A HOUSE IS NOT A HOME: LEARNING FROM OUR MISTAKES TO PREVENT UNEQUITABLE GENTRIFICATION ON A LOCAL LEVEL

INTRODUCTION

Gentrification is an inherently economic process with troubling manifestations. Of particular concern is gentrification's effect on unequal access to housing.[1] Progressive and equitable housing codes attempt to solve a practical symptom of unequal gentrification but do not address the causes.[2]

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1. *See* ALAN MALACH, DIVIDED CITY 99 (2018) ("At its core, gentrification is economic.").

2. *See* CONG. RESEARCH SERV., RL32236, HOPE VI PUBLIC HOUSING REVITALIZATION PROGRAM: BACKGROUND, FUNDING, AND ISSUES (2012) ("HOPE VI, has been credited with eliminating and replacing some of the most dangerous and dilapidated public housing in the country with new mixed income communities. However, the program has come under scrutiny for slow expenditure of funds and for displacing poor families.").

Addressing the economic realities that stress community members in gentrifying areas is crucial in developing progressive housing considerations. Using predictors of gentrification and learning from the failings of housing-based efforts, this Note will show that localities can use a framework of preemptive measures to protect their vulnerable community members from the unequitable revitalization and displacement effects of gentrification.

Part I of this Note will begin with an explanation of gentrification. Next is a discussion of some of the prominent theories on the predictors of gentrification. This part begins with a discussion of the stereotypic "in-movers" that drive gentrification. The discussion of prediction models begins with the Endogenous Model—an economic-geography theory that posits that areas facing future gentrification are those adjacent to wealthy localities. Next, this part discusses the theory that dropping crime rates, or the perceived lack of violent crime, precedes gentrification. Third, this part will discuss the correlation between economically- and racially-segregated neighborhoods and neighborhoods likely to become gentrified. Finally, this part will conclude with a holistic discussion of the increase in public transportation as a predictor and enabler of gentrification.

Part II of this Note will address the practice of racial "redlining," federal low-income housing initiatives, and the economic flux urbanization movements cause. These initiatives include the National Housing Act of 1937, the Federal Housing Administration, the Home Owners' Loan Corporation, section 235, section 236, section 8, housing voucher programs, and two recent demonstrations, Moving to Opportunity and Moving to Work.

With that in mind, Part III of this Note will move into an analysis of housing-based legislation. This analysis examines how the criticisms of housing legislation and gentrification predictors share common themes. This part concludes that many of these initiatives fail to address three critical causes of gentrification: racial and economic segregation, dependence on a static private market, and failure to address implicit and explicit local biases. Moreover, this Note argues that the major predictors of gentrification are corollary to these failures.

Finally, this Note proposes an overlapping framework that uses Move to Work flexibility appropriations to develop community-specific gentrification prediction protocols to identify at-risk community members. Local housing authorities can then use income discrimination laws, inclusive housing ordinances, and a modified version of Moving to Opportunity and Moving to Work to effectuate meaningful housing security for all. This overlapping framework allows communities to gentrify without physically, financially, or perceptually displacing the poor.

I. WHAT IS GENTRIFICATION?

Gentrification, in its best light, is the process of an economically or physically undeveloped area becoming more economically productive.[3] Ruth Glass, a British sociologist, first used the term *gentrification* to describe the phenomenon of middle-class residents "invad[ing]" traditional working-class neighborhoods.[4] Since its coinage in 1964,[5] gentrification has made socially progressive urban planners clutch their pearls for its inescapable association with displacement and social injustice.[6] Members of the middle class buy low-cost properties seeking a cheap investment, but consequentially increase the surrounding property values and cost of living—displacing the low-income residents who can no longer afford to live in the area.[7]

Displacement is a contested phenomenon of gentrification, but the demographic change from lower-class to upper-class is undeniable.[8] For example, displacement was observed between 2000 and 2014: while U.S. cities experienced a net population increase, the poorest 10% of city populations were the most likely to move away from urban areas.[9] In other words, cities were growing, but not all income levels were equally represented in that growth: there were more people of higher income moving in than there were people moving out. And, the people moving out were the most vulnerable in terms of income. Moreover, displaced residents are moving to chronically poor neighborhoods.[10] In conjunction with growing cities, this means that the poorest neighborhoods are the destination for the

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3. *See* MALACH, *supra* note 1, at 99 ("At its core, gentrification is economic."); *id.* (describing the various definitions of *gentrification* that all describe the same economic transition model).

4. Ruth Glass, *Aspects of Change*, *in* THE GENTRIFICATION DEBATES 22–23 (Japonica Brown-Saracino ed., 2010) ("One by one, many of the working class quarters of London have been invaded by the middle classes. . . .").

5. *Id.* at 15.

6. *See* MALACH, *supra* note 1, at 98 (listing *gentrification*'s troubled history and eventual acceptance as an "ugly word").

7. Deliah D. Lawrence, *Can Communities Effectively Fight Displacement Caused by Gentrification?*, 11 J. AFFORDABLE HOUS. & CMTY. DEV. L. 357, 359–60 (2002) (footnote omitted) ("Displacement occurs when low-income residents are forced to move because their buildings have been purchased by private developers who convert the low-income rental units to condominiums or luxury housing for upper-class, young, professional individuals.").

8. *See* RICHARD H. SANDER, YANA A. KUCHEVA & JONATHAN M. ZASLOFF, MOVING TOWARD INTEGRATION 372 (2018) (arguing that many modern scholars no longer have faith in the previous one-to-one displacement model).

9. RICHARD FLORIDA, THE NEW URBAN CRISIS 62 (2017) [hereinafter THE NEW URBAN CRISIS].

10. *Id.* at 74 (describing that displaced residents in question were "least advantaged and most economically vulnerable").

poorest former residents of other neighborhoods. This effect is correlative of the growing wealth gap in America.[11] So, while academia has abandoned the strict one-to-one displacement phenomenon, the poorest of the poor *are* relocating, and the middle-class is moving in.[12]

The process of displacement is as much a process of economic pressure as it is of spatial pressure.[13] Wealthy in-movers are not simply replacing the old residents. The crowded high-density life unique to the city is disappearing within gentrified areas. In 2017, 79% of all new apartments built were luxury sized.[14] In-movers are now taking up as much space as their suburban counterparts.[15] The cheap price tag of gentrifying neighborhoods incentivizes urban developers to build new properties.[16] These developers, aware of their target buyers, cater to that demand.[17] Low initial costs with potential high-paying buyers is a recipe for real estate speculation,[18] which could displace poor residents.[19] So, while it is important to recognize that gentrification creates economic disparity, we must also recognize the spatial scarcity gentrification creates as well.

But cultural displacement simply adds insult to injury, contributing to the reinforcing cycle of gentrification. Residents of culturally-displaced areas may survive economic displacement and physical displacement, but they no longer have the cultural indicia that once marked their neighborhood as

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11. *See, e.g.*, Richard Florida, *America's Worsening Geographic Inequality,* CITYLAB (Oct. 16, 2018), https://www.citylab.com/equity/2018/10/americas-worsening-geographic-inequality/573061/ [hereinafter *America's Worsening Geographic Inequality*] ("It's not just economic inequality—the gap between the rich and the poor—that is growing ever wider. Geographic inequality, the divide between rich and poor places, is too.").

12. *See* SANDER ET AL., *supra* note 8 (explaining the abandonment of one-to-one displacement).

13. *America's Worsening Geographic Inequality*, *supra* note 11.

14. Nadia Balint, *8 Out of 10 New Apartment Buildings Were High-End in 2017, Trend Continues in 2018*, RENTCAFE BLOG (Sept. 21, 2018), https://www.rentcafe.com/blog/apartmentliving/luxury-apartments/8-out-of-10-new-apartment-buildings-were-high-end-in-2017-trend-carries-on-into-2018/.

15. THE NEW URBAN CRISIS, *supra* note 9, at 67.

16. *See* 49 MORTG. & REAL ESTATE EXEC. REPORT 2, *Speculative Construction* (discussing real estate speculation trends: "the level of multifamily construction is 1.5 times what it was 10 years ago, an amount of new development not seen since the 1980s").

17. *But see id.* ("These new class-A apartment towers—they are not getting the millennials as residents because unless you're a recent law graduate or other professional, the rents are just too high for young people . . . .")

18. *Speculation*, BLACK'S LAW DICTIONARY (10th ed. 2014) (defining *speculation* as "[t]he buying or selling of something with the expectation of profiting from price fluctuations").

19. *Cf.* Bethany Y. Li, *Now Is the Time!: Challenging Resegregation and Displacement in the Age of Hypergentrification*, 85 FORDHAM L. REV. 1189, 1198 (2016) ("In Boston, city policies have created significant speculation in the real estate market, and Chinese gentrifiers from mainland China are, in part, financing the gentrification and displacement of low-income Chinese people from Boston's Chinatown.").

home.[20] Spatial and economic displacement are easily measurable using discrete units to explain and analyze these phenomena.[21] However, cultural displacement is more difficult to quantify. But, one study looking at how long-time Philadelphia residents and recent transplants perceive their neighborhood noted some obvious differences.[22] The two groups of people in the study, recent white in-movers and long-time black residents, had different perceptions of "high crime" areas.[23] The two groups even had different names for the neighborhood.[24] The study's authors concluded that "[m]ost Whites defined the area as many things, *except* how minority respondents defined the area."[25] When in-movers begin to drive up the cost of living in gentrifying areas, the sense-of-place and culture may be the only thing keeping residents where they are. When those cultural indicia are replaced, and there are no heartstrings holding residents there, it is no wonder why they choose to move.

Community members in soon-to-be-gentrified areas face multiple embodiments of displacement: dramatic physical displacement through real-estate speculation[26] and decreasing housing stock;[27] persistent pricing-out of their neighborhood as the cost of living increases around them;[28] and painful dismantlement of the culture that had been built around their homes.

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20. Jackelyn Hwang, *The Social Construction of a Gentrifying Neighborhood: Reifying and Redefining Identity and Boundaries in Inequality*, 52 URB. AFF. REV. 98, 102 (2015).

21. *See id.* at 106 (explaining the author's approach to statistical analysis).

22. *Id.* at 115–16.

23. *See id.* (noting that, despite the new white residential areas having a higher crime rate, they incorrectly believed that the older minority areas had a higher crime rate).

24. *Id.*

25. *Id.* at 122.

26. Lawrence, *supra* note 7, at 358 (discussing how real estate speculators refurbish condemned buildings, catering to more affluent families).

27. *Id.*

28. *See* MIRIAM ZUK ET AL., GENTRIFICATION, DISPLACEMENT, AND THE ROLE OF PUBLIC INVESTMENT: A LITERATURE REVIEW, URBAN DISPLACEMENT PROJECT 71 (2015), https://www.urbandisplacement.org/sites/default/files/images/displacement_lit_review_final.pdf ("The proximity to downtown and good transit access has prompted significant development interest, which has caused hardship for many residents because of increasing rents. The report mentions the replacement of mom-and-pop businesses by chain and upscale establishments.").

A. Predicting Gentrification

1. Characteristic In-Movers

Ironically, the most socially-progressive cohort is the precise group of people that mark the beginning of gentrification.[29] White,[30] college-educated,[31] childless,[32] young professionals[33] are the first wave of "in-movers."[34] Wider cultural power dynamics bolster these characteristics, making these in-movers prime candidates to more easily adapt to life in poor urban neighborhoods.[35]

In-movers are likely to be young.[36] As compared to older cohorts that have the interest of their young children in mind, young people are less deterred by the threat of crime often associated with poor neighborhoods.[37] Of this age cohort, recent college graduates are more likely to look for opportunities with low cost of living, such as small rentals (as opposed to single-family homes) to pay off school loans.[38] Moreover, college-educated people have expressed a greater desire to live somewhere with a heterogeneous culture, nightlife, and entertainment—all of which are more

29. *See Millennials in Adulthood*, PEW RESEARCH CTR. (Mar. 7, 2014) http://www.pewsocialtrends.org/2014/03/07/millennials-in-adulthood (describing the strikingly liberal and socially-progressive political tendencies of the 22–37 age cohort).

30. SANDER ET AL., *supra* note 8, at 366 (noting "the substantial migration of Anglos to cities").

31. *See* Miriam Zuk et. al., *Gentrification, Displacement, and the Role of Public Investment*, 33 J. PLAN. & LIT. 31, 37 (2017) [hereinafter *Gentrification, Displacement, and the Role of Public Investment*] (noting the economic considerations of recent college graduates in choosing residences).

32. *See* SANDER ET AL., *supra* note 8, at 376 (predicting that in-movers are likely to leave when starting a family).

33. *Id.* at 373 (noting the primary concern for young people living in city-centers is the distance to high-skill employment).

34. *See* THE WORLD IN BROOKLYN: GENTRIFICATION, IMMIGRATION, AND ETHNIC POLITICS IN A GLOBAL CITY 345 (Judith DeSena & Timothy Shortell eds., 2012) (introducing the term *in-mover*).

35. *See What is Privilege?*, NAT'L CONFERENCE FOR CMTY. & JUSTICE, https://nccj.org/what-privilege (last visited Jan. 25, 2020) (defining *social power* as "[a]ccess to resources that enhance one's chances of getting what one needs in order to lead a comfortable, productive and safe life").

36. INGRID GOULD ELLEN, KEREN MARTENS HORN & DAVIN REED, HAS FALLING CRIME INVITED GENTRIFICATION? 7 (2016), http://furmancenter.org/files/NYUFurmanCenter_WhitePaper_FallingCrimeGentrification_18OCT2016.pdf.

37. Emily Badger, *How to Predict Gentrification: Look for Falling Crime,* N.Y. TIMES (Jan. 5, 2017), https://www.nytimes.com/2017/01/05/upshot/how-to-predict-gentrification-look-for-falling-crime.html (describing results of research indicating that lower-income and minority residents—groups including more young people than higher-educated or higher income groups—may be less sensitive to crime for a variety of reasons).

38. *See Gentrification, Displacement, and the Role of Public Investment*, *supra* note 31, at 32 (postulating that economic concerns are primary drivers of recent college graduate in-movers).

prevalent in the city.[39] Finally, young people are more likely to desire shorter commute times.[40] This desire is the result of several cultural shifts in priority.[41] Young people are more likely than the previous generation to hold relationships where both partners are working.[42] Furthermore, they are more likely to work in the service sector, which is concentrated primarily in the city-center.[43] When both partners work, they are more likely to value shorter commute times, but also desire to spend more time at home with one another.[44]

2. Transportation

Another predictor of gentrification is access to and quality of public transit because the common in-mover demographic values public transportation very highly.[45] When the commute involves going into the city-center, commuters, particularly young commuters, seek out public transit, because it is often quicker and more economic than driving a personal vehicle.[46] However, access to transportation is a one-two punch for gentrification. First, wealthy in-movers are likely to fund public transportation, because it is within their means.[47] Increasing the availability of public transportation takes capital.[48] Capital for many municipalities is derived, at least in part, from taxes.[49] The more affluent a city's tax base is, the easier it is to get the capital required for public transit.[50] Furthermore,

39. *See* THE WORLD IN BROOKLYN, *supra* note 34 (discussing the cultural draw of cities to in-movers).

40. *See, e.g.*, THE NEW URBAN CRISIS, *supra* note 9, at 65 (arguing that "knowledge workers are increasingly willing to pay a premium to be located near their jobs in the urban center or close to subway and transit stops that will get them there quickly").

41. SANDER ET AL., *supra* note 8, at 373 ("[W]e are witnessing a fundamental reorientation of living preferences, particularly among young adults . . . .").

42. *See id.* (discussing young couples' motivation to move into city-centers).

43. *See* THE NEW URBAN CRISIS, *supra* note 9, at 64 (describing such employment as "higher-paying knowledge, professional, tech, and creative").

44. *See* SANDER ET AL., *supra* note 8, at 373 (identifying that long commute times for this group incentivize them to move closer to city-centers).

45. *See* THE NEW URBAN CRISIS, *supra* note 9, at 65–66 (describing how mass transit options attract affluent in-movers).

46. *Id.*

47. *See* Derek Prall, *Millenials in Transit,* AM. CITY & CTY. (Sept. 26, 2017), https://www.americancityandcounty.com/2017/09/26/millennials-in-transit/ (implying that millennials are funding transportation through paying higher taxes in gentrified apartments).

48. *Id.*

49. URB. INST. & BROOKINGS INST., *The State of State (and Local) Tax Policy*, *in* TAX POLICY CENTER BRIEFING BOOK (2016), https://www.taxpolicycenter.org/briefing-book/what-are-sources-revenue-state-governments.

50. *Id.*

first-wave in-movers, such as the college-educated, look at availability of public transit when deciding where to move.[51]

Second, public transportation hubs are likely to attract more in-movers.[52] The attraction to and funding of public transportation creates a positive feedback loop,[53] reflecting scarcity.[54] The reason public transportation is a relatively discrete predictor of gentrification is because it is scarce;[55] not all neighborhoods have access, making those with public transportation access more valuable—more expensive.[56] Rising prices make the neighborhood even less attainable and housing more scarce for all but the upper-to-middle class.[57] Additionally, capital investment may fuel public transit, but it may also invite gentrification. Increased capital investment in urban centers correlates to an increase in class segregation.[58]

3. Endogenous Model

Another prominent prediction model is the Endogenous Model. The Endogenous Model predicts that low-income neighborhoods directly adjacent to wealthy neighborhoods are the most likely to become gentrified.[59] Specifically, a poor neighborhood that is directly adjacent to a wealthy neighborhood was 63% more likely to become gentrified between 1980 and 1990 than a poor neighborhood two to three miles away.[60] Between 1990 and 2000, any poor neighborhood next to a wealthy one was 96.6% more likely to be gentrified.[61] There is a direct correlation between distance from wealthy neighborhoods and higher incomes, educational attainment, and housing

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51. Jeff Turrentine, *When Public Transportation Leads to Gentrification*, NRDC (June 1, 2018), https://www.nrdc.org/onearth/when-public-transportation-leads-gentrification.

52. *See* THE NEW URBAN CRISIS, *supra* note 9, at 65 (describing how mass transit options attract affluent in-movers).

53. *See Positive Feedback*, MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/positive%20feedback (last visited Jan. 25, 2020) (defining *positive feedback* as “feedback that tends to magnify a process or increase its output”).

54. THE NEW URBAN CRISIS, *supra* note 9, at 66 (“The gentrification of neighborhoods around transit reflects scarcity . . . .”).

55. *Id*.

56. *Id.* (“[P]rices are highest around transit lines because we don’t have enough transit and transit-served neighborhoods.”).

57. *See id.* (listing attributes that drive public attraction and raise local prices).

58. *Id.* (“Public investment in parks and green spaces also boosts gentrification.”).

59. Veronica Guerrieri, Daniel Hartley & Erik Hurst, *Endogenous Gentrification and Housing Price Dynamic* 30 (Nat’l. Bureau of Econ. Res., Working Paper No. 16237, 2010), http://www.nber.org/papers/w16237.pdf.

60. *Id.* at 31.

61. *Id.*

costs than to those neighborhoods farther away.[62] Poor neighborhoods that are next to wealthy neighborhoods experience a 6.1% higher increase in housing cost compared to the national average during a housing demand increase.[63] These neighborhoods also experience an increase in average income.[64] Scholars hypothesize that these areas attract residents with higher-than-average wages because they want to live in higher-income communities.[65] People want to live in these specific communities because cities have appealing amenities, like the young in-movers in search of "nightlife." However, according to this model, during periods of high-housing demand, when *all* housing costs increase, fewer people overall can afford to live in wealthy communities.[66] But, the adjacent poor communities are still closer to the amenities than other areas of the city and still offer the necessary lower cost of living.[67] This model is consistent with the migration of young in-movers as they value both low cost of living and city amenities.

The Endogenous Model also supports the observation that increased capital investment in local amenities, such as parks, redeveloping of industrial sites, and sports fields, generates gentrification on *those* peripheries.[68] Development that increases livability of these areas consequently increases the cost of living.[69] The cycle repeats: people want to live in the "up-and-coming" neighborhood but cannot afford it. So, they move to the adjacent neighborhood to reap the benefits of the amenities, gentrifying *that* community. These adjacent communities satisfy the priorities of these in-movers better than wealthy communities or poor communities farther away.[70] In the context of gentrification, this translates to a correlation between "intensified discrimination" and "exclusion" within gentrified neighborhoods.[71] Exclusion and discrimination result from the in-movers and the average resident in wealthy communities sharing in much of the social power at the exclusion of those with little social power, such as the

62. *Id.* at 32.

63. *Id.* at 28.

64. *Id.* at 29–30. Note, however, that the increase in income is not from the residents receiving higher wages, but from new in-movers with higher wages taking up residency in the neighborhood.

65. *Id.* at 14.

66. *Id.* at 32.

67. *See id.* (asserting that poorer communities' income and education increase because people cannot afford to live in wealthier communities).

68. *See* THE NEW URBAN CRISIS, *supra* note 9, at 64 (describing the appeal of urban amenities to stereotypic in-movers).

69. *See id.* at 66 (explaining that desired development "mak[es] [neighborhoods] even more attractive and driv[e]s prices up further").

70. *See id.* (describing how amenities attract in-movers, contributing to gentrification).

71. Elvin K. Wyly & Daniel J. Hammel, *Gentrification, Segregation, and Discrimination in the American Urban System*, 36 ENV. & PLAN. A: ECON. & SPACE 1215, 1230–39 (2004).

poor and people of color. Summarily then, increased capital from wealthy in-movers drives segregation.[72]

4. Segregation

There is an observed correlation between pervasive segregation and displacement.[73] One study tracking gentrification in Chicago suburbs found that persistent segregation in homogenous neighborhoods was the single-most-likely identifier of displacement.[74] The likelihood of gentrification decreased as the proportion of black residents increased.[75] In other words, as the community became less integrated, newly-white neighborhoods were likely to gentrify, and black neighborhoods were more likely to remain in poverty.[76] Specifically, neighborhoods with more than 35% white residents were the most likely to gentrify.[77] Neighborhoods where black residents made up more than 40% were very unlikely to see any economic increases.[78] Segregated areas are also more likely to have poorer schools and fewer children as a percentage of the population.[79] One reason why these areas remain without children is that in-movers are far more likely to be childless.[80] Once white in-movers have children, they are very likely to leave the city-centers.[81] In identifying likely places of displacement, cities with less racial and economic integration are the most likely to displace low-income residents.

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72. *Id.* at 1218, 1221 (describing how race and socio-economic status influence segregation and discrimination in communities).

73. *Id.* at 1216 (describing the likelihood of gentrification based on demographic percentages).

74. Jackelyn Hwang & Robert J. Sampson, *Divergent Pathways of Gentrification: Racial Inequality and the Social Order of Renewal in Chicago Neighborhoods*, 79 AM. SOC. REV. 726, 747 (2014) (concluding that "the racialized social order of gentrification leads most poor minority neighborhoods to remain so").

75. *Id.* at 745.

76. *See* THE NEW URBAN CRISIS, *supra* note 9, at 77 (describing the threshold at which neighborhoods do not typically gentrify as having 40% or more black residents).

77. *Id.*

78. Hwang & Sampson, *supra* note 74, at 727.

79. *See* SANDER ET AL., *supra* note 8, at 376 ("Households with children in these cities tend to be somewhat more segregated than the general population . . . .").

80. *See id.* (predicting that in-movers are likely to leave when starting a family).

81. *Id.* ("[H]aving school-age children elevates the chances that an Anglo family will move out of an integrated neighborhood . . . .").

5. Perceived and Actual Crime

Areas with less perceived crime see a more heterogeneous cohort of people move in and stay there to raise families.[82] For example, in New York City, a combination of efforts caused a dramatic drop in violent crime—about 56% over 10 years.[83] Before this drop in crime, cities experienced "white flight" throughout the late 1960s and early 1970s.[84] This was a migration of many white families into suburbia, leaving a housing vacuum in the cities.[85] However, immediately after this drop in crime, highly-educated white people began the second back-to-the-city movement in the 1990s.[86] On a smaller scale, when pockets of cities have actual or perceived drops in crime, people with college degrees are more likely to move in.[87] Spikes or drops in crime rate, real or perceived, can predict when and where in-movers are likely to move.

These models can forecast gentrification by identifying areas of rapid capital investment, quality transit access, economically- and racially-segregated neighborhoods, and crime trends. By giving community leaders, lawmakers, and urban planners access to these prediction models, cities and municipalities can begin to take preemptive measures to ensure housing security for their vulnerable residents.

B. Major Housing Initiatives[88]

1. New Deal Legislation

The National Housing Act of 1934,[89] the Federal Housing Administration,[90] and the Home Owners' Loan Corporation[91] (New Deal

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82. ELLEN ET AL., *supra* note 36, at 5.

83. David R. Francis, *What Reduced Crime in New York City*, NAT'L. BUREAU OF ECON. RES.: DIGEST, Jan. 2003, at 2, https://www.nber.org/digest/jan03/jan03.PDF.

84. *See* THE NEW URBAN CRISIS, *supra* note 9, at 64 (recapping the racial composition of cities and towns between the late 1980s and before 2000).

85. *Id.*

86. *Id.*

87. ELLEN ET AL., *supra* note 36, at 23 ("[R]eductions in central city violent crime and homicides are inviting high-income and college-educated households to move into central cities, and more specifically to low-income and largely minority central city neighborhoods.").

88. There are many other major pieces of housing legislation left out of this very brief background. Only a handful of acts have been chosen for analysis in the interest of brevity and clarity.

89. National Housing Act, Pub. L. No. 479, 48 Stat. 1246 (1934) (providing improvements to "housing standards and conditions," as well as a "system of mutual mortgage insurance").

90. *Id.* (creating the Federal Housing Administration).

91. Home Owners Loan Act of 1933, Pub. L. No. 73-43, 48 Stat. 128.

Legislation)[92] laid the foundation for modern redlining.[93] These actors used the information they gathered to create mortgage risk maps.[94] The neighborhoods with the highest risk rating were colored red—hence the term *redlining*.[95] There is a debate as to whether the government used these maps to discriminate against communities of color.[96] However, private lending institutions *did* use these maps to discriminate in their lending, contributing to institutionalized segregation.[97]

The National Housing Act of 1934 (NHA) was a predictable response to the Great Depression's devastation.[98] Middle-class families suffered economic whiplash when confronted with the very real possibility of foreclosure, eviction, and bankruptcy.[99] While the NHA was "clearly to aid families in need," it was only intended to help the *recently* poor—the former middle class.[100]

The NHA created the Federal Housing Administration (FHA).[101] The FHA was an insurance policy for lenders, which encouraged them to give cheaper mortgages to higher-risk candidates.[102] After former attempts to resuscitate confidence in the mortgage lending market failed,[103] the FHA took up the lofty goal of surveying every neighborhood in the U.S. to create a comprehensive framework of mortgage confidence, known as the City Survey Program.[104] For this plan to work, the FHA needed to know the risk

92. *See* TIM IGLESIAS & ROCHELLE E. LENTO, THE LEGAL GUIDE TO AFFORDABLE HOUSING DEVELOPMENT 4 (Am. Bar Assoc., 2d ed. 2011) (explaining the birth of the New Deal Legislation).

93. *See Fresh Air: A "Forgotten History" Of How the U.S. Government Segregated America*, NAT'L PUB. RADIO (May 3, 2017), https://www.npr.org/templates/transcript/transcript.php?storyId=526655831 (discussing author Richard Rothstein's analysis of the FHA's segregation efforts by refusing to insure mortgages in and near African-American neighborhoods—a policy known as "redlining").

94. *See* Amy E. Hillier, *Redlining and the Homeowners' Loan Corporation*, 3 J. URB. HIST. 394, 394–95 (2003) ("This City Survey Program produced detailed reports for each city along with a series of now infamous security maps that assigned residential areas a grade from one to four.").

95. *Id.* at 395 ("Areas with African Americans, as well as those with older housing and poorer households, were consistently given a fourth grade, or 'hazardous,' rating and colored red.").

96. *See* SANDER ET AL., *supra* note 8, at 86, 97 (describing the initial use of the HOLC maps, verses the "important countervailing influences that pushed public housing towards segregation").

97. KENNETH JACKSON, CRABGRASS FRONTIER 203 (1985).

98. R. ALLEN HAYS, FEDERAL GOVERNMENT & URBAN HOUSING 89 (3d ed. 2012) (describing the multiple areas of economic devastation caused by the Great Depression).

99. *Id.*

100. *Id.*

101. IGLESIAS & LENTO, *supra* note 92, at 4 (crediting the National Housing Act with creating the Federal Housing Administration).

102. *See* HAYS, *supra* note 98, 89 (describing the introduction of federally-backed mortgage insurance).

103. *Id.* at 55–57 (explaining various regulations designed to stimulate and instill confidence in the housing market).

104. Hillier, *supra* note 94, at 399.

of potential borrowers. The Home Owners' Loan Corporation (HOLC), created in 1933 as an emergency response to assist homeowners in immediate danger of foreclosure, took the lead.[105]

Under the authority of the FHA, the HOLC bought mortgages from private institutions, if those institutions agreed to, among other criteria, an amortized repayment schedule and a low interest rate.[106] For the City Survey Program, HOLC relied on local realtors and lenders to rate mortgage confidence of owners and neighborhoods.[107] The confidence rating was on a scale of one to four, with one being the least likely to be able to pay a mortgage.[108] The confidence rating considered dozens of variables, including: the building materials for the house, its location relative to shopping centers, and the economic homogeneity of the neighborhood.[109] The HOLC maps and underwriting criteria served to cement racial and economic segregation for decades after the City Survey Program by devaluing the characteristics of integrated communities.[110] By locking out people of color and poor people early in the housing game, the HOLC and the FHA set vulnerable residents back from wealth-generating opportunities, like home ownership.

2. Section 235 and Section 236

The urban environment of the 1960s was literally crumbling.[111] Unsurprisingly, these areas were likely the red-zoned areas of the 1930s.[112] In response, the Johnson and Nixon administrations followed the same path

105. HAYS, *supra* note 98, at 89.

106. *Id.* at 89, 91.

107. Hillier, *supra* note 94, at 396.

108. BRUCE MITCHELL & JUAN FRANCO, HOLC "REDLINING" MAPS: THE PERSISTENT STRUCTURE OF SEGREGATION AND ECONOMIC INEQUALITY 5 (2018) ("Neighborhoods were color-coded on maps: green for the 'Best,' blue for 'Still Desirable,' yellow for 'Definitely Declining,' and red for 'Hazardous.'").

109. FED. HOUSING ADMIN., UNDERWRITING AND VALUATION PROCEDURE UNDER TITLE II OF THE NATIONAL HOUSING ACT ¶ 619 (1936) [hereinafter UNDERWRITING AND VALUATION PROCEDURE].

110. *See* MITCHELL & FRANCO, *supra* note 108, at 5 (discussing how the HOLC maps, in conjunction with underwritten criteria, racially and economically characterized communities).

111. *See* Frank Islam & Ed Crego, *America's Cities: An "Urban Crisis" Ignored*, HUFFINGTON POST (May 24, 2015), https://www.huffingtonpost.com/frank-islam/americas-cities-an-urban-_b_6896628.html (chronologizing urban deterioration and destruction from the 1950s to present).

112. *See* MITCHELL & FRANCO, *supra* note 108, at 5 (summarizing the modern effects of the HOLC maps).

as the New Deal Legislation, and Johnson's Department of Housing and Urban Development (HUD) created sections 235 and 236.[113]

Under section 235, low-income residents could purchase housing, as opposed to renting.[114] Private developers would build section 235 housing and sell the house to low- or moderate-income families who could use an FHA insured mortgage.[115] Buyers would pay 20% of their adjusted income to the mortgage and the HUD would cover the difference.[116] In some cases, the HUD would cover the difference between the total monthly payment and the payment required, to effectively bring the interest rate to 1%.[117]

Under section 236, a private lender would lend to developers who agreed to rent a portion of new properties to renters at or below 135% of the federally-established income limit.[118] Both for-profit developers (limited dividend sponsors) and non-profit developers qualified for section 236 subsidies, albeit at different rates.[119] The HUD or a state finance agency would insure the mortgages.[120] Then, the HUD would make payments directly to the private lender to bring the interest payment down to 1% under a 40-year contract.[121]

3. Section 8 and the Housing Choice Voucher Program

Legislators have tinkered with section 8 several times, but the persistent reiterations came in two varieties: housing-based[122] and tenant-based.[123] In the housing-based model, a private owner enters into: (1) a contract with the local Public Housing Authorities; and (2) a lease with a section 8 eligible

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113. Mortgage Insurance and Assistance Payments for Home Ownership and Project Rehabilitation, 24 C.F.R § 235 (1999); Mortgage Insurance and Interest Reduction Payment for Rental Projects, 24 C.F.R. § 236.

114. JAMES T. LYNN, DEP'T HOUSING & URB. DEV., HUD-0000968, HOUSING IN THE SEVENTIES: A REPORT OF THE NATIONAL HOUSING POLICY REVIEW 19 (1974), https://www.huduser.gov/portal/Publications/pdf/HUD-968.pdf.

115. *Id.* at 140.

116. *Id.* at 19.

117. *Id.*

118. *Id.* at 111.

119. For-profit developers could receive up to 90% of project funding. Non-profit developers receive up to 100% of their funding. However, for-profit developers are restricted to less than 6% returns on initial investment. Greg Pearson, Comment, *Low Income Housing: Section 236 of the National Housing Act and the Tax Reform Act of 1969*, 31 U. PITT. L. REV. 443, 447 (1969).

120. *Id.* (discussing federal mortgage insurance for non-profits).

121. *Id.* at 447–48.

122. *See* Fred Fuchs, *Introduction to HUD Conventional Public Housing, Section 8 Existing Housing, Voucher, and Subsidized Housing Programs*, 25 CLEARINGHOUSE REV. 990, 990 (1991) (describing the process by which the HUD subsidizes existing housing).

123. *See id.* at 995 (describing the HUD's approach to tenant-based voucher programs).

tenant.[124] The HUD sets a Fair Market Rent for the area.[125] The tenant pays 30–40% of their income towards rent.[126] The PHA then covers the difference between the tenant's contribution and the Fair Market Rent.[127] The crucial detail is that the eligibility is tied to the specific property.[128]

The HUD has switched over to using primarily the Housing Choice Voucher program—a tenant-based approach.[129] The tenant-based programs are certificates that the PHA gives to low-income families.[130] The HUD limits the number of vouchers each PHA can give.[131] When an applicant receives a certificate, they must find housing approved by the PHA that meets minimum federal living standards.[132] Upon approval, the tenant pays 30–40% of their income, and the PHA covers the remainder of the rent.[133] The primary difference between tenant- and project-based funding is the attachment of the voucher; tenant-based vouchers stay with the tenant if they choose to move.[134] However, problems arise should the tenant want to move outside of the granting the PHA's jurisdiction.[135] An inconsistent patchwork of agreements between PHAs has formed from this snag.[136]

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124. *Id.* at 990.

125. *Id.*

126. U.S. DEP'T OF HOUSING & URB. DEV., *Housing Choice Vouchers Fact Sheet*, https://www.hud.gov/topics/housing_choice_voucher_program_section_8 (last visited Jan. 25, 2020) [hereinafter *Fact Sheet*].

127. Fuchs, *supra* note 122, at 990.

128. *Id*.

129. *Fact Sheet*, *supra* note 126.

130. *See id.* ("The housing choice voucher program is the federal government's major program for assisting very low-income families . . . .").

131. *See id.* (explaining the effect of the limited resources in administering housing vouchers: "Since the demand for housing assistance often exceeds the limited resources available to the HUD and the local housing agencies, long waiting periods are common. In fact, a PHA may close its waiting list when it has more families on the list than can be assisted in the near future.").

132. *Id.* ("The housing unit selected by the family must meet an acceptable level of health and safety before the PHA can approve the unit.").

133. *Id.*

134. *Id.* ("The housing choice voucher program is designed to allow families to move without the loss of housing assistance.").

135. "Those new voucher-holders not living in the jurisdiction of the PHA at the time the family applied for housing assistance must initially lease a unit within that jurisdiction for the first twelve months of assistance. A family that wishes to move to another PHA's jurisdiction must consult with the PHA that currently administers its housing assistance to verify the procedures for moving." *Id.*

136. *See* MARTHA GALVEZ, JASMINE SIMINGTON & MARK TREKSON, MOVING TO WORK AND NEIGHBORHOOD OPPORTUNITY 2 (2017) (listing the possible difficulties voucher holders have when choosing to relocate).

4. Moving to Opportunity and Moving to Work Demonstrations

Perhaps in response to this snag, or maybe out of recognition of the need for mobility to alleviate the effects of poverty, the HUD authorized two demonstrations: the Moving to Opportunity Demonstration[137] and the Moving to Work Demonstration.[138] The Moving to Opportunity Demonstration allowed a small group of section 8 recipients in five major cities to "mov[e] to opportunity" by allowing recipients to move to low-poverty areas.[139] The idea was to see if integrating low-income families into more economically diverse communities would make recipients self-sufficient and move off of section 8.[140] Drafters envisioned that access to better amenities, better schools, and higher-paying jobs would lift recipients out of poverty.[141] However, at the end of the demonstration, Moving to Opportunity did not yield the returns that drafters had hoped for.[142] While recipients fared much better in terms of physical and mental health, they did not raise their incomes, and their children did not raise their grades.[143] In some cases, recipients were actually worse off than when they began.[144]

A recent study looking at the long-term effects of Moving to Opportunity found a silver lining to the program. Children who entered the program before age 13 did markedly better than children in the control group.[145] They were more likely to go to college, outearned their counterparts by 31%, and were significantly less likely to become single parents.[146]

The Moving to Work Demonstration (MTW) was borne of the HUD's desire to privatize, deregulate, and "streamline" public housing to cut costs from the weighty section 8.[147] The drafters intended the MTW to "[i]ncrease housing choices for low-income families."[148] The MTW is still ongoing and

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137. Housing and Community Development Act of 1992, H.R. 5334, 102d Cong. § 152.

138. Omnibus Consolidated Rescissions and Appropriations Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321–281.

139. Michael A. Stegman, *Foreword* to HOUSING AND URB. DEV., EXPANDING HOUSING CHOICES FOR HUD-ASSISTED FAMILIES 9 (1996).

140. *See id.* ("[The HUD] has implemented a carefully controlled experimental design for this demonstration in order to evaluate the impacts of helping low-income families move from public and assisted housing in high-poverty inner-city neighborhoods to better housing, education, and employment opportunities in low-poverty communities throughout a metropolitan area.").

141. *Id.*

142. *See* GALVEZ ET AL., *supra* note 136, at 9 (describing the outcomes of the MTO).

143. *Id.* at 2 (stating that neither recipients' income nor school performance increased).

144. *See id.* (discussing the generally disappointing results of the MTO).

145. *Id.* at 1–2.

146. *Id*.

147. EMILY CADIK & AMANDA NOGIC, MOVING TO WORK: INTERIM POLICY APPLICATIONS AND THE FUTURE OF THE DEMONSTRATION 12 (2010), https://prrac.org/pdf/MTW_fn_2.pdf.

148. *Id.* at 3.

received a planned expansion in 2016.[149] The MTW lifted the traditional restrictions on the PHA's voucher disbursement.[150] These PHAs received more money to enhance their administrative procedures and respond to specific local concerns, like movement between PHA jurisdictions.[151] As long as the PHA still issues a base percent of vouchers to low-income and very low-income applicants, it can be far more flexible in its administration.[152] This flexibility is meant to open up opportunities to "streamline investment policies, develop local deconcentration policies, provide incentives for under-utilized developments, simplify the development and redevelopment process, streamline the demolition and disposition process, enter into commercial business ventures and develop local Total Development Cost (TDC) limits."[153]

II. ANALYSIS

A. New Deal Legislation

The New Deal Legislation—the National Housing Act of 1934, the Federal Housing Administration, and the Home Owners' Loan Corporation—reinforced institutional segregation.[154] Congress never intended for these programs to help the poor, as these programs were unabashedly pro-segregation.[155]

Furthermore, the HOLC redlining maps gave fodder to private-lending institutions that could withhold resources from inner-city renters, contributing to the "slum" designation of urban communities and causing intra-city segregation.[156] It is important to note that the HOLC maps themselves were not racial segregation maps.[157] Despite the clear devaluation

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149. Consolidated Rescissions and Appropriations Act of 2016, H.R. 2029-656, 114th Cong. § 239 (2015).

150. *See* CADIK & NOGIC, *supra* note 147, at 12 (citation omitted) ("The purpose of this demonstration is to give public housing agencies and the Secretary of Housing and Urban Development the flexibility to design and test various approaches for providing and administering housing assistance . . . .").

151. *Id.* at 13.

152. *Id.*

153. *Id.* at 23.

154. *See infra* note 173 and accompanying text (discussing the institutional obstacles created by the New Deal Legislation).

155. *See* HAYS, *supra* note 98, at 91 (describing the appeal of a middle-class resurgence to conservative legislators).

156. *See* SANDER ET AL., *supra* note 8, at 97 (recounting how the HOLC maps may have influenced early mortgage lending practices in several large American cities).

157. MITCHELL & FRANCO, *supra* note 108, at 6–7 ("From this evidence it appears that the residential security maps were not used by the HOLC to qualify mortgage refinancing . . . .").

of poor and minority communities, the FHA approved mortgage insurance seemingly regardless of zone designation.[158] Rather, private actors later used the maps and ratings to effect and cement segregation.[159]

Knowing what we know today about gentrification, it is unsurprising that the FHA, the NHA, and the HOLC shaped the current gentrified landscape. The underwriting criteria valued the very elements that create gentrification: segregation,[160] chronic poverty,[161] barriers to migration,[162] and devaluation of the lower-class and people of color's lives.[163] This is manifested in four control mechanisms crucial to the New Deal Legislation's efficacy: providing the greatest power to inherently biased actors, allowing pro-segregation underwriting, supporting economic segregation, and relying on the private market's actions.

First, implicit and explicit bias contributed to the designation of risk in the HOLC maps.[164] Explicitly, as mentioned above, "inharmonious" or "incompatible" races were almost instantly demoted to red.[165] Paragraph 937 of the Underwriting Manual directs the areas in question and the surrounding areas, and requires investigation for the presence of "incompatible racial . . . groups" and the probability that these groups will "invade[]" another area.[166] Furthermore, "it is necessary that properties shall continue to be occupied by the same social and racial classes. A change in social or racial occupancy generally contributes to instability and a decline in values."[167] The presence of a racially-integrated school in the neighborhood marked the area as "less stable and desirable" than a segregated school area, or somewhere with no school at all.[168] Paragraph 973 plainly states that because families enjoy relationships with similar "racial characteristics," social harmony

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158. *Id.* at 7 (explaining that the FHA provided both white and minority communities with mortgages).

159. *Id.* ("The maps document the neighborhood structure of cities and indicate areas which may have been subject to 'redlining' by banks when making lending decisions.").

160. *See* THE NEW URBAN CRISIS, *supra* note 9, at 77 (noting the role of city area segregation and the probability of gentrification).

161. *See id.* (explaining the relationship between areas of segregation and chronic poverty).

162. *See* Guerrieri et al., *supra* note 59, at 31 (inferring that gentrification is partly created by poor families not being able to migrate due to their proximity to rich neighborhoods).

163. *See* THE NEW URBAN CRISIS, *supra* note 9, at 75 (describing many differences in how whites and blacks experienced the same neighborhood and the prevalence of whites' views becoming dominant).

164. *See infra* note 171 and accompanying text (discussing implicit bias and housing decisions).

165. *See* MITCHELL & FRANCO, *supra* note 108, at 4 ("Redlining buttressed the segregated structure of American cities.").

166. UNDERWRITING AND VALUATION PROCEDURE, *supra* note 109, ¶ 937.

167. *Id.*

168. *Id.* ¶ 951.

naturally flows from racial homogeneity, and evaluators should value this harmony.[169]

While the HOLC Underwriting Manual pretended to be an objective analysis with dozens of measurements and weights, it came down to the judgement of local lenders and real estate agents.[170] These local surveyors had an implicit bias, which manifested as demoting non-white neighborhoods.[171] A recent Ohio State University study found that "racial bias is more predictive of residential integration attitudes than economic impact or mere in-group favoritism. In addition, Whites' evaluations of a neighborhood's desirability are significantly associated with residents' race."[172] The HOLC surveyors were both explicitly and implicitly biased to degrade communities of color.[173] The HOLC process was not objective, because it was left to the inherently biased judgement and preferences of local lenders.

Second, the New Deal Legislation valued middle-class stability over the lives of the lower class.[174] However, the New Deal Legislation never intended to help the poor and never presented itself as a "fair housing" initiative.[175] Regardless, the legislation put the lives of chronically poor Americans as an afterthought or mere positive side-effect of helping the middle class and private industry.[176] Rather, the HOLC process cemented the red-lined areas in permanent vulnerability by valuing wealth disparity and class segregation.[177]

The HOLC process valued economic and racial segregation between regions of the city. Paragraph 1032 advises that a "borrower who acquires property for occupancy in a location inhabited by a class or race of people that may impair his interest in the property" should receive a lower rating.[178] This reinforces support for the wealthy to stay in wealthy areas—that a

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169. *Id.* ¶ 973.

170. *See* MITCHELL & FRANCO, *supra* note 108, at 4 ("Loan officers, appraisers, and real estate professionals evaluated mortgage lending risk . . . .").

171. *See* JILLIAN OLINGER, KELLY CAPATOSTO & MARY ANA MCKAY, KIRWAN INST., CHALLENGING RACE AS RISK: HOW IMPLICIT BIAS UNDERMINES HOUSING OPPORTUNITY IN AMERICA—AND WHAT WE CAN DO ABOUT IT 25–31 (2016), http://kirwaninstitute.osu.edu/wp-content/uploads/2017/02/implicit-bias-housing.pdf (showing how biases can have lasting effects which deepen segregation).

172. *Id.* at 12 (footnotes omitted).

173. *Id.*

174. *See* HAYS, *supra* note 98, at 89 (describing the appeal of a middle-class resurgence to conservative legislators).

175. *Id.* at 90 (finding the selling point of the New Deal Legislation was the appeal of the banking industry).

176. *Id.*

177. MITCHELL & FRANCO, *supra* note 108, at 5.

178. UNDERWRITING AND VALUATION PROCEDURE, *supra* note 109, ¶ 1032.

wealthy person should have no good reason for owning property in the slums.[179] Quality schools increased the neighborhood rating.[180] But, "[t]he social class of the parents of children at the school will in many instances have a direct bearing [on the rating]."[181] Again, there was no good reason for wealthy parents to allow their children to comingle with the lower classes.[182] This was such a staunch directive that if the children from the green areas were sent to a school where "a considerable number of the pupils represent a far lower level of society," the neighborhood was considered unstable, and deserving of a lower rating.[183]

Similarly, the HOLC process supported racial segregation.[184] Critics have called into question the entire portfolio of the New Deal Legislation for its racist segregation requirements, and the HOLC process is no different.[185] As discussed in the explicit biases of the HOLC, the rating scale was designed to promote segregation.[186] It was not enough to live in a wealthy, white, suburban neighborhood to receive the highest rating. The neighborhood had to safeguard itself from possible infiltration of "lower levels of society" and "inharmonious racial groups," even if that meant building physical barriers.[187] Even school children could not consort with the lower classes.[188]

We know that large disparities in wealth make an area vulnerable to displacement.[189] By encouraging this separation of wealth, rather than integration, the wealth gap between city blocks is growing deeper and deeper.[190] For example, in Manhattan, the borough with the greatest wealth

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179. *See, e.g.*, *id.* ¶ 931 ("A change in class of occupancy is frequently accompanied by a decline in the values and seriously affects the continued desirability of the properties to their original owners.").

180. *Id.* ¶ 951.

181. *Id.*

182. *Id.* ¶ 1032.

183. *Id.* ¶ 951.

184. *Id.* ¶ 937.

185. *See* Christopher Klein, *Last Hired, First Fired: How the Great Depression Affected African Americans*, HISTORY: HISTORY STORIES (Apr. 18, 2018), https://www.history.com/news/last-hired-first-fired-how-the-great-depression-affected-african-americans ("Although New Deal programs provided African Americans with badly needed economic assistance, they were administered at a state level where racial segregation was still widely, and systemically, enforced. The New Deal did little to challenge existing racial discrimination and Jim Crow laws prevalent during the 1930s.").

186. *See* MITCHELL & FRANCO, *supra* note 108, at 4 ("Redlining buttressed the segregated structure of American cities.").

187. UNDERWRITING AND VALUATION PROCEDURE, *supra* note 109, ¶ 935.

188. *Id.* ¶ 951.

189. THE NEW URBAN CRISIS, *supra* note 9, at 77.

190. *See* Sam Roberts, *Gap Between Manhattan's Rich and Poor Is Greatest in U.S., Census Finds*, N.Y. TIMES (Sept. 17, 2014), https://www.nytimes.com/2014/09/18/nyregion/gap-between-manhattans-rich-and-poor-is-greatest-in-us-census-finds.html (documenting that Manhattan contains vast wealth disparities in a relatively compact area).

disparity, the top 5% of earners made over 88 times more than the bottom 20%.[191] On the south side of 97th Street, the average median income is over $150,000.[192] One block to the north, just a minute's walk away, on 98th Street, the average median income is about $28,000.[193] The HOLC zoned 97th Street green,[194] but 98th Street was zoned red.[195]

If economic disparity breeds gentrification, then according to the HOLC maps, Manhattan's green zones would seem due for some in-movers. But, recall the Endogenous Model: red zones are close to the amenities, but a blue (third-highest rating) or yellow zone (second-highest rating) would be the happy compromise. Morningside Heights, an HOLC blue zone, is sandwiched between Manhattan's Upper West Side and Harlem. Rent in Morningside Heights has grown 36% since 1990 and is the sixth-most gentrified area in New York.[196] In Harlem, Morningside's neighbor and the second most gentrified neighborhood, rent has spiked up 53% since 1990.[197]

Furthermore, a critical look at the HOLC maps provides support for the Endogenous Model. People want the amenities of the best neighborhoods but balance the price and social influences of poor neighborhoods—just as the Endogenous Model predicts.[198] The HOLC process responded to this in paragraph 935 of the Underwriting Manual, which advises the use of physical barriers such as multilane highways, ravines, and hills to decrease the "permeability" of "adverse influences," thus "preventi[ng] . . . the infiltration of . . . lower class occupancy, and inharmonious racial groups."[199]

By valuing "impermeability," the HOLC maps reflect the invisible fences between the adjacent communities.[200] The majority of the green

191. *Id.*

192. *Wealth Divides: Exploring the Stark Dividing Lines Between Rich and Poor in American Cities*, ESRI STORY MAPS (Nov. 1, 2016), https://storymaps.esri.com/stories/2016/wealth-divides/index.html.

193. *Id.*

194. *Mapping Inequality: Redlining in New Deal America*, DIGITAL SCHOLARSHIP LAB, https://dsl.richmond.edu/panorama/redlining/ (last visited Jan. 25, 2020) [hereinafter *Mapping Inequality*] (search "Manhattan"; then zoom in to 97th and 98th Streets).

195. *Id.*

196. Amy Zimmer, *Here Are City's Top 15 Gentrifying Neighborhoods*, DNAINFO (May 9, 2016), https://www.dnainfo.com/new-york/20160509/crown-heights/here-are-citys-15-gentrifying-neighborhoods/.

197. *Id.*

198. *See* Guerrieri et al., *supra* note 59, at 31 (asserting that people are willing to gentrify poor neighborhoods, because their proximity to the amenities of rich neighborhoods outweigh the costs); *see also* UNDERWRITING AND VALUATION PROCEDURE, *supra* note 109 (listing elements of interest when balancing the best neighborhoods against the poor neighborhoods).

199. UNDERWRITING AND VALUATION PROCEDURE, *supra* note 109, ¶¶ 934–35.

200. MITCHELL & FRANCO, *supra* note 108, at 5–6 ("[The HOLC maps] provide evidence that the segregated and exclusionary structures of the past still exist in many U.S. cities.").

neighborhoods (the highest-rated) are surrounded by the blue (the second-highest), and so on.[201] These maps reflect the compromise between amenities, proximity, and cost.[202] The City Survey system gave the best ratings to homes that were in economically- and racially-homogenous suburban neighborhoods, away from the encroachment of the city.[203] However, if the area was adjacent to "inharmonious racial groups," thus increasing the likelihood of integration, the area would receive a demoted rating.[204] This instruction recognizes the same forces at play in the Endogenous Model's rationale.[205] The HOLC recognized the pulling force of green neighborhoods, but sought to stifle that movement—to suppress integration.

The effect of these maps is persistent and lends credence to the point that the HOLC maps worked to cement economic and racial segregation. Seventy-four percent of redlined areas are still low-to-medium income communities;[206] ninety-one percent of the "best" rated communities are still middle-to-upper income.[207] Sixty-three percent of the redlined communities are still majority-minority.[208] This works out such that the redlined communities of the 1930s are the most segregated communities of today. Unsurprisingly, there exists today a strong correlation between redlined areas and gentrified census tracts—both in the most and least gentrified cities.[209] Furthermore, these overlapped areas experienced higher rates of economic inequality, as demonstrated in the Manhattan-Harlem case study.[210]

Finally, the New Deal housing scheme was one of trickle-down housing policy. Policy makers expected the private market to catalyze stability.[211] The first purpose of the whole arrangement was to give confidence to private lenders, who would then finance private home ownership.[212] The first and

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201. *Mapping Inequality*, *supra* note 194.

202. *See, e.g.*, UNDERWRITING AND VALUATION PROCEDURE, *supra* note 109, ¶ 909(c) ("[B]order locations in less favored directions have a tendency to exhibit a gradual decline in quality . . . . There appears to be an inevitable process of infiltration by lower class occupancy into such districts.").

203. *Id.* ¶ 937.

204. *See id.* ¶¶ 935, 937 ("If a neighborhood is to retain stability, it is necessary that properties shall continue to be occupied by the same social and racial classes.").

205. *See* Guerrieri et al., *supra* note 59, at 31 (finding that poor neighborhoods gentrify when they adjoin rich neighborhoods and "that there is definitely a spatial nature to the gentrification process").

206. MITCHELL & FRANCO, *supra* note 108, at 4 (explaining that a majority of red-lined neighborhoods remain low-to-medium income communities today).

207. *Id.* at 9.

208. *Id.* (defining *majority-minority* as meaning the majority of residents are non-white).

209. *Id.* at 12, 14 (providing statistics to show a correlation between red-lining and gentrification).

210. *Id.* at 14, 17 (describing the Portland-Detroit case study, correlating increased gentrification with increased economic inequality).

211. HAYS, *supra* note 98, at 91.

212. *Id.*

primary goal was to help private banks, not the chronically-poor in need of housing.[213] The government did come to the field in a time of desperation, and so it is predictable that the mortgage institutions would agree to the strict, less profitable conditions of the FHA-backed mortgages.[214] After all, some profit is better than no profit and unsellable houses.

However, once stability returned to the economy, the New Deal Legislation was still dependent on private market mercy.[215] Soon after World War II, courts dismantled many of the New Deal legislative mechanisms, like the Public Works Administration.[216] In response, Congress created a new funding structure in which local PHAs would own the 1.1 million public housing units, rather than the federal government.[217] The federal government would issue annual contributions to the PHAs to continue to provide housing assistance.[218] However, tenants were left to make up for the operating costs previously paid by the FHA. [219]

These housing frameworks ignored urban communities until they were at risk of "infiltrating" suburbia.[220] These laws constricted resources, and urban communities became dilapidated.[221] Legislators left the community members isolated, and then those outside the community condemned those same people for living in slums.[222] Meanwhile, the "best" communities received favorable mortgage rates during the FHA's height and for decades after, as private institutions tried to compete.[223] Economic stability returned to white suburbia, and poverty never left the "hazardous" communities.[224] If the effects of the New Deal Legislation have played out such that its mistakes

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213. *Id.* at 90.

214. *Id.* at 90–91.

215. *See* IGLESIAS & LENTO, *supra* note 92, at 3 (discussing the pattern of housing programs and funding).

216. *Id.* at 4 (footnote omitted) ("[F]ederal government housing ownership under the Public Works Administration was unconstitutional . . . .").

217. *Id.* at 5 (discussing the new funding structure administered by local public housing authorities).

218. *Id.*

219. *Id.*

220. UNDERWRITING AND VALUATION PROCEDURE, *supra* note 109, ¶ 935.

221. Islam & Crego, *supra* note 111 (discussing how the housing focus has shifted away from cities).

222. *See, e.g.,* Alana Semuels, *The Resurrection of America's Slums*, ATLANTIC (Aug. 9, 2015), https://www.theatlantic.com/business/archive/2015/08/more-americans-are-living-in-slums/400832/ ("Low-income residents who wanted to follow the wealthy to the suburbs would have had a difficult time. Many wealthy suburbs passed zoning ordinances that prohibited the construction of affordable-housing units or the construction of apartment buildings in general.").

223. MITCHELL & FRANCO, *supra* note 108, at 4–5.

224. *See* Hillier, *supra* note 94, at 395 (explaining how the act of appraising neighborhoods helped the middle class and hurt the poor).

clearly contributed to the modern gentrification problem, why are the same mistakes being repeated? Leaving major decisions in the hands of biased local councils, preserving economic and racial segregation, and trickle-down housing were mistakes in the New Deal Legislation.

B. Section 235 and Section 236

The post-WWII sections 235 and 236 made the same mistakes as the New Deal Legislation and suffered the same problems. Like the New Deal Legislation, the HUD and state finance agencies insured sections 235 and 236.[225] Sections 235 and 236 acted in a similar way to the New Deal Legislation's amortization and lower interest requirements.[226] A private lender would secure a FHA-insured loan by regular market means.[227] The FHA would then pay subsidies to the lender directly, to lower the net interest rate on the loan to 1%.[228] By effectively lowering the risk and interest rate of the mortgage, private institutions lent more money, and private borrowers had access to more housing.[229] This was meant to translate into lower rent for tenants, or lower mortgage payments in the case of section 235, increasing economic stability and housing security for inner-city residents.[230] However, in times of high inflation, this scheme left tenants to cover the difference and bring the effective interest rate back to 1%.[231] This meant that tenants were using a higher portion of their income for rent or mortgage payments than they initially budgeted for.

Sections 235 and 236 repeated the same mistakes as the New Deal Legislation: economic segregation, racial segregation, unfettered local biases, and a dependence on the stability or charity of the private market. Sections 235 and 236 were squarely under the thumb of local bias despite the federal government's bypass of PHAs by dealing directly with private developers.[232] Local zoning boards ultimately proved to be the greatest

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225. Kevin Fox Gotham, *Separate and Unequal: The Housing Act of 1968 and the Section 235 Program*, 15 SOC. FORUM 13, 21–22 (2000).

226. *Id.*

227. HAYS, *supra* note 98, at 93.

228. *Id.*

229. Gotham, *supra* note 225 at 22 ("Home mortgages were insured by the FHA through a special risk insurance fund that was intended to protect the lending institution against foreclosures.").

230. *See, e.g.*, Pearson, *supra* note 119, at 448 ("The purpose of these payments is to bring monthly rental charges down to a level which lower income families can afford. . . . These reduced borrowing rates are intended to be passed on to the tenants in the form of lower rental charges.").

231. HAYS, *supra* note 98, at 92.

232. *Id.*

stalwart to building racially- and economically-integrated housing.[233] Zoning boards ultimately could keep denying potential low-income housing, citing any number of reasons, like increased traffic, aesthetic reasons, and a distaste for mixed-unit housing.[234] NIMBY[235] segregationist neighbors supported the zoning boards' exclusionist decisions.[236] One developer identified local zoning boards as the greatest obstacle to building affordable housing in the city.[237]

Furthermore, the private market had sections 235 and 236 at their whim. In the case of section 235, high instances of real estate speculation of potential eligible homes caused rapid "racial turnover," encouraging white-flight from section 235 areas.[238] The white-flight problem became such a concern that one neighborhood coalition, the Marlborough Heights Neighborhood Association, sent a letter to the HUD calling section 235, "a major stumbling block to our efforts to stabilize our neighborhood [and] could alter the middle class nature of the neighborhood by precipitating outward movement of middle-class home owners, both black and white."[239]

Developers saw section 236 as a safe and favorable investment because it was backed by the FHA and allowed developers to potentially pay off the 40-year mortgage in 20 years.[240] And while cooperatives and non-profits

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233. *Hearing before the United States Commission on Civil Rights*, 92d Cong. (1971) (statements by Mr. Marvin Chandler, Chairman and Chief Executive Officer, Northern Illinois Gas Company and President, Metropolitan Housing Development Corporation, Aurora, Illinois and Mr. Richard B. Stoner, Vice Chairman, Cummins Engine Company, Columbus, Indiana).

234. *See, e.g.*, David Sachs, *NIMBYs Making Your City Unwalkable and Unaffordable? Meet the YIMBYs*, STREETS BLOG DENVER (June 22, 2016), https://denver.streetsblog.org/2016/06/22/nimbys-making-your-city-unwalkable-and-unaffordable-meet-the-yimbys/ ("Housing in America's fast-growing cities has become increasingly unaffordable because elected officials let it get that way. . . . [NIMBYs] don't want people moving to 'their' street. They don't want 'their' view altered by new development, or someone else occupying 'their' free on-street parking spaces.").

235. *See NIMBY*, MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/NIMBY (last visited Jan. 25, 2020) (defining *NIMBY* as "opposition to the locating of something considered undesirable (such as a prison or incinerator) in one's neighborhood").

236. *See, e.g.*, Richard Florida, *NIMBYs Dominate Local Zoning Meetings*, CITYLAB (Sept. 6, 2018), https://www.citylab.com/life/2018/09/nimbys-dominate-local-zoning-meetings/569440/ (describing a study of the Boston area finding that local zoning meetings "serve[ ] as a mechanism for reinforcing NIMBYism, suppressing housing development, and exacerbating political and economic inequality").

237. Tod Newcombe, *Breaking Down the Barriers to Affordable Housing*, GOVERNING: URBAN NOTEBOOK (Jan. 2014), https://www.governing.com/columns/urban-notebook/gov-breaking-down-the-barriers-to-affordable-housing.html.

238. Gotham, *supra* note 225, at 26.

239. *Id.* at 27 (alteration in original) (citation omitted).

240. *See* BRIEF HISTORY OF HUD-SUBSIDIZED MORTGAGE PRESERVATION ISSUES, NAT'L HOUS. LAW PROJECT [hereinafter NAT'L HOUS. LAW PROJECT], https://www.nhlp.org/wp-content/uploads/Brief-History-of-HUD-Subs-Mortgage-Pres-Issues-for-CW.pdf (last visited Jan. 25, 2020) (describing how mortgages under section 236 could be paid off in 20 years).

could engage in section 236 development, private developers undertook 62% of the housing development.[241] Unsurprisingly, because of the massive leeway given to private developers, federal housing cost 20% more to develop than private market housing, and rent in section 236 housing was higher than identical private market units.[242]

After paying off the mortgage, section 236 lifted the income restrictions, and developers could convert the development into "fair-market" use, possibly fetching twice the rent price as before.[243] This option ended up playing out to the extreme detriment of low-income renters. The ability to convert the mortgage put tenants at risk of displacement as the 20-year mark on many section 236 properties approached.[244] The fear of nationwide renter displacement inspired emergency legislation in 1987 to preserve section 236 affordable housing by prohibiting early mortgage payments.[245] Between local zoning boards refusing to allow section 236 housing into existing neighborhoods, and unregulated housing speculation driving middle-class, primarily-white families out of neighborhoods, the benefits that sections 235 and 236 accrued fell to mostly white, suburban families.[246]

Sections 235 and 236 did little to mitigate racial and economic segregation or to promote mixed-income, integrated housing developments. In fact, to qualify for section 236 subsidies, the development had to have at least five units of only low-to-moderate income renters, creating a housing assistance island rather than a mixed-income community.[247] Similarly, as seen during periods of white-flight, only those families that can afford to move, do. The exodus of middle-class and wealthy citizens contributed to the island of poverty.[248] Furthermore, as the benefits of section 235 fell to suburban white families, in section 236 rental housing, white renters made

241. LYNN, *supra* note 114, at 112.

242. *Id.* at 122.

243. See NAT'L HOUS. LAW PROJECT, *supra* note 240 (explaining how lifted restrictions created "profit-motivated ownership").

244. *Cf. Preventing Displacement in Changing Neighborhoods,* HOW HOUSING MATTERS (Feb. 17, 2016), https://howhousingmatters.org/articles/can-affordable-housing-programs-prevent-displacement-changing-urban-neighborhoods/ (explaining that as federal housing projects like section 236 age out, "[t]he challenge is to try to keep those properties affordable and try to keep them in place, because it would be difficult, if not impossible, to replace them at this point").

245. *See* NAT'L HOUS. LAW PROJECT, *supra* note 240 (explaining the emergency legislation of 1987).

246. Gotham, *supra* note 225, at 32–33.

247. *See, e.g.*, Pearson, *supra* note 119, at 449 (commenting that all the units need not be contiguous).

248. *See* Alana Semuels, *White Flight Never Ended*, ATLANTIC (July 30, 2015), https://www.theatlantic.com/business/archive/2015/07/white-flight-alive-and-well/399980/ ("[W]hite flight, exclusionary zoning, and outright prejudice, are continuing to create black areas and white areas, but this time around, those areas exist in both the cities and the suburbs.").

up 76% of renters.[249] Again, inadequate legislation precluded poor, urban, black families from engaging in the single most wealth-generating opportunity—home-ownership.[250] Moreover, of the ten income brackets section 236 served, the highest income bracket served three times as many households than that of the lowest.[251]

C. Section 8 and the Housing Choice Voucher Program

President Nixon's moratorium on federal housing spending buried the New Deal Legislation and its reincarnations, section 235 and section 236. [252] And, in pattern, section 8 rose from the ashes.[253] Section 8 has become a slur because of its massive failings and because it exacerbated the problems legislators that intended for it to solve.[254] Critics argue that section 8 has contributed to discriminatory housing practices and isolating the poor.[255]

Local PHAs hold the upper hand on section 8 recipients in the PHA's placement steering ability, or their indifference. In Chicago, "south suburban mayors, city managers, and area fair housing organizations" have complained that the local housing authority has not done anything to alleviate the high concentration of section 8 recipients in the same South Chicago neighborhoods.[256] This is even after the 1969 *Gautreaux* case, a challenge to the Chicago Housing Authority's intentional public housing situs "for the purpose of maintaining existing patterns of residential segregation of races in Chicago."[257]

In response to this litigation, the Gautreaux project began to desegregate Chicago.[258] The Gautreaux program used orientation, counseling, assistance in unit-searching, and support services for section 8 voucher recipients.[259] This is a stark contrast to the basic section 8 voucher receipt, which does not necessarily include counseling or assistance in finding eligible housing. In a comparison of the two programs, one with assistance and one with the

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249. LYNN, *supra* note 114, at 112.

250. Gotham, *supra* note 225, at 33.

251. LYNN, *supra* note 114, at 113.

252. HAYS, *supra* note 98, at 88.

253. *Id.*

254. *See* Paula Beck, *Fighting Section 8 Discrimination: The Fair Housing Act's New Frontier*, 31 HARV. C.R.-C.L. L. REV. 155, 159 (1996) (describing the abuse of section 8 in income discrimination claims).

255. *Id.*

256. Paul B. Fischer, *Racial and Locational Patterns of Subsidized Housing in the Chicago Suburbs*, 1 GEO. J. FIGHTING POVERTY 384, 387 (1994).

257. Gautreaux v. Chicago Hous. Auth., 296 F. Supp. 907, 908 (N.D. Ill. 1969).

258. Fischer, *supra* note 256, at 395.

259. *Id.* at 396.

indifference of the PHA, the Gautreaux program placed many times more black families into predominantly white neighborhoods.[260] However, without the Gautreaux program, the PHA allowed just three neighborhoods in the south of Chicago to house 87% of the public housing units.[261] Despite the Fair Housing Act's commandment "to take significant actions to overcome historic patterns of segregation, achieve truly balanced and integrated living patterns, promote fair housing choice, and foster inclusive communities that are free from discrimination,"[262] a 2019 report found that in the largest 50 cities, "voucher-assisted families of color are *more* likely to live in 'minority-concentrated' neighborhoods than low-income renters of color" without voucher assistance.[263]

Section 8 depends too heavily on private markets and private landlords' good will. Because private landlords are under no obligation to rent to section 8 voucher recipients, landlords can discriminate against potential section 8 renters without any meaningful response.[264] Landlords have refused to rent to section 8 recipients for reasons like, "poor families with subsidies often overcrowd apartments, damage property, and make too much noise."[265] One Chicago study found that landlords denied voucher holders from renting 70% of available units.[266] This severely limits the possible areas available for rent. section 8 recipients often end up clustering together in areas where the landlords will rent to them, promoting both economic and racial segregation.[267]

III. SOLUTION

A. Preventing Displacement by Alleviating Dependence on the Private Market

A combination of Moving to Opportunity (MTO) and Moving to Work (MTW) may help displaced community members. The MTO, while cancelled for lack of immediate, widespread benefit, helped many

260. *Id.* at 398.

261. *Id.*

262. Affirmatively Furthering Fair Housing, 80 Fed. Reg. 42,271, 42,272 (July 16, 2015).

263. ALICIA MAZZARA & BRIAN KNUDSEN, WHERE FAMILIES WITH CHILDREN USE HOUSING VOUCHERS 2 (2019) (emphasis in original), https://www.cbpp.org/sites/default/files/atoms/files/1-3-19hous.pdf.

264. *See generally* Beck, *supra* note 254 (examining discrimination in section 8 housing).

265. *Id.* at 159.

266. Rebecca Tracy Rotem, *Using Disparate Impact Analysis in Fair Housing Act Claims: Landlord Withdrawal from the Section 8 Voucher Program*, 78 FORDHAM L. REV. 1971, 1982 (2010).

267. *Id.*

recipients.[268] After conducting interviews and gathering long-term data about participants, several positive trends were recognizable.[269] First, young women and young families benefited from an increased perception of safety.[270] By leaving the chronically poor areas, young women and mothers felt particularly benefited by a sense of safety and wellbeing for their children.[271] Despite the challenges other cohorts faced, such as isolation, harassment, or feeling disconnected from support networks, mothers and young women ranked their sense of safety higher than these challenges, and did better in long-term measures.[272] However, a crucial failing of the MTO was participants' lack of transportation or child care.[273]

One MTW study, conducted in Massachusetts, may mitigate this problem and make meaningful, lasting impacts on MTW participants. The Massachusetts Department of Housing and Community Development's (MDHCD) Self-Sufficiency Program gave eligible participants an annual stipend for housing, a savings escrow, and supportive counseling.[274] By granting this autonomy to recipients, the MDHCD saw remarkable success.[275] Recipients spent less on housing, contributed more to their savings, and saw an average wage increase of 156% over 3 years.[276] By giving participants the autonomy to use money as they need it, while still keeping a deposit safety net, participants can acquire childcare or a reliable source of transportation. Moreover, the PHAs and participants have the escrow safety net should their participation not work according to plan.

By emulating the autonomy of the MDHCD's program, coupled with the MTO's strategic placement and counseling services, PHAs can integrate community members without depending on the private market to build new housing stock. Furthermore, participants can have stability and safety during their transition to a new neighborhood, with a sizable nest egg upon leaving public assistance. This method leads to generational change in the lives of

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268. *See* GALVEZ ET AL., *supra* note 136, at 2 (describing the outcomes of the MTO, specifically the decreased poverty rates).

269. *See id.* (discussing the decrease of living in low-poverty tracts).

270. *See* XAVIER DE SOUZA BRIGGS, SUSAN J. POPKIN & JOHN GOERING, MOVING TO OPPORTUNITY: EXPERIMENT TO FIGHT GHETTO POVERTY 86, 107–08 (2010) (recounting one resident's relief at moving into a neighborhood that she perceives as safer and more secure for herself and her children).

271. *Id.* at 87, 107 (discussing safety as an important benefit to leaving).

272. *Id.* at 96 (describing the long-term positives resulting from moving out of high-poverty neighborhoods).

273. *Id.* at 235 (discussing the failings of the MTO program).

274. CONG. RESEARCH SERV., R42562, MOVING TO WORK (MTW) HOUSING ASSISTANCE DEMONSTRATION PROGRAM 16 (2014).

275. *Id.*

276. *Id.*

the chronically poor by helping to build a foundation for the individual and by moving individuals away from highly-segregated neighborhoods.

Next, a crucial element to unequal gentrification is displacement.[277] To mitigate the displacement efforts, the PHAs should institute an initiative to allow people to stay in their neighborhoods by using predictive and preventative response efforts made possible by the MTW expansion.[278] This means that more local PHAs now have the funds and flexibility to conduct a gentrification prediction analysis.[279] This may require hiring a researcher or a planner, or creating partnerships with local universities, but this information can be extremely valuable in preventing displacement of vulnerable persons.

By identifying high-risk areas, such as those near transportation hubs,[280] rapidly increasing property values or capital investment,[281] and changes in land use indicative of first-wave in-movers,[282] the PHAs can use their financial resources more effectively in conducting outreach and providing effective housing services. Furthermore, they can identify housing that is likely to raise in value and work to ensure affordable housing for existing residents as well as low- to moderate-income housing for new residents. By preventing displacement in the first place, vulnerable people can continue building their lives without backslide from losing essential networks, housing, or sense of place. One of the primary goals of the MTW project is to promote self-sufficiency.[283] A necessary part of reaching self-sufficiency is growing and moving forward. Therefore, early response to vulnerable people creates a strong foundation and mitigates the risk of falling further into poverty.

B. Mitigating Racial and Economic Segregation Through Inclusive Housing Ordinances

To mitigate segregation and extreme racial and economic disparities between neighborhoods, municipalities should introduce inclusionary

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277. *See* SANDER ET AL., *supra* note 8, at 372 (analyzing the theories of displacement).

278. The contested MTW program received an expansion. Consolidated Appropriations Act of 2016, H.R. 2029-647, 114th Cong. § 239 (2015).

279. *Id.*

280. THE NEW URBAN CRISIS, *supra* note 9, at 66 ("The gentrification of neighborhoods around transit reflects scarcity . . . .").

281. *See id.* ("Public investment in parks and green spaces also boosts gentrification.").

282. *See* THE WORLD IN BROOKLYN, *supra* note 34, at 198 (describing the change implemented by in-movers).

283. Stegman, *supra* note 139.

housing ordinances.[284] A recent California Supreme Court case upheld inclusionary housing ordinances under a municipality's general police powers, validating the inclusionary zoning ordinances of more than 170 California municipalities.[285] These ordinances vary in their regulation of developments, but the general framework is that an inclusionary zoning ordinance requires every new residential or commercial development over a certain size to include a scaling number of low-income housing options.[286] Or, in lieu of building low-income housing, developers may contribute to a low-income housing fund.[287] However, critics argue that an in lieu trust fund does little to alleviate actual housing concerns and does not address land and resource scarcity.[288]

Opponents have brought several challenges against these ordinances. The first is that these requirements are a land-use exactment; the municipalities cannot stake the development's approval on the payment of some fee, like the in lieu payment.[289] However, the Court clarified that these requirements are not exactments, but constitutionally permissible land-use restrictions.[290] The Court's rationale is that municipalities have the traditional police power to protect the welfare of the citizens, including providing safe and affordable housing.[291] Because these ordinances do not require any special payment, but rather place a restriction on the land use, they fall under the restrictions test and do not violate the takings clause.[292] New York has taken this a step farther by including high-density incentives and long-term affordability incentives, including tax breaks, favorable loan terms, and expedited approval processes.[293]

By instituting an inclusionary housing ordinance, municipalities can begin to create stability independent of volatile market changes that often

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284. *Inclusionary Zoning and Mixed-Income Communities*, DEP'T HOUSING & URB. DEV. (Spring 2013), https://www.huduser.gov/portal/periodicals/em/spring13/highlight3.html [hereinafter *Inclusionary Zoning*].

285. Cal. Bldg. Indus. Ass'n v. City of San Jose, 351 P.3d 974, 977 (Cal. 2015).

286. *See Inclusionary Zoning*, *supra* note 284 (describing New York City's inclusionary zoning program).

287. *Id.*

288. *Id.* (critiquing in-lieu fees as misrepresenting the cost of creating affordable housing).

289. *See Cal. Bldg. Indus. Ass'n*, 351 P.3d at 974 (determining that the city's failure to state evidence proved that their actions were unconstitutional).

290. *Id.* at 979.

291. *Id.* at 986–87.

292. *Id.* at 991. The restrictions test holds that "so long as a land use regulation does not constitute a physical taking or deprive a property owner of all viable economic use of the property, such a restriction does not violate the takings clause insofar as it governs a property owner's future use of his or her property." *Id.*

293. *See Inclusionary Zoning*, *supra* note 284 (discussing developer incentives to offset the cost of creating affordable housing).

work to the detriment of poor and very poor residents. This is an effective strategy to make sure new developments do not displace either renters or buyers. By including long-term affordability bonuses, the municipalities may also protect residents from being economically displaced.[294] Furthermore, if the prospective building is following trends and building "luxury housing," displacement is very likely in a gentrifying area.[295] By requiring space for existing residents, inclusionary housing ordinances both achieve economic integration and allow equitable gentrification.

C. Relegating Local Bias Through Income Discrimination Statutes

Income discrimination statutes exist in at least 15 states and dozens of municipalities.[296] While worded differently, income discrimination statutes overall prohibit landlords, sellers, lenders, and real estate agents from refusing housing to someone based solely on their status as receiving income assistance or discriminating based on someone's lawful source of income.[297] Many states explicitly define "[l]awful source of income" to include housing assistance programs.[298] Each state has varying enforcement mechanisms from private rights of action to administrative enforcement and adjudication.[299] Legal challenges about the right to contract have contested these laws under the argument that because housing assistance is voluntary, it does not fall under a protectable class.[300] Texas has also passed a state law preventing municipalities from enacting income discrimination laws.[301]

However, because of the rampant discrimination against housing-assisted renters, it may prove unreasonably difficult to prove discrimination based on income. A step in the right direction would be to enact a prohibition on a lender's ability to inquire about the source of income on rental

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294. Rebecca Diamond, Timothy McQuade & Franklin Qian, *The Effects of Rent Control Expansion on Tenants, Landlords, And Inequality: Evidence From San Francisco* 30–31 (Nat'l Bureau of Econ. Research, Working Paper No. 24181, 2017).

295. Lawrence, *supra* note 7, at 360 (explaining how the building of "luxury housing" and associated displacement occurs in gentrified areas).

296. POVERTY & RACE RESEARCH ACTION COUNCIL, EXPANDING CHOICE: PRACTICAL STRATEGIES FOR BUILDING A SUCCESSFUL HOUSING MOBILITY PROGRAM 1 (2018).

297. *See, e.g.*, Washington's Residential-Landlord Tenant Act, WASH. REV. CODE § 59.18.255 (2018) (listing prohibitions on discriminatory renting practices).

298. *See, e.g.*, Conn. Gen. Stat. Ann. § 46a-63 (West 2019) ("'Lawful source of income' means income derived from Social Security, supplemental security income, housing assistance, child support, alimony or public or state-administered general assistance.").

299. POVERTY & RACE RESEARCH ACTION COUNCIL, *supra* note 296, at 9 ("The Connecticut source of income law can be enforced either through the state Commission on Human Rights and Opportunities or in state court.").

300. *See, e.g.*, Knapp v. Eagle Prop. Mgmt. Corp., 54 F.3d 1272, 1282 (7th Cir. 1995) ("It seems questionable, however, to allow a state to make a voluntary federal program mandatory.").

301. TEX. LOC. GOV. CODE ANN. § 250.007 (West 2017).

applications. This would allow federally-assisted tenants the ability to apply for housing without fear of immediate discrimination. It would also allow landlords or owners the flexibility to inquire about income before renting to tenants. This process would create usable evidence in income discrimination investigations, because it leaves a record showing that the tenant was initially a candidate for housing, but after inspecting the source of income, the landlord denied their application.

Both states and municipalities can enact this solution. By enacting an income discrimination law, municipalities are actively pushing against local biases. Implicitly, because the tenant does not need to disclose the source of income, landlords and owners can more accurately evaluate potential tenants. Explicitly, this prohibits intentional discrimination and provides evidence, recourse, and protection for assistance recipients.

CONCLUSION

After decades of gathering data and formulating hypotheses, predicting gentrification is well within our abilities. In predicting gentrification, planners and law makers can no longer ignore inequitable housing practices. Municipalities and states have the ability to identify at-risk residents and take the necessary steps to protect their interests. Despite the failings of previous housing statutes, from the New Deal to the present, municipalities do not need to fall for the same mistakes: racial and economic segregation, local bias, and dependence of a static market. Rather, municipalities can enact a framework of solutions to address these problems. The MTW, the MTO, income discrimination statutes, and an inclusive housing ordinance can prevent inequitable gentrification.

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