1 *et seq*.

[102] Due to various amendments, the GMA is codified in many chapters; it is primarily codified in WASH. REV. CODE § 36.70A.010 *et seq.*

Summary of Anti-Immigrant Housing Ordinances

Introduction

State and local lawmakers are increasingly proposing and enacting laws that pertain to immigration or immigrants. Although many are cloaked as efforts to regulate employment, local law enforcement, and housing, among other areas of law, the vast majority of these laws are fueled by local frustration with national immigration policy and, more often than not, are motivated by anti-immigrant sentiment.[103] The most recent local anti-immigrant ordinances have been attempts to bar undocumented immigrants from obtaining housing. Following the 2006 effort of a small Pennsylvania town, there has been a nationwide proliferation of city ordinances aimed at restricting undocumented immigrants' access to housing, with accompanying sanctions for landlords who do not comply with the laws. In practice, these laws attempt to enforce existing immigration law or create new immigration law, both of which are preempted by the federal government's exclusive authority to regulate immigration.[104] Even though some of these housing ordinances have been invalidated by federal courts, various municipalities–including one California city–have persisted with their efforts to restrict housing for undocumented immigrants.

The Hazleton Ordinance

Hazleton is a town of about 31,000 residents in northern Pennsylvania, a third of whom are Latino immigrants. In 2006, the Hazleton city council passed a number of ordinances aimed at combating what it viewed as the problems created by the presence of undocumented immigrants in the city, citing crime and economic burdens (claims for which the town could offer no evidence).[105] Two such ordinances, the Illegal Immigration Relief Act ("IIRA") and the Tenant Registration Ordinance ("TRO"), were the first of many nationwide local efforts to restrict housing for undocumented immigrants. The TRO required city renters to obtain an occupancy permit, which would have obligated renters to prove that they were citizens or lawful residents. The IIRA prohibited a landlord from renting to undocumented immigrants at the risk of fines and suspension of his/her rental license if he or she did not comply with the ordinance.[106]

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[103] *See* Monica Guizar, *Facts About Federal Preemption*, National Immigration Law Center, available at http://www.nilc.org/immlawpolicy/LocalLaw/federalpreemptionfacts_2007-06-28.pdf (June 2007).

[104] *Id.*, n. 2.

[105] *See* American Civil Liberties Union (ACLU), *Anti-Immigrant Ordinances: Hazleton, PA*, available at http://www.aclu.org/immigrants/discrim/27452res20061115.html.

[106] *See generally Lozano v. City of Hazlelton*, No. 3:06cv1586 (M.D. Pa. July 26, 2007).

Civil rights organizations immediately mobilized to combat the ordinance, and in October 2006, a federal judge granted a temporary restraining order to prevent implementation of the new law. A group of plaintiffs including residents, business owners, civil rights groups, and unnamed "Does" challenged the ordinance in federal court on the grounds that it violated a number of laws, including the Fair Housing Act ("FHA"), the Supremacy Clause of the Constitution, and due process and equal protection rights.

In *Lozano v. City of Hazleton,* decided in 2007, the court found that plaintiffs' challenges to the ordinances under the FHA were without merit, due in part to the Hazleton city council's changing the language of the ordinance to read that the city would not enforce complaints alleging "a violation on the basis of national origin, ethnicity, or race."[107] Moreover, the court found that the plaintiffs' discriminatory impact claim could not be a FHA violation, as the ordinance had yet to go into effect pending resolution of the legal challenges and its impact was therefore unascertainable.[108] Nevertheless, U.S. District Judge James Munley struck down the law. Holding the ordinance unconstitutional, he wrote, "We cannot say clearly enough that persons who enter this country without legal authorization are not stripped immediately of all their rights because of this single act … The United States Supreme Court has consistently interpreted [the 14th Amendment] to apply to all people present in the United States, whether they were born here, immigrated here through legal means, or violated federal law to enter the country."[109] The defendants appealed the decision, and it is expected to be heard in the Third Circuit in the upcoming months.

The Escondido Ordinance

Following the actions of the Hazleton city council, city lawmakers in Escondido, California, passed Ordinance No. 2006-38R, called "An Ordinance Establishing Penalties for the Harboring of Illegal Aliens in the City of Escondido." Like the Hazleton ordinance, the Escondido law sought to prevent undocumented immigrants from obtaining housing within the city by prohibiting landlords from renting an apartment to anyone defined as an "illegal alien," and making landlords responsible for documenting all tenants' immigration status. Landlords who did not comply with the law were subject to fines up to $1,000 per day, suspension of their business licenses, and as much as six months in jail.[110]

One day before the ordinance was scheduled to take effect, a federal judge issued a temporary restraining order preventing its enforcement. A coalition of civil rights advocates and law firms filed a lawsuit challenging the ordinance as a violation of a variety of state and federal laws, including fair housing laws. In December of 2006, the City of Escondido relented.

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[107] *Id.* at 164.

[108] *Id.* at 165-166.

[109] *Id.* at 43.

[110] *See* American Civil Liberties Union (ACLU), *Anti-Immigrant Ordinances: Escondido, CA*, available at http://www.aclu.org/immigrants/discrim/27689res20061214.html .

As part of its proposed settlement agreement, the City backed down from the ordinance and agreed to not enforce it, citing rising legal fees as their main concern.[111]

The Manassas Ordinance

The city of Manassas, Virginia, took a different approach than either Hazleton or Escondido to obstruct immigrants' access to housing. In a thinly-veiled attempt to target Latino immigrant families, Manassas passed a zoning ordinance in 2005 that redefined "family," the purpose of which was to restrict households to immediate relatives, even when the total number living under the same roof was below the occupancy limit. Under the ordinance, a "family" was "[t]wo or more persons related to the second degree of collateral consanguinity by blood, marriage, adoption or guardianship….living and cooking together as a single housekeeping unit, exclusive of not more than one additional nonrelated person." Thus, the law would have prevented aunts, uncles, nieces, nephews, great-grandparents, or great-grandchildren from living together as a family unit.[112] The City claimed in a written statement that the law's narrow aim was to deal with overcrowded housing. However, the vice-Mayor told a newspaper that the law also was aimed at addressing "illegal immigration" and the problems the city associated with it, including parking, garbage issues, and tight school budgets.[113]

A similar ordinance had already been reviewed by the U.S. Supreme Court In 1977. In *Moore v. City of East Cleveland*,[114] the Court considered an East Cleveland housing ordinance that limited occupancy of a dwelling unit to members of a single family. The ordinance defined "family" very narrowly; legal family members included the head of household; dependent, unmarried children; and parents of the head of household. The Court struck down the law, holding that it arbitrarily regulated the family without justifying or satisfying the goals established by the ordinance. The Court determined that the protection of the "sanctity of the family" guaranteed by the U.S. Constitution extended beyond the nuclear family and reached the extended family (grandparents, aunts, uncles, and other family members).[115]

In early 2006, after being threatened with a legal challenge by civil rights groups, the City of Manassas suspended the ordinance. Shortly thereafter, the city council voted to repeal it.[116]

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[111] *See generally Garrett et al v. City of Escondido*, No. 3:06cv02434 (S.D. Cal. 2006).

[112] *See* Press Release, American Civil Liberties Union of Virginia, available at http://www.acluva.org/newsreleases2006/Jan5.html (January 5, 2006).

[113] Stephanie McCrummen, *Manassas Defends New Rule on Who Can Live Together*, WASH. POST, Dec. 30, 2005, at B1.

[114] 431 U.S. 494 (1977).

[115] *Id*.

[116] Stephanie McCrummen, *Anti-Crowding Law Repealed*, WASH. POST, Jan. 12 2006, at A1.

Other Local Ordinances Blocking Immigrants' Access to Housing

Since Hazleton, many cities around the country passed local anti-immigrant housing laws. Generally, the laws have in common some variation of the following provisions: (a) a requirement that landlords document the immigration status of their tenants; (b) prohibition of rental of housing to undocumented immigrants; and (c) imposition of sanctions and/or jail time upon landlords who fail to comply. Some of the laws, again emulating Hazleton, pass the housing ordinances in conjunction with "English-only" ordinances. Among the cities whose ordinances have drawn criticism and legal action are Cherokee County, Georgia; Riverside, New Jersey; Valley Park, Missouri; and Farmers Branch, Texas. To date, none of these ordinances has taken effect. In Georgia, a federal court blocked enforcement of the Cherokee County ordinance and stayed the case until similar challenges elsewhere have been resolved. In New Jersey, a township committee approved a bill that nullified the Riverside anti-immigrant housing ordinance. A federal judge in Texas struck down the Farmers Branch ordinance, and a state court in Missouri permanently enjoined the Valley Park ordinance, after which the city enacted several amended versions that are still being litigated.[117]

[117] *See generally* American Civil Liberties Union, *Local Anti-Immigrant Ordinance Cases*, available at http://www.aclu.org/immigrants/discrim/27848res20070105.html.

The Relationship between Residential and Educational Segregation

In a landmark report, Professor John Powell and his colleagues provided a detailed explanation of the complex relationship between segregated housing and segregated schools:

> There are at least three different ways in which school segregation and residential segregation influence one another. First, people often base their residential choices within metropolitan areas on the quality and racial composition of an area's schools. Second, states often draw school district and municipal lines in ways that create and preserve segregated communities. Finally, housing and education are related in that residential segregation produces segregated schools.[118]

Notably, the report made clear that the pervasive residential and educational segregation in metropolitan areas has created areas of "concentrated poverty."[119]

It is difficult to overstate the close connection between school segregation and racial segregation. For example, the Poverty and Race Research Action Council observed that:

> New federal, state and local programs to 'affirmatively further fair housing' should take a more prominent role in addressing racial isolation in the public schools, using expanded housing mobility programs, inclusionary zoning, regionally targeted use of housing trust fund expenditures, and site selection guidelines for assisted family housing that look explicitly at school performance and school racial and economic isolation.[120]

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[118] John A. Powell et al., The Institute On Race And Poverty, *Examining The Relationship Between Housing, Education, And Persistent Segregation* at 27 (June 2007).

[119] *Id.* at 9-10 ("The rise of concentrated poverty is substantially increasing the isolation of low-income communities of color. Concentration of poverty causes a lack of economic resources so severe that neighborhoods themselves are in poverty. Even though individual poverty for whites and people of color has diminished over the past few decades, we have seen an explosion in community poverty.").

[120] Philip Tegeler, *The Seattle/Louisville Decision and the Future of Race-Conscious Programs* (July/August 2007), *available at* http://www.prrac.org/full_text.php?text_id=1136&item_id=10539&newsletter_id=94&header=Search%20Results

Although courts recognize the close relationship between housing and education,[121] in practice, federal courts have great difficulty addressing the interplay of segregated schools and segregated housing.

In early desegregation cases, the Supreme Court recognized that, "school board decisions concerning new construction and school closings in *de jure* segregated school districts 'may well promote segregated residential patterns which, when combined with neighborhood zoning, further lock the school system into the mold of separation of the races."[122] However, despite this broad pronouncement, the Supreme Court has greatly limited the extent to which courts may hold that a connection exists between past *de jure* acts of segregation and present school segregation due to residential and other demographic factors.[123] Specifically – and due in large part to concern over the complex relationship between housing (and demographics) and schools – courts no longer consider current residential segregation as a factor in determining whether a school system is "unitary" unless the current residential segregation has a "causal link" to the past *de jure* segregation.[124] Courts have been less strict in permitting school districts to tackle *de facto* school segregation as a result of residential segregation. Although finding the plan unconstitutional because it was not narrowly tailored, the Supreme Court's recent *Seattle* decision upheld municipalities' ability to take race into account in attempting to integrate schools that would otherwise be segregated due to pervasive residential segregation.

The Supreme Court's *Keyes* Decision

The *Keyes* case was brought by parents in the Denver, Colorado, school district.[125] The parents sought a desegregation decree based on the School District's "use of various techniques such as the manipulation of student attendance zones, school site selection and a neighborhood school policy, [which the parents asserted] created or maintained

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[121] *See Dowell v. Bd. of Educ., The Okla. City Pub. Sch.*, 8 F.3d 1501, 1514 (10th Cir. 1993) (discussing the Supreme Court's recognition of "the synergy between segregated schools and segregated housing patterns"), *quoting Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 21 (1971) *and Keyes v. School Dist. No. 1*, 413 U.S. 189, 202 (1973).

[122] *Dowell*, 8 F.3d at 1514, *quoting Swann*, 402 U.S. at 21.

[123] *Keyes*, 413 U.S. at 211 ("[A]t some point in time the relationship between past segregative acts and present segregation may become so attenuated as to be incapable of supporting a finding of *de jure* segregation warranting judicial intervention.").

[124] *Dowell*, 8 F.3d at 1515.

[125] 413 U.S. at 191.

racially or ethnically (or both racially and ethnically) segregated schools throughout the school district."[126] The Court recognized that

> the use of mobile classrooms, the drafting of student transfer policies, the transportation of students, and the assignment of faculty and staff, on racially identifiable bases, have the clear effect of earmarking schools according to their racial composition, and this, in turn, together with the elements of student assignment and school construction, may have a profound reciprocal effect on the racial composition of residential neighborhoods within a metropolitan area, thereby causing further racial concentration within the schools.[127]

The school district defended its racially segregated schools by claiming that the segregation was a natural result of "a racially neutral 'neighborhood school policy.'"[128] Both the district court and the appellate court accepted this rationale and refused to enter the requested desegregation decree.[129]

The Supreme Court reversed on this point and rejected the lower courts' simple conclusion that "since the core city area population had long been Negro and Hispano [sic], the concentrations were necessarily the result of residential patterns and not of purposefully segregative policies."[130] The Court made clear that this justification (natural residential patterns) was not *per se* unavailable to school districts, but that it was unavailable in this particular case because of evidence of *de jure* segregation in other portions of the school system.[131]

Freeman and *Dowell*: The *De Jure* Segregation Cases

The case primarily responsible for limiting the scope of a courts' ability to consider current residential segregation is *Freeman v. Pitts*.[132] There, the Court held that although "[s]tudies show a high correlation between residential segregation and school segregation[,] . . . [w]here resegregation is a product not of state action but of private choices, it does not have

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[126] *Id.*

[127] *Id.* at 202.

[128] *Id.* at 206-07.

[129] *Id.*

[130] *Id.* at 211-12.

[131] *Id.* at 212.

[132] 506 U.S. 467 (1992).

constitutional implications . . . . It is simply not always the case that demographic forces causing population change bear any real and substantial relation to a *de jure* violation. And the law need not proceed on that premise."[133]

The Tenth Circuit in *Dowell* then applied the rule of *Freeman* to the thirty years of attempted desegregation in Oklahoma City.[134] *Dowell* affirmed the district court's conclusion that the Oklahoma City school district should be released from a federal desegregation injunction, even though the Oklahoma City schools remained segregated.[135] The *Dowell* court based its holding on the following rationale:

> By redistributing students in a manner designed to desegregate, and by maintaining that posture for some period and avoiding taking other actions that tend to create racially identifiable schools, school boards can exonerate themselves from fault for racially segregated housing patterns. The fact that residential segregation continues, and that neighborhood schools may be predominantly one race, is no longer considered traceable to the school board, but rather is viewed as the result of individual choices and socioeconomic forces.[136]

The Court reached its holding although it was "clear from the record developed through the long history of this case that the current housing patterns in Oklahoma City originated with *de jure* segregation which helped create and perpetuate a social and economic underclass of black people."[137]

In short, absent evidence of continued *de jure* segregation, even where past *de jure* segregation exists (whether school, residential, or both) a school district may be released from a desegregation decree where it has attempted to comply, in good faith, with the decree and the continued segregation is a product of "individual choices and socioeconomic forces."[138]

The *De Facto* Residential Segregation Case: *Seattle*

In *Seattle*, the school district used race as a "tiebreaker" in assigning students to the various magnet schools, as part of the district's voluntary attempt to ameliorate the *de facto* residential

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[133] *Id.* at 495-96.

[134] *Dowell*, 8 F.3d at 1518-20.

[135] *Id.*

[136] *Id.* at 1520

[137] *Id.* at 1520.

[138] *Dowell*, 8 F.3d at 1520.

segregation in that city.[139] Indeed, the school district had "for over 40 years . . . made efforts to attain and maintain desegregated schools and avoid the racial isolation or concentration that would ensue if school assignments replicated Seattle's segregated housing patterns."[140]

An *en banc* panel of the Ninth Circuit rejected a constitutional challenge to the school district's use of race. Applying strict scrutiny, the court found a "compelling interest in the educational and social benefits of racial diversity."[141] More to the point, the Court observed that "each court to review the matter has concluded that because of Seattle's housing patterns, high schools in Seattle would be highly segregated absent race conscious measures" and concluded that ""school districts have a compelling interest in ameliorating real, identifiable *de facto* racial segregation."[142]

The Supreme Court reversed the Ninth Circuit's ruling. The Court agreed that the school district "employs the racial tiebreaker in an attempt to address the effects of racially identifiable housing patterns on school assignments,"[143] but Justice Kennedy (in his concurring opinion) concluded that the school district's plan was not narrowly tailored because the tiebreaker was based on only two categories (white and non-white) despite the presence of numerous racial groups.[144]

[139] 426 F.3d at 1166-67.

[140] *Id.*; *see id.* at 1177-78 ("[T]he District's Plan strives to ensure that patterns of residential segregation are not replicated in the District's school assignments.").

[141] *Id.* at 1177.

[142] *Id.* at 1178; *see id.* at 1179 ("In sum, we hold that the District's interests in obtaining the educational and social benefits of racial diversity in secondary education and in avoiding racially concentrated or isolated schools resulting from ***Seattle's segregated housing pattern*** are clearly compelling.") (emphasis added).

[143] 127 S. Ct. 2738, 2747 (2007).

[144] *Id*. at 2791 (Kennedy, J. concurring).

Importantly, Justice Kennedy did not reverse on the issue of whether the school district's attempt to rectify *de facto* residential segregation constituted a compelling state interest. Indeed, he observed that:

> The plurality opinion is at least open to the interpretation that the Constitution requires school districts to ignore the problem of *de facto* resegregation in schooling. I cannot endorse that conclusion. To the extent the plurality opinion suggests the Constitution mandates that state and local school authorities must accept the status quo of racial isolation in schools, it is, in my view, profoundly mistaken.[145]

Justice Kennedy's (and the four dissenters') willingness to permit municipalities to attempt to combat segregated housing through integrated schools is welcome news to many school districts. Indeed, due to the extreme residential racial segregation in metropolitan areas, school districts feel they ***must*** resort to affirmative action as a last resort to achieve integrated public schools. For example, the Los Angeles Unified School District ("LAUSD"), the nation's second-largest school district, argued to the Supreme Court in the *Seattle* case that the only way LAUSD can comply with its California desegregation obligations is through the use of affirmative action and other race-conscious programs:

> "Because LAUSD is a school district in which fewer than one of eleven students is Anglo and ***residential housing is largely segregated***, LAUSD cannot begin to meet its obligation under state law without the limited use of race and ethnicity in the Magnet Program and other parts of its desegregation plan."[146]

Due to persistent residential segregation, the importance of race-based policy decisions cannot be overstated. LAUSD argued to the Supreme Court that the elimination of race-based desegregation policy options would mean that "[f]or a majority of those [magnet] students, [they] would [ ] leav[e] a desegregated school and return[] to a school segregated by residential patterns within the LAUSD."[147]

Other municipalities tackle the issue of housing and schooling head-on. For example, in July 2008, the State of New Jersey amended its Fair Housing Law to better provide for affordable housing and, in particular, integrated affordable housing.[148] Provisions of the bill include:

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[145] *Id.*

[146] Brief of Amicus Curiae Los Angeles Unified School District In Support of Respondents at 2-3, *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 127 S. Ct. 2738 (2007) (No. 05-908) (emphasis added).

[147] *Id.* at 6.

[148] 2008 N.J. Sess. Law Serv. Ch. 46 (Assembly 500).

- eliminating the ability of wealthy areas to pay less wealthy districts to avoid complying with fair housing requirements;

- imposing a 2.5% tax on non-residential construction to increase revenue for the construction or rehabilitation of affordable and workforce housing;

- requiring private developers that receive government funding to build residential projects to include integrated, mixed income residences therein.

Summary of Books and Articles

Summary of Books and Articles

Roberta Achtenberg, *Symposium: Shaping American Communities: Segregation, Housing & The Urban Poor: Keynote Address*, 143 U. PA. L. REV. 1191 (1995).

The passage of the Fair Housing Act in 1968 was meant to ensure an end to discrimination in housing in the United States. Decent, affordable housing was seen as a fundamental step to economic and social opportunity.

Unfortunately, the federal government, including the Department of Housing and Urban Development (HUD), has helped perpetuate housing discrimination. Throughout its history, HUD repeatedly has missed opportunities to combat housing discrimination. Some federal programs actually concentrate poor minority families in one area. In some communities, Federal Housing Administration programs have actually contributed to residential re-segregation by contributing to high foreclosure rates. Because the Fair Housing Act places the burden for combating housing discrimination on the victims, enforcement has been inadequate.

As of 1995, it was only recently that steps had been taken to improve HUD's enforcement mechanisms. The department started working with local governments instead of micromanaging them and settled long standing discrimination lawsuits. HUD also reorganized enforcement centers to make sure the antidiscrimination laws were complied with.

The article emphasizes the need not to abandon the federal commitment to housing despite some calls at that time to disband HUD.

Camille Zubrinsky Charles, *The Dynamics of Racial Residential Segregation*, 29 Annual; Review of Sociology 2003, 167 (2003).

The passage of the Fair Housing Act in 1968 led many to believe that racial segregation in housing was about to come to an end in the United States. However, while the law enabled some middle and working class African-Americans to move out of urban ghettos, poor African-Americans remained. In addition, the departure of the middle-class removed an important social buffer and created or maintained isolated, segregated communities. Still, the level of intentional discrimination responsible for residential segregation remains contested. Studies have shown that the racial composition of a community is a major factor when people decide where to live.

Although black-white segregation has declined recently, African-Americans remain severely segregated in most U.S. cities. Also, Hispanic and Asian segregation from whites is on the rise, especially in the western United States. In some California and Texas cities such as Los Angeles and Houston, whites already represent less than 50% of the population. Some of these cities show a hyper-segregation of minorities, with a particular racial minority having little contact with other racial groups. Black-white segregation has been most resistant to change in eastern and midwestern regions. Western regions showed the largest declines in black-white

segregation, partially due to the influx of other ethnic minorities like Hispanics. Although minority suburban population is increasing, suburban segregation still remains.

Charles discusses two theories that try to explain why racial housing segregation has persisted despite antidiscrimination laws. The Spatial Assimilation model theorizes that individuals convert socioeconomic gains into higher quality housing by leaving ethnic neighborhoods for those with more whites and through acculturation. Although this model is supported by the behavior of Hispanics and Asians, it is undercut by the behavior of African-Americans and whites: whites tend to live in more affluent neighborhoods regardless of their social class characteristics while African-American homeowners tend to live in poor, segregated neighborhoods even with improved social class status.

The Place Stratification model theorizes that racial minorities are sorted by place according to their group's relative standing in society, thereby limiting even socially mobile members from residing in the same communities as economically comparable whites. This model suggests that whites use residential segregation as a manifestation of discrimination to maintain social distance from minorities and preserve their relative status advantage.

Some argue that decentralized racism exists where whites pay more to live in predominantly white areas, making discriminatory behavior more subtle and harder to detect. However, a growing body of evidence indicates racial discrimination in lending practices. This discrimination makes it more difficult for minorities to purchase housing, particularly in neighborhoods with few minorities.

Charles urges continuing efforts at residential integration and offers various suggestions for implementing appropriate policies, such as studying successfully integrated communities and encouraging programs that support low-income home-ownership.

Camille Zubrinsky Charles, *Won't You Be My Neighbor?* (2006).

Charles' recent book focuses on the fact that, while Los Angeles has become an increasingly diverse city, it has by no means become an integrated city. There has been a significant increase in the minority population of Los Angeles in the last several decades leading to many different racial communities and social structures.

However, the increase in racial ethnic diversity can lead to an increase in racial and ethnic tensions, as evidenced by the 1965 Watts riots and the 1992 Los Angeles riots. In connection with the 1992 riots, many African-Americans felt that Korean immigrants had been taking advantage of them and the poor community in which they conducted business and lived. The racial and ethnic tensions can be evaluated in light of racial residential segregation.

Many scholars have attempted to explain the persistence of racial residential segregation using models such as the Spatial Assimilation model and the Place Stratification model. The Spatial Assimilation model places responsibility for residential segregation on objective differences in socioeconomic status and immigration-related characteristics. The Place

Stratification model focuses on persisting racial prejudice and discrimination. Both models provide valuable insight, but each has its drawbacks. For example, studies under these models do not test whether attitudes influence housing-related behaviors and do not account for characteristics specific to immigrants.

Charles suggests that the US Census Bureau should gather information regarding Americans' racial attitudes in addition to demographic data. However, since this is not likely to occur, Charles suggests that the Los Angeles Survey of Urban Inequality data be combined with Census data to create a more accurate attitudinal model of racial residential segregation.

Charles argues that by examining preferences for racial integration within the context of racial identity, perceptions of discrimination, and beliefs about inequality, the patterns of preferred contacts with various racial groups in different communities can be better understood.

Charles calls for looking at focused statistical data and a more nuanced analysis of racial residential segregation. For example, different levels of prejudice can play differing roles in shaping preferences for integration among minorities, but these differing levels are not necessarily taken into account under the current models. Although prejudice has the biggest impact on residential preferences for whites, prejudice also has an impact on the preferences of African-Americans, Latinos and Asians. Moreover, in-group attachment within minority groups sometimes leads to a resistance to integration. In recent years, whites have become increasingly willing to live in close proximity to racial minorities, and many minority group members are still willing to live in predominantly white neighborhoods.

Charles suggests better enforcement of regulations regarding discriminatory lending and regular monitoring of those suspected of real estate related discrimination.

Loewen, James W. *Sundown Towns*. New York: The New Press, 2005.

In his text *Sundown Towns*, sociologist James Loewen examines the historical evolution of American towns, counties, and suburbs that have excluded members of one or more out-groups from living within their confines. Members of the shunned groups have often been allowed to work or travel within these sundown locales during the daylight hours, but towns, counties, and suburbs have used a variety of enforcement mechanisms to ensure that all members of the excluded group or groups have left by sunset. Some towns and counties have even had a practice of disallowing members of certain groups within their confines at all times. By far, the most excluded group from America's sundown locales has been African Americans, but members of a wide range of out-groups, including Jews, Latino/a persons, union members, GLBT people, and Asian Americans, have also been excluded from residing in certain places. Although some sundown towns, counties, and suburbs remain extant, Loewen locates the most intense period of the sundown town practice in the decades between 1890 and 1970 (23). Loewen expends most of his energy exploring the dynamics of sundown locales in the Midwest, where they have been most common, but also makes clear that this practice of exclusion has been a nationwide

one, common in the North, West, and non-traditional South, rare but not nonexistent in the traditional South.

The practice of sundown exclusion in the West has been in many ways similar to and in a few key ways different from the practice of sundown exclusion nationwide. Loewen argues that any understanding of the phenomenon of sundown towns must begin with an understanding of the nationwide shift in the tenor of race relations that took place around 1890. From 1890 to about 1940, the United States was mired in an era known as the Nadir of race relations. The greatest growth in the development of independent sundown towns nationwide took place during this era, just as Jim Crow and *de jure* segregation grew to be the law of the land in the South. Loewen holds that three key factors led to the Nadir. The Indian Wars, increased immigration, and imperialism of the post-Civil War era have explanatory power in relation to the onset of the Nadir (31-33).

The Indian Wars and imperialism, both of which were by no means entirely racially motivated, gave occasion for white Americans to witness themselves in acts of brutal carnage against people of color from Wounded Knee, South Dakota, in 1890, to the remains of Spain's imperial possessions in the wake of 1898's Spanish-American War. The brutality of American military treatment of people of color stood in stark contrast to the comparative idealism of Reconstruction era Republicans. Loewen holds that the ill-treatment of people of color in the West and abroad made a reversion to pre-Civil War racial norms much easier. In western states, this intensification of racism led to the creation of sundown towns that excluded African Americans and other groups, in addition to already discriminated against American Indians and Asian Americans.

Loewen also cites increased immigration as a primary cause of the Nadir. When new European immigrant groups came to the United States in the late nineteenth and early twentieth centuries, many of their members were quickly inducted into the Democratic Party, which had worked hard to establish itself as the white man's party as it suffered defeat after electoral defeat during the Reconstruction era. Its support among African Americans notwithstanding, the Republican Party of the era was, by contrast, a party of elites and prohibition, two characteristics that did not serve well to endear the GOP to immigrants from Southern and Eastern Europe. The Democratic Party, having a second portion of its base centered in the South, inculcated many of its recent immigrant adherents with a racism that economic competition among marginalized groups made easy to stoke.

In the West, the racism fueled by Democratic Party affiliation and economic competition led to anti-Chinese racist practices that directly presage the tactics used by sundown towns to exclude African Americans and other groups. Members of the Knights of Labor used violence to expel Chinese American miners from Rock Springs, Wyoming, in 1885, spawning copycat expulsions in other Wyoming towns, as well as in Colorado, Oregon, Utah, and other western states (50-51). The entire state of Idaho became a veritable sundown state in relation to Chinese Americans as violence and intimidation caused a decline in Chinese American population from about one third of the state's total in 1870 to

a negligible percentage in 1910 (51). Eureka, California, used the appearance of local government legitimatization and the implicit threat of violence to expel its Chinese American population in 1885; many other California towns followed suit in the ensuing decades (51-52). Although efforts to expel Chinese Americans from large cities like Seattle, San Francisco, and Los Angeles were not successful, anti-Chinese racists effectively developed the methods by which members of out-groups could be excluded from independent towns and counties (53).

As southern elites moved to reinforce the status quo of antebellum race relations through the sharecropping system and residential segregation within municipalities, locales outside of the South, lacking traditional reliance upon inexpensive African American labor, moved decisively to exclude African Americans from their towns and counties. Through violence, intimidation, city ordinance, and unfair real estate practices, towns from Maine to Illinois to Oregon expelled out-groups, most often African Americans, from their corporate limits. In discussing every facet of the sundown issue, Loewen makes it clear that the West is not a regional exception from national trends and that sundown towns proliferated in states, such as Oregon, California, and Washington, that never participated in the slave system to the same degree as former slave states and territories like Texas, Oklahoma, and Arizona.

Traditional independent sundown towns, which have been most common in rural Illinois and Indiana, have included Medford, Oregon; Antioch, California; Scottsdale, Arizona; and Okemah, Oklahoma, towns in all sub-regions of the West (13, 51, 69, 247). Enforcement mechanisms in Medford included the use of the Ku Klux Klan to intimidate African American residents, the refusal to sell real estate to African Americans, and even the refusal to sell groceries to African American shoppers (99, 243). The efforts of Medford residents in allegedly progressive Oregon to preserve their town's all-white racial composition mirror the efforts of towns in rural Indiana, where stereotype predicts Klan presence and open racism, and the blatant disregard of African Americans shown in the housing market and in public accommodations resembles the practices of elite suburbs in purportedly liberal New York and Connecticut. The problem of sundown towns has clearly been a part of a nationwide epidemic of racism, only failing to rear its ugly head in southern locales that have had other racist institutions available to them that have allowed elite white reliance on African American labor to continue along side residential segregation.

Loewen argues that sundown suburbs have become more common and, in some ways, more insidious than independent sundown towns, especially in the years since World War II. Maintaining their all-white status through restrictive covenants, discriminatory lending practices, steering, violence, and the threat of violence, among other means, sundown suburbs of all class make-ups have excluded African Americans and, at times, other out-groups. Although sundown suburbs have most contributed to residential segregation in Rust Belt metropolitan areas like Philadelphia, Cleveland, Detroit, Chicago, and Milwaukee, sundown suburbs have emerged outside of New York City; Washington, D.C.; Mobile, Alabama; Denver, Colorado; San Diego, California; and Los Angeles, California.

According to Loewen, Douglas County, Colorado, one of the wealthiest counties in the United States, is only 0.7% African American. La Jolla, California, a sundown suburb that excluded African Americans, Jews, and Latino/a people, only allowed Jews to reside there after 1959 when the University of California system granted the San Diego suburb a university under the condition that the discrimination against Jews would end (405-406). Loewen cites a source alleging that La Jolla continued its discrimination against prospective Latino/a residents into the 1960s (78-79). Beverly Hills, California, an elite suburb of Los Angeles was planned as an all-white community, and for years its only African American residents were live-in servants (112, 281).

Loewen identifies the motivation for elite whites to move to sundown suburbs as having its roots in the thirst for status. Elite whites sought communities with exclusive characters that served as a constant reminder that the resident, as a result of his or her virtues in comparison to society at-large, may have access to that which others may not. African Americans who have been excluded from that access, whether it be to quality schools, parks, other municipal services, or safe streets, live the consequences of that exclusion with poverty, crime, and poor schools the frequent result. The lack of access becomes cyclical as elite whites attribute social problems to African Americans, rather to the conditions in which many African Americans live as a result of segregation. Sundown suburbs continue to construct high access barriers to keep out potential African American residents whom white residents view with suspicion and fear. Loewen cites the Gautreaux experiment in which many African Americans in Chicago relocated to predominantly white Chicago suburbs with the result that achievement among the new suburban residents skyrocketed while the social problems of the ghetto failed to follow African Americans out of the center city (354-355).

Instead of welcoming residents of the African American Los Angeles neighborhood of Watts into their neighborhoods in the name of equal opportunity, residents of Glendale, a sundown suburb of Los Angeles, called in the National Guard to protect their community during the Watts riots in the mid-1960s (327). The city took this precaution despite the fact that Watts is an over one hour drive from Glendale. The mere thought of unstable geographic relations within a metropolitan area can be enough to make a locale resort to extraordinary means in defense of its home values.

Loewen views proactive, federally-mandated attempts by current and former sundown towns, counties, and suburbs to publicize their openness to African Americans and other out-groups as necessary to ameliorating the social problems, affecting white and out-group populations, that have emerged as an outgrowth of sundown towns (440-442). If sundown towns do not cooperate and follow the mandate to promote open housing, Loewen envisions an enforcement role for the United States Department of Housing and Urban Development, which would have the authority to cut off certain kinds of federal assistance to discriminatory municipalities (442-446). Although sundown towns, counties, and suburbs still exist throughout the country, the most intractable ones appear to be outside of the West. Comparative progress in integrating the West, Loewen contends, is,

to a great extent, the result of the greater diversity of the West generally (408-410). Areas with large and growing Latino/a and Asian American populations are less likely to sustain their resistance to African Americans.

From: "Table 1. Counties with No or Few (<10) African Americans, 1890 and 1930" (56)

State	1890	1890	1930	1930
	0 Blacks	<10 Blacks	0 Blacks	<10 Blacks
Arizona	0	1	1	1
California	0	4	0	8
Colorado	5	19	8	28
Idaho	1	9	14	33
Montana	0	2	11	41
Nevada	1	6	1	8
New Mexico	0	9	3	11
North Dakota	13	26	20	42
Oklahoma	2	10	4	11
Oregon	1	16	4	24
South Dakota	19	37	23	52
Texas	3	20	8	29
Utah	5	16	15	22
Washington	5	16	6	20
Wyoming	0	5	1	11

The data for counties in western states extracted from Loewen's table shows increases in the number of sundown counties across the West during the Nadir.

Summary of Key Cases

of Western Fair Housing

Summary of Key Western Fair Housing Cases

LOS ANGELES AREA

Keith v. Volpe, 858 F.2d 467 (9th Cir. 1988).

In *Volpe*, the Ninth Circuit reviewed an action where individuals, a low-income housing project developer, and the state housing department sought injunctive relief against the City of Hawthorne (the "City") for violating a consent decree, entered into in 1981, that resulted from litigation that began in 1972. The court held that (a) the individuals and organizations were permitted to bring the 1988 lawsuit as a supplemental complaint to the 1972 action; (b) the individuals and organizations had standing to sue the City; and (c) the City's refusal to permit construction of low-income housing had a greater adverse impact on minorities and was therefore discriminatory in violation of the Fair Housing Act ("FHA").

In the 1972 action, individuals and groups concerned about the dislocation of people living in the path of the then-unconstructed Century Freeway in Los Angeles sued the various state and federal agencies responsible for the freeway's funding. After years of litigation, the parties entered into a consent decree that obligated the defendants to commit to provide units of replacement housing for low and moderate income households. Fulfilling the terms of the decree required the cooperation of the municipalities in the freeway's path, including the City. In 1985, the City and its officials refused approval of certain housing developments for low-income families; plaintiffs alleged that the refusal resulted in unlawful discrimination against minority and low-income persons displaced by the freeway.

Finding for the plaintiffs, the court in *Volpe* first rejected the City's argument that plaintiffs should have been barred from bringing the action as a supplemental complaint to the 1972 action. The court held that allowing the supplemental complaint was well within the district court's discretion under Federal Rule of Civil Procedure 15. The court also rejected the City's argument that the plaintiffs lacked standing to sue, finding that the individuals, the project developer, and the state agencies all satisfied the "injury in fact" requirement to establish standing to sue. Finally, in an issue of first impression for the Ninth Circuit, the court held that a showing of discriminatory impact alone was sufficient to establish a prima facie case of discrimination under the FHA. The court agreed with the trial court that the City's actions had a clearly discriminatory effect because the majority of the displaced residents were minorities, and failure to approve the housing projects seriously jeopardized the displaced persons' ability to live in the City. Additionally, the court agreed with the trial court that the City's proffered justifications for not approving the developments – among them, school overcrowding and increased traffic – were pretextual.

Harris v. Itzhaki, 183 F.3d 1043 (9th Cir. 1999).

The issue before the Ninth Circuit in *Itzhaki* was whether the plaintiff, a former tenant of an apartment complex, had standing and sufficient evidence to sue the complex's landlords for

race discrimination under the FHA. The court held that the plaintiff had standing to sue under the FHA, and her claims were sufficient to survive summary judgment.

The defendants in *Itzhaki* were landlords who owned a Los Angeles rental property in which plaintiff, an African-American tenant, lived. The landlords relied on an elderly tenant of the property to assist them with administrative duties such as keeping spare keys, collecting rent, and showing vacant apartments to prospective tenants. The plaintiff overheard the elderly tenant say, "the owners don't want to rent to blacks," after which the plaintiff complained to a fair housing council. The council used fair housing testers to test the apartment complex and found that the white tester received much more favorable treatment than the black tester. The plaintiff also claimed other specific acts of discrimination.

The court first held that the plaintiff met the requirement for standing under the FHA – the Article III minima of injury in fact – by alleging indirect injury from differential treatment of the black housing testers, as well as the statement by the elderly tenant. Next, the court reversed the trial court's award of summary judgment to the landlords, holding that the plaintiff established a prima facie case of disparate treatment under the FHA; although the landlords offered a non-discriminatory reason for treating the testers differently, the court concluded that there was a genuine factual question as to whether their reason was pretextual. Finally, the court rejected the landlords' argument that the elderly tenant was not their agent or employee, thereby making her statements inadmissible. The court held that a jury could reasonably find that she was an agent of the landlords, and her discriminatory statement was part of an evidentiary showing establishing a triable issue on the existence of a claim under section 3604(a) of the FHA, which makes it unlawful to deny a dwelling to any person because of race.

Walker v. City of Lakewood, 272 F.3d 1114 (9th Cir. 2001).

In *Walker*, the Ninth Circuit considered whether an independent fair housing services provider, engaged in advocacy efforts and contracted with a city, may sue the city for retaliation against that advocacy. The court held that, as a general matter, retaliation against independent providers can be actionable under section 3617 of the FHA, which prohibits employers from canceling employment contracts in retaliation for fair housing advocacy, as well as the California Fair Employment and Housing Act ("FEHA").

Appellants were a fair housing foundation ("FHF") that operated a fair housing counseling program for the city of Lakewood (the "City"). A group of tenants at an apartment complex in the City contacted FHF regarding alleged racial discrimination and harassment at the complex, after which the FHF referred the tenants to legal counsel. The tenants filed suit against the City, and the FHF, after notifying the City that it was going to do so, distributed a press release about the suit. The City claimed that the press release accused it of racism. The City then threatened to withhold payment from the FHF until it apologized, and, after excluding the FHF from consideration for contract renewal, filed a third-party complaint against the FHF for breach of contract and indemnity.

The trial court held that the FHF did not have standing to sue under either the FHA or FEHA and awarded summary judgment to the City, but the Ninth Circuit disagreed. Reasoning that the FHF met the Article III minima of injury in fact required for standing to sue, and proffered enough evidence to meet its burden at the summary judgment stage, the court concluded that FHF had standing to sue under both the FHA and FEHA. After determining that independent contractors are protected by FEHA in the housing discrimination context, the court held that the FHF had stated cognizable retaliation claims under the FHA and FEHA, both of which survived summary judgment.

Fair Housing Council of San Fernando Valley v. Roommates, Inc., 521 F.3d 1157 (9th Cir. 2008).

In *Roommates*, the Ninth Circuit considered whether section 230 of the Communications Decency Act of 1996 ("CDA") provided immunity to the operators of a roommate-matching website that published and distributed responses to questionnaires completed by third parties about their roommate preferences. That section of the CDA immunizes providers of interactive computer services against liability arising from content created by third parties; the immunity applies only if the interactive computer service provider is not also an "information content provider," defined in the CDA as someone who is "responsible, in whole or in part, for the creation or development of" the offending content. The court held that section 230 of the CDA did *not* provide immunity to the website operators, where the operators created discriminatory questions and answer choices and designed their website registration process around those questions and answer choices.

The defendants in *Roommates* operated a website that assisted people in locating roommates. Site subscribers had to create a user profile by responding to various questions posed by the website, and for most of them, could select an answer only from a pre-determined set made available by the site. Among other parameters, subscribers were required to state their age, sex and sexual orientation, and state whether they lived with or without children. Subscribers could also provide more information in an "additional comments" box, which the site "strongly recommended" but did not require, and were free to enter what they wanted in the box. The site assembled user profiles from the questionnaire responses and distributed email to site users listing compatible roommate matches based on users' stated preferences. Thus, someone seeking a straight roommate would not receive listings from people stating that they were gay, and vice-versa. The site also used the profile information to restrict those who could view it to users with compatible preferences. Claiming that the defendants were effectively a housing broker doing online what was prohibited off-line, two fair housing councils sued the defendants, alleging that their business violated the FHA and California housing discrimination laws.

The court held unanimously that the defendants were not immune from FHA liability under the CDA for the questions in its profile questionnaires. Specifically, section 230 of the CDA provides that "no provider … of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider." The court reasoned that "the touchstone of section 230(c) is that providers of interactive computer

services are immune from liability for content created by third parties;" here, however, the discriminatory questions and answer choices were created by defendants, and subscribers were forced to answer them as a condition of using the services. Thus, the defendants were a developer in the discriminatory information rather than just a passive transmitter of information provided by others. By the same reasoning, the court found that the defendants were *not* liable for publication of subscriber responses in the "additional comments" box.

CENTRAL CALIFORNIA

Affordable Housing Development Corp. v. City of Fresno, 433 F.3d 1182 (9th Cir. 2006).

In this case, the Ninth Circuit considered whether the City of Fresno (the "City"), in refusing to authorize bonds to fund a low-income apartment project, discriminated on account of disabilities, family size, ethnicity or race in violation of the FHA, California's FEHA, the Americans with Disabilities Act ("ADA"), and various civil rights laws. The court upheld the trial court's award of summary judgment to the defendants, which included the City, individual citizens, and a councilmember from the City.

The Affordable Housing Development Corporation ("AHDC"), a housing developer, sued the City, a City councilman, and a group of citizens because the City refused to approve bonds for a low-income apartment project. The AHDC had proposed and moved forward on the project presupposing that a majority of the financing would come from $30 million in tax-exempt bonds. However, the Tax Equity and Fiscal Responsibility Act ("TEFRA") requires that local governments approve such bonds. After vigorous opposition from citizens who lived in the area of the proposed project, led by councilman Chris Mathys, the Fresno City Council voted to deny the bonds. The AHDC then sued the defendants, accusing them, among other things, of "vicious, old-fashioned rabble rousing," breaking promises not to oppose the project, and of various violations of the FHA, FEHA, and ADA.

The Ninth Circuit upheld most of the district court's rulings, including summary judgment for the citizens, legislative immunity for the councilmember, and the holding that the City's proffered defense against the AHDC's disparate impact claims – that the housing project might negatively impact neighboring property values and was arguably unnecessary – were legitimately related to the City's exercise of the discretion conferred by Congress. The court found that the City had thus proffered a good defense and was not liable under the FHA, FEHA or the ADA.

NORTHERN CALIFORNIA/SAN FRANCISCO BAY AREA

Trafficante v. Metropolitan Life Ins. Co., 409 U.S. 205 (1972).

The *Trafficante* case stands for the proposition that there is an enforceable right under the FHA to live in a building that is free of housing discrimination. Here, the Supreme Court considered whether the tenants of an apartment complex building had standing to sue under section 810(a) of the FHA, which provides that individuals who have been injured by a discriminatory housing practice, or believe that he/she will be irrevocably injured by a

discriminatory housing practice about to happen, may file a complaint with the Secretary of the Department of Housing and Urban Development ("HUD"). The Court held that the plaintiffs had standing to sue, as Congress intended to define standing under the FHA as broadly as is permitted under Article III of the Constitution.

The plaintiffs in *Trafficante* were two tenants of a multi-unit apartment complex, one black and one white, who filed complaints alleging that the owner of the complex had violated section 804 of the FHA by discriminating against nonwhites in the rental of apartments. Specifically, the tenants claimed injury by the owner's discriminatory practices in that the tenants (1) had lost the social benefits of living in an integrated community; (2) had missed business and professional advantages which would have accrued if they had lived with members of minority groups; and (3) had suffered embarrassment and economic damage in social, business, and professional activities from the stigma of living in a "white ghetto."

The district court held that the plaintiffs did not meet the definition of "persons aggrieved" under the FHA, and the Court of Appeals affirmed. The Supreme Court reversed. Relying on a similar interpretation of words in the Civil Rights Act of 1964, the Court held that the FHA reflected a congressional intention to define standing in a broad and inclusive manner. The Court concluded that it could "give vitality to section 810(a) only by a generous construction which gives standing to sue to all in the same housing unit who are injured by racial discrimination in the management of those facilities within the coverage of the statute."

Briggs v. Eden Council for Hope and Opportunity, 19 Cal.4th 1106 (1999).

In *Briggs*, the California Supreme Court analyzed California's "anti-SLAPP" statute, a law that aims to quash lawsuits filed to intimidate or silence people who have petitioned the government or spoken out on a public issue. The court was faced with the following question: when speech connected with an official proceeding leads to a lawsuit, must the defendant who wants the lawsuit dismissed separately demonstrate that the speech concerned an issue of "public significance?" In answering "no," the court held that a defendant moving under California's anti-SLAPP statute to strike a lawsuit arising from a statement made before, or in connection with an issue being considered by, a legally authorized official proceeding, *need not* demonstrate separately that the statement concerned an issue of "public significance."

The appellants in *Briggs* were landlords who sued the Eden Council for Hope and Opportunity ("ECHO"), a nonprofit organization that assisted tenants who had disputes with their landlords by providing counseling, mediation, and referral services. Previously, ECHO had assisted one of the landlords' tenants in filing a complaint with HUD against the landlords. The landlords sued ECHO, alleging that during the HUD investigation, ECHO had defamed them by calling them libelous names, including "racists." In response, ECHO filed a motion to strike the lawsuit under California's anti-SLAPP statute.

The trial court granted the motion, but the appellate court reversed. The California Supreme Court, concluding that the Court of Appeal erred, held for ECHO. Rejecting the landlords' argument that ECHO's activities were not protected because ECHO was neither promoting its

own free speech rights nor informing the public about wrongdoing, the court reasoned that, "it is the context or setting itself that makes the issue a public issue: all that matters is that the First Amendment activity take place in an official proceeding or be made in connection with an issue being reviewed by an official proceeding." The court thus interpreted the anti-SLAPP statute broadly, and defendants seeking to strike actions under the statute need not separately demonstrate that their speech concerns an issue of "public significance."

Fair Housing of Marin v. Combs, 285 F.3d 899 (9th Cir. 2002).

In a question of first impression for the Ninth Circuit, the court in *Combs* considered whether a community fair housing organization has standing to sue a private party for violations of the FHA. Following the lead of other Circuits, the court held that a non-profit fair housing organization had direct standing to sue a property owner because it showed a drain on its resources from both a diversion of its resources and frustration of its mission.

The appellees in this case were Fair Housing of Marin (FHOM), an organization whose mission was to promote equal housing opportunities. Among FHOM's activities were outreach and education to the community about fair housing, as well as investigations into allegations of housing discrimination. In response to complaints that the landlord of an apartment complex was racially discriminating against black tenants, FHOM conducted controlled tests where a black tester was shown a unit at the complex followed by a white tester; the tests revealed that the landlord discriminated against black applicants.

The trial court found that FHOM had standing to sue the landlord, found the landlord had violated the FHA, and awarded over $600,000 in damages and attorneys fees to FHOM. On appeal, the Ninth Circuit affirmed the trial court's ruling. The court said that FHOM's injury, which was a diversion of resources and frustration of mission due to the costs associated with investigating the landlord's practices and the dissemination of literature aimed at redressing the impact of the landlord's racial discrimination on the housing market, was sufficient to confer standing. The court also upheld the award of compensatory damages, punitive damages, and attorney fees to FHOM.

Giebler v. M & B Associates, 343 F.3d 1143 (9th Cir. 2003).

The question that the Ninth Circuit considered in *Giebler* was whether the Fair Housing Amendments Act ("FHAA") required the owners of an apartment building to reasonably accommodate a potential tenant's disability by assessing his individual disability-induced financial situation and proposed financial arrangement, rather than inflexibly applying a rental policy that barred potential tenants from having cosigners. The court held that the FHAA does so require reasonable economic accommodations for disabled individuals.

Giebler was a man with AIDS who, because of AIDS-related impairments, could not work and was living off of disability payments supplemented by financial help from his mother. Because of his reduced income, he did not meet the minimum income requirements to live in an apartment complex owned by the defendant landlords. The landlords rejected Giebler's

application, despite his good credit and rental history. The landlords also rejected Giebler's proposed financial arrangement where Giebler's mother – who lived within a mile of the rental unit and also had excellent credit and solid assets – would sign the lease for her son, because the landlords had a strict "no-cosigners" policy. Giebler filed an action under the FHAA, California's FEHA, and other statutes, alleging disparate impact discrimination, intentional discrimination, and failure to reasonably accommodate his disability through the landlords' refusal to waive their no-cosigner policy.

The trial court ruled in favor of the landlords, reasoning that the FHAA did not contemplate an accommodation which remedies the economic status of a disabled person. The Ninth Circuit reversed, holding that the FHAA includes reasonable economic accommodations to disabled tenant applicants rather than applying an inflexible rental policy barring cosigners. The court reasoned that renting to Giebler's mother was a reasonable accommodation, as it would have afforded Giebler an equal opportunity to use and enjoy a dwelling and, under these circumstances, would not have been any kind of burden on the landlords.

Sisemore v. Master Financial, Inc., 151 Cal.App.4th 1386 (2007).

In *Sisemore*, a California Court of Appeal considered whether a licensed family day care home operator who allegedly suffered discrimination when applying for a home loan may state a legally cognizable claim for discrimination under California's FEHA. The court held that the plaintiffs stated both a legally cognizable source-of-income claim and a disparate impact discrimination claim under FEHA.

The plaintiff in *Sisemore* sought a home loan for the purpose of buying a house which she planned to live in and use as a daycare center, a business that formed her primary source of income. During the escrow process, the lender denied the plaintiff's loan application, stating unequivocally that it did "not lend on daycare homes." The plaintiff was thus required to seek and obtain an alternative home loan with less attractive rates. The plaintiff filed a complaint against the lender, claiming that its refusal to grant her home loan violated FEHA because it (a) constituted intentional discrimination on the basis of her source of income; and (b) had the effect of discriminating against women and families with children.

In the first published decision to extend source-of-income protection outside of the landlord-tenant context, the court reversed the trial court and ruled that the plaintiff stated claims for intentional discrimination on the basis of source-of-income in violation of FEHA. The court relied on legislative history, principles of statutory construction, and "common sense" to reach this result.

The court also held that plaintiffs could state a claim that the lender's facially neutral prohibition against loans for day care centers violated the FEHA because it had a disparate impact on women and families with children. The court also upheld a co-plaintiff fair housing agency's standing to sue on this cause of action based on the allegation that the discrimination caused the agency to divert its resources.

PACIFIC NORTHWEST

Pfaff v. HUD, 88 F.3d 739 (9th Cir. 1996).

In *Pfaff*, the Ninth Circuit considered whether two private landlords' facially neutral practice of numerically restricting the occupancy of their rental home illegally discriminated against families with children. The court held that the landlords successfully rebutted the prima facie case against them, and admonished HUD for its "heavy-handed conduct" in suing the landlords.

A retired couple owned a number of rental units, and each unit's occupancy limit varied with the size of the dwelling, its lot, its amenities, and the landlords' own "common sense." The complainants, a family of five, expressed interest in one of the rental units through a real estate broker; however, the landlords communicated that they wished to rent to a family of four and were not interested in renting to the complainants. The complainants subsequently filed a complaint with HUD, claiming that the landlords had violated the FHA by discriminating against them on the basis of "familial status."

Relying on a recent administrative adjudication that announced a new rebuttal standard, the administrative law judge ("ALJ") required the landlords to produce a "compelling business necessity" to justify their numerical occupancy restriction and, concluding that the landlords failed to satisfy this standard, found for the complainants. The Ninth Circuit vigorously disagreed. In addition to finding that the ALJ applied the incorrect rebuttal standard, the court relied on the record to set aside the ALJ's decision. The court concluded that the new rebuttal standard was a radical departure from preexisting HUD interpretations of the FHA, and found that HUD acted with arbitrariness and caprice by bringing the enforcement action against the landlords. The court therefore reversed the ALJ's order and dismissed the charge of discrimination against the landlords.

McGary v. City of Portland, 386 F.3d 1259 (9th Cir. 2004).

In *McGary*, the Ninth Circuit considered whether the City of Portland (the "City") discriminated against a resident on the basis of his disability, in violation of the FHAA and the ADA, when it denied the plaintiff's request for additional time to clean his yard in order to comply with the City's nuisance abatement ordinance. The court held that the plaintiff adequately pled that the City discriminated against him by failing to reasonably accommodate his disability.

Richard McGary, the plaintiff, was a homeowner with AIDS whose disability impaired his ability to perform major life functions, including the upkeep of his yard. When McGary requested additional time to remove debris from his yard, as required by the City's nuisance ordinance, the City denied it. McGary was later hospitalized with complications from his disabling illness. While away, the City cleaned McGary's yard, charged him $1,818.83 for the service, and placed a lien on his property for the amount of the service. McGary filed suit against the City, alleging that it discriminated against him on the basis of his disability and therefore violated the FHAA, the ADA, and other parallel state and local laws.

The trial court dismissed McGary's action for failure to state a claim upon which relief can be granted under Rule 12(b)(6) of the Federal Rules of Civil Procedure. The Ninth Circuit reversed, finding that McGary met the low pleading threshold for pleading discrimination claims under the FHAA. The court rejected the City's argument that the FHAA's language about impairment of "use and enjoyment" of a dwelling is limited to complete denial of the use of a home, concluding that the imposition of even a small financial burden, where disability is linked to the need for modifying a neutral policy, can run afoul of the FHAA. The court thus reinstated McGary's claims in full and remanded the case to the trial court.

OTHER WESTERN STATES

Williams v. Matthews Co., 499 F.2d 819 (8th Cir. 1974).

In *Matthews*, the Eighth Circuit considered whether the policy of a housing developer in selling lots in a housing subdivision only to approved builders, which under the circumstances operated to exclude African-Americans from acquiring lots in the subdivision, was discriminatory under the Civil Rights Acts of 1870 and 1866 and the FHA. Noting that the concept of a "prima facie case" applies to discrimination in housing, the court held that the developer's policy was prima facie discriminatory in violation of the Civil Rights Acts and the FHA.

The plaintiff in *Matthews* was an African-American man who attempted to purchase a lot in Lakewood, a residential subdivision in Arkansas. At the time that Williams filed his complaint, none of the 2,000 Lakewood lots were occupied by African-Americans. The developer of the subdivision told Williams that they sold lots only to approved builders, and suggested that Williams find an approved builder to purchase the lot on his behalf. After being turned down by white builders, Williams found a black builder who was subsequently turned down by the developer because he was not an approved builder. The developer claimed at trial that the "approved builder" scheme, for which it had no formal policies in place, was a way to make sure that building in Lakewood proceeded in an orderly fashion. The trial court accepted this business justification as sincere, if mistaken. The Eighth Circuit court disagreed. Even assuming that the "approved builders" scheme was not a ruse, said the court, the facts showed that the scheme had racial overtones and even if neutral on its face, could not stand if it served to discriminate on the basis of race.

HUD ex rel. Campbell v. Housing Authority of Las Vegas, HUD ALJ 09-94-1016-1(1995).

In this case, an administrative law judge from HUD considered whether the Housing Authority of Las Vegas ("HALV") had racially discriminated against and racially "steered" African-Americans to segregated housing. The judge found that HALV had indeed engaged in such discriminatory practices, and ordered HALV to pay over $160,000 in damages and penalties.

Four years before this case, HALV entered into a Voluntary Compliance Agreement (the "Agreement") with HUD to remedy a pattern of segregation where African-Americans were housed primarily in complexes on the West Side of Las Vegas, and non-African-Americans

were housed in complexes on the East Side. The Agreement operated to give certain housing applicants the opportunity to wait for East Side housing if none was available at the time that applicants were approved by HUD.

The complainants in this case, a mother and her young daughter, complained that HALV had discriminated against them by providing an apartment in a predominantly black public housing complex on the West Side of Las Vegas and failed to offer them the option of waiting for an apartment in an East Side complex. The judge found that the complainants repeatedly requested a transfer to the East Side after experiencing gang harassment and having a firebomb thrown through their apartment window yet were denied transfers. The judge also found that the discriminatory acts were attributed to a HALV employee who had worked there for 21 years, herself a Latina, who not only made various racially biased comments against African-Americans but assisted Latinos with obtaining East Side housing while declining to offer similar aid to African-Americans. Because the employee was employed by HALV at the time of the discriminatory acts, the judge found HALV vicariously liable for violation of the Fair Housing Act.

Community House, Inc. v. City of Boise, 468 F.3d 1118 (9th Cir. 2006).

The principal fair housing issue before the Ninth Circuit in *Community House* was whether a men-only policy at a homeless shelter in the City of Boise (the "City") discriminated on the basis of disability, sex, and familial status in violation of the FHA. The court held that the City's men-only policy was facially discriminatory.

The City had jointly operated a shelter with a non-profit organization, Community House, Inc. (CHI) that housed homeless men, women, and families. The City and CHI had a dispute in 2005, after which the City took over the CHI shelter and awarded shelter operations to the Boise Rescue Mission (BRM), a Christian nonprofit organization. The policy of BRM was to segregate homeless men and women in separate facilities; its proposal to the City outlined a plan to move homeless women and families out of the previous CHI shelter to convert it to a men-only shelter, purportedly intending to convert another one of BRM's shelters into a shelter for women and families. Before the City's implementation of this plan, the plaintiffs sought an injunction to (a) prevent the relocation of women and families from the previous CHI shelter and (b) require reinstatement of women and families who moved from the previous CHI shelter anticipating the new plan.

The district court denied plaintiffs' request for a preliminary injunction. The Ninth Circuit reversed, concluding that the plaintiffs demonstrated the City's men-only policy to be facially discriminatory, and the district court erred by applying the wrong precedent to test for discrimination. Under the correct precedent, plaintiffs successfully made out a prima facie case of intentional discrimination under the FHA by showing that women and families had been subjected to explicitly differential treatment. The court also found that the City's main justification for the policy - safety - was not adequately supported by the record. The court therefore held that the balance of hardships tipped in favor of the plaintiffs.

Garcia v. Brockway, 526 F.3d 456 (9th. Cir. 2008).

In *Brockway*, the Ninth Circuit considered when the statute of limitations begins to run in a design-and-construction claim under the FHA. The court held that the statute of limitations is triggered at the conclusion of the design-and-construction phase, which occurs on the date that the last certificate of occupancy is issued.

Section 3613(a)(1)(A) of the FHA provides that "[a]n aggrieved person may commence a civil action in an appropriate…court not later than 2 years after the occurrence or the termination of an alleged discriminatory housing practice." The plaintiffs in *Brockway* sued the original builders and architects of Idaho apartment buildings because the buildings and apartments did not comply with the design-and-construction requirements of the FHA; among other things, the buildings' entrances were not wheelchair-accessible and lacked curb cuts.

The court rejected the plaintiffs' argument that a design-and-construction violation is a "continuing violation" that does not end until the defects are cured. Rather, said the court, a "failure to design and construct" is a discrete instance of discrimination that terminates at the conclusion of the design-and-construction phase. Here, the triggering event – the conclusion of the buildings' construction – occurred long before the plaintiffs brought suit. The court thus held that plaintiffs' claims were time-barred, and refused to extend the statute of limitations with either the discovery rule or the equitable tolling doctrine.