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Introduction

Since coming into office on January 20, 2025, the second Trump Administration has unleashed on the civil rights of all residents of the United States of a scale and scope unprecedented in the recent history of this country. Although not tied to a specific theme, the articles collected in this issue all speak to big questions that advocates for racial and economic justice are grappling with today. Professor Danielle Wingfield's *Massive Resistance: Then and Now* invites us to consider the parallels between efforts to stymie school integration in the wake of *Brown v. Board of Education* and current classroom censorship attempts. In *Thoughts from an Insider on the Legal Response to the Trump Administration's First Nine Months*, my former boss (and legendary civil rights litigator) Jon Greenbaum provides an overview of how public interest litigators are standing up to the lawlessness of the Trump Administration and highlights what factors are helping those efforts and which ones are hindering their success. Lastly, in *Poppy Seed Bagel Progressivism or What We Talk about When We Talk about Affordable Housing Development Costs*, I attempt to bring some nuance to the overheated abundance discourse in the hopes that good faith actors can arrive at a consensus that enables us to demonstrate to the public that the juice of a multiracial, social democracy is worth the squeeze.

– Thomas Silverstein, editor

Massive Resistance: Then and Now

Danielle Wingfield, JD, PHD

Introduction

At school board meetings across the country, parents demand the removal of books that present diverse perspectives on history and society. State legislatures introduce bills banning the teaching of so-called "divisive concepts." Politicians insist that "parental rights" are under attack and portray public schools as dangerous places where children are indoctrinated rather than educated. These campaigns are not new. They echo an earlier period when lawmakers and officials mobilized against the Supreme Court's decision in *Brown v. Board of Education*. Then, Virginia Senator Harry Byrd led a strategy known as "Massive Resistance," designed to block desegregation and weaken public education. Today's battles over curriculum, censorship, and parental control are part of that same lineage.

The core of Massive Resistance—both in the 1950s and today—is about controlling knowledge, limiting access, and undermining the democratic promise of public schools. When public education is weakened, children lose the opportunity to learn the full truth of our history, families lose a vital site of community, and democracy itself becomes more fragile. The strategies have evolved over time: in the past, resistance took the form of closing schools and creating private segregation academies; today, it surfaces through book bans, coordinated digital campaigns against public education, and the expansion of charter schools. But the underlying project remains the same: to deny equal education and to curtail schools as places of belonging and democratic formation.

Understanding the connection between past and present resistance is critical. Just as the Byrd Organization's rhetoric and policies helped normalize segregation and silence, current attacks on curriculum and public education are shaping how a new generation will think about democracy, justice, and belonging. This is not simply a culture war or a battle over

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lesson plans. It is a struggle over who counts as part of the American story and whose children will be fully prepared to participate in our democracy.

Today's Playbook of Resistance: Following Virginia's Blueprint

The current wave of attacks on public education has three defining strategies: political rhetoric that sows fear and mistrust, censorship that narrows what children can learn, and "parental rights" campaigns that aim to privatize power in schools. Each mirrors earlier efforts, but adapted to the twenty-first century. To understand the depth of the parallels, we must return to Virginia in the years after *Brown v. Board of Education*. There, Senator Harry Byrd and his political machine pioneered the strategy of Massive Resistance. It was more than a slogan; it was a coordinated set of policies designed to halt desegregation and maintain the status quo.

1. Political Rhetoric as Weapon

In the years following *Brown*, Byrd and his allies sowed fear, framing the Supreme Court's decision as an existential threat to freedom. They used rhetoric warning that integration would destroy public education and corrupt white children. They invoked states' rights and constitutional crisis, insisting that federal courts had overreached. This rhetoric gave legitimacy to defiance and emboldened officials to ignore the law. The words served their purpose: they turned segregation into a noble cause rather than a legal violation.

Today, the language of fear remains one of the most powerful tools of resistance. The term "Critical Race Theory" has become a catch-all label for any classroom discussion about race, inequality, or justice. Politicians and advocacy groups have used it to generate panic, portraying teachers as indoctrinators and students as victims of radical agendas. Then and now, the goal is not accuracy but mobilization—turning schools into battlefields in order to rally political support.

This is not simply a culture war or a battle over lesson plans. It is a struggle over who counts as part of the American story and whose children will be fully prepared to participate in our democracy.

2. Censorship and Curriculum Control

In Virginia, the period after *Brown* also witnessed the battle extend to curriculum and textbooks. Censorship became policy. The state created "approved" history books that celebrated the Confederacy and omitted the realities of slavery and racial violence. Libraries were purged of pro-integration materials, and entire courses were rewritten to emphasize "states' rights" and glorify the Confederacy. Teachers who sought to present a fuller history faced pressure and retaliation. The goal was to ensure that generations of children learned a distorted version of the past—one that protected racial hierarchy by silencing truth.

In the contemporary resurgence of Massive Resistance, book bans and curriculum restrictions are again spreading rapidly. School districts across the country have pulled titles ranging from Toni Morrison's *Beloved* to children's books about civil rights leaders. In some states, teachers face penalties for addressing systemic racism, while administrators issue lists of prohibited terms. The effect is a chilling silence in classrooms where history and literature should spark curiosity and debate. The old playbook is being

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In This Issue:

Thoughts from an Insider on the Legal Response to the Trump Administration's First Nine Months

Jon Greenbaum

A month after the 2024 Presidential Election, I shared my initial thoughts on the then-upcoming legal response to the second Trump Administration. Recently, my former colleague Thomas Silverstein asked for an updated perspective.

Through my firm, Justice Legal Strategies, I work closely with Democracy Forward and Democracy Defenders, two organizations central to the nonprofit legal response to the Trump Administration. When the Trump Administration does something bad, I usually learn about it almost immediately. When asked, I participate in the legal response efforts.

The incredible pace of the first month has continued, and there is no indication that it will let up. The Trump Administration has been unrelenting in attempting to destroy democracy and the federal government as we know it. In its place, the Administration is working to install a government and society dominated by President Trump and his followers. Within the executive branch, employees who do not follow presidential edicts — regardless of their legality—are on thin ice. The Administration has flouted constitutional and congressional constraints. It has fired the heads of independent agencies, even when Congress has created removal restrictions. It has refused to spend funds appropriated by Congress for activities with which it disagrees. Frighteningly, it is increasingly moving toward the militarization of domestic law enforcement.

Fortunately, the progressive legal community—in addition to some governors and state attorneys general—has responded with equal intensity. At the time of writing, Just Security's tracker listed over 500 lawsuits against the Administration. By my estimate, progressive legal groups initiated roughly two-thirds of those actions, and those groups have participated as amicus in many others. While the Supreme Court has reversed or weakened some victories, the overall quality and impact of the legal work have been strong.

Here are some insider observations on the progressive legal response.

The Trump Administration has been unrelenting in attempting to destroy democracy and the federal government as we know it. ...the progressive legal community—in addition to some governors and state attorneys general—has responded with equal intensity.

Preparation has made a difference

Democracy Forward deserves particular credit here. Democracy Forward was one of numerous nonprofits founded after the 2016 presidential election. It was not well-known during early years and was often confused with other organizations such as Protect Democracy, which was created at around the same time. Democracy Forward has elevated its importance and profile enormously because of its prominence in the legal response to the Trump Administration. This was earned. Democracy Forward invested early in preparations for the possibility of a second Trump Administration. It did so on two levels: first, it expanded its internal litigation capacity, and, second, it launched Democracy 2025, a collaborative hub responding to Project 2025, the Heritage Foundation's blueprint for Trump's second term. Democracy Forward spent the last nine months of 2024 creating spaces to bring people together and sharing research and other informational materials. I began consulting with Democracy Forward on April 15, 2024, the day Justice Legal Strategies opened for business. I participated in the development of Democracy 2025 and have watched Democracy Forward's impressive growth and impact.

I wished that there would have been more groups preparing like Democracy Forward across the progressive legal sector, but there was enough preparation to hit the ground running and keep going.

Coordination, communication, and community

When I left the Department of Justice for the Lawyers' Committee for Civil Rights Under Law at the end of 2003, I learned how competitive the progressive legal community is. Tensions over who files their lawsuit first after certain laws

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employed anew but with similar intent. The tactic works by controlling whose stories can be told, and whose histories can be erased.

3. The Rise of "Parental Rights"

Finally, during Byrd's Massive Resistance, parental rights were deployed as a shield. Virginia lawmakers insisted that white parents should not be forced to send their children to integrated schools. They created tuition grants and private academies where white families could flee, diverting public money to private segregationist institutions. These schools flourished even as public schools were closed or starved of resources. In the name of "choice," Virginia officials undermined the very idea of public education as a shared democratic good.

Yet again today, the language of parental rights has become the centerpiece of modern resistance. Groups claim that parents should have absolute authority over what their children learn and whom their children learn with. On the surface, this may sound reasonable. But in practice, these campaigns often elevate the demands of some parents while silencing others, especially minoritized families who want schools to tell the truth about history and to create inclusive environments. Today, as in Massive Resistance's early days, "parental rights" have become a tool for undermining public education itself.

This Massive Resistance blueprint—rhetoric, censorship, parental rights—provides a model for resistance that resonates today. Together, these three deeply interconnected strategies reinforce a vision of schools that are less democratic, less inclusive, and less accountable to the full public. Then, as now, the impacts go far beyond education policy, shaping democracy, determining whose voices matter, and defining the boundaries of belonging.

Lessons for Democracy

What does this history teach us about the present moment? There are three urgent lessons.

1. Resistance is Cyclical, Not New

The first lesson is that resistance to equity in education is not an aberration but a recurring strategy. Just as *Brown* was met with organized defiance, today's modest efforts to create inclusive curricula have sparked backlash. Recognizing the cyclical nature of resistance helps us see today's fights not as isolated culture wars but as part of a long struggle over education and democracy.

2. History and Truth Are Central to Democracy

Second, the control of history and knowledge is not a side issue. It is central to the health of democracy. When students are denied access to honest accounts of slavery, segregation, civil rights, and continuing inequalities, they are denied the tools to understand the society they live in. A democracy built on silence and distortion cannot endure. Public schools are not just sites of academic instruction; they are where young people learn what it means to be citizens and how to participate in a pluralistic society.

If we can meet this moment with clarity and courage, we can ensure that our schools remain places of truth, belonging, and democratic possibility.

3. Law Can Be a Tool, But Not Alone

Third, law has a complicated role in these struggles. Courts and legislatures can advance equality, but they can also entrench resistance. During Massive Resistance, state lawmakers wrote new laws to block integration, while courts were slow to enforce desegregation. Today, legal battles over curriculum bans and parental rights show the same dynamic: the law can be used to dismantle democracy as well as to protect it. The lesson is that legal strategies must be paired with grassroots organizing, community advocacy, and cultural change. Democracy is defended not only in courtrooms but in classrooms, libraries, and school board meetings.

Conclusion

The attacks on public education we see today are not simply debates about lesson plans or parental involvement. They are the newest expression of a long tradition of resistance to equality, echoing the Massive Resistance of the 1950s and 1960s. By recycling the strategies of rhetoric, censorship, and parental rights, today's campaigns seek to weaken public schools and silence histories that are essential to understanding our democracy.

But history also teaches us that resistance can be met with resilience. Communities, educators, and students themselves have long fought back—demanding the right to learn, to tell the truth, and to participate fully in public life. The task now is to recognize the stakes, connect the lessons of the past to the challenges of the present, and build coalitions that can defend public education as the foundation of democracy.

The struggle over schools has always been about more than what happens in the classroom. It is about who counts, whose stories are told, and what kind of future we will share. If we can meet this moment with clarity and courage, we can ensure that our schools remain places of truth, belonging, and democratic possibility. ■

Poppy Seed Bagel Progressivism or What We Talk about When We Talk about Affordable Housing Development Costs

Thomas Silverstein

There is a type of article that appears periodically and that predictably generates reactions ranging from handwringing, at best, to outrage, at worst. The article will generally look at a single affordable housing project and highlight the property's high per-unit costs. The article may or may not provide the context that the highlighted project is a bit of an outlier and average per-unit costs are lower. If it does, it will still try to paint the average costs as being intolerably high. In doing so, it may compare those costs to the median value of existing homes or to the per-unit cost of producing unsubsidized housing, both of which will inevitably be lower than the cost of producing affordable housing. We – the readers – will be left to decide which of two forks in the road to take: should we modify the policy design of our affordable housing programs to reduce costs, or should we give up on the premise of developing affordable housing because the private market is more efficient? Asking these questions naturally invites us to draw connections to the abundance discourse and abundance proponent Ezra Klein's critique of "everything bagel liberalism," a putative cause of these elevated costs.

Many of the policy design features that increase the cost of affordable housing development actually reduce costs that would be absorbed elsewhere within our social safety net, effectuate important civil rights goals, or both.

Poppy Seed Bagel Progressivism

If you are reading this article, you probably are not inclined to turn off the funding (or tax expenditure) spigot for the affordable housing programs that exist in the United States. Thus, we are left with the former option of figuring out how to reduce the per-unit cost of affordable housing development, and we should figure out how to do that. The thrust of this article, however, is that we need to undertake that task with extreme care because many of the policy design features that increase the cost of affordable housing development actually reduce costs that would be absorbed elsewhere within our social safety net, effectuate important civil rights goals, or both. Looking at the ways in which labor, environmental, and civil rights provisions incorporated into affordable housing programs contribute to project costs while mitigating what we might otherwise be externalized social costs is helpful for charting a path forward. That path forward, to stick with the bit, might be a poppy seed bagel progressivism that is more just and equitable and involves fewer trade-offs than the plain bagel with which a myopic focus on cost reduction would leave us but more scalable and therefore effective at ending the housing crisis than the everything bagel liberalism of the status quo.

Labor

There is no serious dispute that increasing labor costs are one of the drivers of high affordable housing development costs. Growing labor costs also affect market-rate residential and non-residential development but not to the same extent because affordable housing developments may be, depending on the project, subject to the requirements of the Davis-Bacon Act (which requires payment of local prevailing wages to construction workers performing work on federally funded construction projects). Affordable housing developers might also opt for what would otherwise be suboptimal (and cost increasing) configurations in order to avoid compliance with Davis-Bacon. Some states and localities may impose prevailing wage-like requirements on a broader set of affordable housing projects than those covered under federal law, as well. It is self-evident that there is some cost associated with complying with these requirements.

If the conversation is left there, the obvious answer may be to abandon prevailing wage requirements and to put affordable housing developers and other developers on an equal footing in terms of labor costs. Choosing that answer, however, requires us to ignore a lot. First, by simply comparing the hourly wages of construction workers employed under prevailing wage requirements with those who are not, we are likely to miss cost savings flowing from increased worker productivity and decreased staff turnover. Second, even if we ignore those savings, paying construction workers less creates social costs that have to be borne some-

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are passed, who represents a particular client, who testifies before Congress on a particular issue, who gets the media attention, and, perhaps most of all, who is the funders' favorite are commonplace. At times, the environment can be frosty and inefficient.

Though it would be inaccurate to say that the progressive legal community's response to the Trump Administration has been free of competition and tension, coordination, communication, and community have eclipsed those dimensions by far. There are multiple platforms through which groups keep each other informed and learn from one another. Victories are widely and enthusiastically celebrated. There is a level of generosity that I have not seen previously seen from this community.

There are multiple platforms through which groups keep each other informed and learn from one another. Victories are widely and enthusiastically celebrated. There is a level of generosity that I have not seen previously seen from this community.

The coordination has extended to state and local governmental officials who are challenging the Trump Administration efforts. In numerous instances, beginning with the birthright citizenship cases filed on Day One of the Trump Administration, state attorneys general have filed cases that parallel those brought by the progressive legal groups. In some instances, progressive legal groups serve as counsel to states, including behind the scenes. However, these groups represent cities and counties more frequently. There is frequent communication, usually orally, between state attorneys' general offices and advocates.

A broader coalition

In addition to progressives, there are individuals across the ideological spectrum who are concerned about the authoritarian efforts of the Trump Administration. Those voices are essential because the defense of democracy needs to be a broader movement. Norm Eisen, the co-founder of Democracy Defenders Fund/Action has been particularly instrumental in bridging relationships between the progressive community and moderates and conservatives, including those who served in prior Republican presidential administrations. The Board of Democracy Defenders Action reflects its ideological diversity as it includes long-time conservative commentator Bill Kristol; Stephen Richer, who was elected as a Republican to run elections in Maricopa County, Arizona; Lavora Barnes, the former Chair of the Michigan Democratic Party; and Rahna Epting, the Executive Director of MoveOn.

The shift from Big Law to small firms

During my two decades at the Lawyers' Committee for Civil Rights Under Law, our secret sauce was co-counseling with law firms, including most of the nation's largest firms that are sometimes referred to as "Big Law." In one notable Lawyers' Committee case, Kirkland & Ellis contributed more than $20 million of attorney and staff time and more than $2 million in out-of-pocket expenses to challenge the State of Maryland's discriminatory treatment of its public Historically Black Colleges and Universities (HBCUs). Without Kirkland, we would not have achieved the $577 million settlement for the HBCUs that came only after 12 years of hard-fought litigation in a case on which I spent more time than on any other in my career to date.

Numerous Big Law firms served as pro bono co-counsel in lawsuits challenging the misdeeds of the first Trump Administration. The experience could hardly be more different this time. The explicit capitulation of several firms, including Kirkland, to the Trump Administration through "settlements" has been widely discussed. But more significantly, Big Law has been virtually absent with a few exceptions. Like much of corporate America, Big Law firms are afraid of being Trump targets, and so they have laid low.

Smaller law firms have stepped up in Big Law's place. The firms range from those as small as one or few attorneys, like Justice Legal Strategies, to those that have dozens of attorneys. The quality of lawyering at many of these firms is comparable to that of larger firms, and they often operate more efficiently and nimbly than Big Law. But there are structural limitations. The smaller law firms are limited in how much pro bono work they can do, and frequently progressive legal organizations co-counseling with them or institutional clients need to pay them, often at reduced rates. Also, small law firms are less equipped to handle time-intensive litigation, particularly litigation that includes extensive discovery, including document production and depositions. Many of the cases against the Trump Administration so far have not been discovery-intensive, but that may change over time.

The injection of talent from former governmental attorneys

Many of the career attorneys who worked at the Department of Justice and other governmental agencies saw public service as their calling. There was a certain built-in conservatism at the Department of Justice that historically created stability to smooth the differences between

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where. As of May 2024, Bureau of Labor Statistics data reflected that the median hourly wage for construction laborers was $22.47 per hour. The 25th percentile hourly wage, by contrast, was $18.32 per hour. According to the National Low Income Housing Coalition's 2025 Out of Reach report, there was not a single state in the country where a worker earning $18.32 per hour could afford a modest two-bedroom apartment while workers earning $22.47 per hour could afford one in 14 states. In other words, the average construction laborer is already teetering on the edge of housing precarity. Pushing down wages could make that economic tenuousness universal among construction laborers rather than merely common. The same point that applies with respect to construction laborers' ability to afford housing extends to other life necessities, such as food, clothing, and health care, that may be pushed further out of reach if wages declined. This precarity results in costs that are borne societally, ironically including through affordable housing programs themselves, and not just by low-wage workers.

Just as taking the problem of affordable housing costs seriously does not mean that we must scrap prevailing wage standards, taking the precarity of construction laborers seriously does not mean that we should view affordable housing program design as the most strategic intervention point for enhancing their economic well-being. Instead, a better policy mix, with some components geared towards protecting workers and some towards lowering costs, is possible. On the worker protection side, public policy should protect all workers, regardless of their sector, through substantially higher minimum wages and strengthened collective bargaining rights. The outcome of such shifts may – or, indeed, is supposed to be – higher wages, but it would be higher wages arrived at without the gymnastics that often accompany affordable housing developers' choices about whether or not to comply with Davis-Bacon. Additionally, we should increase the long-term wage growth potential of construction laborers by investing in union apprenticeship programs that help workers transition into skilled trades.

There are also gains to be made through the more widespread utilization of modular construction, and, although that technological innovation would theoretically reduce demand for workers and therefore their bargaining power, it would not do so as significantly if accompanied by the scale of affordable (or ideally social) housing production that is needed to make up for our housing shortage. Immigration policy – albeit not during the Trump Administration – also holds potential for reducing labor costs. Both enabling more immigrants to enter the country and providing secure documented status and work authorization to those who are here already would make it easier for affordable housing developers to hire and retain workers, including without fear that their employees will be subject to removal proceedings during the middle of construction. Although, with a higher minimum wage or continuing prevailing wage requirements, the wages for immigrant construction laborers might be high (a good thing, to be clear), having a larger pool of potential workers would still reduce costs by helping developers avoid delays caused by staffing shortages. Lastly, if and only if we are able to significantly increase minimum wages and strengthen bargaining rights, we may reach a point where prevailing wage requirements that are baked into affordable housing programs are no longer needed to serve their laudable goal. In that scenario, taking a step back from prevailing wage requirements should not actually reduce construction laborers' wages, but it should reduce affordable housing developers' compliance costs.

Just as taking the problem of affordable housing costs seriously does not mean that we must scrap prevailing wage standards, taking the precarity of construction laborers seriously does not mean that we should view affordable housing program design as the most strategic intervention point for enhancing their economic well-being.

It is impossible to ignore the fact that there can be tension between the ways in which we have historically attempted to boost construction laborers' wages and the goal of increasing the volume of affordable housing unit production. However, it should be possible to harmonize these interests by strengthening generally applicable labor and employment laws, making career ladders to the skilled trades more available to construction laborers, embracing new technology, elevating the ambition of our affordable housing production goals, and reforming our immigration laws. That is the path forward for ensuring that attempts to reduce labor costs associated with affordable housing development do not result in significant externalities.

Environment

There are two analytically distinct sets of environmental considerations that can drive up the cost of affordable housing, and it is worth dealing with each in turn. The first relates to green building requirements, and the second relates to the environmental impact of development at particular sites.

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With respect to green building requirements, the explanation for why compliance has greater upfront costs is obvious. If it cost the same amount or less to have thicker windows, more insulation, and energy-efficient appliances in comparison to thinner windows, less insulation, and energy-intensive appliances, requirements likely would not be needed in any case, and developers would default to green building. Moreover, for some green building criteria, it is also obvious why the cost would be higher: using more of the same type of insulation is going to cost more than using less of it.

The justifications for absorbing these costs when building affordable housing, however, are substantial. Many of these requirements pay for themselves through decreased utility bills over time. If the tenants would bear those increased utility costs, then avoiding that outcome prevents heaping more precarity on already low-income households. If the owner would bear those costs, then avoiding that outcome frees up resources for routine maintenance and important capital projects. Given the possibility that the climate crisis will motivate policymakers to force green retrofits in the future, it is also almost certainly more cost-effective to build green from the start. Lastly, if there are requirements that will not pay for themselves over time and that are unlikely to be forced on building owners down the line, it is plausible that some of those are means of avoiding the externalization of social costs that would be borne societally, whether through less clean air or disasters exacerbated by climate change.

Recognizing that the costs are probably worth it does not mean that we should not consider how we might reduce them. First, if there are green building requirements that, frankly, are not green and therefore neither reduce long-term utility costs nor internalize pollution- or climate-related externalities, then we should feel okay about discarding them. To be clear, discerning which requirements are worthwhile and which are not is likely to be difficult in practice. Second, government could change the cost of what is needed to comply with some green building requirements through subsidies or industrial policy. That could look like government paying producers of energy-efficient appliances to sell refrigerators to affordable housing developers at below market prices, and it could look like government providing the financing for the development of additional appliance manufacturing plants, theoretically leading to a greater supply of energy-efficient refrigerators and lower prices for those items. Lastly, if green building requirements are critical for addressing the climate crisis (among other objectives), there is a strong argument for holding market-rate developers to the same standards. Doing so may not directly reduce the per-unit cost of affordable housing, but it would close the gap in per-unit costs between affordable and market-rate development. Additionally, it actually could lower costs in absolute terms by establishing a larger market for, for example, energy-efficient refrigerators and incentivizing manufacturers to scale up their activities.

With respect to environmental requirements relating to project siting, a few considerations are noteworthy. First, environmental review, where it applies, is often a requirement of state laws like the California Environmental Quality Act that apply to development generally rather than affordable housing development specifically. Thus, while environmental review may increase costs for affordable housing development, it may not do so in ways that distinguish affordable housing development from market-rate development. Second, just as with green building requirements that reduce utility payments or avert the need for costly retrofits, some environmental constraints on siting may reduce or prevent long-term costs stemming from, for example, flood damage to properties. Third, it should still be fairly obvious that infill multifamily development that is not contributing to sprawl and that is not located on particularly inapt sites such as those that are in flood zones does not merit extensive environmental review. That is the case because such development is not actually causing externalities. Accordingly, streamlining environmental review requirements, whether under state environmental laws or under affordable housing programmatic criteria, does make sense.

In sum, we should have some tolerance for environmental requirements, whether to install an energy-efficient refrigerator or to pick a site that does not require filling wetlands, that increase the per-unit cost of building affordable housing, and a recognition that compliance with those requirements can reduce some long-term costs that still have to be borne by someone is critical to understanding why we should do that. At the same time, we can still attempt to reduce costs by making necessary goods less expensive to affordable housing developers through subsidies and industrial policy, eliminating requirements that are not grounded in evidence, and streamlining review for infill projects that are not on environmentally sensitive sites.

Civil Rights

Historically, affordable housing developments in the United States have been heavily concentrated in low-income communities of color and, in metropolitan areas with significant Black population, in poor and working class Black neighborhoods in particular. Intentional racial discrimination by both governmental and private sector actors has played a role in creating this dynamic, and factors ranging from land costs to zoning to the political capital of white communities to resist affordable housing development have reinforced it over time. With the Low-Income Housing Tax Credit (LIHTC) program having grown into the nation's largest affordable housing production vehicle over the last four decades, efforts to achieve a more equitable distribution of affordable housing across neighborhoods and to foster residential racial integration have naturally focused on that program. Through both litigation and engagement in

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Democratic and Republican presidential administrations.

For many attorneys working in the federal government, staying in the government was not tenable because political demands from Trump appointees overrode the imperatives of adhering to the law and ethical obligations. The present Trump Administration provided additional incentive by offering buyouts, including to most of the attorneys in the Civil Rights Division of the Department of Justice resulting in an attrition rate of more than 75% there.

One byproduct of this exodus has been an unprecedented glut of available legal talent. If you look at the staff bios at Democracy Forward alone, you will see attorney after attorney who worked for the federal government at the beginning of 2025. The attorneys who used to work in the Federal Programs Branch of the Department of Justice's Civil Division are a particularly valuable group of additions to the progressive legal community, because they used to defend the federal government in these types of cases and can anticipate the types of arguments that the government routinely uses when defending challenges to Presidential and agency actions.

Resilience and endurance

I have long thought that the most underrated traits of successful veteran progressive attorneys, including civil rights attorneys, are resilience and endurance. These are rewarding jobs, and it is an honor to represent such admirable clients in vitally important cases; but the work is mentally, physically, and emotionally draining. The first Trump Administration, combined with the COVID-19 pandemic, was unusually exhausting, and I just felt relief when it was over.

The current situation is exponentially worse. Democracy is at stake. The last Trump Administration had senior officials who intervened on occasion to restrain him from taking the most extreme measures. The current one not only does not hold him back but amplifies the damage he does. The majorities in both houses of Congress have lost any concept of institutional integrity. The Supreme Court, with Justices Brett Kavanaugh and Amy Coney Barrett replacing Anthony Kennedy and Ruth Bader Ginsburg, have become his chief enablers, as evidenced by the Court's lawless presidential immunity decision in Trump v. U.S. and countless shadow docket decisions staying injunctions entered by the lower federal courts in challenges to the illegal acts of the second Trump Administration. Until recently, American autocracy was unimaginable. Now we are staring at the possibility.

This is not simply a culture war or a battle over lesson plans. It is a struggle over who counts as part of the American story and whose children will be fully prepared to participate in our democracy.

The Trump Administration is unrelenting. The emergencies are broad, deep, and constant. I feel fortunate to be part of the response but not one of the leaders. I have spent my career fighting for justice and often in a central role. But leading this effort would be too much for me at this time in my life. I have moments where it feels like too much as it is. Accordingly, I have enormous admiration for Skye Perryman, Norm Eisen, Anthony Romero and others who are taking on a disproportionate share of the burden.

Perhaps most daunting of all is that we are only about 20% through this Administration. The degree of resilience and endurance it will take to get through the remainder of this term is unfathomable. But from what I have seen, I am confident we will. ■

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Qualified Allocation Plan (QAP) stakeholder engagement processes, fair housing advocates have pursued approaches like incorporating incentive points into QAPs, which guide which properties get credits, for properties located in low-poverty neighborhoods or having separate set-aside pools of tax credits available for properties in such neighborhoods. In metropolitan regions where central city neighborhoods are experiencing significant gentrification and displacement risk, some of these interventions have evolved to address both the need for more affordable housing in low-poverty neighborhoods and for the preservation of affordable housing in neighborhoods that are in the process of becoming higher income.

It is often but not always the case that a major cost component – land – will be higher for affordable housing developments in low-poverty neighborhoods than in higher poverty neighborhoods. Indeed, some of the prominent examples of high per-unit development costs that have received media attention are in such areas, including a project in the District of Columbia's affluent and centrally located Adams Morgan neighborhood. It should not be surprising that land is often more expensive in higher income, lower poverty neighborhoods. To be clear, this is not always the case, especially in relatively low-density suburban contexts though the lower density limits for multifamily housing than in cities may erode the theoretical promise of lower land costs in those areas. Thus, we are left with a similar decision point in

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relation to the siting of affordable housing in low-poverty neighborhoods as were with respect to labor and environmental considerations: do we decide that the costs are simply worth bearing and that we should plow forward, do we decide that the costs are unsustainable and we should scrap the incentive points and set-asides that state housing finance agencies have devised in recent years, or do we chart a more nuanced path?

…it still makes sense to prioritize subsidy for locations that simultaneously have low poverty rates and low land costs.

Unsurprisingly, the more nuanced path is the one most conducive to positive policy outcomes. While there may be some instances in which it makes sense to invest housing subsidy in locations with the highest land costs, it still makes sense to prioritize subsidy for locations that simultaneously have low poverty rates and low land costs. Intriguingly, at least in some contexts, these places may have higher performing schools than do the places with the very highest land costs. In the context of LIHTC, it should be possible to continue to prioritize affordable housing development in low-poverty neighborhoods by utilizing QAP provisions like separate set-aside pools for projects in low-poverty neighborhoods while incentivizing lower land costs within the pools for low-poverty areas by assigning scoring points for lower land costs. It is worth noting that, while this approach should work in theory, its potential in practice will be influenced by the need for zoning and land use reform given that places with low land costs and low poverty rates often have relatively restrictive zoning.

It should be noted that pursuing this approach with respect to how we prioritize housing subsidies like LIHTC need not mean that we let areas with low poverty rates and high land costs off the hook when it comes to developing their fair share of affordable housing. That is because it is precisely in those areas where inclusionary zoning has the greatest potential to produce significant numbers of affordable housing units because market-rate demand and therefore the potential for cross-subsidization is the greatest. An approach that combines subsidies like LIHTC in places with low-poverty levels and relatively low land values with inclusionary zoning in places that also have low-poverty rates but that have high land values should help us achieve a better balance of affordable housing units across high- and low-poverty neighborhoods in metropolitan regions. Accordingly, we should be able to mitigate the impact of high land costs on overall affordable housing development costs across the country without perpetuating segregation.

Before concluding this discussion of how civil rights-oriented policy implicates cost concerns in affordable housing development programs, it is worth addressing the issue of family-sized units. Some of the developments that have become poster children for high per-unit costs featured substantial portions of units - such as three-bedroom units - that are capable of accommodating families with children, a protected class under the Fair Housing Act. It is absolutely true that the per-unit cost of producing three-bedroom units is higher than that of producing studio or one-bedroom units; however, there is an emphatic rejoinder to that framing: the per-occupant cost of producing larger units, if it is higher at all, is not nearly so disproportionately high. Ultimately, people - as opposed to households - motivate the imperative of building affordable housing.

Tackling Inefficiencies That Do Not Implicate Social Justice Tradeoffs

Of course, just because some of the drivers of elevated affordable housing development costs implicate social justice concerns, that does not mean that they all do. Policymakers at all levels of government should be especially mindful of the opportunities to trim costs by tackling these other drivers. Going into these in depth could be the subject of an entirely separate article, but some notable ones include: complicated program design that requires the intensive use of lawyers, accountants, and consultants; exclusionary zoning, including restrictions on housing type and density as well as aesthetically-oriented design criteria; and unduly slow approval processes. Prioritizing the reduction of costs through tackling these contributing factors is preferable to doing so by reducing protections for workers, eliminating green building requirements, and concentrating affordable housing in high-poverty neighborhoods. That does not mean that doing so will be easy, as powerful political constituencies will predictably fight to preserve the status quo. But no one ever promised that reducing affordable housing development costs without sacrificing socially important interests would be easy.

Conclusion

If nothing else, this article should be taken as a call to avoid binary thinking as we decide how to try to reduce affordable housing development costs. Avoiding binary thinking will mean that we acknowledge that some cost-inducing policies reduce costs that would be borne elsewhere. It will mean that we look for ways of solving the problems that cost-inducing policies seek to address through policy frameworks that are outside of affordable housing program design. It will mean that we look for ways of reducing costs that do not involve trade-offs with social justice implications. At the end of the day, rather than being left to choose between an everything bagel or a plain bagel, we can have a poppy-seed bagel (or sesame or garlic, if one prefers) that is nearly as satisfying as an everything bagel and nearly as efficient as a plain bagel. ■

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