



 **REPORT RACE & INEQUALITY**

# An Economic Fair Housing Act

AUGUST 3, 2017 — RICHARD D. KAHLENBERG

A century ago, the U.S. Supreme Court struck down racial zoning laws that prohibited black people from buying homes in majority-white neighborhoods. About a half-century later, the Fair Housing Act of 1968 outlawed explicit racial discrimination in the sale and rental of housing units. These advances against the racial segregation of American society represent significant landmarks in the march for human dignity.

But the judicial and legislative branches have both left virtually untouched another source of segregation: economically discriminatory government zoning policies that exclude low-income and working-class Americans from entire neighborhoods. This economic segregation in housing is damaging, and perhaps even as insidious as outright racial segregation, because while in effect it still excludes substantial numbers of people of color from good places to live, it does so with the open consent of the law. As the nation prepares to celebrate the fiftieth anniversary of the 1968 Fair Housing Act next year, it is an opportune time to reflect on how housing policies can and should be substantially revised to address two important new realities that have emerged in the past half-century.<sup>1</sup>

The first troubling reality is that, while America has made progress in reducing racial discrimination in a number of areas, efforts to fight racial segregation in housing still lag far behind. Over the past fifty years, we have made considerable strides reducing discrimination in restaurants, hotels, transportation, voting, and employment, writes Richard Rothstein in his compelling new book, *The Color of Law*, but—despite the Fair Housing Act—progress on reducing residential racial segregation has been much more muted. Rothstein argues that the major unfinished business of the civil rights movement is housing.<sup>2</sup>

The second reality—related to the first—is that skyrocketing levels of income segregation in housing is compounding racial segregation. As Harvard University’s Robert Putnam notes in his book, *Our Kids*, “while race-based segregation has been slowly declining,” we have seen the rise of “a kind of incipient class apartheid.”<sup>3</sup> President Barack Obama, likewise, has noted, “what used to be racial segregation now mirrors itself in class segregation.”<sup>4</sup>

This worsening housing segregation by class is extremely troubling, because where people live affects so much else in their lives—their quality of life, access to transportation, employment opportunities, access to decent health care, and, perhaps most important, access to good schools. This last point is critically important, because in American society, education has long been “the great equalizer.” Research dating back five decades suggests one of the most powerful ways to improve the life chances of disadvantaged students is to give them the opportunity to attend high-quality schools that educate rich and poor students under a single roof.<sup>5</sup> And so, for twenty years, The Century Foundation (TCF), in a series of books and reports, has outlined a number of ways to reduce economic segregation in our schools through choice within the public school system (particularly magnet schools and diverse charter schools) and by redrawing

neighborhood school boundaries.<sup>6</sup> These policies, in one hundred traditional public schools and charter school organizations, educate 4.4 million students in thirty-two states, and are having a very positive effect on student achievement.<sup>7</sup>

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Public school choice and redistricting policies remain a critical tool for increasing educational opportunity. But in a country where roughly three-quarters of students attend neighborhood schools—that is, are simply assigned to the school nearest their homes—public school choice is a limited device.<sup>8</sup> Policymakers, researchers, and advocates have long noted that it is important to pursue a parallel set of housing strategies that, if successful, could help integrate neighborhood schools. As scholar David Rusk has put it, “housing policy is school policy.”<sup>9</sup>

While access to high-quality schools is perhaps the most visible and valuable outcome of housing integration, bringing people together where they live offers numerous other benefits for adults and their children as well. Access to good schools means a higher chance of attending college, which can lead to higher-paying employment, more wealth accumulation, and ultimately, more choices of where to live and start a family. So, while at times this report will focus on the positive impact that housing integration would have on educational opportunity, this is the start of a cycle, the first of many benefits that would accrue from reversing the trend toward residential segregation.

Where did this rising segregation by class come from? It stems in part from society’s growing income divide. And, as William Julius Wilson of Harvard has documented, it is also the unintended result of some of our civil rights laws themselves, which by reducing housing discrimination against those middle- and upper-class African Americans who could afford to move out of ghettos, left behind a truly disadvantaged group of African Americans who live in highly concentrated poverty.<sup>10</sup> After passage of the Fair Housing Act, Rothstein notes, it was not primarily discrimination that kept blacks out of white suburbs; “It was primarily unaffordability.”<sup>11</sup>

This unaffordability, on one level, has to do with the fact that the free market discriminates based on price and the ability to pay. Not everyone can afford a \$200,000 house, much less one that costs \$500,000 or \$1 million, which is the way a capitalist system works. But layered on top of these market forces is harmful government regulation that aids and abets segregation. Many localities have adopted exclusionary zoning ordinances—sometimes referred to as “snob zoning” rules—that forbid builders from developing apartment buildings or townhouses in certain areas, reserving them instead

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for detached, single-family homes. While this practice may seem harmless upon first consideration, some of these ordinances actually had racist origins and were designed to exclude low-income African Americans specifically. Other zoning laws go further, imposing minimum residential lot requirements. In extremely wealthy neighborhoods, with very large lot requirements, policies can effectively exclude virtually all families not in the top 1 percent by income and wealth. Critically, these policies that exclude families from neighborhoods by requiring minimum lot sizes—purportedly in the name of preserving some sort of aesthetic uniformity—also exclude children in those families from attending high-performing schools.

In this sense, class segregation, like racial segregation, is widely misunderstood. Because income and racial segregation are so commonplace, it is easy to consider them the natural state of affairs. It is tempting to believe that segregation by income and race simply reflects a certain reality—that people move into neighborhoods where they “fit in,” or where they can afford to live. In fact, segregation is not the result of purely individual choices or of marketplace forces, but rather of conscious policy decisions made over many decades. As this report details, both racial and income segregation are the result of social engineering on the part of federal, state, and local actors. Beginning in the early twentieth century, policymakers and individual citizens pursued a number of policies and practices to segregate housing by race and income, including: explicit zoning by race, which was replaced by exclusionary zoning by income; racially restrictive covenants in housing deeds; redlining in mortgage insurance; and police inaction in the face of white mob violence against black families.

America’s worst practices did not go unnoticed, however. Judicial decisions in combination with the Fair Housing Act of 1968 have now made explicitly racial discriminatory actions illegal. But class discrimination in the form of exclusionary zoning laws is not explicitly based on race, and so it remains perfectly lawful in virtually all states—even if it results in outlandish racial and economic segregation.

To complete the unfinished business of the civil rights movement—and to address rising segregation by income—we need a new set of policies to update the 1968 act. Such a new Economic Fair Housing Act would help the vast majority of Americans—of all races—who are excluded from resource-rich neighborhoods not merely by market forces, but also by government regulation. This new Economic Fair Housing Act would curtail government zoning policies that discriminate based on economic status. In its strongest form, it would entirely ban unnecessary exclusionary zoning at the local level. In the alternative, it could impose a penalty on municipalities that insist on maintaining discriminatory zoning, either by withholding infrastructure funds or limiting the tax deduction that homeowners can take for mortgage interest.

In the current political climate, federal action is unlikely in the near term on this issue, and so progressive policies are most likely to be adopted at the state level. Certain jurisdictions, such as Massachusetts, New Jersey, and California, have led the way in fighting exclusionary zoning by promoting affirmative steps to foster inclusion. Additional progress at the state level would have a meaningful impact for millions of Americans, and also could provide an important model for federal action at some time in the future.

This report proceeds in seven parts. The first part outlines the history of how policy makers consciously engineered racial and income segregation in housing. The second part discusses the legal and policy efforts to date to fight segregation by race and income. The third part examines the comparative effectiveness of these strategies, outlining the evidence that racial segregation is slowly declining but income segregation is on the rise. The fourth part lays out the case for why exclusionary zoning is biased and harmful to both adults and children. The fifth part outlines a policy strategy for reducing economic and racial segregation in neighborhoods and schools. The sixth part addresses objections to such a policy, including questions about the potential effect on property values and crime in upper-middle class neighborhoods. And the seventh part discusses how to build a political coalition for change that includes civil rights groups, affordable housing advocates, and environmentalists on the left, along with libertarians and developers on the right.

## Origins of Segregation through Social Engineering

Americans recognize that, when they drive through a metropolitan area, they are likely to pass through predominantly black neighborhoods, predominantly Hispanic neighborhoods, and predominantly white neighborhoods. They may even recognize that, in some measure, these patterns reflect the preferences of individual homeowners—racial bias on the part of whites, or an understandable desire of minorities to have a haven where they do not have to face discrimination from the majority population.

“All of this has some truth,” says Richard Rothstein of the Economic Policy Institute, “but it remains a small part of the truth.”<sup>12</sup> Much of this segregation is not the result of personal choices, but rather the result of “a century of social engineering on the part of federal, state and local governments that enacted policies to keep African Americans separate and subordinate.”<sup>13</sup> Ironically, Rothstein notes, otherwise liberal presidents such as Woodrow Wilson and Franklin D. Roosevelt enacted many of these policies.<sup>14</sup> Similarly—and perhaps more clearly—today’s economic segregation is not the result of lower-income people congregating together because it makes them more comfortable, but rather has been socially engineered through over a century of zoning regulations that are mostly heavily employed in the liberal Northeast and remain in effect throughout the country to this day.

## *From Racial to Economic Zoning*

Residential areas were comparatively integrated by race in the nineteenth century, Rothstein says, until a set of deliberate acts to segregate began in earnest in the early twentieth century. In 1910, for example, Baltimore pioneered racial zoning by prohibiting blacks from buying in majority-white areas, or whites in majority-black areas.<sup>15</sup> Similar racial zoning policies spread throughout the country, Rothstein notes, to include “Atlanta, Birmingham, Dade County (Miami), Charleston, Dallas, Louisville, New Orleans, Oklahoma City, Richmond (Virginia), St. Louis and others.”<sup>16</sup>

Racial zoning policies were struck down in 1917 by the U.S. Supreme Court decision in *Buchanan v. Warley*, which declared them a violation of the U.S. Constitution.<sup>17</sup> The Court ruled that Louisville’s racial zoning ordinance violated the Fourteenth Amendment and related statutes, which “entitle a colored man to acquire property without state legislation discriminating against him solely because of color.”<sup>18</sup> White real estate interests, which opposed zoning limitations, allied with the NAACP in the case.<sup>19</sup>

But communities quickly switched from race-based zoning to economic-based zoning, through policies such as those requiring that neighborhoods consist exclusively of single-family homes, have minimum lot sizes, or have minimum square footage requirements. “Such economic zoning was rare in the United States before World War I,” Rothstein notes, “but the *Buchanan* decision provoked urgent interest in zoning as a way to circumvent the ruling.”<sup>20</sup> For example, in Milpitas, California, a suburb of San Jose, the town adopted a policy of banning apartments and allowing only single-family homes, shortly after 250 African Americans were transferred to work in a nearby Ford auto plant.<sup>21</sup> Because African Americans were (and are) disproportionately low income, economically exclusionary zoning accomplished much of the same end result as explicit racial zoning.<sup>22</sup>

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## Exclusionary zoning would effectively designate the economic wherewithal of the families living in each residential neighborhood.

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Zoning policies of all kinds proliferated during the early twentieth century. In 1916, just eight cities in the United States had zoning ordinances. That number grew to 1,246 cities by 1936. Today, every major city has zoning policies, with the exception of Houston, Texas.<sup>23</sup> To be sure, racial animus was only one reason for the growth of these policies; economic, aesthetic, and safety reasons also played a role. Zoning programs, for example, were adopted to give predictability to the investments of homeowners who were worried about a sudden drop in property values.<sup>24</sup> People who invest large

amounts of money into a home understandably do not want a cement factory to suddenly pop up next door. But exclusionary zoning went far beyond simply demarcating between land for residential versus industrial use, to the point where it effectively would designate the economic wherewithal of the families living in each residential neighborhood.

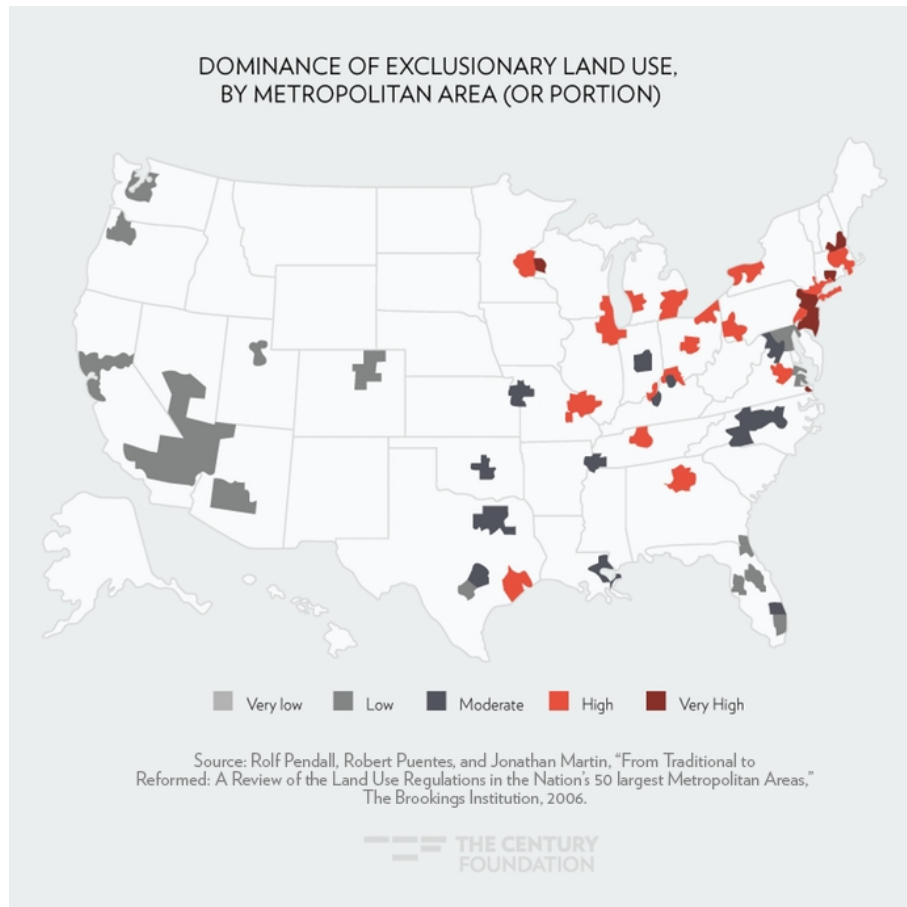
Like the racial zoning policies a decade earlier, exclusionary economic zoning was quickly challenged in the U.S. Supreme Court, in the case of *Euclid v. Ambler* (1926).<sup>25</sup> In the litigation, Ambler Realty sued the Village of Euclid for violating the “due process” clause of the Fourteenth Amendment of the Constitution, claiming it was preventing the company from using its property as it wished. The land in question was zoned not only to prohibit the erection of industry, but also apartment buildings, thereby depriving the developer of liberty and property without compensation, Ambler argued. The District Court in the case also suggested that Euclid, Ohio had a racial and income segregation purpose in using exclusionary zoning.<sup>26</sup>

In a landmark decision, the U.S. Supreme Court nevertheless upheld economic zoning in *Euclid*. Excluding industrial uses in a residential neighborhood was clearly justified, the opinion suggested, but excluding apartments was also appropriate, it declared. An apartment house can be “a mere parasite, constructed in order to take advantage of the open spaces and attractive surroundings created by the residential character of the district.” Apartment houses would bring more people and traffic, “depriving children of the privilege of quiet and open spaces for play, enjoyed by those in more favored localities—until, finally, the residential character of the neighborhood and its desirability as a place of detached residences are utterly destroyed. Under these circumstances, apartment houses...come very near to being nuisances.”<sup>27</sup> The Court gave no consideration to the people, of all races, who could not afford single-family houses and were thus, by government edict, excluded from entire neighborhoods—and, importantly, the public school districts associated with those neighborhoods.

Today, exclusionary zoning policies are widely used, particularly in certain parts of the country. To estimate the extent of exclusionary zoning nationwide, Rolf Pendall, Robert Puentes, and Jonathan Martin prepared a survey for the Brookings Institution of exclusionary zoning in the nation’s fifty largest metropolitan areas. They found such policies are much more popular in the Northeast and the Midwest than in the rest of the country (see Figure 1).

## FIGURE 1





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Another way to ascertain the degree to which zoning policies exclude is the Wharton Residential Land Use Index, which measures the stringency of local land use regulations, including exclusionary zoning, across more than 2,600 municipalities.<sup>28</sup> The authors, Joseph Gyourko, Albert Saiz, and Anita Summers, conclude that Northeastern states—despite their liberal reputations—tend to have higher (more stringent) scores, while the least regulated states are generally from the south or Midwest. The Wharton researchers concluded that towns with the most stringent regulatory environments tended to have lower density and to be wealthier than communities with low levels of regulation.

## *Covenants, Federal Housing Administration Redlining, White Violence, and Steering*

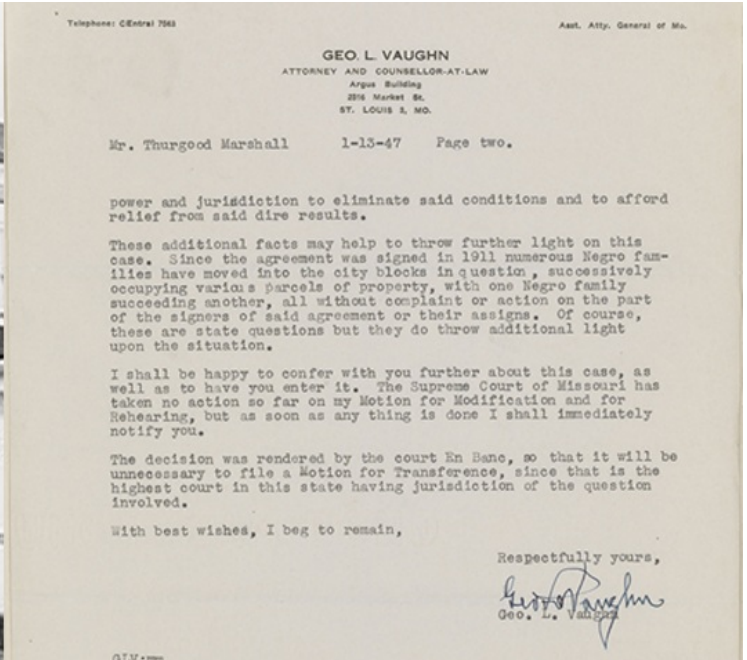
While economic zoning made vast swathes of America inaccessible to low-income minorities, racial segregationists realized they needed ways to keep middle- and upper-class African Americans out of white neighborhoods. One response for many homeowners was to adopt racially restrictive covenants, which required purchasers to agree not to resell to black people, among other specified “undesirable” uses of the property. One such provision, for example, forbade the buyer from reselling the home to someone who would construct “any slaughter house, smith shop, forge furnace,” or



“for any structure other than a dwelling of people of the Caucasian race.”<sup>29</sup> These provisions were initially upheld by the U.S. Supreme Court in a 1926 decision in *Corrigan v. Buckley* on the theory that the covenants were private contracts not subject to the Constitution.<sup>30</sup> The decision applied faulty reasoning, however, because contracts do not have force without the power of the state. Chillingly, in city after city, for more than two decades, courts and sheriffs evicted African Americans from homes they had rightly paid for to enforce racially restrictive covenants.<sup>31</sup> Across the country, police also helped enforce segregation through related practices, such as allowing blacks to work in towns, but requiring them to leave by dusk. As James Loewen has documented, these so-called “sundown towns” proliferated throughout America in the late nineteenth and twentieth century.<sup>32</sup>

Meanwhile, in the 1930s, the federal government further deepened economic and racial segregation through programs designed to expand home ownership. The Home Owners Loan Corporation and its successor, the Federal Housing Administration (FHA), were meant to increase opportunities for homeownership by guaranteeing mortgages, broadening the group of people who could buy homes. But both organizations cruelly instructed appraisers to focus this aid on economically homogenous and all-white communities. An FHA manual suggested the best financial bets were those in which there were safeguards, such as highways separating communities to prevent “the infiltration of . . . lower class occupancy, and inharmonious racial groups.”<sup>33</sup> As Ta Nehisi Coates notes, the FHA provided the strongest financial support to green zoned areas that, as one appraiser noted, lacked “a single foreigner or Negro.” All black areas were coded red and received no federal support.<sup>34</sup> In 1940, the FHA actually denied insurance for a white development located near an African-American community until the builder agreed to construct a half mile concrete wall, six feet high, to separate the two neighborhoods.<sup>35</sup>

In 1948, civil rights activists won a victory when the U.S. Supreme Court reversed its earlier ruling and unanimously struck down racially restrictive covenants as a violation of the Constitution in the case of *Shelley v. Kraemer*.<sup>36</sup> The opinion only involved six justices, Rothstein notes, because three had to recuse themselves on the grounds that their own homes contained such covenants.<sup>37</sup> The victory was short-lived, however, as discrimination just took another turn as white mobs routinely harassed black families moving into white communities, subjecting them to violence as police stood by. The practice continued for decades, until such harassment was finally declared a federal crime in 1968.<sup>38</sup>



SHELLEY HOUSE. SOURCE: NATIONAL PARK SERVICE OF THE INTERIOR (LEFT) GEORGE L. VAUGHN TO THURGOOD MARSHALL CONCERNING SHELLEY V. KRAEMER, JANUARY 13, 1947. TYPED LETTER. SOURCE: LIBRARY OF CONGRESS. (RIGHT)

Even after passage of the 1968 Fair Housing Act (discussed below), both private and public forms of racial discrimination have continued to this day. In the private sphere, some real estate agents continue to steer African Americans away from white areas. Research from the Poverty and Race Research Action Council and the National Fair Housing Alliance suggests that racial steering by real estate agents remains a major problem.<sup>39</sup>

After passage of the Fair Housing Act, explicit racial discrimination by government was likely to be challenged in court, but in the 1970s, suburbs adopted a new wave of exclusionary zoning and growth management rules that in some cases appeared to have racial motivation.<sup>40</sup> In addition, zoning expanded significantly during this era, as home values became an increasing proportion of the financial portfolio of most families. As homeownership was transformed from a consumer commodity to an investment, homeowners became increasingly anxious about property value declines, whether associated with an influx of minority or low-income families.<sup>41</sup>

## *Placement of Public Housing to Perpetuate Segregation*

Public policy also tends to this day to steer public housing units, which typically are heavily minority populated, into high-poverty areas that offer few economic opportunities for residents. The original New Deal public housing program was explicitly segregated. And today, the two major low-income housing programs in the United States focused on privately owned rental properties—the Low-Income Housing Tax Credit (LIHTC) and Section 8 housing vouchers, now known as Housing Choice Vouchers—both tend to perpetuate economic and racial segregation.<sup>42</sup>

Under the Low-Income Housing Tax Credit, each state receives a set amount of tax credits based on population size. State housing agencies distribute the credits to private and for-profit housing developers based on a Qualified Allocation Plan (QAP) that considers local housing needs. A few states, such as Massachusetts, Texas, and Mississippi, prioritize programs in “high opportunity areas,” which pushes against segregation. But most factors perpetuate segregation. For instance, community support levels are often a criterion in deciding which developments will be awarded tax credits. This factor tends to steer housing to lower-income communities, which are less likely to organize in opposition.<sup>43</sup> In addition, credits are often awarded based on financial feasibility. Since land is cheaper in low-income neighborhoods, even many liberal housing advocates argue in favor of locating public housing in disadvantaged communities, because more units can be developed there than in wealthier, more expensive communities.<sup>44</sup>

In theory, the nation’s largest low-income housing program, the Section 8 voucher, could promote integration, because vouchers go to individual families and can be used in any neighborhood. But in practice, in most states, landlords can reject Section 8 housing vouchers because income, unlike race, is not a protected class. Moreover, voucher values are usually too limited to enable tenants to afford apartments in wealthier neighborhoods.<sup>45</sup> In Metropolitan Philadelphia, for example, researcher David Rusk found that 79 percent of Housing Choice Vouchers were concentrated in minimum opportunity towns in Pennsylvania suburbs in 2013 compared with just 3 percent in maximum opportunity towns.<sup>46</sup>

As a result, according to a 2012 study by New York University’s Ingrid Gould Ellen and the University of Massachusetts at Boston’s Keren Mertens Horn, students in public housing generally have nearby public schools that are poor performers. Among all American households, the median performance of the nearest school was at the 53rd percentile in proficiency in math and English Language Arts, but the percentile for Housing Choice Voucher households was the 26th percentile, for Public Housing was the 19th percentile, for Project Based Section 8 was the 28th percentile and for LIHTC was the 31st percentile.<sup>47</sup>

## Existing Legal and Policy Efforts to Fight Racial and Economic Segregation

Supporters of racial and economic inclusion have fought valiantly against segregation through a number of legal and policy initiatives. Their efforts seeking to reduce racial segregation have generally been more successful than those seeking to reduce economic segregation to date, in part because the U.S. Constitution has been read to prohibit racial discrimination more readily than discrimination based on economic status, and in part because American culture has become less accepting of racial discrimination than of class discrimination.

# *Fighting Racial Segregation*

The assault on racial segregation has been robust, both in the courts and in the policy arena, at all levels of government.

## 1. Legal Strategies

In the courts, as already noted, racial zoning was successfully challenged in the 1917 *Buchanan* case, and racially restrictive covenants were outlawed in the 1948 *Shelley* case. Courts have also imposed desegregation remedies to address conscious discrimination by government in segregating public housing. Among the most famous cases is *Gautreaux et al. v. Chicago Housing Authority*. In the litigation, Dorothy Gautreaux charged the Chicago Housing Authority and the U.S. Department of Housing and Urban Development with purposely segregating 10,000 public housing units in black neighborhoods in violation of the U.S. Constitution and the 1964 Civil Rights Act. Gautreaux won in the lower level courts, and in 1976, the U.S. Supreme Court upheld a remedy that would go on to help 25,000 voluntary public housing participants live in low-poverty neighborhoods in one hundred communities throughout the metropolitan Chicago area.<sup>48</sup>

## 2. Policy Initiatives

On the policy level, President John F. Kennedy issued Executive Order 11063 in 1962, which prohibited discrimination in housing that received federal funds. Likewise, Title VI of the 1964 Civil Rights Act prohibited discrimination in federally assisted housing, including public housing. While these actions were important symbols, they applied to less than 2 percent of housing in the country.<sup>49</sup> The big breakthrough came in 1968, with passage of the Fair Housing Act, which outlawed discrimination in the sale or rental of housing units based on race, color, national origin, religion, sex, familial status, or handicap. The Fair Housing Act also required housing providers “affirmatively to further fair housing,” meaning that government actors were not supposed to simply stop segregating, they were also supposed to start intentionally integrating, or risk losing federal funds.<sup>50</sup> The legislation covers about 80 percent of the nation’s housing supply.<sup>51</sup>

Over time, the courts interpreted the law to allow plaintiffs to bring so-called “disparate impact” lawsuits against policies that have a discriminatory impact on minorities, even absent a discriminatory intent. The U.S. Supreme Court affirmed this interpretation of the act in the 2015 case of *Texas Department of Housing and Community Affairs v. Inclusive Communities Project*.<sup>52</sup>

Also in 2015, the Obama administration issued a ruling to elucidate the requirement that local recipients of federal housing funds “affirmatively further” fair housing. As the Affirmatively Furthering Fair Housing (AFFH) regulation noted, “The Fair Housing Act not only prohibits discrimination but, in conjunction with other statutes, directs HUD’s program participants 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.”<sup>53</sup> (In a step backward, Congress passed a rider on the FY 2017 Omnibus appropriations bill which prohibited HUD from directing grantees to undertake specific changes to zoning under AFFH.)<sup>54</sup>

To supplement the federal law, the vast majority of states and many localities have adopted local statutes prohibit discrimination in housing by race and ethnicity and other categories. The Leadership Conference for Civil and Human Rights lists thirty-nine states and the District of Columbia’s laws promoting fair housing.<sup>55</sup>

## *Fighting Economic Segregation*

By contrast, the assault on economic segregation has been far less aggressive, at both the legal and policy level.

### 1. Legal Strategies

Whereas *Buchanan* outlawed racial zoning, *Euclid* affirmed economic zoning that excludes apartment building from some neighborhoods, and even single-family homes with small lots in other neighborhoods. In a 1971 decision in *James v. Valtierra*, the U.S. Supreme Court, by 5 to 3, affirmed the constitutionality of a California requirement that any low-income housing project be put up to local referendum because the policy discriminated against the poor, rather than against a particular racial group. The Fourteenth Amendment, the Court ruled, generally prohibits discrimination based on race, but not based on economic status.<sup>56</sup> In 1974, the Court upheld, in *Village of Belle Terre v. Boraas*, a zoning ordinance that limited the number of unrelated individuals who may inhabit a dwelling.<sup>57</sup> And in the 1977 case *Arlington Heights v. Metropolitan Housing Corporation*, the Court again upheld an economic zoning regulation that had the effect of excluding low-income and racial minorities, even when there was evidence of racial bias among community members.<sup>58</sup> To show unconstitutionality, the Court created an extraordinarily hard test to meet: the city had to have an improper intent to discriminate by race, and that the improper intent was the actual cause among policymakers of the discriminatory impact.<sup>59</sup> Tellingly, there was no argument advanced that economic exclusion by itself was improper.

State legal efforts aimed at dismantling economically exclusionary zoning have had more success, though only in a limited number of places. The cases attack exclusionary zoning from two angles: as a threat to the liberty and property rights of landowners, and as a threat to the interests in equality and social justice interests of people of modest means.<sup>60</sup>

In 1970, in *Appeal of Girsch*, the Pennsylvania Supreme Court invalidated an ordinance in Nether Providence that prevented the construction of apartments. “Apartment living is a fact of life that communities like Nether Providence must learn to accept,” the court ruled. “If Nether Providence is located so that it is a place where apartment living is in demand, it must provide for apartments in its plan for future growth; it cannot be allowed to close its doors to others seeking a ‘comfortable place to live.’” The decision emphasized the liberty rights of property owners and cited Article I, Section 1, of the Constitution of Pennsylvania, which affirms the right to acquire, possess, and protect property.<sup>61</sup>

In 1975, the New Jersey Supreme Court ruled in *Southern Burlington County NAACP v. Mount Laurel* that zoning laws that have the effect of excluding low-income families violate the state constitution. The court ruled that localities have an affirmative obligation to provide their “fair share” of moderate and low-income housing.<sup>62</sup> The decision has been called “the *Roe v. Wade* of fair housing, the *Brown v. Board of Education* of exclusionary zoning.”<sup>63</sup> Significantly, the case reached beyond race to class discrimination. Though the plaintiffs originally brought the case against the town of Mount Laurel for excluding “black and Hispanic” poor people, the New Jersey Supreme Court chose to take on the larger issue of economic class and framed the case “from the wider viewpoint,” ruling that the zoning policies banning trailer homes and limiting the number of multi-bedroom apartments excluded families of all races who had modest “income and resources.” In addition, the *Mount Laurel* court held that there was no requirement that the zoning policies intentionally exclude poor people; if the effect was exclusion, then that was sufficient to trigger higher judicial scrutiny.<sup>64</sup>

After the state dragged its feet on action, the court ruled again on the matter in *Mount Laurel II* (1983), which established an enforcement mechanism known as a “builder’s remedy,” by which developers can bring suit against a municipality to change zoning so long as 20 percent of the development is dedicated to low- or moderate-income homes. Although implementation of the *Mount Laurel* decision has often proven difficult, thousands of low-income families who have been allowed to move to low-poverty neighborhoods as a result of the decision and have benefited greatly.<sup>65</sup> (See discussion below).

Still, despite the *Mount Laurel* case’s positive effect on the life chances of disadvantaged children, the 1975 decision subsequently has been followed by similar actions in only a relatively small number of states. Among the few promising decisions are *Associated Home Builders, Inc. v. Livermore* (1976), in which the California Supreme Court declared that where an “ordinance may strongly influence the supply and distribution of housing for an entire metropolitan region, judicial inquiry must consider the welfare of that region”; and *Britton v. Chester* (1991), in which the New Hampshire Supreme Court struck down Britton’s exclusionary zoning ordinance. The court in New Hampshire held that each municipality must provide a “realistic opportunity” for construction of their “fair share” of affordable housing.<sup>66</sup>

## 2. Policy Initiatives



Policy efforts to reduce economic discrimination in the form of exclusionary zoning have also had only modest success. While the Fair Housing Act prohibits discrimination on the basis of a long list of categories—including race, disability, sex, and religion—it does not extend to income. There is no federal legislation comparable to the 1968 race-based Fair Housing Act that similarly speaks to class-based discrimination in zoning. The closest thing to a fair housing act for low-income people was an ill-fated 1970 proposal advanced by Richard Nixon’s secretary of housing and urban development George Romney. Romney’s proposed Open Communities program would have withheld federal infrastructure aid to jurisdictions that employed exclusionary zoning discriminating against poor or minority people.<sup>67</sup> But as Nikole Hannah-Jones outlines in an extensive article on the topic,<sup>68</sup> Nixon, fearing a backlash, killed the program.<sup>69</sup>

On a more modest level, some states, such as Massachusetts, Texas, Nevada, and Mississippi, are beginning to provide preferences for low-income tax credits that go to high opportunity neighborhoods. Nevada, for example, provided points in its competition for tax credits to developments not close to other subsidized housing. A 2015 report by the Department of Housing and Urban Development of QAPs in twenty-one states, found that 40 percent of Nevada housing tax credit units were in high-opportunity, low-poverty neighborhoods, compared with only 2.3 percent of housing tax credit units in nearby Arizona.<sup>70</sup>

A more popular initiative has been to promote “inclusionary zoning” policies. Curtailing exclusionary zoning would reduce outright discrimination against low-income and working-class families, whereas inclusionary zoning goes a step further. Under such programs, a developer must set aside a portion of new housing units to be affordable for low- and moderate-income residents. In exchange, the developer receives a “density bonus,” allowing him or her to develop a larger number of high-profit units than the area is zoned for. This benefit for developers has proven critical to the idea’s political acceptance. Among the states most dedicated to inclusionary zoning are New Jersey, Massachusetts, Maryland, and California.<sup>71</sup> In all, about 400 municipalities have inclusionary zoning programs.<sup>72</sup> According to researcher David Rusk, 11 percent of Americans now live in jurisdictions with inclusionary zoning policies nationally.<sup>73</sup>

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**Curtailing exclusionary zoning would reduce outright discrimination against low-income and working-class families, whereas inclusionary zoning goes a step further.**

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A leading example is Montgomery County, Maryland, which adopted a groundbreaking program in 1974. Under the policy, when a developer builds more than a certain number of units, 12.5 percent to 15 percent of a developer’s new housing stock must be affordable for low-income and working-class families. Between 1976 and 2010, the program



produced more than 12,000 moderately priced homes, of which the housing authority has the right to purchase one-third for public housing.<sup>74</sup> Research suggests the program has had an important positive effect on student achievement. (See further information below.) Yet almost 90 percent of American municipalities lack any inclusionary zoning policies.

In the 1990s, the federal government enacted the Moving to Opportunity (MTO) program, a modest experiment to de-concentrate poverty in a few jurisdictions. Based in part on the successful results stemming from Chicago's Gautreaux program, the Clinton Administration sought to rigorously test the effects of Section 8 voucher holders who move to low-poverty areas. The experiment, run by the U.S. Department of Housing and Urban Development between 1994 and 1998, randomly assigned 4,604 families living in high-poverty housing projects in five major cities to one of three groups: those receiving a voucher to move to a census tract with a poverty rate below 10 percent, those receiving a voucher to live anywhere, and a control group that was not offered a voucher to move.<sup>75</sup> Initial research questioned the effects of MTO, but the longer term effects are much more positive. Still, the program was relatively small and was discontinued in the 1990s.

Finally, a number of states and localities have passed legislation to ban discrimination based on "source of income"—that is, discrimination against individuals using government subsidies to pay for part of their rent. According to the Poverty and Race Research Action Council, as of May 2017, fourteen states and sixty localities had passed legislation to bar source of income discrimination.<sup>76</sup>

Each of these important integration efforts—the Mount Laurel program in New Jersey, inclusionary zoning policies in a small number of jurisdictions, and the Moving to Opportunity program—were pursued against a much larger number of exclusionary public policies that push in the opposite direction.

## The Imbalance in the Fights against Racial and Income Segregation Matters

The failure to fight class segregation with the same ferocity as efforts to combat racial segregation has had significant consequences for our culture, and clearly on levels of housing segregation.

### *Impact on Culture*

Culturally, efforts by local, state, and federal agencies to passively allow or authorize economic exclusion carries significantly less stigma properly associated with explicit racial exclusion. Indeed, even as open racial discrimination became less acceptable, the nation has seen a rise in the "gated communities" phenomenon, in which private guards and

extensive fences literally exclude less-advantaged Americans.<sup>77</sup> What U.C. Berkeley's Robert Reich has termed "secession of the successful" has, if anything, accelerated during the same era in which racial exclusion has become delegitimized.<sup>78</sup>

## *Impact on Segregation*

The effect of exclusionary policies—and the cultural attitudes that are shaped by policies—can be demonstrated empirically. Exclusionary zoning policies are linked directly to rising income segregation. Researchers find that skyrocketing income segregation is partly related to exploding income inequality generally, but it is also, as Rutgers professor Paul Jargowsky notes, the result of policy. "Our highly dispersed and profoundly unequal distribution of housing is not inevitable; indeed, it is not the norm around the world."<sup>79</sup>

Some of the best evidence compares jurisdictions with and without exclusionary policies and measures levels of income segregation. An important 2010 study of fifty metropolitan areas by Jonathan Rothwell of the Brookings Institution and Douglas Massey of Princeton University suggests a causal relationship between density zoning and income segregation.<sup>80</sup> In another study, Rothwell concludes that local and exclusionary land-use regulations are largely responsible for differences in racial segregation between cities.<sup>81</sup>

Of course, if exclusionary zoning were ended, barriers would still exist to income integration: apartments in low-poverty neighborhoods would still be more expensive than apartment units in high-poverty neighborhoods. But in many cases the difference in the affordability is surprisingly small. In Milwaukee, as Matthew Desmond notes in his book *Evicted*, the median rent for a two-bedroom apartment in a recent year was \$600, but the variation was exceedingly small. Ten percent of units rented at or below \$480, he noted, while 10 percent of units were at or above \$750. "A mere \$270 separated some of the cheapest units in the city from the most expensive," he writes. "That meant that rent in some of the worst neighborhoods was not drastically cheaper than rent in much better areas." In one high-poverty neighborhood, median rent was only \$50 less than the city-wide median.<sup>82</sup>

## *Trends in Racial and Income Segregation*

What are the trends in racial and economic segregation? Evidence suggests racial segregation remains high, but it is headed downward slowly, while income segregation is rising.

### **1. Racial Segregation Remains High**

Given the powerful ways in which American government socially engineered racial segregation through the first two thirds of the twentieth century—through racial zoning, racially restrictive covenants, FHA redlining, and police tolerance

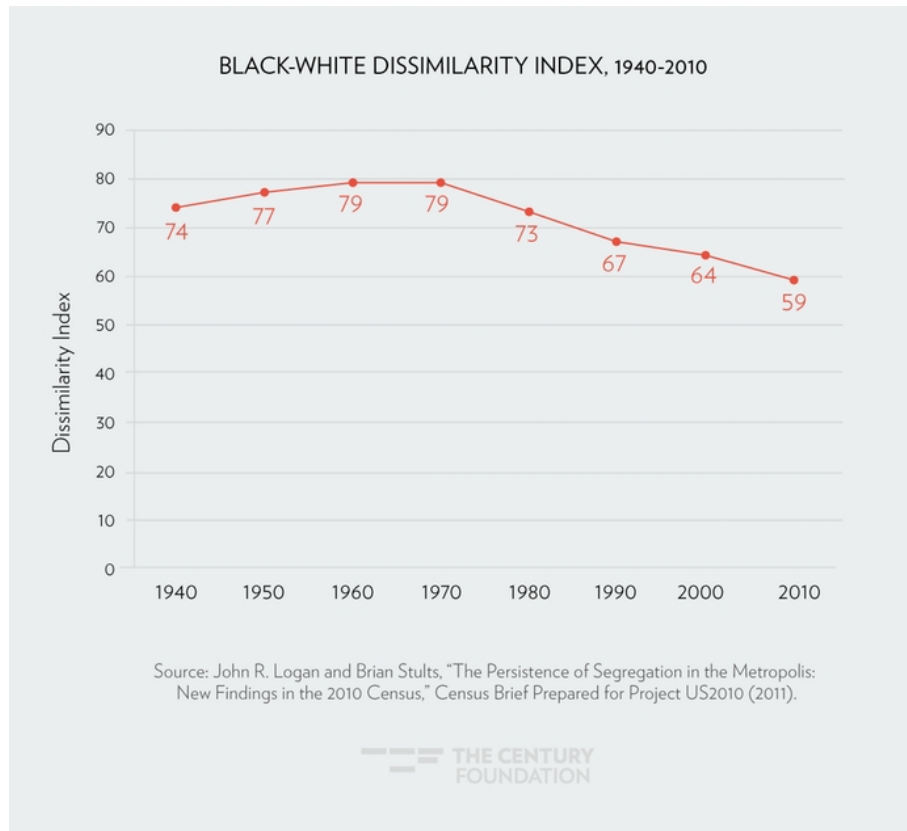
of white mob violence—it is not surprising that racial residential segregation remains pervasive. Indeed, racial segregation today is still greater in magnitude than economic segregation, according to a 2012 report by the Pew Foundation.<sup>83</sup>

As discussed further below, poverty concentration in America remains highly racialized. Middle-class African-Americans are more likely to live in high-poverty neighborhoods than poor whites. Indeed, sociologist Patrick Sharkey finds that middle-class African-Americans earning \$100,000 or more per year live in neighborhoods with the same disadvantages as the average white household earning less than \$30,000 per year.<sup>84</sup>

## 2. Racial Segregation Is Slowly Declining

While racial segregation remains high, the good news is that fifty years of fair housing policies and a century's worth of court decisions curtailing race-based zoning policies appear to be having a positive effect. The trajectory on racial segregation is headed in the right direction, as neighborhoods have slowly become less racially isolated. Although racial segregation can be measured in five ways and sometimes yields different results,<sup>85</sup> a 2002 Census report found that between 1980 and 2000, black/white segregation declined on all five measures.<sup>86</sup> More recently, John Logan and Brian Stults of Brown University found that the black/white dissimilarity index (in which 0 is perfect integration and 100 is absolute segregation) has declined from 79 in 1970, to 59 in 2010 (see Figure 2).<sup>87</sup>

**FIGURE 2**

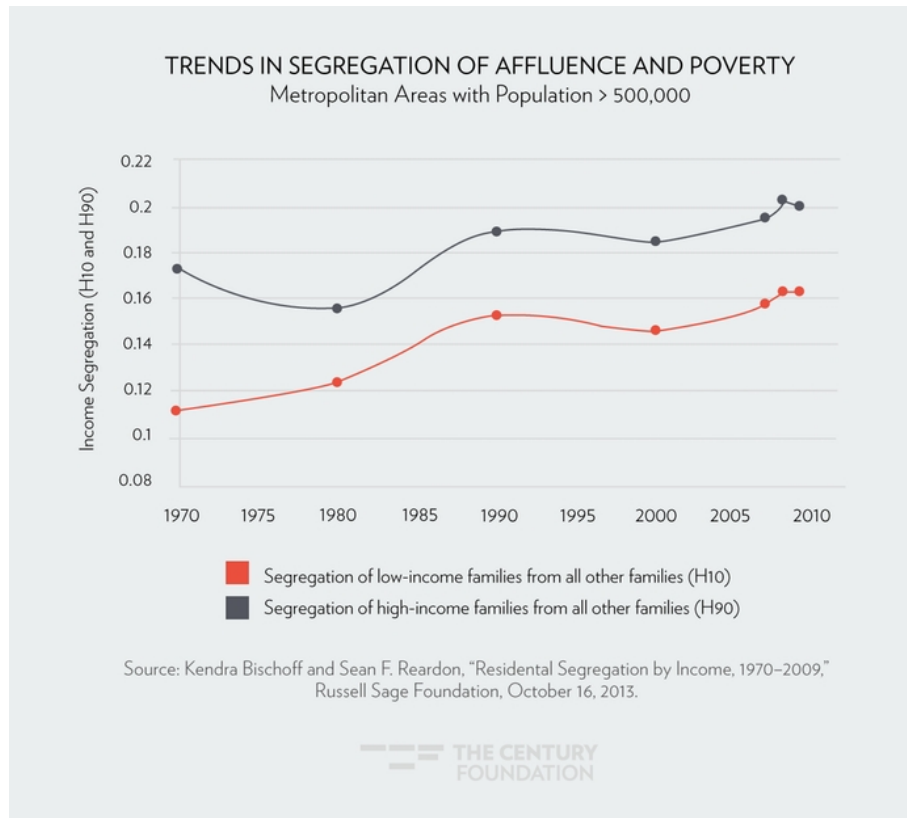


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### 3. Income Segregation Is Rising

Given that exclusionary zoning, unlike racial zoning, is still perfectly legal in most of the country, it is perhaps not surprising that income segregation is on the rise. Income segregation, Putnam notes, “was significantly higher in 2010 than it was in 1970.”<sup>88</sup> In a 2013 study for the Russell Sage Foundation, Stanford University’s Sean F. Reardon and his colleague Kendra Bischoff find that income segregation has grown significantly, for both low-income and, particularly, for high-income families. Looking at the segregation of families (households where children and guardians are present) over the past four decades in 117 metro areas that had a population of at least 500,000 in 2007, the authors found that family income segregation has steadily grown in every decade from 1970 to 2009, with the growth from 2000 to 2009 being the most significant, particularly among black and Hispanic families (see Figure 3).<sup>89</sup>

**FIGURE 3**



[Download](#)

Three phenomena are apparent. First, research finds that the rich are pulling away from the middle class.<sup>90</sup> Second, poverty is becoming more concentrated, and the number of high-poverty census tracts is on the rise. In a 2015 Century Foundation report, Paul Jargowsky found that “the number of people living in high-poverty ghettos, barrios, and slums has nearly doubled since 2000, from 7.2 million to 13.8 million,” and these increases “were well under way before the Great Recession began.”<sup>91</sup> Third, income segregation is rising particularly among families with children. As Ann Owens of the University of Southern California has demonstrated, income segregation grew primarily among families with children compared with those without children between 1990 and 2010.<sup>92</sup> Taking the income and racial trends in tandem, David Rusk argues that “we are substituting Jim Crow by race with Jim Crow by income.”<sup>93</sup>

## Why Exclusionary Zoning Should Be Curtailed or Eliminated

As this report has shown, racial and economic segregation have been socially engineered. Furthermore, efforts to fight racial segregation have been relatively more effective than efforts to fight income segregation, meaning that while racial segregation is slowly declining, income segregation is on the rise. But why should these trends matter to policymakers? They matter because significant research suggests that exclusionary zoning and the income segregation it fosters causes significant harm to communities and individuals. And conversely, evaluations of a number of modest efforts to make

neighborhoods more inclusive have yielded positive benefits, both for low-income and middle-class families.

## *The Harms of Exclusionary Zoning*

Today, there are three major harms associated with exclusionary zoning: (1) it inhibits the Fair Housing Act's effort to combat racial bias; (2) excluding people from neighborhoods and communities according to socioeconomic status, whatever the color of their skin, reduces their life chances of success; and (3) exclusionary zoning contributes to the housing affordability crisis in America.

### 1. Exacerbating Racial Segregation

Eliminating exclusionary zoning across the country is a critical piece of the civil rights movement's unfinished business, in part because the motivation for exclusionary zoning was often racial animus. Moreover, whatever the motivation today, exclusionary zoning has the effect of segregating Americans along racial lines. One study by Harvard researcher Matthew Resseger finds that in Massachusetts, Census blocks "zoned for multi-family housing have black population shares 3.36 percentage points higher and Hispanic population shares 5.77 percentage points higher than single-family zoned blocks directly across a border from them."<sup>94</sup>

The perpetuation of racial segregation also has a profound effect on the ability of African Americans to accumulate wealth. Houses appreciate less rapidly in predominantly black neighborhoods, which helps explain why the black/white wealth gap is so much larger than the black/white income gap. Median income for black households is 60 percent that of white households, while black median household net worth is just 5 percent of white median household net worth.<sup>95</sup>

In a nation with extensive exclusionary zoning, people of color disproportionately live in concentrated poverty compared with poor whites. As Paul Jargowsky found in 2015: "More than one in four of the black poor and nearly one in six of the Hispanic poor lives in a neighborhood of extreme poverty, compared to one in thirteen of the white poor."<sup>96</sup> Nationally, Patrick Sharkey notes, African American children are eleven times as likely to grow up in poor neighborhoods as whites (66 percent versus 6 percent).<sup>97</sup>

### 2. Exacerbating Income Segregation

Moreover, exclusionary zoning by income is wrong, even when there is no racial motivation, because it is unfair to exclude working-class and poor people of any color from entire neighborhoods. Excluding fellow humans who make less money from living anywhere in a community betrays ugly sentiments, just as excluding by race does. And it does real harm to the adults and children who are excluded.

The hypocrisy of eagerly inviting low-income individuals into communities to provide vital child and elderly care, or work in jobs from landscapers to waitresses to checkout clerks—while effectively zoning them out from living anywhere in the community—should be more broadly exposed and reconciled.<sup>98</sup> As David Rusk has argued, “Anyone good enough to work here is good enough to live here.”<sup>99</sup>

If, after a long struggle, Americans have come to a point where it is culturally unacceptable to zone a community by race, why is it acceptable to effectively discriminate against low-income and working-class families through exclusionary zoning? Using public policy to treat all working-class or low-income people as “undesirable” neighbors—the way it had been used to treat minority racial and religious groups—is untenable. Some will argue that race is different than class; one is born with race, while one’s economic status is a matter of personal character. The subtext is that low socioeconomic status is the fault of the individual. But there is a growing body of research to suggest that luck plays a much bigger role in determining socioeconomic status than previously believed. Furthermore, with social mobility levels in the United States low and getting lower, the class status of your parents has an enormous impact on one’s life chances; in that sense, the distinct line traditionally drawn between inheritance of race and inheritance of class has blurred.<sup>100</sup> Moreover, even if one believes it is appropriate to exclude low-income and working-class people from neighborhoods because their economic status is their own fault, in what moral universe is it acceptable to exclude a five-year-old child from a good neighborhood and its good public school because they “chose the wrong parents”?

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**Even if one believes it is appropriate to exclude low-income and working-class people from neighborhoods because their economic status is their own fault, in what moral universe is it acceptable to exclude a five-year-old child from a good neighborhood and its good public school because they “chose the wrong parents”?**

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While the market discriminates by income at the individual unit level, what bias motivates governments to exclude individuals from entire neighborhoods? And why does this class-based discrimination persist in the face of evidence suggesting that economic isolation does significant harm to adults and children alike?

Excluding families from neighborhoods (and accompanying schools) is harmful for adults, and, especially, for children who are denied the opportunity to grow up in high-opportunity neighborhoods and attend socioeconomically integrated



schools. Beginning with sociologist William Julius Wilson's pioneering work, a number of researchers have established the strong harms associated with poverty concentrations. There are disadvantages associated with family poverty, of course, but there is an additional layer of disadvantage associated with growing up in neighborhoods where many other people are poor as well. Douglas Massey and Nancy Denton, in their classic book, *American Apartheid*, note: "where one lives—especially where one grows up—exerts a profound effect on one's life chances. Identical individuals with similar family backgrounds and personal characteristics will lead very different lives and achieve different rates of socioeconomic success depending on where they reside."<sup>101</sup>

Adults in high-poverty neighborhoods are often cut off from transportation and jobs, which can have a crippling effect on families. As Sherrilyn Ifill, president of the NAACP Legal Defense and Education Fund, has noted, if a parent does not live in a neighborhood with good transportation options, it can take up to two hours to commute. That can mean less time to help nurture a child after work.<sup>102</sup> Miss one bus exchange, and a worker can get fired for showing up late, with devastating effects on the whole family. Families in poor neighborhoods are also often cut off from health care. To take one example, Bethesda Maryland, an affluent suburb of Washington, D.C., has one pediatrician for every 400 children, compared to poor and predominantly black Southeast D.C., where there is one pediatrician for every 3,700 children.<sup>103</sup>

Children in particular face disadvantages in high-poverty neighborhoods, as decades of research has shown.<sup>104</sup> For example, a 2008 study by Robert Sampson of Harvard, Patrick Sharkey of New York University, and Stephen W. Raudenbush of the University of Chicago found that growing up in high-poverty neighborhoods had the effect for African-American children of reducing verbal ability later in life on the order of one year of schooling.<sup>105</sup>

As Putnam notes, living in a poor neighborhood is associated with reduced educational opportunities, diminished health outcomes, and lower levels of civic engagement.<sup>106</sup> There is also more communal parenting in wealthier areas, and higher levels of social trust.<sup>107</sup>

Low-income students stuck in high-poverty schools are surrounded by: (1) peers who, on average, are less academically engaged and more likely to act out than those in middle-class schools; (2) a community of parents who are less actively involved in school affairs; and (3) weaker teachers who have lower expectations for students.<sup>108</sup> High-poverty schools are twenty-two times less likely to be high achieving as middle-class schools.<sup>109</sup> And low-income students in high-poverty schools are two years behind low-income students in low-poverty schools on the National Assessment of Educational Progress in mathematics in fourth grade.<sup>110</sup>

### 3. Exacerbating the Affordability Crisis

Exclusionary zoning imposes an additional harm: it artificially drives up the price of available housing units. Dense housing is more affordable than single-family homes for four reasons: (1) because density provides more units per acre, land costs are cheaper for the developer; (2) dense units (such as apartments) have fewer exterior walls, which keeps construction costs lower; (3) compact developments reduce infrastructure costs for trunk lines and treatment facilities; and (4) dense housing increases overall supply relative to demand, resulting in lower prices for consumers. As writer Brent Toderian notes, “Not all dense housing is affordable, but all affordable housing is dense.”<sup>111</sup>

Progressive and conservative economists generally agree that the government constraint on housing supply that exclusionary zoning imposes distorts markets and artificially raises rents and home prices. Right-leaning economist Edward Glaeser argues in the Manhattan Institute’s *City Journal* that eliminating exclusionary zoning would make housing cheaper, citing the relatively lower prices in Houston, which is among the least-regulated housing markets compared with other cities.<sup>112</sup> He and his colleague Bryce Ward have found that “each extra acre of minimum lot size decreases new construction by roughly 40 percent and increases housing prices by roughly 10 percent.”<sup>113</sup> Likewise, conservative economist Joseph Gyourko of the Wharton School estimates that excessive zoning has pushed real house prices a staggering 56 percent above real construction costs.<sup>114</sup>

Meanwhile, on the center-left, Jason Furman, the chair of President Obama’s Council of Economic Advisors, favorably cited Gyourko’s research in arguing against excessive zoning.<sup>115</sup> And no less a liberal than Lyndon Johnson created a commission in 1968 to address the ways in which zoning was artificially inflating housing prices, reducing affordability for low and moderate-income families.<sup>116</sup> (Anti-density efforts also encourages sprawl, which is bad for the environment—an issue discussed later in this report.)

## *Benefits of Mixed-Income Neighborhoods and Schools*

Research has established not only the harms associated with living in high-poverty neighborhoods and attending high-poverty schools, but also the benefits for students of all backgrounds of living in mixed-income neighborhoods and attending mixed-income schools. Research involving four housing interventions stand out: (1) Montgomery County’s 1974 inclusionary zoning policy; (2) Mount Laurel, New Jersey’s 1975 “fair share” intervention; (3) Chicago’s 1976 housing integration program spurred by the *Gautreaux* litigation; and (4) the results of the 1990s Moving to Opportunity programs in several cities. This section of the report then concludes with a discussion of the benefits of integration for middle-class children and adults.

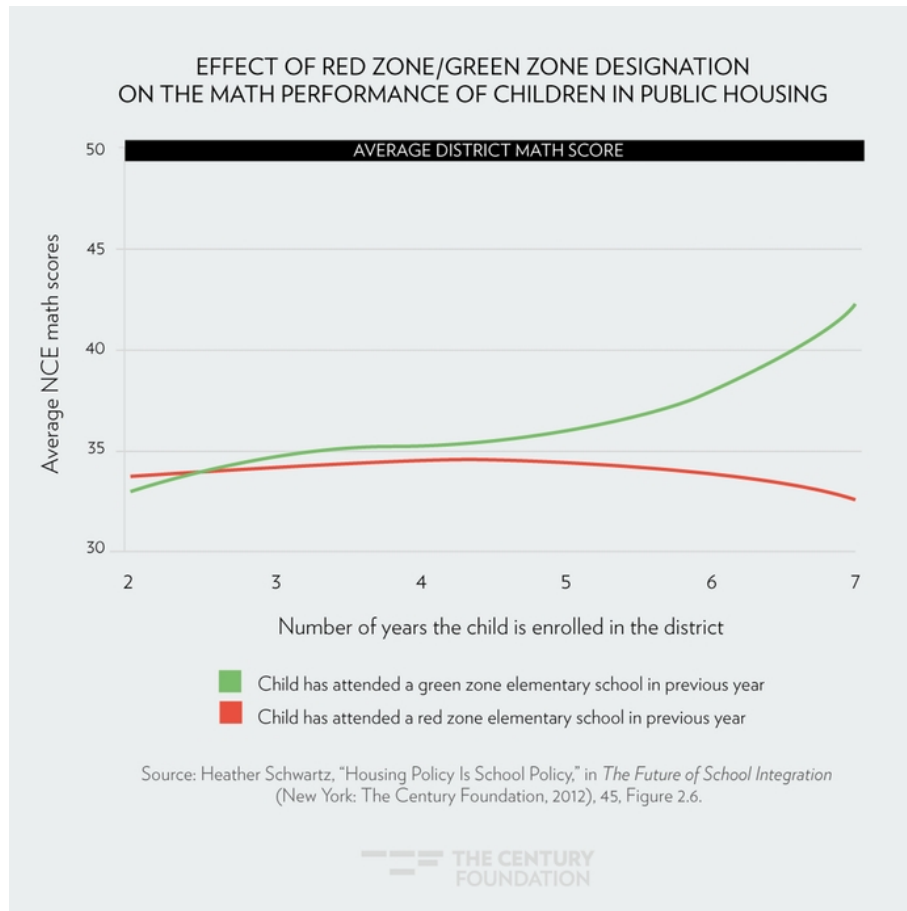
### 1. Montgomery County, Maryland (1974)

As outlined earlier, Montgomery County established the first nation's inclusionary zoning program in 1974. More than three decades later, Heather Schwartz of the RAND Corporation compared the effects of inclusionary zoning within Montgomery County on academic outcomes of elementary school students compared with a parallel county strategy to help low-income students by providing compensatory spending in higher-poverty schools.<sup>117</sup> (Beginning in 2000, the school district began spending about \$2,000 extra per pupil in higher-poverty schools for all-day kindergarten, reduced class sizes, and investments in teacher development.)

Schwartz examined 858 children randomly assigned to subsidized housing units scattered throughout Montgomery County and enrolled in Montgomery County public elementary schools between 2001 and 2007 and asked: Who performed better—subsidized housing students in higher-poverty neighborhoods where schools have extra financial resources, or students in lower-poverty schools that spend less?

Over time, low-income public housing students in low-poverty (“green zone”) schools performed at 0.4 of a standard deviation better in math than low-income public housing students in higher-poverty (“red zone”) schools with more resources. Because educational interventions typically have an effect size on the order of 0.1 of a standard deviation, the outcomes in Montgomery County are considered quite powerful. Low-income students in “green zone” schools cut their large initial math gap with middle-class students in half. The reading gap was cut by one-third. Schwartz estimates that most of the effect (two-thirds) was due to attending low-poverty schools, and some (one-third) was due to living in low-poverty neighborhoods. (See Figure 4.)

#### FIGURE 4



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## 2. Mount Laurel, New Jersey (1975)

The New Jersey Supreme Court's 1975 decision requiring Mount Laurel to accommodate its "fair share" of low- and moderate-income families also provided an opportunity to evaluate, many years later, how well the children in subsidized housing in the community fared. Consistent with other research, Princeton scholar Douglas S. Massey and his coauthors found in their book, *Climbing Mount Laurel: The Struggle for Affordable Housing and Social Mobility in an American Suburb*, that children in subsidized housing who moved to Mount Laurel performed better than those who applied but could not be accommodated because of space constraints.<sup>118</sup>

As Robert Putnam notes, under *Mount Laurel*, "poor kids whose families were moved into a more affluent area achieved higher test scores and went further in school than comparable kids who were not moved."<sup>119</sup> David Kirp, writing in the *New York Times*, summarizes the findings: Children who moved to Mount Laurel "have also fared better. They study twice as many hours and spend more time reading. That extra effort is paying off—even though their schools are more academically rigorous, they earn slightly better grades."<sup>120</sup>

### 3. Chicago, Illinois Gautreaux Program (1976)

In 1976, after a long legal battle, the U.S Supreme Court upheld a remedy to racial segregation in Chicago that gave low-income African Americans a chance to move to low-poverty neighborhoods in surrounding suburbs in the *Gautreaux* litigation. In 1991, James Rosenbaum and colleagues found in their study of Chicago's program that inner-city students whose families moved to publicly subsidized housing in the affluent suburbs as part of the court-ordered housing discrimination remedy were much more likely to succeed than similar students whose families moved instead to other parts of Chicago. The students who moved to the suburbs were four times less likely to drop out (5 percent versus 20 percent), almost twice as likely to take college preparatory courses (40 percent versus 24 percent), twice as likely to attend college (54 percent versus 21 percent), and almost eight times as likely to attend a four-year college (27 percent versus 4 percent). Because 95 percent of movers chose the first available placement, whether in the city or in the suburb, the greater success of suburban movers is unlikely to be heavily influenced by self-selection. Indeed, researchers have lauded the Gautreaux finding as particularly reliable because the study involves a "natural experiment" of virtually random placement.<sup>121</sup>

A similar desegregation remedy in Baltimore—the Baltimore Housing Mobility Program—was established in 2003 as a result of the *Thompson v. HUD* litigation.<sup>122</sup> Stefanie DeLuca, Anna Rhodes, and Philip M.E. Garboden of Johns Hopkins University followed 1,423 families with school-aged children between 2003 and 2012 and found that students "began performing better on standardized tests than they would have in the absence of the program. . . . Within five years students showed statistically significant improvement in their test scores."<sup>123</sup>

### 4. Federal Moving to Opportunity Program in Several Cities (1990s)

Moving to Opportunity, the federal experiment that allowed families to move to low-poverty neighborhoods in the 1990s, has also shown positive effects, particularly over the long term. The initial studies on outcomes for children showed very modest effects for the children of families able to move to low-poverty neighborhoods. But when researchers looked more closely, the results were not surprising—because the treatment group attended schools that were not much different than the schools attended by the control group. In the treatment group, 67.5 percent of classmates were low-income compared with a control group attending schools with 73.9 percent of students receiving subsidized lunches.<sup>124</sup>

More recent research on the longer term effects of MTO has been far more favorable. In a May 2015 National Bureau of Economic Research working paper, Raj Chetty, Nathaniel Hendren, and Lawrence F. Katz found that the adult outcomes of moving to a low-poverty neighborhood were significant for those who moved as children before the age of 13. The total

mean income as adults for early movers was 31 percent higher than for the control group. The researchers also observed a 16 percent increase in the likelihood of attending college between the ages of 18 and 20.<sup>125</sup>

## 5. Benefits to Middle-Class Children and Adults

There is a growing body of evidence to suggest that the benefits of diversity by race and class run in all directions—to middle-class and white families as well as minority and low-income families. As Amy Stuart Wells of Teachers College, Columbia University and her colleagues Lauren Fox and Diana Cordova-Cobo note in a 2016 Century Foundation report, there is increasing evidence that “diversity makes us smarter,” a finding that selective colleges long ago embraced and increasing numbers of young parents are coming to appreciate at the K–12 level.<sup>126</sup> The authors write: “researchers have documented that students’ exposure to other students who are different from themselves and the novel ideas and challenges that such exposure brings leads to improved cognitive skills, including critical thinking and problem solving.” Families are beginning to realize, as researcher Eugene Garcia notes, “When a child comes to school for the first time he/she comes with a little suitcase full of experiences (language and culture) that he/she had before coming to school.” All students benefit when a teacher says, “Welcome, let’s open that little suitcase and see what you have so you can share and we can learn from you.”<sup>127</sup>

Apart from the cognitive benefits, there are additional reasons increasing numbers of middle-class families now want to send their children to diverse schools. Middle-class and white millennials realize that their children are growing up in a very different country, demographically, than previous generations. For the first time since the founding of the republic, a majority of public school K–12 pupils in the United States are students of color. Students can learn better how to navigate adulthood in an increasingly diverse society—a skill that employers value—if they attend diverse schools. Ninety-six percent of major employers, Wells, Fox, and Cordova-Cobo note, say it is “important” that employees be “comfortable working with colleagues, customers, and/or clients from diverse cultural backgrounds.”

Middle-class adults, too, can benefit from the greater density, and income and racial integration of neighborhoods that comes from the elimination of exclusionary zoning. With density and diversity comes a rich variety of food offerings, and the opening of public transportation (which requires density to create demand), to name just two.

## Combating Segregation in Its Many Forms

If American society is once again experiencing the problems that come with increasing segregation, what should be done? The problems of racial and economic segregation are complex and deeply rooted and cannot be fixed with a single remedy. What is needed is a multi-pronged strategy, one that includes strengthening many familiar approaches and

ideas; but, also, to combat the surge in economic segregation, we probably need a big new idea.

## *A Multipronged Approach*

As a first step, the Fair Housing Act to combat racial discrimination should be strengthened—for example, to provide funding for more testers who can ferret out and punish landlords who discriminate. More funding for lawsuits targeting public housing authorities such as the *Gautreaux* litigation in Chicago would probably help, as well as would more disparate impact suits, and strong compliance with the new Affirmatively Furthering Fair Housing regulations.<sup>128</sup>

Inclusionary zoning programs of the type used in Montgomery County, Maryland should be expanded to more communities, particularly those experiencing gentrification. Likewise, housing mobility programs such as Moving to Opportunity should be expanded. Laws prohibiting source-of-income discrimination should be passed in additional states. *Mount Laurel*-type fair share lawsuits should be filed in more states. And state housing tax credit rules should encourage integration rather than create concentrated poverty.

## *A New Idea: A Federal Economic Fair Housing Act*

In addition to strengthening existing strategies, we need a new policy tool that updates state and federal fair housing acts to frontally assault exclusionary zoning. We need an Economic Fair Housing Act that seeks to diminish or even end exclusionary zoning. This legislation should first be implemented at the state level in progressive jurisdictions. Over time, if successful, these state-level efforts could build to a federal effort.

The concept of an Economic Fair Housing Act is straightforward: just as it is illegal to discriminate in housing based on race, it should be illegal for municipalities to employ exclusionary zoning policies (such as banning apartment buildings, townhouses, or houses on modest size lots) that discriminate based on income and exclude the non-rich from many neighborhoods, and their associated schools.<sup>129</sup> At the individual housing unit level, free market forces would continue to discriminate by income, because some apartments and houses will be more expensive than others—that simply is what markets do. But government zoning policies should not, on top of that, discriminate based on income by rendering off limits entire communities where it is impossible to rent an apartment, live in a townhouse, or purchase a home on a modest plot of land.

An Economic Fair Housing Act would harness not only liberal arguments about equity, but also conservative principles tied to liberty: the government should get out of the way and allow individuals to build at greater density levels than exclusionary zoning allows.



One alternative to a complete ban on exclusionary zoning would be a federal (or state) policy to reduce the amount of mortgage interest that a family can deduct in jurisdictions that practice exclusionary zoning, as the University of North Carolina's John Boger has suggested.<sup>130</sup> Another variation would bar federal funding for infrastructure to municipalities that insist on exclusionary zoning policies. For example, HUD currently allocates \$50 billion for a variety of forms of public housing, including \$5 billion in Community Planning and Development Grants. Although exclusive suburbs do not often rely on these housing grants, there are other federal spending programs that can provide leverage over wealthy communities.<sup>131</sup>

More broadly, an Economic Fair Housing Act should also declare that it is the policy of the United States to have highly integrated neighborhoods and authorize significant spending to advance that goal.

## *State Level Approaches*

In the current political environment in Washington, it makes sense to begin to plant the seeds for eventual federal action by systematically enacting economic fair housing legislation in states that are willing. New Jersey and Massachusetts are leaders in fighting exclusionary zoning.<sup>132</sup> California and the Washington, D.C.-Maryland-Virginia area are leaders on inclusionary zoning.<sup>133</sup> Illinois also has progressive legislation that extend property tax deductions to landlords in wealthier neighborhoods who agree to rent to low-income holders of Section 8 housing vouchers.<sup>134</sup> These, and other states, represent important starting places for the larger effort.

## Addressing Objections about an Economic Fair Housing Act

Concerns will be raised on both the left and right about the idea of an Economic Fair Housing Act that curtails exclusionary zoning. First, there will be concerns about the effect on property values, crime rates, school quality, and the “character” of affluent neighborhoods. In addition, progressives will point out that increasing density by itself is insufficient to fully promote affordability and reduce segregation, while some conservatives will suggest that such federal action would represent overreach. There are reasonable responses to each of these concerns.

### *Responding to Fears about Property Values*

Propping up property values is at the heart of why exclusionary zoning programs have been created in the first place, and a reduction in those values is the central fear about curtailing snob zoning. Policies of exclusion have long been justified as a way to protect against “the deteriorating influence of undesirable neighbors.”<sup>135</sup> So what will happen when people from all walks of life have greater access to neighborhoods that in the past have, though the power of government

regulation, excluded them? The evidence suggests that property values could modestly decline in exclusive areas, primarily as a result of racial integration, but this would also make property more affordable and in line with genuine market values. Four observations are in order.

First, fears about large reductions in property values are overblown. Research on programs that introduce affordable housing to neighborhoods generally finds small effects on property values—and that reductions can be mitigated by taking steps to ensure a positive transition. Columbia University’s Lance Freeman and Baruch College’s Hilary Botein’s 2002 literature review, for example, found that there is no conclusive evidence that affordable housing reduces property values.<sup>136</sup> San Francisco State University’s Mai Thi Nguyen’s 2005 overview of seventeen studies finds negative effects on property values are small, and can be mitigated by making sure the architecture is compatible with the neighborhood’s existing architecture and is not concentrated.<sup>137</sup> More recently, in 2013, the University of Chicago’s Len Albright and Princeton University’s Elizabeth Derickson and Douglas Massey published an analysis of the effects of the Mount Laurel affordable housing development on local property values. The study took advantage of a quasi-experiment that compared property values in Mount Laurel with similar townships that “did not experience the sudden opening of a 100 percent affordable housing project.” The authors found no statistically significant differences between property value trends in Mount Laurel and the control townships. The results may be explained by the fact that Mount Laurel affordable housing residents had to go through extensive screening that included criminal backgrounds checks, and that the property was well maintained and aesthetically similar to surrounding areas.<sup>138</sup>

Second, to extent that ending exclusionary zoning will in fact diminish property values in some predominantly white communities, evidence suggests reductions are likely to be triggered by prejudicial attitudes—a clearly impermissible grounds for justifying exclusionary public policy in twenty-first-century America. A number of researchers have found that some whites remain distressingly uncomfortable with racial integration, and that the presence of African Americans of any socioeconomic background could reduce property values in homogenous communities.<sup>139</sup>

A 2008 study by researchers at the University of Illinois and University of Michigan, for example, sought to determine how information about neighborhood racial composition influenced perceptions of neighborhood quality. They found that preferences and perceptions were directly linked to the density of African Americans living there. In the study, researchers showed more than 600 randomly assigned white adults videos of four different neighborhoods: lower working class, blemished middle class (in which some houses were in disrepair), unblemished middle class, and upper middle class. In each of the neighborhoods, the videos showed residents who were either all white, all black, or both black and white. The characteristics of the homes and physical environments were identical, as were the activities performed by the people portrayed. The ages, styles of dress, and gender presentations of the black and white actors in the videos were also similar.

In four of the five dimensions tested—cost of housing, safety of neighborhood, future trajectory of property values, and quality of surrounding schools—whites who saw an all-white neighborhood ranked the neighborhood significantly more positively than whites who saw the identical neighborhood with all black residents. Mixed-race communities were viewed less favorably than all white communities, but more favorably than all black communities. Black neighborhoods received the worst assessments of all, regardless of whether the residents were poor or wealthy. The authors observe: “The perceptions of these communities are above and beyond the visible social-class characteristics of the neighborhood. Respondents are told nothing about these features, but they make negative presumptions. These presumptions do not derive from visible-social class characteristics, but from merely the observed presence of African Americans in the neighborhood.”<sup>140</sup>

Similarly, a 2004 study by Berkeley researchers Robert Cervero and Michael Duncan in Santa Clara County, California, found that racial diversity—unlike land-use diversity—lowered residential property values, even when controlling for factors like average household income. For two single-family residential homes identical in all other respects, the authors found, the one in the maximally diverse neighborhood could be expected to sell for \$5.14 less per square foot than one in a purely homogenous (white) neighborhood.<sup>141</sup>

If this research is correct in finding that race is a driving factor in determining property values—and if curtailing exclusionary zoning reduces property values because it opens up opportunities for African Americans—the anticipated drop in property values cannot be a cognizable rationale for keeping exclusionary policies in place. For years, racism was allowed to drive policy. The National Association of Real Estate Boards once suggested, “a realtor should never be instrumental in introducing into a neighborhood...members of any race or nationality...whose presence will clearly be detrimental to property values in the neighborhood.”<sup>142</sup> But since the 1968 Fair Housing Act, official policy has properly rejected the idea that entire groups of people are undesirable neighbors because of the color of their skin.

Third, to the extent that exclusionary zoning artificially props up property values by creating scarcity, as discussed earlier, curtailing such policies will have a healthy effect of bringing prices into line with market realities, and thereby reduce the housing affordability crisis. As noted above, there is a cross-ideological consensus among economists that government policies limiting the supply of housing through exclusionary zoning boost prices above what they would naturally be. Eliminating exclusionary zoning would not bring property values below market value; it would bring them to the market level. Millions of Americans who are now shut out of the housing market by artificially high prices would benefit.

Fourth, to the extent that curtailing unfair exclusionary zoning policies creates financial winners and losers, it may be possible to mitigate the losses to homeowners through a policy of home equity ownership insurance. Dartmouth economist William A. Fischel has argued that exclusionary zoning can be thought of as a kind of home equity insurance

for homeowners—a policy that reduces the risk that one’s property value will decline because of the introduction of new development. One way to address this anxiety, Fischel argues, is to offer homeowners insurance on their equity. This would free up policymakers to eliminate the harmful effects of exclusionary zoning—economic segregation, racial segregation, and housing unaffordability—while also reducing the risks of a policy change to existing homeowners.<sup>143</sup>

## *Responding to Fears about Crime*

After homeowners’ concerns about property values, a close second is the fear that economic and racial diversity will bring crime to wealthy, white neighborhoods, an idea sometimes stoked by the media. In 2008, for example, Hanna Rosin published a widely read piece in the *Atlantic* suggesting that after the demolition of a high-rise housing project in Memphis, Tennessee, former residents used housing vouchers to move to surrounding suburbs, and crime spiked in these areas as a result.<sup>144</sup>

A host of researchers, however, have debunked Rosin’s analysis. In 2011, for example, Ingrid Gould Ellen and Katherine M. O’Regan of New York University and Michael C. Lens of UCLA analyzed Rosin’s hypothesis by looking at longitudinal, neighborhood-level crime and voucher utilization data in ten large U.S. cities. They found that the relationship between the presence of additional housing voucher holders and elevated crime was not statistically significant after controlling for unobserved differences across census tracts and trends in the broader area.<sup>145</sup> In a separate 2013 analysis, Lens reviewed more than a dozen studies on crime and subsidized housing and concluded that “concentrated disadvantage is the chief culprit when subsidized housing affects crime.” Scattered-site public housing, by contrast, has little to no effect on neighborhood crime, he found.<sup>146</sup>

## *Responding to Fears about School Quality*

Research also suggests that economically diverse schools do not negatively affect the achievement of middle-class and high-income students and can, in fact, benefit the learning of middle-class students in important ways.<sup>147</sup> While the research suggests that sprinkling a few middle-class students into a school of highly concentrated poverty may hurt their academic achievement, students in a middle-class school—where a large portion of students are not eligible for free or reduced-price lunch—do not suffer declines in achievement with the presence of low-income students.<sup>148</sup> Studies show that integration is not a zero-sum game, in which gains for low-income students are offset by declines in middle-class achievement.<sup>149</sup> The research on racial integration found similar results: test scores of black students increased and white scores did not decline.<sup>150</sup>

Research suggests that low-income students can benefit in economically mixed schools and middle-class students are not hurt academically for two central reasons. First, a critical mass of middle-class students can set the tone in a

school.<sup>151</sup> Second, middle-class children are less sensitive to school influences (for good or ill) than low-income children. This “differential sensitivity” to school environment, one of the central findings of the 1966 Coleman Report, has been dubbed “Coleman’s Law.” The reason, Coleman explained, is that aspirations and achievement are more firmly rooted for those with stable family backgrounds, who might benefit from economic security, live in a two-parent household, or have resources for out-of-school educational enrichment; those with more unstable family backgrounds—who face food or housing insecurity, live in single-parent households, or spend less time under adult supervision, for example—are more open to the influence of peers. Other researchers have consistently confirmed this finding.<sup>152</sup>

Moreover, as noted above, students of all backgrounds, including those from middle-class families, benefit from learning in socioeconomically and racially diverse environments. Research suggests that the benefits of socioeconomic and racial integration flow both ways—to minority students and to whites; to low-income students and to wealthier students. As a “Brief of 553 Social Scientists” in the *Parents Involved in Community Schools v. Seattle School District* (2007) school integration case noted, “learning in diverse classrooms, where students from different backgrounds communicate their different experiences and perspectives, encourages students to think in more complex ways.”<sup>153</sup>

In addition, middle-class students benefit in integrated environments by learning to work with others unlike themselves—a twenty-first-century workplace skill highly valued by employers. Increasingly, business leaders are looking for employees who can work with others to come up with creative solutions. As one educator noted, “Einstein is dead. It’s not the lone genius but the laboratory team that has produced most of the new thoughts and inventions in the last half century.”<sup>154</sup>

As a result, one national survey of employers found that businesses are increasingly interested in entry-level employees who can “work in teams or participate in problem-solving groups.”<sup>155</sup> Not surprisingly, business groups have been strong supporters of socioeconomic integration plans in a number of communities. In La Crosse, Wisconsin, for example, business leaders advocated for socioeconomic integration of the schools because, they told teachers, “people have to be able to work together...The number one problem in the workplace is not not knowing your job or not knowing the skills for your job...It is people with skills not being able to get along with coworkers.”<sup>156</sup>

## *Responding to Fears about Changing the “Character” of Neighborhoods*

Neighborhood character is an amorphous concept that can include a variety of concerns that run the gamut from entirely legitimate to completely illegitimate. Neighbors indisputably affect the character and quality of life in a neighborhood. Having a cement factory or a chemical plant next door would mean more noise and possibly unpleasant smells. More neighbors of any kind mean more traffic and more difficulty in parking. For some, the presence of a smaller house in a

neighborhood of large houses is aesthetically displeasing. For some, the presence of a plumber's van or police officer's car in the driveway is undesirable. For others, the presence of black or Muslim neighbors in a white Christian neighborhood is upsetting.

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The proper role of zoning is to draw a line between what are permissible concerns and what are not. Today, public policy gives very wide discretion to local government to discriminate against others in virtually all categories, in part because the focus has been primarily on the interests of the property owners who exclude rather than the would-be residents who are excluded. There is a societal consensus that zoning by use—that is, industrial and commercial use versus residential use—is appropriate, and that zoning by race is not. When one reflects on the harm that racial zoning does to the rights and interests of the excluded families and children, it becomes clear that racial concerns are not permissible for zoning; likewise, the harm that exclusionary zoning does in residential neighborhoods should make it clear that we should move the line designating unacceptable zoning rationales to include the desire to limit the neighborhood's economic diversity.

### *Responding to Concern that Density Is Not Enough to Provide Opportunity*

Progressive critics will note (correctly) that ending exclusionary zoning will not by itself end economic housing segregation or the affordability crisis for many American families. If, for example, an area zoned for single family homes becomes open to multiple family units, a developer might build luxury townhomes or condominiums, as opposed to affordable apartments. More generally, new dense housing might be higher quality and more expensive than existing less-dense housing stock. In Silicon Valley, for example, developers in gentrifying areas have recently been introducing dense, but more expensive, new housing.<sup>157</sup> Because density by itself does not equal affordability, this report has suggested that the phase-out of exclusionary zoning should be accompanied by inclusionary zoning policies.<sup>158</sup> In any event, as the evidence presented above suggests, curtailing exclusionary zoning will have an important impact in and of itself because government policy, as much as the marketplace, drives economic segregation and the affordability crisis.<sup>159</sup>

### *Responding to Concerns about Local Control*

Some conservatives may object that an Economic Fair Housing Act—whether enacted by the federal government or states—would interfere with local zoning rights. Similar objections of federal overreach were lodged against the 1964

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Civil Rights Act. But in two landmark decisions—*Heart of Atlanta Motel Inc. v. U.S.* (1964) and *Katzbach v. McClung* (1964)—the U.S. Supreme Court upheld bans on racial discrimination in hotels and restaurants because both activities affected interstate commerce, which Congress is authorized to regulate under the Commerce Clause of the Constitution.<sup>160</sup> Moreover, the rights of localities to zone under the Constitution's Tenth Amendment are not unlimited. Going back to 1917, the U.S. Supreme Court invalidated local zoning ordinances that discriminate based on race. And the 1968 Fair Housing Act recognized that local control had to give way to a congressional policy forbidding discrimination based on race and other categories, such as disability (which was added in 1988). For example, while the courts have generally supported local ordinances that limit residential use to single families,<sup>161</sup> group home operators have used the amended Fair Housing Act as a tool to combat the exclusionary zoning of group homes. In the 1995 case *City of Edmonds v. Oxford House*, for example, the U.S. Supreme Court found that a zoning ordinance violated the Fair Housing Act when it attempted to limit the number of unrelated persons who could live in a dwelling zoned for single-family use, because no similar restrictions were imposed on residents of other types of dwellings.<sup>162</sup> Most recently, Congress unanimously passed the Religious Land Use and Institutionalized Persons Act of 2000, a law that came in response to an outcry from religious institutions that had faced discrimination when local governments denied zoning approval. Under the federal law, religious institutions can bring suits and receive injunctive or declaratory relief. Clearly, there is ample precedent for federal and state action along the lines of an Economic Fair Housing Act.<sup>163</sup>

## Building a Political Coalition

Opponents of exclusionary zoning, like opponents of school segregation, face an instinctive response from skeptics: “You make a strong moral and empirical case, but the politics are too tough to do anything.” In the case of school segregation, critics point to the backlash against compulsory busing in Boston in the 1970s. In the case of residential segregation, cynics point to the ill-fated attempt of George Romney to limit exclusionary zoning in 1970, which Richard Nixon quashed for political reasons.

But just as school integration advocates have learned a great deal about how to make integration politically palatable by employing incentives and public school choice, such as magnet schools, so too new strategies are available to fight exclusionary zoning in the United States almost fifty years after Romney's aborted effort. This section (1) reviews lessons learned from local efforts to promote a more inclusive approach to housing, (2) analyzes the particular political advantages of an Economic Fair Housing Act, and (3) discusses the unusual left-right political coalition that could support this initiative.

### *Local Examples*



Some 400 municipalities have adopted inclusive housing policies, beginning with Montgomery County, Maryland in 1974, up to New York City in 2016. What explains their success? A recent promising effort to promote inclusivity in housing in Seattle offers some lessons on the themes that can resonate with today's constituencies. In 2014, Seattle's mayor and City Council came together to begin developing a Housing and Livability Agenda (HALA) in support of greater density and mixed-income housing. The recommendations include upzoning single-family zones to increase density. What drove this agenda?

To begin with, residents recognized that exclusionary zoning was the enemy of affordability. Seattle for Everyone, a local group that is part of a national Yes In My Back Yard (YIMBY) movement, pushed the idea that denser cities will increase housing supply and lower housing costs. A survey found that three-quarters of respondents would be comfortable with increased density if it made housing more affordable.<sup>164</sup>

In addition, HALA supporters acknowledged the racist and classist history of exclusionary single-family zoning. A HALA Steering Committee noted that Seattle had one of the highest percentages of land zoned for single-family homes among peer cities, and that this was not reflective of Seattle's progressive values.

Furthermore, local researchers and advocates explicitly linked exclusionary zoning to exclusion from good schools. The Sightline Institute, a think tank devoted to environmental health and social justice, noted that in the areas feeding into the thirteen top-rated neighborhood public elementary schools in Seattle, single-family zoning covered 72 percent of land on average, thereby excluding large swaths of Seattle residents. (Citywide, about half of the overall housing stock is comprised of single-family homes.) A Sightline researcher, Margaret Morales, noted that if zoning ordinances were relaxed, as the city's Housing Affordability and Living Agenda recommended, to include more small duplexes, triplexes, modest row-houses, stacked flats and "mother-in-law apartments," space would be made for nearly 2,500 additional homes within a half mile of the city's high performing elementary schools. Exclusionary zoning, Morales concluded, is "an often overlooked structural factor contributing to school segregation."<sup>165</sup> Seattle has seen some political push back against its efforts to be more inclusive, but advocates remain energized. Other cities could learn a great deal for Seattle's approach while also customizing efforts to reflect local political realities.

### *Three Advantages over Existing Approaches*

Local experiences suggest that it is possible to make progress in enacting inclusionary zoning policies and federal experience suggest it is possible to pass legislation forbidding racial discrimination in housing. These policies should be strengthened and supported, but it is notable that an Economic Fair Housing Act offers three distinct political advantages over these existing policies.

## 1. The Excluded Outnumber the Excluders

When individuals are awakened to the ways in which class-based zoning hurts virtually everyone but the wealthiest families, a populist response is possible in this distinctly populist moment in American politics. Regulations that limit development to single-family housing or limit lot sizes can, in extremely wealthy neighborhoods, exclude virtually everyone but the very richest families.

An illustration of such populist politics can be found in the state of Massachusetts. In 1969, the state passed an anti-snob zoning law that empowered the state to alter local zoning laws in communities where less than 10 percent of housing stock is deemed affordable. In 2010, an effort to overturn the law through a statewide referendum was opposed by 58 percent of voters.<sup>166</sup>

## 2. Class Appeal Even Broader than Racial Appeal

Because curtailing exclusionary zoning is an income-based remedy, it could cut across racial lines and benefit not only working-class constituencies of color who support the Democratic Party but also the working-class white base of the Republican Party, which, as J.D. Vance notes in *Hillbilly Elegy*, are also “socially isolated” and excluded from middle-class neighborhoods.<sup>167</sup> (Indeed, since 2000, the fastest growth in poverty concentrations has come among non-Hispanic whites, who saw a 145 percent increase among those living in high-poverty neighborhoods.)<sup>168</sup>

## 3. Nondiscriminatory

Because ending exclusion is an anti-discriminatory policy, it should be an easier political sell than policies (such as inclusionary zoning) that go beyond nondiscrimination to posit a form of affirmative action. While inclusionary zoning intervenes affirmatively in the marketplace, ending exclusionary zoning reduces government marketplace intervention. To be clear, this report also supports race-based anti-discriminatory laws and affirmative inclusionary zoning, but it is worth noting that the attack on exclusionary zoning arguably has political advantages over both of those policies.

### *Coalitions*

In addition, a number of organized constituency groups could coalesce against exclusionary zoning and class discrimination. Interesting combinations of left and right actors could come together behind an Economic Fair Housing Act.

## 1. On the Left

- Civil rights groups on the left recognize that exclusionary zoning originated with racial bias and continues to have a negative disparate impact on communities of color. The NAACP was the key plaintiff in the *Mount Laurel* case in New Jersey. And the NAACP LDF has emphasized the importance of using “disparate impact” legal tools (that don’t require discriminatory intent) to fight exclusionary zoning.<sup>169</sup>
- Tenant groups, which in some cities have organized rent strikes and historically have been important instigators of housing reform, could be important allies in curtailing exclusionary zoning.<sup>170</sup>
- Affordable housing advocates have been key opponents of exclusionary zoning in Seattle and elsewhere, given the way in which zoning artificially inflates housing prices.
- Environmentalists generally favor density and smart growth and have for years decried suburban sprawl, which causes longer driving commutes, as a “threat to our environment.”<sup>171</sup> Density usually means more walkability and access to public transportation. Density also reduces the carbon footprint of housing because housing units that are closer together have lower heating and cooling costs.<sup>172</sup>
- Faith groups, too, can be an important part of the coalition for an Economic Fair Housing Act. Most major religious traditions emphasize the dignity of individuals, a principle that exclusionary zoning policies implicitly challenge by deeming some of our fellow human beings so degraded they should be excluded from entire jurisdictions.
- Progressive millennials in many cities have fought for school integration, and this constituency will be a natural ally in fighting for housing integration that will better integrate neighborhood schools.<sup>173</sup> They can join with the 70 percent of Americans who, in a recent poll, agreed that “more should be done to integrate low- and high-poverty schools.”<sup>174</sup>

## 2. On the Right

- As noted earlier, libertarians have long argued against overly burdensome zoning regulations that limit the ability of a property owner to develop his or her land as he or she wishes. Ilya Somin, an adjunct scholar at the Cato Institute, argues libertarians are part an “emerging cross-ideological consensus on zoning,” noting that libertarians were among the first critics of exclusionary zoning. He also observes that more conservative Western and Southern communities tend to have less zoning regulation than the more liberal Northeast.<sup>175</sup>

- For-profit developers are a critical constituency whose interests must be addressed in any discussion of housing. In some jurisdictions, they have raised concerns about inclusionary zoning laws, but can usually be brought along if, in exchange for building affordable housing, they can build more units on a parcel of land through a “density bonus.” But developers are generally strong opponents of exclusionary zoning, which inhibits their ability to develop land as they see fit.

Overall, then, there is a strong possibility of an interesting left-right coalition in favor of reducing exclusionary zoning that offends developers and libertarians on the one hand, and civil rights, tenant and affordable housing advocates, environmentalist, faith groups and millennials on the other. Unlikely coalitions are difficult to sustain, but every once in a while they do occur in American politics (think airline deregulation in 1978, and tax reform in 1986). Could zoning reform be another?

## Conclusion

The 2016 election was all about division—between races, classes, religion, and genders. Part of the reason that divisive rhetoric pitting different groups against one another had political resonance is that Americans of different races and classes too often live in separate communities and have little understanding of one another. This economic and racial segregation of residential areas undermines our unity as a nation. And, as the extensive evidence in this report suggests, economic and racial segregation also undercuts the ability of individuals from all walks of life to pursue the American Dream.

The tragedy is that local government policy, to this day, actively perpetuates the economic and racial divisions in our society. Ending exclusionary zoning would help reduce segregation and promote communities with diverse and shared economic and cultural lives that represent the best of what America has to offer. Fifty years after the Fair Housing Act struck a blow against racist practices that limited the opportunities of African Americans, it is time to strike another blow against classist practices that inhibit the opportunities of millions of Americans of all races.

An Economic Fair Housing Act resonates with some of the most deeply held beliefs that have animated Americans across the political spectrum—the liberty to live where you want absent government discrimination and the equal opportunity to get a good education for your children. The policy is pro-liberty, pro-equality, and pro-opportunity. For Americans of all ages—but especially for American schoolchildren—it is time to end state-sponsored economic segregation.

# Notes

1. This report is the first part of a larger Century Foundation project on this topic. I would like to acknowledge the research support of three superb Century Foundation scholars: interns Yvette Chen and Elliott Rigsby, and policy associate Kimberly Quick. I would also like to thank colleagues who provided important editorial feedback, including Paul Jargowsky, Halley Potter, Jason Renker, Elliot Rigsby, David Rusk, Philip Tegeler, Brooke Williams, and Mark Zuckerman. Parts of this report are drawn from Richard D. Kahlenberg, “Why Segregated Neighborhoods Persist,” *Washington Monthly*, June/July/August 2017, <http://washingtonmonthly.com/magazine/junejulyaugust-2017/why-segregated-neighborhoods-persist/>.
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