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Combating State Preemption Without Falling into the Local Control Trap

Thomas Silverstein

In recent years, there has been a concerted effort by well-funded conservative interests, led by the American Legislative Exchange Council (ALEC), to pass state laws that preempt local governments from engaging in a broad range of regulatory activity and, at times, the provision of public services. The breadth of these laws is staggering, covering topics ranging from hydraulic fracturing

(fracking) to ridesharing to municipal broadband. Significantly, some types of blocked ordinances attempt to address social equity issues for marginalized communities, either directly or indirectly. State legislatures have stepped in to stop localities from broadening non-discrimination protections to include sexual orientation, gender identity, and source of income, and have barred living wage ordinances, inclusionary zoning ordinances, and other policies designed to increase access to opportunity for low-income people of color. When state legislatures have taken the step of expressly

preempting progressive local laws, they have often targeted cities that are more heavily Black and Latino than their encompassing states. It is clear that, as practiced in 2018, many state legislatures are exercising their power to preempt local laws in a manner that frustrates racial justice goals and reduces the political self-determination of people of color.

The Perils of Local Control

For those familiar with civil rights history, however, the need for con-

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Snatching Defeat from the Jaws of Victory: HUD Suspends AFFH Rule that was Delivering Meaningful Civil Rights Progress

Justin Steil and Nicholas Kelly

After years of sustained pressure from civil rights advocates and support from across the housing and com-

munity development field, the Department of Housing and Urban Development (HUD) in July of 2015 at last issued the Affirmatively Furthering Fair Housing (AFFH) Rule. On January 5, 2018, however, HUD abruptly announced that no new Assessments of Fair Housing (AFHs) would be required until October of 2020, and AFHs in progress would not be reviewed. In justification of the suspension, HUD claimed that cities need more time to comply. A research

analysis that we conducted prior to the suspension, however, suggests that the AFFH Rule was working. Even though some municipalities submitted weak proposals, HUD correctly refused to accept those plans until they were revised, and the majority of submissions were a significant improvement over the prior Analysis of Impediments to Fair Housing (AI) regime.

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Justin Steil, steil@mit.edu, is Assistant Professor of Law and Urban Planning at MIT. Nicholas Kelly is a PhD student in Urban Studies and Planning at MIT. This article is adapted from a forthcoming paper by the authors; citations have been omitted.

straints on local control is equally clear. Although state laws often mandated segregation at the local level under Jim Crow, we remember the Montgomery Bus Boycott, not the Alabama Bus Boycott, and *Brown v. Topeka Board of Education*, not *Brown v. Kansas Board of Education*. To this day, the municipalities play at least as central a role as, and perhaps a larger role than, states in perpetuating and exacerbating segregation and racial disparities in housing, education, employment, and criminal justice. The exclusionary zoning that keeps affordable housing out of predominantly white communities is largely the product of city councils and county boards of supervisors, not state legislatures. Police chiefs hired by local officials establish policing priorities and strategies that fuel mass incarceration. State legislation can, at times, be an effective tool for limiting the ability of local governments to adopt policies that generate inequality. The New Jersey Fair Housing Act, for example, pushes municipalities to adopt inclusionary zoning as a means of allowing a reasonable opportunity for the development of their fair share of the regional need for affordable housing. That law is every bit as much of a constraint on local authority to regulate land use as laws in Indiana, Kansas, and other states which *prohibit* local inclusionary zoning.

The civil rights movement simply cannot embrace local control without conditions. The challenge for racial justice advocates is differentiating between the increasingly common state preemption laws that undermine racial justice goals and those that do the op-

posite. In deciding whether to support or oppose individual bills in state legislatures, there is no quandary here. Advocates and committed legislators can easily commit to preempting exclusionary and discriminatory local policies and practices while opposing the preemption of policies and practices that break down barriers and increase access to opportunity. From time to time, there may be disagreement about which category a bill falls into, but the normative consequences of such disputes are not inherently far-reaching.

For legal advocates, deciding whether to advance interpretations of state law that invalidate state preemption is entirely more complicated. The state law doctrines that can support challenges to state preemption laws

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can, almost without exception, support challenges to good state laws just as readily as attacks on bad state laws. For example, state constitutional home rule protections can shield discriminatory at-large systems of election that may limit political representation for people of color from state regulation. Restrictions on legislation that targets only one municipality may stymie attempts to address racial equity problems that arise in specific localities, which may include both communities

with racially biased leaders and large, diverse cities that adopt counterproductive and discriminatory responses to crime.

Anti-Discrimination Law Strikes the Balance

Under certain circumstances, federal anti-discrimination laws may have the best potential for overturning pre-emption laws that undermine racial equity, and with fewer unintended consequences. Yet prevailing in cases using these theories raises significant challenges, as discussed below.

For example, the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution prohibits states from adopting laws where intentional discrimination is a motivating factor for passage. In some instances, there may be evidence, including circumstantial evidence, that state legislatures acted with discriminatory intent in adopting preemption laws. Equal Protection Clause challenges to preemption laws typically rely on the framework for inferring discriminatory intent from circumstantial evidence enunciated by the U.S. Supreme Court in 1977 in *Metropolitan Housing Development Corp. v. Village of Arlington Heights*. In that seminal case, which involved a challenge to exclusionary zoning in a predominantly white Chicago suburb, the Court looked to the disparate impact of the zoning decision, the village's history of discrimination, departures from procedural and substantive norms in the zoning process, and contemporaneous statements by local officials. Though the Court ultimately concluded that the plaintiffs had not proven that discriminatory intent was a motivating factor for the zoning decision, the *Village of Arlington Heights* factors have guided the adjudication of cases of this type ever since.

Two important current challenges to state preemption laws attempt to utilize the *Village of Arlington Heights* framework to prove violations of the Equal Protection Clause. First, in

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INTERVIEW: The Cycle of Segregation

Maria Krysan, Kyle Crowder, Tyler Barbarin, and Megan Haberle

Maria Krysan and Kyle Crowder's new book, Cycle of Segregation (Russell Sage 2017), analyzes housing segregation, mobility, and the ways that daily, lifelong experiences mold people's views of the neighborhoods they should—and should not—live in before they even begin considering a move. Drawing on interviews with dozens of Chicago residents, the authors offer a new framework for understanding the persistence of housing segregation despite reductions in the most overt forms of discrimination, the expansion of the Black middle class, and liberalizing racial attitudes. Although economics and discrimination are more commonly understood to drive housing segregation, this new research shows how segregation is also perpetuated by the communities we live in and the ways that social networks—that have already been shaped by segregation—determine housing search processes.

Tyler Barbarin and Megan Haberle at PRRAC interviewed Krysan and Crowder about their research findings and Cycle of Segregation. A modified transcript follows.

PRRAC: To begin, what inspired the book and research, and what prompted you to write about these findings?

KYLE CROWDER: Maria is mostly a social psychologist and I am mostly an urban demographer, and both of us, coming from very different perspectives, realized early on that we had similar frustrations with the theoretical arguments regarding residential segregation. We started filling in a new theoretical argument for articulating the hidden drivers of residential segregation through which segregation is perpetuated, inspired mostly by what was missing theoretically from the segregation lens.

MARIA KRYSAN: Traditionally, the three explanations for segregation are: economic differences between racial

and ethnic groups, which translate into differential abilities to buy into neighborhoods; the discrimination argument, which focuses on barriers to enter into certain kinds of neighborhoods; and third, people's preferences, people's choices of where to live being incompatible with integration. Those are the "big three" that get laid out in a canonical fashion. Our frustration was that, first of all, the big three aren't independent forces: they interact with each other. For example, some people argue that preferences are race neutral, just people wanting to live with similar people. In contrast, some of my earlier work looks at how African American preferences, in particular, were shaped by

anticipation or perceptions of discrimination. In other words, those two of the big three are impossible to disaggregate from each other. That was one frustration with existing research. The second is that there are many other factors that are driving segregation that are fully ignored when you just focus on the big three.

PRRAC: Preferences, as you said, are shaped by experience. How would you address the fact that minority experiences with segregation and discrimination are sometimes a matter of safety? And asking people to integrate may be asking them momentarily to feel unsafe, while we

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Interviewees: Kyle Crowder, kylecrow@uw.edu , is Blumstein-Jordan Endowed Professor in the Department of Sociology at the University of Washington; Maria Krysan, krysan@uic.edu , is Professor and Head in the Department of Sociology and professor in the Institute of Government and Public Affairs at the University of Illinois Chicago.	1
Interviewers: Tyler Barbarin is Editorial Assistant for Poverty & Race, and Megan Haberle is Director of Housing Policy at PRRAC; many thanks to Sarah Arruda, Communications Intern, for her assistance.	1
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focus on the formal policies of integration? What are your thoughts on the best way to address these concerns for physical and mental safety—or are we saying to people, “just hold on?”

KYLE CROWDER: One of the things to keep in mind, and that we try to emphasize in the book, is that forces that created people's perceptions of neighborhoods, and of safety and quality of life in various neighborhoods, is a product of forces that have been in play for decades and decades. I think it would be a little bit foolish to believe that we can undo all of the work that has been done for decades and in a short time. A long term answer to your question is that as people develop exposure to various kinds of neighborhoods, expand outside of their daily rounds, outside of their residential history, some of this will erode naturally. The problem is that these extensions beyond the daily rounds and beyond residential history are hard to affect. Still, there are subtle ways we can encourage folks to move outside of their existing residential experiences and to be exposed to more neighborhoods, to find places where they feel safe and ways to facilitate that movement in a way that allows them to feel safe. One of the things we talk about in the book is the importance of being close to kin, especially as a protective mechanism: are there ways to open up residential opportunities for kinship networks and gain new residential experiences together?

The other part of this, of course, is community maintenance: the idea is not people moving into neighborhoods that are static, but rather that people get into places and affect the community there. One theme of the book is the disparity between the actual, on-the-ground lived experiences that people have and the assumptions that people hold. For example, how do we help whites who move into integrated neighborhoods engage in the community in ways that do not just reflect their prior assumptions about what liv-

ing in that community would be like? And how do you keep Latinos and African Americans engaged in integrated neighborhoods in a way that makes that integration sustainable? It's not just about moving into a static neighborhood: it's about community building in integrated neighborhoods. For decades, the assumption in the segregation literature was that integrated neighborhoods are inherently unstable, and just on their way from one brand of segregation to another. Part of the policy answer here is correcting that assumption.

PRRAC: Could you also speak to the political way forward for your policy suggestions? Given the cur-

One of the insights from this book and the complicated story of the drivers of segregation is that there are more levers that are available to us than [only] the federal government.

rent administration, to what extent can we keep our foot on the gas as more progressive and less progressive administrations come and go?

MARIA KRYSAN: One of the insights from this book and the complicated story of the drivers of segregation is that there more levers that are available to us than the federal government. We put ideas in the book that the neighborhood could do, that the communities could do. For instance, we talk in the book about marketing campaigns for communities: being welcoming to people with all races and ethnicities. A community can insist on diverse marketing tools, diverse approaches, and openness.

PRRAC: The book also explores the fluidity of preferences, in particular looking at some of the experiences of Housing Choice Voucher movers in Baltimore and Chicago, and how people's preferences may

change after they have moved and encountered new neighborhoods. Could you talk a bit about mutable preferences and what lessons can be drawn from that? And more generally, about the role of those voucher mobility programs as a learning tool?

MARIA KRYSAN: One of the interesting things in writing this book is the way in which voucher mobility studies came to be great examples of an area in which we actually know a fair amount about how people search for housing and the related interventions programs have used. That group has really been studied more than any other group of searchers and movers: we don't elsewhere have such detailed insights about the search experience, and the related hardships and preferences.

Stefanie Deluca's work looks at actual changes over time in people's preferences, in regard to housing. Some of her insights are gleaned from the accounts of mobility programs about the things that have and have not worked: where they tried to change people's perceptions and gave them exposure, or gave them the resources they need to make a move different from one that all the segregative forces we talk about in the book would otherwise lead them to make. One path forward is to look at what you learned in that context, and think about how you can apply it outside of a federally funded program for voucher holders and for populations that are in similar circumstances.

KYLE CROWDER: In terms of mutability of preferences: one of the major insights from the book is that it's not people's preferences that need to be addressed, it's really their knowledge of actual communities. One of our inspirations was the work that Maria Krysan did with Mike Bader at American University that demonstrates that there are huge blind spots in people's knowledge of actual neighborhoods, and there are big racial differences in these blind spots, so there are whole sections of the metropolitan area that people never actually consider

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The Constitutional Right to Education is Long Overdue

Derek Black

Public school funding has shrunk over the past decade. School discipline rates reached historic highs. Large racial and socioeconomic achievement gaps persist. And the overall performance of our nation's students falls well below our international peers. These bleak numbers beg the question: don't students have a constitutional right to something better?

Most Americans understandably believe that federal law protects their right to education. Why wouldn't it? All fifty state constitutions recognize a right to education. The same is true of the national constitution in 170 or so other countries. Yet the word "education" does not even appear in the United States Constitution, and federal courts (most notably in the 1973 Supreme Court case *San Antonio v. Rodriguez*) have rejected the idea that education is a fundamental constitutional right and should be protected anyway.

While advocates and scholars have lamented the problem for the past fifty years, no one has come up with a plausible solution. Effective litigation strategies have been in such short supply that advocates had all but given up on the federal courts by the late 1980s. It seemed the only solution was to amend the Constitution itself. That, of course, is no small undertaking. In recent decades, therefore, the debate over the right to education has been primarily academic.

The summer of 2016 marked a surprising turning point. Two independent groups—Public Counsel and Students Matter—filed lawsuits in Michigan and Connecticut. In the Michigan case (*Gary B. v. Snyder*), plaintiffs

argue that students have a fundamental right to an education that ensures they are literate. Otherwise, "[t]he stigma of illiteracy will mark them for the rest of their lives, deny them the ability to live within the structure of our civic institutions, and foreclose any realistic possibility that they will contribute in even the smallest way to the progress of our Nation." In the Connecticut case (*Martinez v. Malloy*), plaintiffs argue that while the U.S. Supreme Court has never recognized a full-fledged right to education, its prior decisions leave open the possi-

Research that I began before any of these lawsuits were filed indicates they may be onto something remarkable—particularly the plaintiffs in Mississippi. While the U.S. Constitution does not explicitly mention education, a careful examination of the events leading up to the enactment of the Fourteenth Amendment reveal that education was to be an implicit guarantee of citizenship. Without the government extending education to former slaves and poor whites, they would never fully exercise their rights as citizens, and the nation could not become a true democracy.

A careful examination of the events leading up to the enactment of the Fourteenth Amendment reveal that education was to be an implicit guarantee of citizenship.

bility of a federal constitutional right to a "minimally adequate education." Like the Michigan plaintiffs, they argue that a minimally adequate education is crucial for basic citizenship.

In May 2017, the Southern Poverty Law Center filed a third suit in Mississippi (*Williams v. Bryant*), claiming that federal law requires Mississippi to maintain the commitment the state first made in education in 1869. Following the Civil War, Congress exercised its authority to grant or deny the readmission of southern states to the Union. When Congress granted Mississippi's readmission, it did so only under the condition that Mississippi provide public education to everyone and that it never renege on that commitment. Plaintiffs allege that Mississippi has broken that promise.

Why a Federal Right to Education Matters

A federal constitutional right to education is necessary for all students to get a fair shot in life. Absent a federal check, education policy tends to reflect politics more than an effort to deliver quality education. In many instances, states have done more to cut taxes than to support needy students.

The delivery of education in the United States is extremely decentralized, producing inequitable results. Local districts have a much larger effect on the quality of education a student receives than the state or federal government. State government, in turn, has a much larger effect than the federal government.

The net result is vast funding inequality among states. For instance, New York spends \$18,100 per pupil, while Idaho spends \$5,800. New York is wealthier than Idaho, and its costs are of course higher, but New York still spends a larger percentage of its state resources on education than Idaho. Likewise, Kentucky is slightly poorer than Tennessee, but spends \$8,500 per pupil while Tennessee spends \$7,300.

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Derek Black, derekwblack@gmail.com, is Professor of Law at the University of South Carolina School of Law.

In short, geography and wealth are important factors in school funding, but so is the effort a state is willing to make to support education.

States often makes things worse by dividing their funds unequally among school districts. In Pennsylvania, the poorest districts have 33 percent less per pupil than wealthy districts. Half of the states follow a similar, although less extreme, pattern.

These funding cuts and inequalities among and within states matters. Reviewing decades of data, a 2014 study found that a 20 percent increase in school funding, when maintained, results in low-income students completing nearly a year of additional education, wiping out roughly half of the graduation gap between low- and middle-income students. A more recent study found that a 10 percent increase in funding correlates with a 5 percent jump in graduation rates in high-poverty districts. With a 99 percent confidence level, a Kansas study showed that “a 1 percent increase in student performance was associated with a .83 percent increase in spending.” These findings are just the most detailed recent examples of the scholarly consensus: money matters for educational outcomes.

The Original Intent to Ensure Education

While normally the refuge for civil rights claims, federal courts have re-

fused to address these educational inequalities. In 1973, in *San Antonio v. Rodriguez*, the Supreme Court explicitly rejected education as a fundamental right. Later cases asked the Court to recognize some narrower right in education, but the Court again refused. These new lawsuits are seeking to change that at last. While none of the new lawsuits explicitly state it, all three advance the notion that education is a basic right of citizenship in a democratic society. Rich evidence to support this principle can be found in the history of the 14th Amendment itself.

While none of the new lawsuits explicitly state it, all three advance the notion that education is a basic right of citizenship in a democratic society.

Immediately after the Civil War, Congress needed to transform the slaveholding South into a working democracy and ensure that both freedmen and poor whites could fully participate in it. High illiteracy rates posed a serious barrier. Illiteracy among whites in the South was more than four times higher than in the north. African American illiteracy in the South was even higher; it had been a crime to teach African Americans to read. As my research documents, this led Congress to demand that all states guarantee a right to education. Without education, Congress believed, the average person

could never fully become a citizen.

Congress implemented this guarantee through a complex series of events following the war. By 1868, Congress was in the middle of two of our nation’s most significant events: the readmission of southern states to the Union and the ratification of the 14th Amendment. While numerous scholars have examined this history, few, if any, have closely examined the intersection of public education with these events. The evidence is in plain view, but has never been properly contextualized or pieced together. The most startling revelation is how central education was to transformation of the south and the nation as a whole. In fact, the evidence shows, Congress demanded that southern states provide public education, with a direct effect on the rights guaranteed by the 14th Amendment.

As I detail in *The Constitutional Compromise to Guarantee Education*, Congress placed two major conditions on southern states’ readmission to the Union: Southern states had to adopt the 14th Amendment and rewrite their state constitutions to conform to a republican form of government. In rewriting their constitutions, Congress expected states to guarantee education. Anything short of this was unacceptable, and Southern states got the message. By 1868, nine of ten southern states seeking admission had guaranteed education in their constitutions. Those that were slow or reluctant were the last to be readmitted. The last three states—Virginia, Mississippi and Texas—saw Congress explicitly condition their readmission on providing education.

The intersection of southern readmissions, the rewriting of state constitutions, and the ratification of the 14th Amendment must be understood to define the meaning of the 14th Amendment itself. The Fourteenth Amendment could not become an official part of the Constitution until southern states also adopted it. And southern states could not reenter the Union until they ratified the 14th Amendment and rewrote their state

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PRRAC Update

- Last month, we said goodbye to two of our valued staff members who have moved on to new positions: **LaKeeshia Fox**, our Policy Counsel (housing) is moving to AARP, where she will serve as an AARP Legislative Representative

focused on Housing and Livability issues, and **Michael Hilton**, Policy Counsel (education) will be working in the General Counsel’s office of the New York City Department of Education. Congratulations, LaKeeshia and Mike!

After the Superstorm

David Rammller

Losses and costs of recovery from 2017 hurricanes in Texas, Florida, Puerto Rico and the U.S. Virgin Islands and wildfires in California have been estimated in the hundreds of billions of dollars. As recovery efforts continue to take shape, fair housing advocates should heed the lessons of Superstorm Sandy and the New Jersey rebuilding process.

The disaster recovery process in New Jersey was hampered from the beginning by both repeated administrative failures and a systemic lack of interest in rebuilding in ways that were fair to working families, immigrant communities and communities of color. The state's original plan almost completely ignored these deficiencies and, additionally, diverted substantial federal funding to projects in politically connected communities that had seen almost no impact from Sandy. When attempts to work with state officials to remedy these serious problems fell on deaf ears, the Latino Action Network of New Jersey, the New Jersey NAACP and the Fair Share Housing Center of New Jersey filed a civil rights complaint against the state. A mediation process concluded 14 months later with a landmark agreement, the largest settlement in the history of the federal Fair Housing Act.

As part of the settlement, Gov. Chris Christie's administration committed to addressing severe problems in its disaster recovery plan that threatened to leave thousands of renters and homeowners behind. The State of New Jersey allocated about a half a billion dollars more than initially planned to develop affordable, multifamily housing in communities that were most impacted by the storm along the Jersey Shore and other storm-impacted communities. These rental homes dis-

proportionately served people of color and lower-income people and the lack of initial rental funding in the rebuilding plan threatened to displace renters from both higher-opportunity suburban communities and gentrifying urban neighborhoods. The agreement also led to the creation of a program specifically designed to assist low- and moderate-income homeowners seeking to rebuild, after HUD found that the initial program serving homeowners had not sufficiently been marketed in areas with significant concentrations of homeowners of color.

At the same time, the settlement sought to reform a litany of failed prac-

sult of this settlement, the road to recovery continues to be rocky for too many New Jersey families. There are still thousands of New Jersey families five years later who are not finished rebuilding. Many of the recovery programs aimed at working families and communities of color didn't get off the ground until after the settlement was in place—years after the storm hit. While there have been areas of improvement, one of the lessons from Sandy is that when programs are initially not designed correctly, the impacts reverberate for years, especially for lower-income people who cannot afford to wait.

Yet advocates seeking to ensure equitable rebuilding in areas hit hard by this year's hurricane season are in a better position because of the work we did after Sandy. Our settlement agreement with the state helped shape important federal guidance under Title VI of the Civil Rights Act issued in 2016 by the Department of Justice and all major agencies involved in disaster recovery that confirmed disaster recovery programs must follow federal civil rights laws. The guidance called on states, counties and municipalities to proactively plan to respond to the needs of low-income communities, immigrant families and communities of color and instructed federal agencies to ensure equitable rebuilding opportunities that respect victims' civil rights.

Even with this meaningful federal guidance, substantial additional reforms of federal disaster recovery programs remain needed. On the federal level, the Federal Emergency Management Agency (FEMA) and the Department of Housing and Urban Development should provide better training to disaster personnel on the particular problems posed by storm-damaged manufactured homes. Even relatively minor water damage could cause total loss of the structures. In addition,

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David Rammller, davidrammler@fairsharehousing.org, is an Attorney at Fair Share New Jersey.

Despite the progress made as a re-

FEMA must improve management of private insurance companies that process flood claims to ensure that people receive the benefits for which they are eligible. Too many families' claims in New Jersey were improperly rejected or underpaid—and there remains no clear and speedy appeal process to address these problems.

On the local front, the processes for accepting and processing impacted resident's assistance applications must be easily understood, contain safeguards to protect information, allow residents to track their application processing, and guide them through an unwieldy alphabet soup of aid programs and offices that can confound ordinary families. Poorly designed procedures—and an over-reliance on contractors with poor track records of responding to other disasters—divert resources that could be used to help families and significantly prolong the rebuilding process.

While disaster recovery will involve the hiring of many contractors, advocates should take care to ensure that federal Section 3 diversity targets are met or exceeded and that local minority- and women-owned businesses have a fair shot at bidding for work against out-of-state outfits that swoop in and seek work following a disaster. Because mistakes will occur, it's imperative that all disaster relief applicants know about, and have access to, quick and simple appeal processes and that all aid request denials are explained to families in clear, simple language they

will be able to understand. Also key to any effective response from the advocacy community is access to current disaster recovery data. Advocates should press state, local and federal officials for accurate and timely data on recovery to track progress and quickly identify trouble spots.

Finally, if local officials are preparing to implement inequitable recovery plans, advocates must be prepared to move quickly to protect the civil rights of impacted communities. It is imperative that advocates work quickly to insert themselves into the process so that the voices of low-income communities and families of color are listened to and included in any final disaster recovery plan. This involvement is especially critical for the longer-

If local officials are preparing to implement inequitable recovery plans, advocates must be prepared to move quickly to protect the civil rights of impacted communities.

term recovery programs using Community Development Block Grant-Disaster Recovery (CDBG-DR) funds administered by HUD. Federal, state and local governments face pressure to quickly initiate recovery programs, but, if the programs are flawed from the beginning, valuable time is lost and unnecessary suffering occurs in the many months it will undoubtedly take to correct problems and to resolve a civil rights complaint.

Time is of the essence in the weeks and months following a major hurricane. Advocates should be armed with an understanding of how federal dollars are allocated to impacted communities and the lessons of Superstorm Sandy, and be prepared to utilize new tools, particularly the 2016 civil rights guidance, to win a seat at the table and ensure that any final recovery plan focuses on the needs of low-income residents and communities of color.

constitutions. By the time the 14th Amendment was finally ratified in 1868, these congressional demands and state constitutional law had cemented education as a central pillar of citizenship. In other words, for those who wrote and ratified the 14th Amendment, the explicit right of citizenship in the 14th Amendment included an implicit right to education. The reasoning of both Congress and the state conventions was clear: "Education is the surest guarantee of the ... preservation of the great principles of republican liberty."

The rest is history. Our country evolved from one in which fewer than half of states guaranteed education prior to the war to one in which all fifty state constitutions guarantee education today. In fact, prior to the Civil War, the vast majority of states had entered the Union without any provision for education in their state constitutions. But after the Civil War, Congress would never admit another state to the Union whose constitution did not provide for education.

The new cases before the federal courts offer an opportunity to finish the work first started during Reconstruction—to ensure that all citizens receive an education that equips them to participate in democracy. The nation has made important progress toward that goal, but so much more work remains. The time is now for federal courts to finally confirm that the United States Constitution does, in fact, guarantee students the right to quality education. □

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Resources

The Constitutional Compromise to Guarantee Education, *Stanford Law Review* (forthcoming 2018). Current draft available at <https://ssrn.com/abstract=2982509>.

Lewis v. Governor of Alabama, low-income African-American workers and civil rights groups are challenging a 2016 Alabama statute that expressly preempts municipalities from adopting minimum wages that are higher than the federal minimum wage. The legislature enacted the law in response to the City of Birmingham's passage of a living wage ordinance that would have incrementally raised the minimum wage within the city to \$10.10 per hour. Following the *Village of Arlington Heights*' factors, the plaintiffs marshaled statistical evidence showing that African-American workers were disproportionately likely to benefit from the city's ordinance; cited Alabama's recent discriminatory enactment of a restrictive immigration law (which shared co-sponsors with the living wage preemption bill); pointed out that legislative process was rushed and that the legislature failed to provide required notice of the bill to Birmingham residents; noted that the legislature did not consider any studies or expert testimony relating to the subject of the bill; and referenced statements by legislators that were coded references to people of color. Despite this substantial evidence of discriminatory intent, the U.S. District Court for the Northern District of Alabama granted the state's motion to dismiss. The plaintiffs appealed that decision to the U.S. Court of Appeals for the Eleventh Circuit, where the Lawyers' Committee for Civil Rights Under Law filed an *amicus curiae* brief underscoring this evidence, alongside other key arguments.

Second, in *City of El Cenizo v. State of Texas*, several municipalities, elected officials, and civil rights groups are challenging a 2017 Texas statute that purports to preempt municipalities and other public entities with law enforcement functions, such as public universities, from adopting sanctuary policies that limit the role of local law police in the enforcement of federal immigration laws. The plaintiffs have raised a variety of claims in their complaints, including

federal preemption, Due Process Clause, and First Amendment arguments, in addition to a claim that Texas intentionally discriminated against Latinos by enacting the law in violation of the Equal Protection Clause. The evidence that the Texas Legislature acted with discriminatory intent includes the disparate impact of the law on Latinos; the state's recent history of intentionally discriminating against Latinos through racial gerrymandering in the drawing of legislative districts; the legislature's consideration of the bill in a context marked by a virulent anti-immigrant backlash fueled by the campaign of President Donald J. Trump; coded language used by legislators who supported the bill; and irregularities in the legislative process such as the bulk consideration of amendments.

In August 2017, the U.S. District Court for the Western District of Texas

Depending on the nature of the preempted local ordinances, federal civil rights statutes may provide a more effective line of attack on these pernicious state laws than Equal Protection Claims do.

granted a preliminary injunction barring enforcement of many aspects of the statute but did not address the Equal Protection Clause claims in its decision. Texas appealed that decision to the U.S. Court of Appeals for the Fifth Circuit, which issued a stay allowing the state to enforce parts of the law pending appeal. The Lawyers' Committee filed an *amicus curiae* brief in support of those challenging the law, elaborating on the Equal Protection Clause claim.

At the time of writing, each of these cases remained pending in the Courts of Appeals.

Leveraging Disparate Impact

Depending on the nature of the preempted local ordinances, federal civil rights statutes may provide a more effective line of attack on these pernicious state laws than Equal Protection claims do. That is so because, under some federal civil rights laws, plaintiffs can prove violations through evidence of the unjustified disparate impact of a policy or practice (even if they could not prevail on an intentional discrimination theory). Under the disparate impact framework, a plaintiff can challenge neutral policies or practices that cause a disproportionate adverse effect or disparate impact and either are not justified or have justifications that could be served through less discriminatory alternative policies. The disparate impact rule of the U.S. Department of Housing and Urban Development sets forth a burden shifting framework under which the plaintiff must show that the challenged policy or practice has a disparate impact or perpetuates segregation, the defendant then has the opportunity to show that the policy or practice is necessary to achieve a substantial, legitimate, non-discriminatory interest, and, lastly, the plaintiff has the chance to show that a less discriminatory alternative policy or practice could serve the defendants' interest (24 C.F.R. § 100.500).

One such case is *Inclusive Communities Project v. Abbott*, a lawsuit filed in the U.S. District Court for the Northern District of Texas in February 2017 by the Inclusive Communities Project (ICP), a Dallas-based organization that provides mobility counseling to Housing Choice Voucher holders seeking to move to high opportunity neighborhoods within the Dallas-Fort Worth area. The lawsuit claims that a 2015 Texas statute preempting municipalities from adopting protections against housing discrimination on the basis of source of income, except for local ordinances that narrowly apply to veterans, violates the federal Fair Housing Act. ICP, previously the successful plaintiff in

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the case in which the U.S. Supreme Court upheld the viability of disparate impact claims under the Fair Housing Act, is alleging that the state law violates the Fair Housing Act on both intentional discrimination and disparate impact theories. ICP included the City of Dallas as a defendant, as well, because it had adopted a source of income ordinance consistent with the restrictions in the state statute.

The Texas Legislature passed the preemption law at issue in response to two local developments. First, the City of Austin adopted an ordinance protecting voucher holders from discrimination. Second, the City of Dallas entered into a voluntary compliance agreement with the U.S. Department of Housing and Urban Development resolving allegations of violations of civil rights and fair laws, including the duty to affirmatively further fair housing. As a part of that agreement, the city committed to introducing a proposed ordinance in the Dallas City Council that would protect voucher holders from discrimination. The council adopted a narrow source of income ordinance solely protecting veterans in a purported effort to comply with the state law barring source of income protections.

In support of its disparate impact claim, ICP argues that in the context of Dallas where over 86% of voucher holders were African American as of 2013, the state law and the city's adoption of an ordinance consistent with that law would have a disparate impact on African Americans and would perpetuate segregation in light of the greater incidence of source of income discrimination in predominantly white areas. The state's primary justification for the law is weak: ensuring that municipalities not require participation by landlords in a voluntary federal program. This justification is flawed for, as ICP argues, it may be a plausible interest for a landlord, but not for a government entity. Moreover, that the law also effectively allows localities to require participation in the Veter-

ans Affairs Supportive Housing Voucher program, which is also voluntary, is inconsistent with this justification. ICP further observed that there are alternative policies that a municipality could incorporate into a source of income discrimination ordinance in order to address landlord concerns, such as providing compensation for delays in lease-up due to the Housing Quality Standards inspection process for the utilization of vouchers. A state law requiring local governments to include similar types of provisions

The state's primary justification is weak: ensuring that municipalities not require participation by landlords in a voluntary federal program.

could be a less discriminatory alternative to Texas's sweeping approach. A motion to dismiss the case is pending.

Safeguarding Inclusionary Zoning

Inclusive Communities Project v. Abbott has the potential to serve as a guide for challenges to a broader range of preemption laws than just source of income protections. Yet the threshold requirement of establishing statistical proof of disparate impact may be more difficult to meet in connection with other equitable local housing policies.

Specifically, state laws that preempt inclusionary zoning may be susceptible to challenge. In theory, the same statistical framework as in *Inclusive Communities Project v. Abbott* could apply to such a case. The hypothetical argument would be that residents of affordable units in otherwise market rate inclusionary developments are disproportionately people of color and, because new market rate development is disproportionately likely to be located in predominantly white commu-

nities, a law blocking inclusionary zoning perpetuates segregation. The design of the inclusionary zoning program matters a great deal for how compelling these arguments would be. Most inclusionary zoning programs do not serve extremely low-income and very low-income tenants, and low, moderate, and sometimes middle-income households served by inclusionary zoning are not always disproportionately people of color. Thus, local context is important, and the preemption of an ordinance that reaches deeper levels of affordability may be a stronger jumping off point for this kind of a disparate impact claim.

Another obstacle in using the Fair Housing Act's disparate impact standard to overcome the preemption of inclusionary zoning is that data on the actual inhabitants of affordable units produced through inclusionary zoning generally is not available, unlike data on the residents of subsidized housing. Accordingly, in order to construct a disparate impact claim, it would be necessary to project likely occupancy based on the percentage of households within certain income ranges by race or ethnicity. Doing so will often result in a projection of African-American and Latino occupancy that is below what would occur in practice. One way to counteract this issue through inclusionary zoning program design would be to follow the example of Montgomery County, Maryland and provide for the local housing authority to purchase some percentage of affordable inclusionary units to operate as public housing. That would allow the use of data on the actual demographic composition of public housing residents and individuals on the waiting list to project the occupancy of those units.

With respect to possible state justifications for preempting inclusionary zoning and less discriminatory alternatives to preemption, many of the arguments marshaled by ICP in its challenge to the state preemption of local source of income laws appear relevant. Avoiding the perceived burden of having to provide affordable

units would seem to be more properly the interest of a developer and not the state, particularly in light of states' affirmatively furthering fair housing obligations as HUD grantees. Additionally, state legislation requiring municipalities to provide incentives to developers to offset the costs of providing affordable units would be a logical less discriminatory alternative to broad preemption.

A potentially thornier justification for preemption would leverage strategically chosen studies that claim that inclusionary zoning is ineffective and has unintended consequences for housing affordability. Although competing studies may credibly rebut those assertions, Professor Stacy Seicshnaydre of Tulane University Law School has written about how difficult it is for plaintiffs to prevail in disparate impact claims, and convincing a court to credit one study over another would be difficult. The more likely route to success would be arguing, similar to the response to the first justification, that the state can guard against any potential unintended consequences by requiring municipalities to provide for adequate incentives.

The State's Obligation to Affirmatively Further Fair Housing

A final possible avenue for arguing that preemption violates federal civil rights laws has great normative appeal but poses challenges with respect to enforceability. The Fair Housing Act requires recipients of federal housing funds to affirmatively further fair housing. Every state in the U.S. receives housing and community development funds from HUD, as well as similar funds from other federal agencies, and, as a result, has a duty to affirmatively further fair housing. In various contexts, HUD has held out both source of income discrimination protections and inclusionary zoning as best practices for affirmatively furthering fair housing. HUD's 2015 Affirmatively Furthering Fair Housing rule

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requires states, among other HUD grantees, to certify that they will not take action that is materially inconsistent with the duty to affirmatively further fair housing (*Affirmatively Furthering Fair Housing*, 80 Fed Reg. 42272, 42350 (July 16, 2015)). It is clear that prohibiting local governments from adopting HUD-endorsed best practices for affirmatively furthering fair housing is materially inconsistent with the duty to affirmatively further fair housing. Two possible avenues arise from this situation: a private right of action to enforce the duty against HUD grantees, or a False Claims Act lawsuit.

Each of these avenues presents challenges. Unfortunately, although the ultimate issue of whether there is a private right of action to enforce the duty against HUD grantees remains unsettled, lower court precedent is not conducive to claims that there is such a private right of action. Despite showing some potential in *U.S. ex rel. Anti-Discrimination Center of Metro New York, Inc. v. Westchester County*, the federal False Claims Act has proved to be a limited tool for enforcing the duty in subsequent cases. It may be possible to argue that preemption laws are, in turn, preempted under the Supremacy Clause of the U.S. Constitution in light of their conflict with the duty to affirmatively further fair housing, but the U.S. Supreme Court made claims of that ilk more difficult in its 2015 decision in *Armstrong v. Exceptional Child Center, Inc.*, in which it established a new and more stringent test for evaluating whether judicial enforcement of federal statutes is appropriate.

If, in the future, there are shifts in the jurisprudence governing the en-

forceability of federal statutory obligations or Congress amends the Fair Housing Act to create an express private right of action to enforce the duty, the duty to affirmatively further fair housing may emerge as a stronger bulwark against state preemption laws that target equitable local housing policies. In an administration committed to robust civil rights enforcement, administrative complaints alleging that preemption laws violate the duty to affirmatively further fair housing may get some traction and present a viable non-litigation route to preserving the ability of local governments to adopt housing policies that advance racial justice goals.

The potential for success of these theories is uncertain, but the adjudication of pending cases over the coming years will be highly informative.

Conclusion

As advocates seek to stem the tide of state preemption laws blocking a wide range of equitable policies, the political process is and will remain the primary venue for fighting back. For some types of laws, however, there are legal theories grounded in both the Equal Protection Clause of the U.S. Constitution and federal civil rights statutes that could provide a litigation option when legislative advocacy is unsuccessful. The potential for success of these theories is uncertain, but the adjudication of pending cases over the coming years will be highly informative. Where preemption targets types of local policies that implicate federal civil rights statutes that allow for disparate impact claims, the potential to fight back through the courts is at its greatest. These types of theories avoid the pitfalls of embracing local control when the past and present contain countless examples of discriminatory exercises of local control. □

Regulatory Background

When Congress enacted the Fair Housing Act in 1968, it prohibited discrimination on the basis of race, color, religion, national origin, and sex (and later family status and disability) in the provision of housing and also required that federal housing and community development funding “affirmatively further” fair housing (42 U.S.C. §5304(b)(2); see also 42 U.S.C. §3608(e)(5); 24 C.F.R. §5.154). The policy interests underlying the Fair Housing Act and its AFFH provision are still sharply relevant today: levels of residential segregation by race in the United States remain high. And higher levels of metropolitan area segregation continue to be associated with worse socio-economic outcomes for Black and Latino young adults. Segregation by race and by income is also associated with lower levels of overall socio-economic mobility, for all residents of a metropolitan area.

Yet although the Department of Housing and Urban Development (HUD) is responsible for ensuring that recipients of HUD funding affirmatively further fair housing, HUD has rarely enforced these provisions of the Fair Housing Act. After Congressional prodding, HUD in 1988 required grant recipients to submit an Analysis of Impediments to Fair Housing Choice (AI) and certify that they were furthering fair housing. HUD, however, rarely if ever reviewed these AIs and many HUD grant recipients paid little attention to advancing fair housing. A 2010 Government Accountability Office report found that roughly one third of AIs were out of date and that the majority of AIs lacked any time frame for implementing their recommendations.

In contrast, the 2015 AFFH Rule was designed to provide HUD grant recipients “with an effective planning approach to aid program participants in taking meaningful actions to overcome historic patterns of segregation, promote fair housing choice, and foster inclusive communities that are free

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from discrimination" (24 C.F.R. §5.150). Pursuant to the AFFH Rule, HUD now provides data about residential segregation about disparities in access to opportunity (measured in terms of local school proficiency, job access, transportation access, and exposure to environmental hazards) to public entities receiving HUD funds. Those HUD grant recipients are then required to engage in a community process to conduct an analysis of segregation, of racially or ethnically concentrated areas of poverty, of disparities in access to opportunity, and of disproportionate housing needs within the jurisdiction, and then to identify what factors contribute to these fair housing issues (24 C.F.R. §5.154 (d)(1)-(3)). To address those contributing factors, grant recipients then set out goals for advancing fair housing and equal access to opportunity, identify the metrics, milestones, and parties responsible for achieving those goals, and, in their subsequent Consolidated Plans and annual Action Plans, include strategies and actions to realize the Assessment of Fair Housing (AFH) goals (24 C.F.R. §5.154 (d)(4)-(5)). Municipalities began submitting their AFHs to HUD on a rolling basis in 2016.

Research Findings: Concrete Commitments, Consistency with the FHA's and Rule's Aims

To evaluate to what extent the AFFH submissions differ from the prior AI submissions, we coded and analyzed all of the 28 AFHs that were submitted between October 2016 (the first submission date) and July of 2017, as well as each of these municipalities' AIs (their previous plans filed before the AFFH Rule came into effect) to examine variation in two areas. We analyzed differences in the robustness of municipal goals (measured as goals that set out a quantifiable metric or commit to a new policy) to address segregation between those plans submitted pursuant to the AFH process and those submitted previ-

ously under the AI process. We recognize that introducing a new policy or having a quantifiable metric for a goal is at best an imperfect measure of the robustness of an AFH plan, but it is a consistently measurable characteristic of goals that captures at least some level of the strength of a tangible public commitment.

Of all goals in the 27 AIs we reviewed (one AI was unavailable), only 5 percent contained a quantifiable metric or included a new policy. By contrast, 33 percent of all goals in the 28 AFHs contained a quantifiable metric or new policy, an increase of 28 percentage points. Every municipal-

ity except one (Harrisonburg, VA) had more goals with quantifiable metrics or new policies in their AFH than in their AI. On the one hand, advocates can and should ask why only a third of AFH goals included either a new policy or an easily measurable metric and should be pressing municipalities to make even more innovative goals and concrete commitments. On the other hand, compared to the old AIs, the new AFHs include a dramatic increase in the number of goals, in the ambition of those goals, and in the share of goals with metrics the public can use to hold municipalities accountable to their commitments.

For instance, in the Wilmington, North Carolina AI, one of the nine goals and recommendations was to "consider soliciting an intern from a local college to institute basic practices with regard to fair housing" for the city and the county by "disseminating fair housing information," "developing and monitoring a hotline," and "work[ing] with the city and county to maintain fair housing information on each website". This is an example of a goal that makes essentially no public commitment to any defined action and provides minimal ways to measure if fair housing information is being effectively disseminated and what effect that dissemination is having on awareness or enforcement of fair housing laws.

The AFH from Wilmington, by contrast, includes an increased number of goals (12) and a number of more concrete commitments. "10% of affordable housing produced with CDBG and HOME participation over the next 5 years will be targeted for persons with disabilities"; "partner with area banks to provide up to 10 mortgages annually through the homeownership opportunities program to households at or below 80% of AMI" with a commitment that housing authority will enhance the existing Housing Choice Voucher homeownership program support; "fund after school programs in racially or ethnically concentrated areas of poverty over the next 5 years" such that "75% of youth enrolled will increase scores on end of year test at 80% or more; 90% promotion to next grade level"; and a commitment to making 100% of city owned available in-fill lots available for development into affordable housing, as well as revisions to the zoning code to encourage mixed-use, mixed-income, and mixed-tenure status units. The goals in the AFH are more specific, touch on a broader range of place-based characteristics affecting access to opportunity, and include concrete commitments to measurable outcomes, from first-time home-buyer loans financed, to dwelling units that are accessible to the disabled, to school performance, to the use of public land for affordable housing.

Throughout the AFHs we reviewed, municipalities made concrete commitments to measurable goals or to the implementation of new policies. Some of those goals attempted to increase the mobility of households receiving housing vouchers. For instance, New Orleans, Louisiana set out to provide landlords in the city with information on how to become a Hous-

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Throughout the AFHs we reviewed, municipalities made concrete commitments to measurable goals or to the implementation of new policies.

ing Choice Voucher landlord in order to expand program participation and decrease the share of Housing Choice Voucher properties in racially or ethnically concentrated areas of poverty from 33% to 30% by 2021. Other goals sought to reduce displacement from gentrification. For instance, Seattle, Washington proposed scaling its mandatory housing affordability requirements to geographic areas of the city based on market conditions, in an effort to increase the contributions to affordable housing from areas with strong markets. Similarly, New Orleans set out the goal of developing more than 400 affordable rental units in the gentrifying neighborhood of Treme over five years. Other goals made commitments to increasing the number of affordable units in neighborhoods with high levels of access to opportunity. For instance, Chester County, Pennsylvania committed to creating 200 new affordable units in high opportunity neighborhoods across the county by 2021. Still other goals focused on public housing, economic development, and education. For instance, Wilmington set out the aim of enrolling at least 150 individuals from public housing in a job training and placement program while New Orleans proposed developing new commercial sites in public housing. Perhaps the most exciting development was the joint regional submission from five different municipalities in the Kansas City region, collaborating across jurisdictional lines to develop a shared approach to reducing place based disparities in access to opportunity.

To assess the extent to which the AFHs were actually producing goals that were consistent with the AFFH Rule's aim to "overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics," we also coded goals that either proposed to increase household mobility or access to neighborhoods with low-poverty rates and other measures of opportunity ("mobility" goals); or that proposed to in-

vest in "transforming racially and ethnically concentrated areas of poverty into areas of opportunity" ("place-based" goals). There was a more than five-fold increase in both of these types of goals, from fewer than 20 across all of the AIs to nearly 100 in the AFHs.

Of the AFHs we reviewed, roughly one out of four had initially been "not-accepted" by HUD for failing to comply with the AFFH Rule and HUD has reported that of all 48 submissions prior to the delay in implementation just over one in three were initially not-accepted. The primary reasons for these "pass-backs" were failures to sufficiently analyze obstacles to fair housing or incorporate ideas from the community engagement process, failures to justify the prioritization of contributing factors for each fair housing issue identified, and a lack of metrics and milestones for determining when fair housing results will be achieved. These initial non-acceptances from our perspective represent a strength of the new AFFH Rule and HUD's implementation of it, in that the AFFH Rule has higher standards for municipalities than the previous AI and that HUD is enforcing those standards. Additionally, the non-acceptances provided

participants with the opportunity respond to HUD feedback and to strengthen their final AFHs so as to meet their fair housing obligations. In short, the non-acceptances should be seen as a strength of the new rule not a failure. We hope that a non-acceptance would be embraced by a municipality as an opportunity to improve their analysis and enhance their goals and simultaneously embraced by HUD as a sign of the need for further investment in technical assistance to municipalities conducting AFHs.

Conclusion

Since the announcement of the January 5 delay, dozens of civil rights groups have expressed their opposition to the change, urging HUD to reverse its action. If HUD will not act (or is not forced to act), advocates will also need to press their cities to pursue the rigorous analysis and robust goals that the AFFH rule calls for. The Fair Housing Act and its goal of "moving the Nation toward a more integrated society" require it (*Texas Dep't of Hous. & Cmty. Affairs v. Inclusive Communities Project, Inc.*, 135 S. Ct. 2507, 2515 (2015)). □

because they don't know anything about them. And that is likely rooted in their life experience, their residential histories, their daily rounds. A big part of the puzzle is how to overcome those gaps in people's knowledge of the neighborhoods and to demonstrate the options in those blind spots.

PRRAC: How would you characterize the role of the media in all of this? In shaping current perceptions and potentially, going forward, in modifying perceptions?

MARIA KRYSAN: That it is incredibly important. We conducted interviews in Chicago, in which we showed people maps of the metro area and we talked to them about a range of places, asking them in many cases just to

speculate. There was a lot of pushing people to tell us about places they didn't have personal knowledge of. And so often, a throwaway comment was their impression came from: "the news of course," "from what I have read of course," so that in doing the analysis you almost forgot about it, it was so pervasive. People watch local news, and local news is so driven by coverage of crime, and all the crime they ever see is in the Southside of Chicago, for instance. That's an extreme example but it is a window into the role of the media. There isn't that much data or studies that look specifically at the media in this regard. It is a great area for future research, I think.

PRRAC: What other future research needs do you think were exposed by your research and by writing the book?

KYLE CROWDER: This book is an exercise in taking the little clues that we have about what drives residential stratification and using them to build a sketch of a new theoretical argument. The next step is testing all aspects of the theory. We have clues that things don't work in the way that the "big three" theoretical arguments imply, but most of what we are saying requires a lot of verification. Starting at the very beginning: where do blind spots develop? How do people develop knowledge of the neighborhoods within the metropolitan area? What is the role of their daily rounds? What is the role of the media? The news media, but also popular media, where stereotypes about the neighborhoods are baked in to our depictions of neighborhoods. How do kinship networks and social networks influence our perception of neighborhoods? Once our knowledge of neighborhoods is shaped, how does that affect how we go about searching for housing? The on-the-ground mechanical processes of trying to identify housing options: how are those informed by knowledge, relative to things like economic means, racial attitudes, and the like? We have ideas from evidence about each of these things. But our three big theoretical arguments have been so dominant for so long that we are currently in the practice of collecting data relevant to just those three theoretical arguments. A big part of the book is a call to action to start collecting data on the other kinds of hidden drivers of residential segregation, to better understand those things and develop better policies.

PRRAC: Beyond the focus groups you did in Chicago, you also talk in the book about communities like the suburb of Oak Park. What lessons do you think can be gained from those "experiments" of integration for other communities?

MARIA KRYSAN: I've been on the board of directors of the Oak Park Regional Housing Center for more than a decade. It is one of the few such organizations still alive today after forty-some years; there were a whole

New on PRRAC's Website

"Fair Housing and Environmental Justice: New Strategies and Challenges," (Megan Haberle, *Journal of Affordable Housing*, January 2018)

"Disrupting the Reciprocal Relationship between Housing and School Segregation" (Philip Tegeler and Michael Hilton, November 2017)

Court papers in *Open Communities Alliance et al v. Carson* (Small Area Fair Market Rent litigation)

cluster of them that were born in the 1960s in different communities around the country. It's one of the few that actually have tried to intervene in the housing search process, in this case for mostly middle class whites, and to some extent for African Americans. But it is distinctive in that it has targeted the private market, not the public sector. They too have learned a lot of lessons about how people search for housing, and the efforts and strategies they can use to disrupt stereotypes and perceptions. There are some great lessons for other communities who are paying more attention to Affirmatively Furthering Fair Housing. And that it has to involve more than just figuring out how to move voucher holders to opportunity areas. That's an important piece of the puzzle, but with respect to the larger question of integration across a whole metropolitan area, you have to be thinking about ways to encourage moves beyond that very small population. A population that is important, but is certainly not the only driver of segregation in our cities. That is why the Oak Park example is so useful, because it's been successful in the private rental market, whereas much of our policy analysis is focused on public housing or recipients of vouchers.

KYLE CROWDER: Similar kinds of things are happening in Seattle. A lot of our innovations in these areas start with public housing authorities, which have a little more control and insight into the mobility process because of the voucher system, as well as an opportunity to study what drives people's residential choices. King County and other housing authorities in the area

have shown significant interest in trying to understand people's neighborhood perceptions and choices.

Of course, what we have been talking about is the demand side. The supply side is the other part that metropolitan areas need to deal with, especially in hot markets like Seattle. This means coming up with innovative ways to foster integration both by socioeconomic status, but also race and ethnicity. Fostering development strategies that allow for and encourage a variety of housing types in neighborhoods. Making sure that development impact fees and other funding strategies are used to provide housing at a variety of income levels in neighborhoods. In other words, we need to do things at a higher level to make sure that a supply of housing is there in these integrated neighborhoods—but we need to affect the demand side of it as well, through developing knowledge of these neighborhoods and affirmatively marketing these neighborhoods.

PRRAC: Concluding words?

KYLE CROWDER: One of the take-aways is that I would hate for policy makers to say: "Hey look! You know, residential segregation is really just all about people's knowledge, and their lived experiences, their kinship network, and so you know, integrating metropolitan areas is beyond our control." I think that would be a mistake. There are absolutely things that metropolitan governments, city governments, state governments, and the federal government can do to affect the breadth of choices that people have. □

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