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A Deregulatory Framework for Alleviating Concentrated African-American Poverty

BENJAMIN ZIMMER

Introduction

In 1967, Norman Rockwell released the painting *New Kids in the Neighborhood*, which depicts an African-American family moving to a white suburb. The painting focuses on the interaction of the family’s children with three white children in the driveway of their new home. The children eye each other with trepidation, but their faces convey more curiosity than suspicion, and other than their race they seem to have more commonalities than differences. The painting suggests a new era for residential equality in the United States. Previously, the middle-class suburbs, the iconic symbol of the American dream, had been available only to white Americans. African Americans, in contrast, had been largely confined to impoverished inner-city slums. Henceforth, Rockwell seemed to envision, a more equitable future lay ahead.

Rockwell’s painting was emblematic of a broader spirit of cautious optimism towards residential inequality and racial desegregation in the United States at the time. Three years earlier President Lyndon Johnson had declared an “unconditional war on poverty.” “Many Americans live on the outskirts of hope,” he declared, “some because of their poverty, and some because of their color, and all too many because of both.” “We must . . . seek,” he continued, “as our ultimate goal in our free enterprise system a decent home for every American family.”

pushed through Congress several pieces of legislation designed to combat racism and poverty. Most notably for purposes of residential equality, the Fair Housing Act of 1968 outlawed all discrimination in the sale, rental, and financing of housing. “[F]air housing for all — all human beings who live in this country — is now a part of the American way of life,” Johnson declared at the bill’s signing. “In the [Fair Housing] Act of 1968 America does move forward and the bell of freedom rings out a little louder.”

More than forty years later, however, the promise of Rockwell’s painting and Johnson’s rhetoric remain unrealized. On the contrary, America’s urban poor have only become more geographically concentrated and isolated since the late 1960s. And African Americans continue to comprise the majority of impoverished-inner city residents. Some degree of both socioeconomic and racial


4. In 1970, 12% of poor Americans lived in high poverty non-rural neighborhoods (defined as a metropolitan census tract with a poverty rate of 40% or higher). PAUL A. JARGOWSKY, POVERTY AND PLACE: GhettoS, Barrios, and the American City 9-12, 30 (1997). [Hereinafter JARGOWSKY, POVERTY AND PLACE]. By 1990, that number had risen to 18%. Id. at 30. The tech bubble of the 1990s reduced this figure slightly by lowering overall poverty levels (and thus the number of high-poverty neighborhoods). See THE FEDERAL RESERVE SYSTEM & THE BROOKINGS INSTITUTE, THE ENDURING CHALLENGE OF CONCENTRATED POVERTY IN AMERICA: CASE STUDIES FROM COMMUNITIES ACROSS THE U.S. 7-8 (2008).”[Hereinafter BROOKINGS, ENDURING CHALLENGE]. But recent work suggests that poverty concentration has increased once again during the 2000s. See ELIZABETH KNEEBONE & ALAN BERUBE, BROOKINGS INSTITUTE, REVERSAL OF FORTUNE: A NEW LOOK AT CONCENTRATED POVERTY IN THE 2000s (2008). Additionally, despite the temporary reversal of the 1990s, even in 2000 poverty concentration remained higher than in 1970. See BROOKINGS, ENDURING CHALLENGE, supra note 4; WILLIAM JULIUS WILSON, MORE THAN JUST RACE: BEING BLACK AND POOR IN THE INNER CITY 59 (2009) (drop in concentrated poverty during the 1990s was a “blip[!] of [an] economic boom[!] rather than [a] permanent trend”). It is also worth noting that while one in five poor Americans living in high poverty neighborhoods may not seem overly concentrated, high poverty census tracts account for fewer than 5% of all metropolitan neighborhoods. Thus, even if most poor people do not live in high poverty neighborhoods, the urban poor are highly concentrated. See JARGOWSKY, POVERTY & PLACE, supra note 4, at 10. Additionally, the total U.S. poverty rate over the past few decades has been around 10-15%. Id. at 42. Thus, the mere existence of these high poverty neighborhoods reveals a major concentration of urban poverty.

5. As of 1990, African Americans comprised at least two-thirds of the residents in approximately half of all high-poverty neighborhoods. In half of those (a quarter of the total), African Americans comprised more than 90% of residents. Additionally, African Americans comprised fewer than 10% of residents in only 20% of high-poverty neighborhoods, meaning (since African Americans account for slightly more than 10% of the national population) that they were overrepresented in nearly 80%. See JARGOWSKY, POVERTY & PLACE, supra note 4, at 15-16. As African Americans disproportionately suffer from concentrated poverty they disproportionately benefited from its temporary
segregation is natural, as many people prefer to live near others with similar demographic characteristics. But, as this paper will discuss, the ongoing concentration of impoverished African Americans in inner-city slums is neither naturally occurring nor benign. Rather, it is the consequence of historical racial discrimination combined with a set of ongoing policies that reinforce the detrimental consequences of that discrimination. Moreover, due partially to some of the same government policies, residents of impoverished inner-city neighborhoods face structural impediments to upward mobility beyond those associated with simply being poor. The perpetuation of concentrated African-American poverty, then, is a problem that transcends both its racial and economic sub-components. It involves systematic government-imposed economic disadvantages that not only disproportionately impact members of a single race, but do so in a manner directly attributable to past policies of de jure segregation.

The perpetuation of concentrated African-American poverty is not a consequence of any lack of effort to combat it. On the contrary, since the late 1960s the government has enacted countless programs to combat concentrated poverty and residential segregation. Why these policies have failed to alleviate the concentration of impoverished African Americans in inner city slums, and what the government must do differently going forward, is the subject of this article.

The article’s central theme is that a tragic irony underlies our country’s forty-year failure to alleviate concentrated African-American poverty. Efforts to combat concentrated poverty have consisted primarily of new government interventions in the housing market: subsidies, mandates, and other programs and regulations designed to compel socioeconomic and/or racial integration. All the while, a separate set of government interventions in the form of tax expenditures, education financing, and land-use controls are largely responsible for the perpetuation of concentrated African-American poverty in the first place. With these policies firmly in place,
supplemental interventions have been at best ineffective and all too frequently actively harmful. A successful approach to poverty deconcentration and residential integration must begin by eliminating harmful government interventions in the housing market, not by adding even more interventions on top of them.

At the same time, deregulating the housing market alone will not be enough. The ongoing drivers of concentrated poverty may be racially neutral tax, education, and land use regulations. But the concentrated African-American poverty these regulations entrenched was a result of explicit racial discrimination, not a meritocratic or even random initial allocation of resources. Due to the perpetuation of concentrated poverty, the deleterious effects of that racial discrimination remain in effect. Even 40 years after de jure racial segregation ended, African Americans continue to suffer from its consequences. Thus, even as housing deregulation is a critical prerequisite to alleviating concentrated African-American poverty, certain strategic government interventions — particularly those targeted at helping poor African Americans — may also be necessary. This paper will seek to provide some insight on which types of interventions might be valuable — and which are not.

This paper is hardly the first work to address concentrated poverty or residential segregation. On the contrary, a multitude of books, academic articles, and policy reports have discussed in detail various aspects of both topics. Historians have discussed their initial causes. Sociologists have written at length about segregation’s harmful consequences. Economists and economically minded law professors have discussed the sometimes counter-intuitively harmful consequences of various government interventions in the housing market. Policy analysts at think-tanks and elsewhere have provided detailed analyses of the impacts of particular government programs, often at the level of a particular city or even a particular housing development. And law professors have provided similar


analyses of the various pieces of litigation surrounding residential segregation.\(^\text{12}\)

For such a complex and multi-faceted problem, detailed studies of particular aspects can provide valuable sources of insight. The problem with this approach, however, is that by siphoning off a small piece of the problem, analysts may overlook the interconnectedness of that piece to the whole. This is particularly dangerous when analysts seek to generalize or extrapolate broader conclusions from their narrow analysis.

For instance, historically and sociologically minded scholars and policy analysts tend to focus on the widespread racial discrimination that caused concentrated African-American poverty and the tragic consequences of its perpetuation. Unsurprisingly, then, they tend to urge solutions that involve government interventions targeted at helping these suffering individuals.\(^\text{13}\) However, due to the limited scope of their work, they frequently do not engage with the broader economic context into which these interventions occur. Yet, as this paper will discuss, this context renders some of their proposed interventions are unnecessary, others marginally beneficial but ultimately non-impactful, and others actively detrimental.

Economically minded scholars and policy analysts, for their part, tend to focus on the pernicious effects of many of the government regulations related to urban policy, including many intended to help impoverished African Americans. However, they tend to examine these policies outside the lens of concentrated African-American poverty, focusing rather on efficiency and affordability in the housing market more generally.\(^\text{14}\) They therefore appropriately urge lifting certain unhelpful government interventions; but they may underestimate the full set of challenges facing the creation of equitable urban living arrangements.\(^\text{15}\)


\(^{13}\) See, e.g., MASSEY & DENTON, supra note 8, at 229 ("Dismantling the ghetto ... requires direct institutional involvement of the federal government[] [t]o an unprecedented degree.").

\(^{14}\) See, e.g., GLAESER & GYOURKO, supra note 10.

\(^{15}\) For instance, Randall Holcombe and Benjamin Powell argue that "[l]ooking at the big picture, America's housing market is not facing a crisis [because] [m]ost Americans have more-than-adequate shelter." See Randall G. Holcombe & Benjamin Powell, Introduction, in HOUSING AMERICA: BUILDING OUT OF A CRISIS (Randall G. Holcombe & Benjamin Powell eds. 2009). As the remainder of this paper will argue, this
Thus, for all that has been written on issues related to concentrated African-American poverty, there is a dearth of holistic analysis tying together all the pieces of the problem into coherent policy recommendations. This paper will certainly not be the final word on the causes, consequences, or appropriate solutions to concentrated African-American poverty. But one of the paper’s useful contributions will be to approach these questions through a different analytical framework than most of the existing literature. Rather than look at any one piece of the topic in great detail, it will seek to synthesize the multitude of existing analyses and case studies into a more holistic understanding of concentrated African-American poverty and all its various dimensions. It will, in a sense, attempt to see the forest for the trees.

The article will conduct this analysis in four Sections. Section I will discuss the causes of concentrated African-American poverty, both historically and presently. Section II will discuss why concentrated African-American poverty is a problem worth caring about and alleviating, in spite of recent attempts to minimize its importance. Section III will provide an overview of the different types of programs that are currently in place to combat the problem, and will discuss why none has succeeded in substantially alleviating it. Section IV will discuss several law and policy recommendations for more effectively addressing the problem going forward.

I. Causes of Concentrated African-American Poverty

The concentration of urban poverty is as old as urbanization itself. As early as the 1890s, English sociologist Charles Booth demonstrated that the poor in London were concentrated in the eastern parts of the city, while wealthier persons lived predominately in the west.\footnote{See \textit{Charles Booth, Life and Labour of the People in London} (1902-1903).} In the United States, photojournalist Jacob Riis’s 1890 book \textit{How the Other Half Lives} famously documented the congestion of the poor in New York’s lower east side tenement housing.\footnote{See \textit{Jacob A. Riis, How the Other Half Lives: Studies Among the Tenements in New York} (1890).}

Nevertheless, the concentrated poverty of late nineteenth and early twentieth century America was of a decidedly different nature from the predominantly African-American urban poverty of recent decades. Inhabited largely by poor immigrants from Europe who

is an over simplistic understanding of housing policy. See \textit{infra} Section III.D (discussing the shortcomings of several economists’ arguments that concentrated poverty is not a serious a problem).
naturally lived together when first arriving in the country, these poor neighborhoods were, in the words of Douglas Massey and Nancy Denton, "a fleeting, transitory stage in the process of immigrant assimilation."18 Indeed, modern research "has done much to discredit the conception of the [nineteenth and early twentieth century] 'ghetto' as a neighborhood of permanence."19

In contrast, contemporary concentrated African-American poverty is "a permanent feature of black residential life." Whereas immigrant enclaves "served as springboards for broader mobility in society," impoverished African-American neighborhoods serve as impediments to their residents' geographic, economic, and social mobility over the course of generations.20 Why concentrated African-American poverty has been uniquely intransient is the subject of the rest of this Section. The explanation with which one must undoubtedly start is explicit racial discrimination.

A. Racial Discrimination

Racial discrimination in the United States has existed for centuries, but the particular problem of urban housing discrimination is a relatively recent one. Prior to early 1900s, the vast majority of African Americans lived in the rural south, and those that did live in urban areas were relatively evenly dispersed among neighborhoods.21 African-American migration to northern urban centers began in earnest only with the onset of World War I. The war increased demand for urban industrial production while simultaneously cutting off the flow of white European immigrants who had previously provided the workforce for that production.22 This opened new urban labor opportunities to African Americans in manufacturing and other industrial work that had previously been available to them only as strike breakers.23 Over the next several decades, rapid African American urbanization continued. All told, between 1910 and 1950, the African-American urban population increased nearly four-fold from approximately 2.5 million to more than nine million.24

As African Americans arrived in cities, whites worked

18. MASSEY & DENTON, supra note 8, at 33.
20. MASSEY & DENTON, supra n. 8, at 33.
22. MASSEY & DENTON, supra note. 8, at 28-9.
23. TAYLOR & HILL, supra note. 22, at 7.
24. Id. at 2.
systematically to prevent them from moving into existing white neighborhoods. At the local level, neighborhood “improvement associations” (or other similarly named organizations) served as the primary instrument for residential discrimination. Intended ostensibly to promote neighborhood security and enhance property values, neighborhood associations in reality began as a thinly veiled (if veiled at all) attempt to keep African-American migrants from integrating. Most notably, neighborhood associations organized and promoted race-restrictive covenants, in which property holders mutually committed themselves to not sell or rent their property to a non-Caucasian for a fixed period of time, sometimes indefinitely. These requirements became part of property deeds and were passed down to heirs and future owners. Neighborhood associations promoted the spread of these covenants by drafting model agreements, organizing signing drives, and using their influence over local realtors and real estate boards to have them added to property deeds at time of sale.

By the mid-1940s, race-restrictive covenants were in widespread use across the United States, covering, for example, 5.5 square miles of land in St. Louis and eleven square miles in Chicago.

Racial discrimination in housing was not limited to local organizations. Beginning in the 1930s, the federal government began to systematically promote housing discrimination and segregation through the newly created Home Owners Loan Corporation (“HOLC”) and Federal Housing Authority (“FHA”). Part of Franklin Roosevelt’s New Deal, the organizations were founded to provide economic stimulus to the construction industry and help Americans avoid home foreclosures. Specifically, the HOLC provided funds for refinancing certain urban mortgages in danger of default, while the FHA guaranteed private bank loans for construction of certain new homes. In determining which houses to fund, however, both agencies employed blatantly racist and segregationist policies. The HOLC conducted risk assessments of neighborhoods, and those with even a small portion of African Americans received the lowest of four ratings, “hazardous.”

The FHA Underwriting Manual, for its part, specifically warned against


27. See Kenneth T. Jackson, Crabgrass Frontier: The Suburbanization of the United States 195-203 (1987); Massey & Denton, supra note 8, at 51-2; Abrams, supra note 8, at 237-238.
lending in areas with "inharmonious racial or nationality groups." "If a neighborhood is to retain its stability," it directed, "it is necessary that properties shall continue to be occupied by the same social and racial classes."28 The FHA also established minimum requirements for lot size, house width, setback from the street, and separation from adjacent structures, eliminating most categories of non-suburban housing from its loan guarantees.29

Taken together, these policies resulted in the famous "white flight" to the suburbs of the 1940s and 1950s. Federal housing policy spurred extensive construction of new housing, but only for Caucasians, and only in the suburbs. In Philadelphia, for instance, more than 700,000 whites moved to the city's suburbs during the 1950s, while the city lost 225,000 whites and gained 153,000 blacks. During the same period, suburban Chicago gained more than 1 million whites while the city lost 399,000 whites and gained 320,000 blacks.30

Meanwhile, within cities, restrictive covenants and related tools maintained a firm color line between neighborhoods. Even after the Supreme Court declared the judicial enforcement of race restrictive covenants unconstitutional in 1948,31 realtors continued to work systematically to exclude blacks from white neighborhoods.32 Moreover, since the majority of whites supported residential segregation, judicial enforcement of restrictive covenants was rarely necessary.33 And the Supreme Court's ruling certainly did not bring about the end of racial discrimination in government residential policy. In addition to the continued segregationist practices of the federal housing agencies, city governments contributed where they could. In Chicago, for instance, Mayor Richard J. Daley deliberately relocated the Dan Ryan expressway to create a physical barrier between white and black neighborhoods on the city's south side.34

28. JACKSON, supra note 27, at 208-215; MASSEY & DENTON, supra note. 8, at 53-4; ABRAMS, supra note. 8, at 230-2.
29. JACKSON, supra note. 28, at 208.
32. MASSEY & DENTON, supra note. 8, at 49-50; see also Richard W. Brooks, Covenants without Courts: Enforcing Residential Segregation with Legally Unenforceable Agreements (2010) (on file with Author).
33. Brooks, supra note 32.
34. ADAM SETH COHEN & ELIZABETH JOEL TAYLOR, AMERICAN PHARAOH: MAYOR RICHARD J. DALEY: HIS BATTLE FOR CHICAGO AND THE NATION 189 (2001). Many other city governments similarly deliberately located expressways in places that would promote racial segregation. See Raymond A. Mohl, Planned Destruction: The Interstates and Central City Housing, in FROM TENEMENTS TO TAYLOR HOMES: IN SEARCH OF AN
Nevertheless, by the late 1960s, explicit racial discrimination in housing policy began to wane. Coming under increasing scrutiny from civil rights advocates, including U.S. Senators, in 1966 the FHA dramatically changed its lending practices so that they were no longer openly discriminatory.\(^3\) The next year, the Supreme Court held in *Reitman v. Mulkey* that any government policy that "encouraged" housing discrimination was unconstitutional.\(^3\) Finally, in 1968 the Fair Housing Act actively banned even private racial discrimination "in the sale, rental, and financing of dwellings, and in other housing-related transactions."\(^3\)

Equally important to these legal changes, white public opinion began to turn against racial segregation. As late as 1964, 35% of whites agreed when asked whether "[w]hite people have a right to keep (Negroes/black people) out of their neighborhoods." By 1972, that number had fallen to 20%, and by 1976 it had fallen to 10%.\(^3\)

Thus, explicit racial discrimination was the core factor behind the creation of concentrated African-American poverty, but it is less satisfactory as an explanation of the perpetuation and intensification of the phenomenon over the last forty years. Some degree of racial discrimination in housing undoubtedly persists to the present day,\(^3\) but it lacks the systematic, institutional character of the of pre-civil rights discrimination.\(^4\)

To understand why so many African
Americans remain concentrated in urban slums, one must look to factors beyond explicit racial discrimination.

B. The Public Housing Debacle

The Civil Rights movement fundamentally changed the discourse surrounding housing policy in the United States. Not only would the government no longer work to actively promote separate and unequal housing for African Americans; it would work, in the words of President Johnson, to “rebuild cities” and “place a decent home within the reach of [all] families,” including African Americans.41 The new dilemma facing policy-makers was how to effectively achieve this goal.

For the urban reformers of the 1950s and 1960s, the answer lay in public housing. As early as the 1930s, urban planners had begun to argue that “ordinary laws of supply and demand” had failed the housing market, and that public housing for the poor was a necessary solution to the poverty of the Great Depression.42 In 1937, the Wagner Public Housing Act authorized funding for local authorities to designate certain neighborhoods as blighted, purchase the property and bulldoze the neighborhood, and construct public housing in its place.43 This program of “slum clearance” gained even more traction in the years following World War II, and Congressional Acts in 1949 and 1954 further strengthened the public housing mandate.44 It was under the Johnson administration, however, that the government fully embraced public housing as a solution to inner city poverty. All told, between 1950 and 1968 nearly 500,000 poor Americans were relocated into public housing projects, and — building off the momentum of Johnson’s efforts — another 375,000 units were made available for occupancy between 1968 and 1973.45

Though well intentioned, public housing programs suffered comprise a vastly disproportionate number of impoverished inner city residents. Nor should it hide the fact that this disadvantage is a direct legacy of our country’s racially discriminatory past.

43. See Gail Radford, The Federal Government and Housing During the Great Depression, in FROM TENEMENTS TO TAYLOR HOMES, supra note 34, at 102, 110-12.
44. See Roger Biles, Public Housing and the Postwar Urban Renaissance, 1949-1973, in FROM TENEMENTS TO TAYLOR HOMES, supra note 34 at 143, 143-147.
from problems in conception, funding, and execution, and ultimately did much more harm than good for the poorer residents of American cities. Because public housing projects were located on the same land as the blighted "slums" they were replacing, they did little to alter the racial or socioeconomic makeup of neighborhoods. Housing administrators made some attempts at racial integration, but vast disparities in demand made this simply unfeasible, and the goal was quickly abandoned. Entire neighborhoods of African Americans had been left without homes due to slum clearance, and they needed someplace to live. Most whites, for their part, had neither the need nor desire to live in predominantly African-American public housing.46

Public housing not only failed to promote racial and socioeconomic integration; it concentrated African-American poverty even further. By moving entire communities into overcrowded concrete high-rise complexes that the Chicago Defender accurately characterized as "prison-like," public housing destroyed any possibility of residential mobility that poor African Americans may have had and provided stark visual warnings for everyone else, including businesses, to stay away.47 Anyone who could afford to lived as far away as possible from the projects and those who remained became even poorer and more isolated.48 By 1984 the city of Chicago, for instance, had roughly 30,000 families living in public housing projects. Ninety-five percent of these families were African-American; only ten percent reported employment; and of the families with children, only seven percent had two parents.49

The harmful nature of public housing quickly became apparent, and public opinion turned strongly against the program. Indeed, public housing had received its share of criticism from its inception, and by the mid-1970s construction of new projects had essentially ceased.50 But once constructed, public housing projects could not easily be dismantled, as they provided residency for hundreds of thousands of families. As the statistics from Chicago cited above show, the projects remained a prominent fixture of urban American life well into the 1980s, and their subsequent dismantling has

46. See HUNT, supra note 42, at 99-120.
47. See id. at 121-212.
48. Id.
49. Id. at 183-84. Nationally, in 1990 public housing constituted 1.5% of the nation’s housing stock. The average annual income of resident households was $6,539. See Michael H. Schill, Privatizing Federal Low Income Housing Assistance: The Case of Public Housing, 75 CORNELL L. REV. 877, 897 (1990).
50. Mitchell, supra note 46, at 12-3.
proceeded slowly. Despite nearly universal recognition of the venture’s failures, as recently as 2009 Atlanta was the only major American city to have fully eliminated all of its large housing projects.51

C. Tax, Education, and Land-Use Regulations

Racial discrimination and the public housing debacle created the current concentration of poor African Americans in American inner cities. But this concentrated poverty has been maintained and exacerbated, despite efforts to combat it,52 by ongoing government policies that incentivize and enable wealthier Americans to keep poorer Americans out of their neighborhoods. Because racial discrimination and public housing placed African Americans in the country’s poorest neighborhoods, these economic regulations operate in practice to severely limit residential mobility for poor African Americans.

The first government policy promoting economic residential segregation is the continued federal subsidization of personal home ownership through the Internal Revenue Code. Most notably, section 163(h) of the code (the “home mortgage interest deduction”) allows homeowners to deduct their mortgage interest payments and property taxes from their federal income tax; and section 121 of the code exempts from income taxes the capital gains earned through appreciation in the value of a home.53 Taken together, these provisions provide homeowners with a tax deduction proportional to the purchase price of their home and exempt from taxes altogether income earned through appreciations in housing values. Economists estimate that combined, these tax expenditures provide more than $100 billion per year of subsidies to homeowners and developers.54

These expenditures not only benefit homeowners at the expense

51. Last Housing Project in Atlanta Nears Demise, ASSOCIATED PRESS, (July 27, 2009), available at http://www.msnbc.msn.com/id/32176690/ns/us-news-life/. Other cities, of course, are also making efforts to eliminate their large housing projects. But because of the difficulties of finding new residencies for all their residents, they have not yet completed these projects.
52. These efforts will be discussed in Part IV, infra.
53. I.R.C. §§ 163(h), 121.
54. See JOINT CONGRESSIONAL COMMITTEE ON TAXATION, ESTIMATES OF FEDERAL TAX EXPENDITURES FOR FISCAL YEARS 2007-2011, at 27 (2007) (data on magnitude of expenditures) [Hereinafter CONGRESSIONAL TAX EXPENDITURE DATA]. The benefits of these subsidies accrue allocated across the housing value chain (in other words, between those who develop, construct, and sell homes, and those who purchase them) based on the various elasticities of supply and demand. See GLAESER & GYORKO, supra note 10, at 95-6.
of renters, but also disproportionately benefit the wealthiest homeowners. Because they are awarded in the form of income tax deductions and exemptions (as opposed to tax credits), those with the highest marginal tax rates receive the highest proportional benefits. Additionally, the home mortgage interest deduction is awarded as a so-called “below-the-line” deduction, meaning it only benefits taxpayers who choose to itemize their deductions rather than take the so-called “standard deduction.”

Itemization of below-the-line deductions, for its part, tends to be a financially logical decision only for households with fairly high incomes. As a result, more than 75% of the value of these returns accrues to those earning more than $100,000 per year. Less than 2% of the value accrues to those earning less than $40,000 per year.

Bearing these background facts in mind, these tax expenditures contribute to residential segregation in two ways. First, at least some of the subsidies’ benefits accrue to home “producers” (developers, construction companies, real estate agents, etc.) in the form of higher housing prices. This means that producers have an incentive to build houses for which the homeowner will receive a large deduction. Since only housing consumers with fairly high incomes receive a large deduction, producers have an incentive to construct and sell housing only to wealthier buyers and then raise prices on these houses even more to capture some of the benefits of government subsidization. It thereby becomes more difficult for poorer families looking to move out of the inner city to find housing they can afford.

Second, and perhaps even more importantly, by encouraging Americans to invest a disproportionately high percentage of their wealth in homeownership, the tax code creates incentives for wealthy Americans to keep poorer Americans out of their neighborhoods through other means, lest the presence of less affluent neighbors drive down the price of their own home.

These exclusionary incentives are reinforced by the structure of

55. See IRC §§ 61-3, 67.

56. For instance, one study estimates that while 63% of all homeowners itemize, only 23% of those with incomes below $40,000 do. On the other hand, the study estimates, 98% of homeowners with incomes above $125,000 itemize. See GLAESER & GYOURKO, supra note 10, at 94.

57. Calculations based on data in CONGRESSIONAL TAX EXPENDITURE DATA, supra note 54, at 39, 43.

58. Id.

59. As of 2004, more than 40 percent of Americans’ net worth was concentrated in home equity. See THOMAS M. SHAPIRO, THE HIDDEN COST OF BEING AFRICAN AMERICAN: HOW WEALTH PERPETUATES INEQUALITY 107 (2004).
our nation's public education system. Each state has its own generally complex system for funding public schools, but nearly all funding is at least somewhat proportional to the property taxes collected in each school district.\textsuperscript{60} Thus, schools in wealthier neighborhoods are generally much better funded than those in poorer neighborhoods, and families who pay below the mean property tax in a well-funded school district effectively free ride\textsuperscript{61} on the education paid for by their wealthier neighbors. The Supreme Court has explicitly affirmed the constitutionality of such systems\textsuperscript{62} while simultaneously limiting poorer students' ability to attend schools in better-funded neighboring districts.\textsuperscript{63} These circumstances provide a strong incentive for residents in any school district to preclude the development of housing of lower value than their own.

It is hard to imagine two things more important to most middle-class, upper-middle class, and upper-class households than maintaining and increasing their wealth and providing their kids with a quality education. Indeed, both are laudable goals when pursued properly. The problem is that the tax code and our public education system provide incentives for wealthier Americans to pursue these goals in a hardly commendable manner — by fighting against economic residential integration. And fight they do. As William Fischel has written, "concern for home values is the central motivator of local government behavior."\textsuperscript{64}

The primary way local governments fight against integration is through zoning ordinances. Zoning laws developed in the early twentieth century as a way for local governments to plan the development of their municipalities through restrictions on the uses of land.\textsuperscript{65} Though zoning laws may have some valuable uses (such as insulating residential areas from industrial pollution), they are often thinly veiled efforts to promote far less benign goals. One such

\textsuperscript{60} See Daphne A. Kenyon, The Property Tax - School Funding Dilemma, LINCOLN INST. OF LAND POLICY (2007).
\textsuperscript{61} I use this term descriptively, not to connote any expressive judgment.
\textsuperscript{64} WILLIAM A. FISCHEL, THE HOMEVOTER HYPOTHESIS: HOW HOME VALUES INFLUENCE LOCAL GOVERNMENT TAXATION, SCHOOL FINANCE, AND LAND-USE POLICIES 5 (2001); see also MARC L. SILVER & MARTIN MELKONIAN, EDS., CONTESTED TERRAIN: POWER, POLITICS, AND PARTICIPATION IN SUBURBIA (1995) (discussing forces shaping suburban politics, including the maintenance of home values).
\textsuperscript{65} The objectives of these restrictions range from aesthetics to historical preservation to insulating residents from pollution to (at least in theory) promoting economic growth. See Village of Euclid v. Amber Realty Co., 272 U.S. 365 (1926); Standard State Zoning Enabling Act (1928);
A restriction that is particularly common in suburban communities throughout the United States is large-lot zoning, which precludes the construction of new homes below a certain lot size. Although justified as a measure to preserve the aesthetic appeal of a neighborhood, large-lot zoning ordinances operate as explicitly exclusionary laws that prop up housing values in suburban neighborhoods and preclude non-wealthy families who cannot afford the larger lots from moving in. These exclusionary effects of large-lot zoning are augmented by similar land use restrictions regulating, among other constraints, property set-backs from the street, maximum population densities in certain neighborhoods, and units per acre in multi-unit buildings. Some even require houses to have swimming pools or tennis courts.

Thus, as African Americans (and others) from the inner-city look to relocate to less poverty-ridden neighborhoods, exclusionary zoning ordinances substantially limit the amount of housing available and raise the costs of that housing, making it very difficult for them to move. Nevertheless, the Supreme Court has aggressively protected the constitutionality of exclusionary zoning ordinances. The Court has placed stringent limitations on the class of plaintiffs with standing to challenge a zoning ordinance and required that plaintiffs prove that the zoning ordinance was motivated by a racially discriminatory intent or purpose; a disparate racial impact of any magnitude is insufficient for invalidation.

In addition to zoning ordinances, local building codes also serve to solidify the contours of residential segregation. In their modern form, building codes are an outgrowth of the “progressive” attempt of the early twentieth century to improve health and safety standards in urban environments. They generally include ostensibly

66. Economists estimate that as the average minimum lot size in a community rises by one acre per lot, prices increase by more than ten percent per house and the overall housing stock in the community declines by more than 30%. GLAESER & GYOURKO, supra note 10, at 66-7; See id. at 77-8 (“[L]and scarcity is not the primary motivation for strict land-use controls. . . . [T]he strong positive relation of regulatory strictness with various measures of community wealth suggests exclusionary desires are a key factor in many places.”).

67. See, e.g., Warth v. Seldin, 422 U.S. 490, 522 (1975) (Brennan, J., dissenting) (discussing zoning requirements regulating “lot area, set backs, population density, density of use, units per acre, floor area, sewer requirements, traffic flow, ingress and egress, and street location”).


69. Warth v. Seldin, 422 U.S. at 490.

uncontroversial requirements that address buildings' basic materials, structure, plumbing, and electricity. Yet by precluding the construction of housing that urban planners have deemed unfit, building codes, like zoning restrictions, act to increase housing prices and reduce stock.\textsuperscript{71}

Unlike zoning restrictions, building codes' impact on prices in wealthier suburban areas is generally minimal.\textsuperscript{72} But building codes nevertheless contribute to the perpetuation of concentrated poverty and residential segregation by raising home prices within inner cities. There, even small increases in prices can make it more difficult for poor African Americans to acquire home equity within their neighborhoods that, in turn, could help them accumulate wealth to move out. Indeed, it was this “poor-as-landlords” phenomenon that helped make the immigrant urban “ghettos” of the early twentieth century launching pads for integration into broader society, not permanent confinements.\textsuperscript{73} Moreover, while contemporaneous urban reformers viewed these building code-less communities as “places of disease, high death rates, and social disorganization,” most modern scholars dispute this characterization and question the need for most types of codes.\textsuperscript{74}

Thus, while nominally uncontroversial, building codes, like zoning restrictions, may contribute to residential segregation and concentrated poverty. And their alleged positive values may be overrated.

D. Tying It Together

Explicit racial discrimination, both by private individuals and the government, created the phenomenon of concentrated African-American poverty in American cities. But the causes of its perpetuation run much deeper. Even as the vast majority of Americans have become committed to some notion of racial justice and equality, and even as some aspects of our legal system explicitly outlaw racial discrimination in housing, other laws and policies continue to solidify and exacerbate the concentrated African-American poverty that our racist past created. Some of these policies

\textsuperscript{71} Building codes increase housing prices by making it more costly to produce housing. These costs include the substantive costs of compliance (e.g., using possibly more expensive material), and the regulatory costs of ensuring compliance (hiring lawyers, preparing for inspections, etc.). See William Tucker, Building Codes, Housing Prices, and the Poor in HOUSING AMERICA, supra note 15, at 65, 66-7; GLAESER & GYOURKO, supra note 10, at 62-4.
\textsuperscript{72} Tucker, supra note 71, at 67; GLAESER & GYOURKO, supra note 10, at 63.
\textsuperscript{73} Tucker, supra note 71, at 72-81.
\textsuperscript{74} GLAAB & BROWN, supra note 19, at 142.
were benevolently intentioned; others may have deliberately sought to privilege the wealthy, even if they lacked an explicit racial motivation. But in either case they have served, and continue to serve, to solidify and perpetuate concentrated African-American poverty.

As we turn to examine the various attempts to alleviate concentrated African-American poverty, it is crucial to bear this full set of causes in mind. But first, we must detour briefly to an equally important question: why concentrated African-American poverty is a problem in the first place.

II. Why Concentrated African-American Poverty Matters

In recent years, a number of scholars have begun to challenge the long-held intuitive view that concentrated poverty has negative consequences. These scholars do not dispute that residents of poor neighborhoods are worse off than residents of wealthier neighborhoods along a variety of social and economic dimensions. Rather, they question whether these conditions are a consequence of neighborhood effects rather than simply of being poor. This Section will discuss several of concentrated poverty's negative effects for both the residents of impoverished neighborhoods and for society more generally. It will then discuss the arguments challenging these effects, and whether or not they are persuasive.

A. Economic and Educational Effects

The most tangible negative effect of concentrated poverty is on the educational and economic opportunities available to residents of poor neighborhoods. As discussed in Section II.C., the tax code allows wealthier homeowners to invest and accumulate wealth tax-free through homeownership. Not only, as discussed, does this provide incentives for residents in wealthy neighborhoods to keep the poor out; but once exiled, the poor are unable to invest in one of the easiest ways to accumulate wealth and escape poverty: homeownership. Most residents of poor neighborhoods are renters, and even those who are homeowners lack sufficient income to benefit from the homeownership tax subsidies. This, in turn, makes it more difficult for residents of poor neighborhoods to accumulate even low levels of personal savings that they can invest in the...

75. See generally Ellickson, supra n. 10, at 1012-6 (providing an overview of these arguments).

education and economic development of future generations. It then becomes even more difficult for those future generations to invest in homeownership themselves (and, thereby, in the tax free accumulation of wealth).\textsuperscript{77}

Compounding this wealth effect is the fact that businesses tend to locate closer to affluent suburban neighborhoods than to inner cities. Since 1980, more than two-thirds of employment growth has occurred outside of city centers, and today roughly 70\% of manufacturing, wholesale, and retail trade jobs are located in the suburbs.\textsuperscript{78} In Cleveland, for example, although entry-level workers are concentrated in inner-city neighborhoods, 80\% of the entry-level jobs are located in the suburbs.\textsuperscript{79} Like homeownership subsidization, this "spatial mismatch"\textsuperscript{80} between the poor and job opportunities contributes to a self-perpetuating cycle of inner-city poverty. When the poor are isolated, businesses don’t locate near the poor. This makes it more difficult for the poor to obtain jobs than it otherwise would be. And this, of course, makes them even poorer.

Concentrated poverty also negatively impacts inner city residents’ educational opportunities, further limiting their upward mobility in society. As discussed in Section II.C., public schools are often financed proportionally to district property taxes, and high poverty schools, especially high-poverty urban schools, almost always have lower levels of academic achievement than low-poverty schools.\textsuperscript{81} Yet the educational disadvantages of attending a high-poverty inner-city school transcend insufficient funding. Interestingly, even where litigation or state legislative decisions have mandated that high-poverty schools receive equal funding, the achievement gap remains high.\textsuperscript{82} A variety of factors help explain this outcome, nearly all related to the effects of concentrated poverty. For instance, in high poverty urban neighborhoods, a majority of decent-paying jobs are often in the public school system. This lends itself to high levels of patronage in the hiring of teachers (those hired are not the most qualified) and other employees (more support staff are hired than is actually necessary). Patronage not

\textsuperscript{77} As evidence of this phenomenon, nearly fifty percent of white Americans who bought homes in the early 1990s did so with support from family savings, while only 12\% of African-American families received similar support. SHAPIRO, supra note 59, at 113.

\textsuperscript{78} WILSON, supra note 4, at 41 (2009).

\textsuperscript{79} Id.

\textsuperscript{80} Id.

\textsuperscript{81} JAMES E. RYAN, FIVE MILES AWAY A WORLD APART: ONE CITY, TWO SCHOOLS, AND THE STORY OF EDUCATIONAL OPPORTUNITY IN MODERN AMERICA 157 (2010).

\textsuperscript{82} Id. at 157-61.
only reduces the effectiveness of the money schools are given, but creates a (not inaccurate) public perception of wastefulness, which, in turn, makes it even more difficult to obtain funding for resources that actually are needed.\textsuperscript{83}

\section*{B. Cultural Effects}

Despite the concrete educational and economic impacts of concentrated poverty, academic and popular debates have often focused instead on the less tangible cultural impacts of concentrated African-American poverty. This can be credited largely to a 1965 report by Daniel Patrick Moynihan (at the time Lyndon Johnson’s Assistant Secretary of Labor for Policy) entitled “The Negro Family: The Case for National Action.”\textsuperscript{84} Moynihan’s report deserves praise as one of the first nationally prominent documents to present concentrated African-American poverty as a social problem, but his specific conclusions were dubious and understandably controversial. Moynihan argued that “the fundamental problem” facing inner city African Americans was that “the Negro community has been forced into a matriarchal structure which, because it is so out of line with the rest of the American society, seriously retards the progress of the group as a whole, and imposes a crushing burden on the Negro male.”\textsuperscript{85} This argument was unsurprisingly the subject of substantial criticism,\textsuperscript{86} and it provided straw-man fodder for those seeking to argue that concentrated poverty is not a serious problem in the first place.\textsuperscript{87}

In recent years, however, sociologists have once again begun to argue that “culture and persistent poverty are enmeshed,” albeit in more nuanced ways than those articulated in the Moynihan Report.\textsuperscript{88} William Julius Wilson, a prominent sociologist who has written extensively on the topic, defines culture as the way “individuals in a community develop an understanding of how the world works and make decisions based on that understanding.”\textsuperscript{89} Sociologists have

\begin{itemize}
\item \textsuperscript{83} ld. at 161-64.
\item \textsuperscript{85} Id. ch. 4.
\item \textsuperscript{86} See, e.g., WILLIAM RYAN, BLAMING THE VICTIM 65-7 (1976 ed.).
\item \textsuperscript{88} Patricia Cohen, Culture of Poverty Makes a Comeback, N.Y. TIMES (October 17, 2010), http://www.nytimes.com/2010/10/18/us/18poverty.html.
\item \textsuperscript{89} Id.
\end{itemize}
articulated several ways in which poverty stricken communities develop cultural norms with deleterious neighborhood effects.

For instance, in the domain of violent crime, sociologist Robert Sampson has argued that it is not merely individual instances of poverty but community norms created by concentrated poverty that give rise to higher crime rates. Among other detrimental consequences, high crime rates contribute further to the poverty of a neighborhood because many employers refuse to hire persons with criminal records. Similarly, in the domain of education, many studies suggest that in socioeconomically diverse environments the higher academic aspirations of wealthier students can be “contagious” and raise the aspirations and motivation of poorer students. In environments of concentrated poverty, in contrast, lower expectations can be self-reinforcing across peers, diminishing academic success and future income potential.

These cultural effects are exacerbated by the strong racial component to concentrated poverty. When young African Americans are brought up in a world surrounded only by other poor African Americans, they may begin to feel the deck is stacked against them because of their race. This can lead them to approach new situations with particular skepticism and mistrust, making social mobility even more difficult.

Because these cultural effects are difficult to quantify, their magnitude remains in question. It is particularly difficult to disentangle the cultural effects of growing up in a poor neighborhood from those of growing up in a poor family, the latter of which would be present even without residential segregation. Yet when the cultural effects of poverty are combined with the structural economic effects described above, it becomes less important whether they occur at the family or neighborhood level. Since the existence of poverty-stricken neighborhoods is one driver of the poverty of its residents, even the cultural effects of growing up in a poor family are, indirectly, exacerbated through concentrated

91. JAMES E. RYAN, supra note 81, at 165.
92. WILSON, supra note 4, at 17-8.
93. Id.
94. Ellickson, supra note 10, at 1012-6.
95. See Philip Oreopoulos, The Long-Run Consequences of Living in a Poor Neighborhood, 118 Q. J. ECON. 1533 (2003). But see Sampson et al., Durable Effects on Verbal Ability, supra n.9 (providing a quantitative argument that certain negative cultural effects of concentrated poverty do occur at the neighborhood level, not merely the family level).
poverty. As William Julius Wilson writes, “structural conditions provide the context within which cultural responses to chronic economic and racial subordination are developed.” And, as described in the previous paragraph, these cultural forces themselves exacerbate the poverty of poor inner city African Americans, further reinforcing the self-perpetuating cycle of inner-city poverty across generations.

C. Diversity and Citizenship

Both the structural and cultural effects described above relate to the detrimental effects of concentrated poverty on the residents of poor neighborhoods. But concentrated African-American poverty also impacts society more generally by affecting the way wealthier and poorer Americans interact in our broader civic community.

First, residential segregation can foster general attitudes of distrust between members of separated communities. Studies by social psychologists and sociologists suggest that people find it easier to trust one another and cooperate when there is less social distance between them — in other words, when they have a shared identity. Identity, of course, is determined by factors beyond geography, including socioeconomic class, religion, ethnicity, and family structure, among others. But conceptions of identity are themselves dynamic and malleable. Geographic proximity forges common experiences — be they at schools, grocery stores, or parks — that can play an important role over time in closing the social distance between families and creating new, shared identities. This is particularly important in light of the extensive racial element to concentrated poverty. Studies suggest that subconscious racial bias and distrust remain prevalent across our society, and residential integration can potentially play a useful role in reducing this bias by fostering shared trans-racial identities.

Second, and more tangibly, when wealthier Americans are geographically insulated from the realities of urban poverty, they are much less likely to embrace the need to alleviate that poverty. Multiple studies by political scientists suggest that while wealthy persons generally vote their class interests, those who are exposed

96. WILSON, supra note 4, at 61.
98. Id. at 161-62.
socially to members of other classes are less likely on the margins to do so.\textsuperscript{100} This is hardly surprising given general patterns of voting behavior. Voters are influenced by self-interest, but they also can be moved by moral persuasion.\textsuperscript{101} And it is far easier to persuade a wealthy person to vote for policies that address poverty when the person personally confronts poverty’s realities on a day-to-day basis.

Thus, even leaving aside the negative consequences of concentrated poverty for the poor, residential segregation makes it more difficult to build the coalitions necessary to address issues of poverty and inequality in the first place. This is not to take a position on what those policies should be -- an issue well beyond this paper’s already expansive scope. But it is to say that the political debates and interest group bargaining that generate these policies would be enhanced through residential integration.

D. The Moving to Opportunity Program

Scholars who have challenged the negative effects of concentrated African-American poverty have done so largely by relying on the Moving to Opportunity program (“MTO”), a social experiment that evaluated the effects of poverty relocation programs in five cities.\textsuperscript{102} Specifically, the MTO Program tracked the impact of various government poverty de-concentration programs from 1994 through 2002 and compared them to a control group of families who remained in their poor neighborhoods without government assistance. MTO documented impacts of the programs in five cities — Baltimore, Boston, Chicago, Los Angeles, and New York — along five dimensions: economic self-sufficiency, mental health, physical health, risky behavior, and education.\textsuperscript{103}

In their analysis of the MTO data, researchers found that mental health was the only dimension along which the study documented statistically significant improvements for all persons. Teenage females demonstrated statistically significant improvements along some of the other dimensions (such as through improved educational outcomes), but these were offset by equally sizable


\textsuperscript{101} I owe this insight to conversations with political scientist Ian Shapiro.

\textsuperscript{102} See Kling et al., \textit{supra} note 76, at 84.

\textsuperscript{103} Id.
deteriorations among teenage males. Adults did not demonstrate any statistically significant changes one way or the other outside mental health.  

The conclusions regarding the MTO program, however, are more relevant for analyzing solutions to combat concentrated poverty than for analyzing its consequences. The MTO provides important insights on the strengths and shortcomings of some of the particular government programs it evaluated. But the fact that certain relocation programs failed to produce benefits for relocated residents does not mean that concentrated poverty more generally does not produce long-term negative effects.

The reasoning that draws this conclusion from the MTO results is flawed for two reasons. First, as explained above, the negative impacts of concentrated poverty are not limited to the immediate experience of living in a poor neighborhood. Rather, as discussed, concentrated poverty’s consequences operate across a much longer time horizon. Poor families are poor in the first place partly because of concentrated poverty, and a few years of integration can hardly be expected to alleviate that. A poor education, a criminal record, and a lack of home equity do not simply disappear when a family moves to a wealthier neighborhood.

Put otherwise, relocation, of itself, cannot be expected to alleviate poverty. But over time, relocation can enable poor families to raise their children in a setting where they are not structurally disadvantaged and where they may be able to slowly improve their families’ socioeconomic status. Without residential integration, poor African-American families will never be able to escape the self-perpetuating poverty trap in which they find themselves. But to see these positive benefits reflected in the metrics MTO tracked for would require decades, if not generations, of integration. After all, that is how long the negative effects of concentrated African-American poverty have been allowed to compound.

Second, the programs the MTO tracked did not systematically alleviate concentrated African-American poverty or address the structural forces that perpetuate it; they simply relocated certain

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104. *Id.* at 91, 99-105.

105. Ellickson, *supra* note 10, at 1013; see also Kling et al., *supra* note 76, at 109 (concluding associations between concentrated neighborhood poverty and “individual outcomes . . . appear to be much weaker” than previously thought).

106. *See infra* Section IV.
families to wealthier neighborhoods. Thus, using the MTO to evaluate the effects of concentrated poverty more generally involves a false analytical dichotomy between living in a poverty-stricken neighborhood and living as one of the few poor families in a wealthier neighborhood. The latter context could induce several negative effects of its own, including social and cultural isolation and despair at being surrounded by higher achieving peers and colleagues with greater opportunities. Indeed, these effects may be partially responsible for the actively detrimental impact MTO relocation had on teenage males, who would be particularly susceptible.\textsuperscript{107} These effects would not necessarily be present, however, in a more systematically and organically integrated neighborhood. Poorer families would be less socially isolated and neighborhoods could develop cultural identities and norms that transcended economic status and race. Certainly, poor families would still encounter more advantaged colleagues and peers, but they would no longer dominate the neighborhood socially or culturally.

All this is not to say that the results of the MTO are devoid of import. The MTO tracked the impact of actual government programs to de-concentrate poverty, and even if its findings do not shed substantial new insight on the underlying problem of concentrated poverty, they do suggest that the current policy framework for addressing this problem may be in need of revision. It is to these policies and their shortcomings that this paper will now turn.

\section*{III. Attempted Solutions}

Having analyzed the causes and consequences of concentrated African-American poverty, we now turn to the question with which this paper began: why, despite decades of efforts, have we not been able to solve this problem? Current programs to fight concentrated poverty generally fall into one of three categories: project-based subsidies, tenant- and homeowner-based subsidies, and inclusionary zoning. This section will evaluate each, in turn. But across all, the same pattern of shortcomings emerges. Policies have focused on government interventions in the housing market to compel integration, but they have not addressed the existing government tax provisions, land-use and education policies, and other regulations that, as discussed in Section II.C., are responsible for the perpetuation of concentrated African-American poverty in the first

\footnote{107. See Kling et al., \textit{supra} note 76, at 105-7.}
place. The result is that the programs often encounter severe local opposition making them difficult to implement, and even when they are effectively implemented they fail to induce systematic positive change.

A. Project-Based Subsidies

The first way the government has worked to de-concentrate poverty is through strategic subsidies for certain low-income and mixed-income private housing developments. It is difficult to characterize the precise nature or effects of these subsidies, since, as Robert Ellickson writes, they encompass an “ever-changing panoply of programs . . . whose specifics are obscure to all but an intrepid brand of specialists.”

But it is fair to state two general characteristics of the programs in aggregate.

First, most have as their explicit objective the promotion of “affordable housing,” with poverty de-concentration a secondary consideration. For example, the Low-Income Housing Tax Credit (“LIHTC”), the largest of these programs, authorizes tax credits for developers who set aside at least twenty percent of units as low-rent dwellings for qualifying households. Although this tax credit could be used to promote integration, there is nothing inherent in its design to preclude it from exclusively subsidizing developments in poor neighborhoods inhabited entirely by low-income renters. Indeed, the program somewhat bizarrely provides additional incentives to developers who locate projects in high-poverty neighborhoods. Nevertheless, the theory goes, because private developers will still want to turn a profit on the enterprise, they will locate projects in areas where they can also attract higher income renters. Supporters of the program thus claim that on balance it will have “positive benefits with respect to racial integration.”

108. Ellickson, supra note 10, at 990.

109. There is a minority of programs for which this is not the case, most notably the HOPE VI program. These will be discussed below.


111. Ellen et. al., Sitting, Spillovers, and Segregation, supra note 110 at 236, 238.

112. Id. at 239.

The second general characteristic of most project-based subsidies is that their practical implementation is left to state and local authorities.\textsuperscript{114} Even for subsidies funded by the federal government like the LIHTC or the Community Development Block Grant Program ("CDBGP"),\textsuperscript{115} state and local authorities control which projects the subsidies actually fund.\textsuperscript{116} Thus, their actual effect on concentrated poverty is highly dependant on the decisions of local authorities.

The rationale for decentralizing programs to local authorities is that residential patterns and poverty conditions vary by locality and that local authorities are best placed to adapt subsidization programs to these local realities.\textsuperscript{117} The problem with this approach is that local authorities are subservient to the interests of residents who elect them, and, as discussed in Section II.C., these residents have a tangible interest in maintaining entrenched residential segregation. Moreover, even subsidized private developments are subject to the land-use restrictions, building controls, and other regulations that many localities have already enacted to entrench concentrated poverty in the first place. The result is that, in practice, local authorities implement the subsidies in such a way that they do little to alleviate concentrated poverty or residential segregation.

The ongoing legal disputes over affordable housing in Westchester, New York, provide a powerful example of the inability of affordable housing programs to overcome local resistance to residential integration. Located just north of New York City, Westchester is in many ways a socioeconomic cross-section of America. It famously includes several of the country’s wealthiest suburbs such as Scarsdale and Bedford Village, where median property values exceed $1 million. But it also includes poor African-American neighborhoods such as Yonkers and White Plains –

\textsuperscript{114} Ellickson, \textit{supra} note 10, at 990.

\textsuperscript{115} In this program, the federal government funds local proposals to develop poor communities, including through support for affordable housing. See \url{http://www.hud.gov/offices/cpd/communitydevelopment/programs/}.

\textsuperscript{116} See, e.g., LIHTC POLICY QUESTIONS, \textit{supra} note 113, at 12 ("The separation between the funding mechanism at the federal level and housing policy development and implementation at the state and local level is a hallmark of the LIHTC program."); Eli Saslow, \textit{In Southwest Va., As More Need Help, Aid Organization Has Less to Give}, \textit{Washington Post} (April 16, 2011), available at \url{http://www.washingtonpost.com/national/in-southwest-va-as-more-need-help-aid-organization-has-less-to-give/2011/04/13/AFDASD_story.html?wpisrc=emailtoafriend} (CDBG involves "minimal federal oversight").

\textsuperscript{117} See LIHTC POLICY QUESTIONS, \textit{supra} note 113, at 12 ("The structure of the program is perceived by many as one which enables states to more easily innovate and make changes to reflect shifting local housing priorities within the existing program design.").
communities more akin to the inner city Bronx than a suburb.

The first major legal dispute over affordable housing in Westchester occurred in Yonkers during the 1980s. Residentially, Yonkers is a microcosm of Westchester more generally, with poor African-American communities concentrated in the southwest of the city and more affluent (though not quite Scarsdale-level affluent) white communities located in the east. In the late 1970s and early 1980s, shortly after the adoption of the CDBGP, Yonkers began applying for affordable housing funds under the program. Yonkers housing officials filed CDBG proposals with the federal government that emphasized the need for housing development in the eastern part of the city, but when it came to actually implementing the programs, the City Council denied permitting to any project located outside the poor, southwest neighborhoods.118

In 1980, the Civil Rights Division of the Department of Justice initiated a lawsuit against Yonkers. Judge Leonard Sand urged the city to settle the lawsuit, but the council declined, instead fighting the DOJ vigorously in protracted litigation.119 In 1985, Judge Sand ruled against the city, finding that the city council had engaged in intentional racial segregation in its siting of affordable housing units.120 But even after Judge Sand’s decision was upheld by the Second Circuit Court of Appeals and the U.S. Supreme Court, the battle was far from over.

After the Supreme Court upheld Judge Sand’s finding of liability, the judge had, in theory, unlimited authority to order the City Council to undertake remedial action. Accordingly, Judge Sand issued a broad remedial order involving the construction of subsidized housing in east Yonkers and the dispersal of low-income families into that housing.121 The City Council, however, openly obstructed the remedy’s implementation, refusing to voluntarily engage in any of the required rezoning or permitting. It swallowed the heavy contempt fines Judge Sand leveled against it, and forced Judge Sand to order the rezoning and permitting of each housing unit, one at a time.122 Even as the standoff between the council and Judge Sand threatened to bankrupt the city, in the 1987 municipal elections the citizens of Yonkers voted for more defiance, reelecting the most hard-line council members and voting out those who had

118. Schuck, supra note 12, at 325-27, 332-34.
119. For more details of the legal battle see id. at 333-43.
120. Id. at 343.
121. Id. at 345-50.
122. Id. at 352-54.
supported compromise.\textsuperscript{123}

Judge Sand and the citizens of East Yonkers continued this game of chicken into the 1990s, with the City Council caught in the middle. At one point, Judge Sand ordered a freeze on all private development in Yonkers, emboldened by a Second Circuit decision affirming the legality of his hard-line approach towards the city. This measure inspired several City Council members to once again urge compliance, but Judge Sand backed off when these council members received a multitude of death threats from Yonkers citizens. Indeed, with Yonkers on the brink of civil unrest more reminiscent of Little Rock or Selma in the 1950s and 1960s than New York in the 1990s, Judge Sand eventually took his foot off the gas. The law may have been on his side, but President Clinton was not about to send the National Guard in to do battle against a group of upper-middle class New York suburbanites, a core part of his own constituency. When all was said and done, two decades of legal battles resulted in the construction of a whopping 200 affordable housing units in east Yonkers.\textsuperscript{124}

Yet even as integrationists' efforts in Yonkers fizzled their way to an anticlimactic finish, similar disputes over affordable housing in Westchester more generally have continued. Most recently, in 2009 the Westchester County Board settled a lawsuit in which it admitted to using federal affordable housing funding for projects that reinforced existing patterns of residential segregation.\textsuperscript{125} The county agreed to spend $51.6 million to develop at least 750 units of affordable housing in municipalities less than 3% African American and less than 7% Latino populations.\textsuperscript{126} The county also agreed to use its authority to override local zoning restrictions and other municipally created barriers.\textsuperscript{127}

The county's compliance with the decree, however, has been questionable at best. As recently as October 2010, only three of the 750 units had received all necessary funding, and not a single unit

\textsuperscript{123} Id. at 354.
\textsuperscript{124} Schuck, supra note 12, at 354-59.
\textsuperscript{126} See Anti-Discrimination Center, Fact Sheet on Key Elements of the Settlement, http://www.antibiaslaw.com/westchester-false-claims-case/fact-sheet-key-elements-settlement.
\textsuperscript{127} Id.
had received approval for building permits. That same month, the Mayor of Scarsdale reassured his constituents that county officials did not intend to take any action against municipalities to compel them to change their zoning codes. And Westchester county executives have continued to vigorously fight any efforts at real change to their housing laws and practices. It is too early to determine the ultimate outcome of this most recent litigation, but there is little reason to believe it will ultimately have any greater impact on integration than the Yonkers litigation of the 1980s and 1990s.

Westchester’s experience with local resistance to integrated affordable housing has hardly been unique. Political scientist Edward Goetz, for instance, has copiously documented the local resistance to the integration of affordable housing in Minneapolis, Minnesota. And national data reinforces the extent to which federal affordable housing programs have done little to break down entrenched concentrated poverty and residential segregation. Analyses of the LIHTC, for instance, suggest that the siting of developments has roughly mirrored existing distributions of poverty. Unlike the public housing projects of early eras, affordable housing subsidies may not actively exacerbate concentrated poverty. But as the experience with Westchester shows, it is a dubious strategy for combating it.

Given the local resistance to integrating wealthy neighborhoods with affordable housing, a few federal project-based subsidies have taken an alternative approach to combating concentrated poverty. Specifically, rather than bringing poor people into wealthy neighborhoods they have sought to bring wealthy people into poor neighborhoods. The most prominent of these programs is the HOPE VI program, which funds local efforts to knock down “severely stressed” public housing projects and replace them with mixed-


129. See Anti Discrimination Center: Court Monitor Bows to Westchester’s Defiance of Federal Court Desegregation Order While HUD and Justice Department’s Civil Rights Division Stand Idly By, Vocus (Oct. 28, 2010), http://www.prweb.com/releases/2010/10/prweb4711004.htm.


131. GOETZ, supra note 11, at 137-76.

income developments. From its establishment in 1992 through 2004, HOPE VI brought about the demolition of more than 60,000 public housing units across 166 cities.\textsuperscript{133}

The HOPE VI model of poverty de-concentration is politically appealing because it does not threaten the integrity of already-established wealthy communities. The problem is that the displaced residents of public housing projects need somewhere to live, and as long as the overall structure of governmental regulations continues to entrench concentrated poverty, they are likely to remain in poor neighborhoods. Indeed, data suggests that while displaced public housing residents end up living in somewhat less impoverished neighborhoods than initially (hardly surprising considering the locations are pre-selected for being in the worst living conditions in the United States), they disproportionally remain in poor, African-American areas.\textsuperscript{134} And to the extent that some displaced families have improved their conditions, it has been largely through the receipt of housing vouchers, relocation support services, and other tenant-based programs that operate independently of HOPE VI's core mission of replacing public housing with mixed-income developments.\textsuperscript{135} Thus, it appears that the actual act of replacing public housing with mixed-income housing serves primarily to relocate, not de-concentrate poverty.

Moreover, while they are certainly preferable to public housing, mixed-income projects themselves have several shortcomings as tools to promote racial and socioeconomic integration. First, since all the residents of mixed-income developments are renters, they neither individually nor collectively as a neighborhood capture the benefits associated with homeownership. For higher income market-rate renters, generally students and young professionals living in the development for only a few years, this is insignificant.\textsuperscript{136} For the poorer residents for whom the developments are permanent homes, the consequences are far more substantial. Not owning homes, they cannot capture the tax benefits that link homeownership to long-term wealth accumulation. And since their wealthier neighbors are not paying property taxes or sending their kids to local schools, they fail to capture the educational benefits associated with living in a wealthier neighborhood.

Second, mixed income developments and other project-based subsidies suffer from a problem of scale. Whereas other entitlement

\textsuperscript{133} POPKIN ET AL., \textit{supra} note 11, at 2.
\textsuperscript{134} Id. at 29.
\textsuperscript{135} Id. at 14-16. These tenant-based programs will be discussed in the next section.
\textsuperscript{136} See Brophy, \textit{supra} note 11.
programs for the poor like food stamps and welfare are available to anyone who needs them, only 30% of qualified renters with incomes below the federal poverty line benefit from any sort of federal housing aid.137 This is a consequence of the fact that a substantial portion of that aid is allocated through project-based subsidies, which is available to the poor only to the extent that subsidized units are actually constructed. Given the huge challenges involved in ensuring that each subsidized project actually benefits the poor — from local opposition to coordination between government and private developers to finding locations with sufficient market demand for non-subsidized units — it is hardly surprising that it has not been possible to construct enough units.

Finally, mixed-income developments and other project-based subsidies suffer from several economic inefficiencies as compared with subsidies provided directly to the poor. First, subsidized developments involve higher administrative costs than unsubsidized private developments. These costs derive from the coordination between private developers and government and across levels of government that are unique to subsidized developments.138 Second, when a subsidy is associated with a particular unit rather than a tenant, that tenant has no opportunity to leave for alternative housing. Landlords thus face minimal market pressure to construct units whose designs and features efficiently meet low-income tenants’ preferences, or to maintain building standards and services once tenants have moved in.139

All told, then, project-based subsidies do not seem to be a viable solution for addressing concentrated African-American poverty. Implementing the programs in a way that actually promotes integration requires the approval and support of the very localities whose regulations have entrenched segregation in the first place. And even to the extent that programs like HOPE VI create developments in which poorer and wealthier tenants live side-by-side, they are unlikely to fully capture the social or economic benefits of holistic neighborhood integration. Finally, by not awarding subsidies directly to the people they are intended to benefit — the poor — project-based subsidies create a variety of otherwise avoidable inefficiencies. It is for this reason that many housing economists, in particular, favor government programs that provide housing assistance directly to the poor. It is to this category of programs that this paper will now turn.

137. Ellickson, supra note 10, at 1003.
138. Id. at 997-98.
139. Id. at 998-1001.
B. Tenant- and Homeowner-Based Subsidies

The programs described above all sought to combat concentrated poverty by strategically subsidizing particular housing projects. This section will discuss a set of programs that operate instead by strategically subsidizing low-income renters and buyers. In other words, they direct subsidies at the demand side rather than the supply side of the housing market.

The largest and most prominent demand-side subsidy is the Section 8 Voucher Program, which provides rental assistance to low-income households. First established in 1974, the Section 8 Program today serves roughly 1.8 million households, the most of any federal housing subsidy. The precise nature of the program has varied over time, but in its current form, it essentially allows poorer households earning less than half the median income in an area to rent something close to the median-price apartment in their area without having to spend more than 30% of their own income in the process. Additionally, in recent years several programs have begun coupling Section 8 vouchers with mobility counseling to help low-income families understand the implications of living in different types of neighborhoods.

Section 8 vouchers have several advantages over project-based subsidies. Most notably, they are easier to implement effectively on a large scale, and they lack the inefficiencies in construction costs and market discipline associated with project-based subsidies. Indeed, vouchers have been far more effective than project-based subsidies at providing aid to the poor families who most need it. And low-income renters who relocate through vouchers generally express much higher levels of satisfaction with their new housing than those who relocate into subsidized projects.

Nevertheless, most of the core obstacles that have prevented project-based subsidies from substantially de-concentrating poverty inhibit the effectiveness of Section 8 vouchers as well. Most significantly, while Section 8 makes it easier for low-income tenants to rent in wealthier neighborhoods on the margins, that boost still occurs against the backdrop of the overall structure of land-use.

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140. Glaeser & Gyourko, supra note 10, at 115-16.
141. See, e.g., Kling et al., supra note 76, at 84 (discussing mobility counseling in context of MTO), Popkin et al., supra note 11, at 33-49 (discussing mobility counseling in the context of HOPE VI); Schuck, supra note 12, at 321 (discussing use of mobility counseling in the context of the Gatreaux consent decree in Chicago).
142. See Ellickson, supra note 10, at 996-1003; Shuck, supra note 12, at 322.
143. See Glaeser & Gyourko, supra note 10, at 116.
144. See Ellickson, supra note 10, at 1011.
controls and other regulations that entrench concentrated poverty. These regulations, as discussed in Section II.C., lead prices in wealthier neighborhoods to be substantially higher than they would in an unregulated market, partially if not wholly offsetting the impact of vouchers. For instance, in 2010 the Section 8 program dispersed roughly $17 billion of subsidies to low-income families.\textsuperscript{145} The preferential tax treatment of home ownership alone provides more than five times that amount annually to wealthy homeowners.\textsuperscript{146}

As a result, while the Section 8 program has contributed positively to poverty de-concentration on the margins, it has failed to induce systematic change over its more than thirty years in existence. While fewer Section 8 recipients live in high poverty neighborhoods than impoverished non-recipients (including inhabitants of subsidized low-income developments), they are still disproportionately represented in high poverty neighborhoods.\textsuperscript{147} Indeed, the great success story of Section 8 was the relocation of poor families to the Chicago suburbs following the \textit{Gautreaux v. Chicago Housing Authority} lawsuit; yet this program de-concentrated only 7,100 households over the course of twenty years.\textsuperscript{148} This is less than half of one percent of the nearly 2 million households that currently receive Section 8 assistance.

Additionally, even if Section 8 recipients express more satisfaction with their relocation than recipients of project-based subsidies, their relocation is far from perfect. Section 8 was one of the major programs tracked by the MTO program, and, as discussed in Section III.D., the recipients failed to demonstrate improvements along most of the dimensions tracked. As also discussed in that section, one of the explanations for these results may be the short time-horizon of the study. But it also reflects the fact that Section 8 has brought about only the piecemeal relocation of families, not systematic poverty de-concentration. This not only is problematic for the majority of residents who remain in impoverished


146. See Congressional Tax Expenditure Data, supra note 54 and accompanying text.

147. See Ellickson, supra n.10, at 1011; Kling et al., supra note 76, at 87-8 (discussing the challenges of Section 8 relocation revealed by the MTO).

148. The \textit{Gautreaux} case involved a lawsuit against the Chicago Housing Authority alleging that they had placed public housing in a discriminatory manner. As part of the remedy, the court ordered the Housing Authority to use Section 8 vouchers for public housing residents’ relocation. See \textit{GOETZ}, supra note 11, at 52-3 (describing how \textit{Gautreaux} was the most successful use of Section 8 for deconcentration); Schuck, supra note 12, at 319-23 (details of the litigation and consent decree).}
neighborhoods; it also, as discussed in Section III.D., may undermine the benefits of relocation for those who do move.

Section 8 vouchers have several additional shortcomings. First, while the market-based approach of Section 8 eliminates some of the shortcomings of project-based subsidies, one risk of the approach is that the benefits of the subsidy will be passed on to landlords through higher rents. Empirical studies, however, suggest that this effect is minimal and that low-income renters do, indeed, capture most of the program's benefits.1

More significantly, Section 8, like project-based subsidies, only provides low-income households with rental assistance and thus fails to address one of the phenomena at the core of concentrated poverty's causes and detrimental consequences: the government's heavy subsidization of homeownership. It is true that even without homeownership, poor families can capture some of the positive benefits of residential integration and poverty de-concentration (education, job availability, lower crime rates, etc.). And this, in turn, can help them accumulate capital to become a homeowner. But given the government's massive subsidization of homeownership — and the huge head start on wealth accumulation this provides to those who are already homeowners — it is hard to imagine any holistic solution to concentrated poverty that exclusively addresses renting.

This brings us to the second set of demand-side subsidies: those targeted at low-income homeowners rather than renters. The federal government has two such programs, in particular: the Community Reinvestment Act, which requires banks to meet certain lending thresholds in low-income areas, and the Federal Housing Enterprise Financial Safety and Soundness Act (generally referred to as the GSE Act, or the GSEA), which requires federal mortgage insurers Fannie May and Freddie Mac to guarantee a certain number of loans in low-income areas.150 While the GSEA serves primarily to crowd out private mortgage insurers and thus has essentially no impact on lending or homeownership rates in poor neighborhoods, studies suggest that the CRA has had a tangible, if small, positive impact on homeownership rates in poor communities.151

Given that the government is going to subsidize homeownership, it is a positive development on the margins that

149. GLAESER & GYOURKO, supra note 10, at 116-17.
151. Id. at 224-25.
homeownership is available in poorer as well as wealthier neighborhoods. Nevertheless, the CRA does little to de-concentrate poverty, and in fact does not even fully alleviate its negative effects related to homeownership. As discussed in Section II.C., the tax-preferential treatment of homeownership is regressive and disproportionately benefits the wealthiest homeowners. This means that a homeownership boost in a poor neighborhood provides a smaller subsidy to poor families than a homeownership boost in a wealthy neighborhood provides to wealthy families. Moreover, the homeownership subsidy not only provides immediate benefits to wealthy homeowners, but also provides incentives for them to further boost their property values by excluding poorer residents from their neighborhoods, which they are able to do through land-use regulations and other measures. The CRA does nothing to address this phenomenon. Indeed, if anything, by targeting low-income neighborhoods rather than low-income families wherever they live, the CRA provides additional incentives for low-income homebuyers to continue living in poorer neighborhoods, enhancing concentrated poverty and its deleterious effects.

Thus, like Section 8 vouchers, the CRA may have certain positive benefits to poor families on the margins. But also like Section 8 vouchers, it is a far cry from a systematic program to alleviate concentrated poverty and residential segregation.

C. **Inclusionary Zoning**

The final category of policies to combat concentrated poverty is inclusionary zoning. Rather than subsidizing the supply or the demand side of the housing market, inclusionary zoning instead takes a regulatory approach, mandating that municipalities dedicate a certain percentage of all future developments to affordable housing projects. The specific details of the programs vary by state and locality, but they generally require that anywhere from 5% to 35% of new developments be sold or rented at price-controlled rates. These price-controlled developments generally must be of similar size and quality to market-rate units and must be spread throughout designated areas to preclude the creation of new pockets of concentrated poverty.¹⁵²

Inclusionary zoning originated in the 1970s and has been adopted with particular frequency in the last two decades.¹⁵³ The policy is appealing at first blush because it is straightforward in

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¹⁵³. *Id.* at 110.
design and, its supporters argue, it can produce affordable housing without direct public subsidies. But this argument overlooks the fact that funding for affordable housing has to come from somewhere. If developers are forced to build a certain number of nonsubsidized unprofitable developments for every profitable development, they will require an even greater margin on those profitable developments. Thus, inclusionary zoning ordinances can be expected to substantially raise prices for market-rate housing. And if market-rate renters and buyers are unwilling to pay these higher prices, developers will simply not construct any new housing at all, market-rate or affordable.

These consequences of inclusionary zoning ordinances are borne out in empirical data. In the San Francisco Bay Area, for instance, inclusionary zoning ordinances raised the prices of market-rate homes by an average of roughly $45,000. In some cities prices per home increased by as much as $200,000. Similarly, in Los Angeles and Orange Counties, the median increase in market-unit prices from inclusionary zoning was $66,000, with increases as high as $500,000 per unit in some wealthier suburbs. The town of Watsonville, CA imposed particularly stringent inclusionary zoning requirements in 1990, requiring that 25% of all new homes be sold to low- and moderate-income buyers at below-market prices. Almost no new construction of any kind occurred until ten years later, when the ordinances were made less restrictive. San Jose had a similar construction boom when the city offered a two-year exemption on its 20% affordability requirement for new developments. And in suburban Boston, only one-fifth of communities with inclusionary zoning programs have reported the construction of any affordable housing units.

It appears, then, that inclusionary zoning is not a viable strategy for poverty de-concentration. When ordinances aggressively set affordable housing mandates, no new development occurs. When thresholds are less ambitious, ordinances may prompt small levels of affordable housing construction. But this comes at the cost of increased prices for market-rate housing, making the neighborhood even less affordable for all but the few families who lottery into the affordable housing. Moreover, these price increases occur on top of

156. Id. at 116.
157. Id. at 118-19.
158. Schuetz et al., supra note 155, at 452.
the already inflated prices brought about by exclusionary zoning and other land use policies, which inclusionary zoning does not invalidate. Thus, while inclusionary zoning may facilitate token relocations of low-income families into wealthy neighborhoods, it creates new obstacles to residential integration more generally. Its net effect on concentrated poverty may not only be neutral, but negative. Indeed, Dartmouth Professor William Fischel has hypothesized that the real reason municipalities adopt inclusionary zoning is as a public relations and legal cover to fend off efforts that actually seek to promote systematic integration.159

Finally, even the families who do move into inclusionary zoning-mandated affordable housing are not able to capture the full benefits of integration. Inclusionary zoning ordinances impose resale price controls on the owners of affordable units in order to preclude them from immediately flipping the homes for “windfall” profits.160 The problem with these restrictions is that they reduce the value of the home and eliminate incentives for the owner to maintain and improve it, which in turn further devalues the property.161 This precludes the low-income homeowner’s ability to accumulate wealth through homeownership, one of the core benefits of living in a wealthier neighborhood in the first place.

D. Tying it Together

Over the past several decades the government has pursued a multitude of subsidies and regulations designed to compel residential integration and poverty de-concentration. All the while, the government’s own tax, land use, and education policies that entrenched concentrated African-American poverty remain unabated. Against this backdrop, some of the attempts to compel de-concentration have been beneficial on the margins, while others have been inconsequential if not actively detrimental. But they all share one common feature – they have failed, over the course of several decades, to induce any systematic progress because at the end of the day they do not address concentrated poverty’s underlying causes. They address a problem that is perpetuated by government interventions not by ending those interventions, but by adding more interventions on top of them: community development grants implemented by the level of government with the least interest in integration; subsidies for low-income renters dwarfed by

160. Powell & Stringham, supra note 153, at 121; Schuetz et al., supra note 155, at 448.
161. Powell & Stringham, supra note 153, at 121-23.
subsidies to wealthy homeowners; inclusionary zoning on top of exclusionary zoning. The list goes on.

There have been some half-hearted attempts to address the underlying drivers of perpetuated concentrated poverty. In the celebrated 1975 case of Southern Burlington County NAACP v. Township of Mount Laurel, for instance, the New Jersey Supreme Court held that New Jersey’s existing zoning practices violated the state constitution’s provision that police powers be used to promote the “general welfare.” Rather than invalidate these zoning practices, however, the court instead issued a remedy involving a combination of inclusionary zoning mandates and affordable housing subsidies. As with most other uses of these policies, the net impact has been minimal.

Ultimately, if the United States is serious about alleviating concentrated African-American poverty, the current policy framework of attempting to compel integration through government intervention will not work. Rather, we must fundamentally rethink the overall structure of our approach towards homeownership, land-use, and urban planning. The final section of this paper will lay out several recommendations for how to effectively do this.

IV. Law and Policy Recommendations

A. The Case Against Localism

In the last few decades, it has become increasingly trendy in legal and academic circles to support the enhanced autonomy of local governments. The delegation of services and decision-making to local authorities, the argument goes, allows municipalities to tailor their laws and policies to the particular needs of community members while also allowing individuals and families to choose among communities. This results in an efficient “package” of governance for the residents of each community and encourages democratic experimentation and innovation.
This perspective is also present in the jurisprudence of the Rehnquist and Roberts Courts, which have worked to limit the power of the federal government on the grounds that a "decentralized government . . . will be more sensitive to the diverse needs of a heterogeneous society." While the Supreme Court’s jurisprudence nominally restricts the power of the federal government only vis a vis state governments, the Court "has often (if unreflectively) treated local institutions as undifferentiated stand-ins for the state."

The problem with giving local governments too much autonomy, however, is that many local laws and policies impact individuals outside the local polity that creates them. This is particularly relevant for zoning laws, building codes, and other housing and land-use regulations, which artificially restrict the ability of new families to enter a community. One of the alleged benefits of local autonomy is that localities will compete to attract residents, promoting democratic innovation and allowing families to pick the package of government that best suits their needs. But zoning ordinances and building codes have the exact opposite effect, precluding outsiders from taking advantage of a community’s desirable features so that current residents can benefit from them disproportionately.

Land use regulations certainly have some valuable uses, but in order to limit their exclusionary impact, their use should be limited in two important ways. First, zoning decisions should be made at the state level, not at the level of municipalities or even counties. This way, the officials making zoning decisions will be responsible to all constituents who will be impacted by the laws, not merely a subset. Second, and more importantly, Congress should authorize federal courts to invalidate any zoning ordinance that, in a substantial way, disproportionately excludes racial groups or members of a socioeconomic class. The Supreme Court has repeatedly held that such ordinances cannot be invalidated under the equal protection clause of the Constitution. But Congress could plausibly invalidate them under the interstate commerce clause, or

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168. See sources cited supra, note 165.
169. The Westchester litigation shows that even county authorities with diverse populations may be overly subservient to their wealthiest constituents.
170. Under the Interstate Commerce Clause, Congress may regulate any activity that has a “substantial relationship” to interstate commerce. United States v. Darby, 312 U.S. 100 (1941). As part of assessing whether an activity has a substantial relationship to
under its equal protection enforcement power.\footnote{171} Indeed, in the context of employment and voting, Congress has already enacted laws banning policies with disparate racial impacts, even if they are not racially motivated.\footnote{172}

Banning exclusionary zoning would not only go a long way towards alleviating concentrated African-American poverty; the decision would have few countervailing negative effects. Most of the basic functions of zoning that are actually useful — such as separating residential, commercial, and industrial uses of space — would, if properly designed, not be invalidated by the exclusionary zoning limits proposed above. Moreover, wealthy Americans would still have complete control over their own property. If they really wanted, they could even buy up surrounding space to create a buffer between themselves and less well-off residents with less aesthetically pleasing houses.

In addition to zoning and other housing and land-use regulations, the localization of public education funding also presents a problematic delegation of government services. In this case, the problem is not the externalities of local decisions so much as the perversion of local incentives. The essence of public education is that the government provides all Americans with a baseline of educational opportunity irrespective of their ethnic, socioeconomic, or geographic background. Unlike parks, public transportation, or garbage collection, education is not a service that we want to vary in nature based on local needs and preferences. Fostering competition among individual schools to promote pedagogical experimentation and innovation may be valuable. But funding schools proportionally to average community wealth does not incentivize interstate commerce, Congress can apply the principles of "aggregation" (measuring the effect of one person's activity by looking at what effect it would have if everyone did it) and "overhang" (measuring the effect aggregated private action would have on third parties). Wickard v. Filburn, 317 U.S. 111 (1942). (local zoning plausibly has a substantial relationship to interstate commerce because, when aggregated, local zoning laws affect third-party mobility, including potentially across states).

\footnote{171. Under its equal protection enforcement power, Congress may take preventative steps to combat discrimination, as long as they are "congruent and proportional" to an underlying equal protection violation. City of Bourne v. Flores, 51 U.S. 507 (1997). Thus, even though the disparate racial impact of exclusionary zoning may not give a private individual a constitutional cause of action, it could potentially serve as a basis for prophylactic invalidation of these local laws by Congress. See Nevada Dep't Human Resources v. Hibbs, 538 U.S. 721 (2003) (in acting to prevent discrimination, Congress may sometimes regulate "a somewhat broader swath of conduct, including that which is not itself forbidden by the Amendment's text," particularly for "difficult and intractable problem[s]" that "justify added prophylactic measures in response.").}

educational innovation; it incentivizes municipalities to pass laws unrelated to education (like exclusionary zoning ordinances) whose sole purpose is to maximize the school district’s wealth at the expense of other school districts.

Banning exclusionary zoning would, of course, go a long way towards minimizing municipalities’ ability to act on these incentives. But a correlation between public school quality and wealth is hardly a particularly desirable outcome in the first place. Given the role that the localization of school funding plays in incentivizing wealthier localities to perpetuate residential segregation and poverty concentration, states would be wise to eliminate this aspect of their public education systems.173

B. The Proper Role for Government

Given the role local autonomy has played in perpetuating concentrated African-American poverty, it is tempting to look to the federal government to solve the problem. Before doing so, it is worth bearing in mind that federal interventions in the housing market over the last eighty years have ranged from ineffective to disastrous. In the 1930s, 1940s, and 1950s, the federal government played a crucial role in creating concentrated African-American poverty through the racist practices of the FHA and HOLC. The public housing movement of the 1960s and 1970s was better intentioned, but no less harmful. And even today, the federal government’s net role in the housing market is to entrench concentrated poverty. Whatever one thinks of HUD’s plethora of housing subsidy programs for the poor (and as Section IV of this paper discussed, there are strong reasons to doubt the efficacy of many), they are dwarfed in magnitude by the federal tax code’s subsidization of homeownership for the wealthy.

The truth is that concentrated African-American poverty was in large part created and perpetuated by government interventions at both the federal and local level. To the extent that federal action is necessary to restrain harmful action by localities, such as by limiting localities’ zoning power in the manner proposed in this paper, it should act. But before rushing to declare that new government interventions are needed to help inner-city African Americans, we should give housing markets a chance to operate without the detrimental regulations already in place. Policymakers and

173. Some states that have reduced financing disparities between school districts still have high levels of concentrated African-American poverty. But this is to be expected given that all of the other drivers of concentrated African-American poverty remain in place.
advocates truly concerned with combating concentrated African-American poverty would best spend their energies trying to eliminate, for instance, the home-mortgage interest deduction, rather than trying to conjure up even more varieties of affordable housing programs.

Even if the pernicious interventions of federal and local governments are lifted, it will be unrealistic to expect rapid de-concentration of poverty. The cycle of inner-city poverty — poverty concentration exacerbating poverty and thereby making it even more difficult for residents of poor neighborhoods to move — has operated for generations. It will be important to give markets time to undo this cycle and to avoid the temptation to give in to quick-fix government interventions that are likely to backfire as so many have in the past.

That said, given that the deck has been stacked against them for so long, it may be appropriate to give the residents of impoverished neighborhoods some form of boost as they enter an unregulated housing market. Tenant-based subsidies such as the Section 8 voucher program or a modified version of the CRA that targets poor families rather than poor communities seem like the best options. These programs are scalable, comparatively easy to administer, provide money directly to the families who need it, and do not take away from them the market benefits of choice and exit. Project-based subsidies are a far inferior alternative given their inefficiencies, inability to scale, and heavy reliance on localities for implementation. And inclusionary zoning ordinances provide the worst option, since, as discussed, they generally do more harm than good.

It is critical to remember, however, that even tenant-based subsidies will not be successful until the exclusionary zoning ordinances, tax subsidization of homeownership, and other government regulations that entrench concentrated poverty are lifted. This *deregulation* should be the number one objective of anyone who wishes to combat concentrated poverty. Advocacy organizations currently focused on promoting new interventions would be wise to redirect their efforts and resources.

C. The Case for Anti-Subordination

The fact that it is government policies that continue to entrench concentrated African-American poverty has implications for the legal and constitutional treatment of race more generally. In its equal protection jurisprudence, the Supreme Court has for several decades been split down the middle on the question of whether "benign" uses of racial classifications by government are
constitutional. For the Court’s “conservative” members, essentially any use of a racial classification is invidious, and therefore unconstitutional unless being used to directly remedy a specific piece of past de jure segregation. For the Court’s “liberal” members, racial classifications that seek to promote racial equality are not invidious at all; they therefore may be used, within reason, to remedy more general lingering impacts of historical racial discrimination. These are sometimes referred to as the “anti-classification” and “anti-subordination” understandings of the equal protection clause, respectively.  

Underlying the majority’s anti-classification jurisprudence is the assumption that, forty years after the civil rights movement outlawed intentional racial discrimination, general racial inequalities cannot be directly attributed to government actions. For instance, in the case of Parents Involved in Community Schools v. Seattle School District No. 1, Seattle engaged in a plan to desegregate its public schools by assigning, on the basis of race, certain students to schools outside their geographic school district. To Chief Justice Roberts, this was an act of invidious “racial balancing” that could not be justified because the schools’ initial segregation was a consequence of naturally occurring “housing patterns,” not the policies of the schools themselves. The Chief Justice famously quipped, “The best way to stop discrimination based on race is to stop discriminating based on race.”

However, as this paper has discussed, racial segregation of neighborhoods is not simply a consequence of natural “housing patterns,” but rather is directly traceable to government policies: the racially discriminatory policies that helped create segregation and the ongoing land use regulations, tax subsidies, and other regulations that entrench it. As the dissenting justices in Parents Involved argued, the Constitution may not impose an affirmative duty to desegregate such school districts, but it certainly should not prevent a district from doing so if it wishes.

As with many equal protection decisions, the swing vote in Parents Involved belonged to Justice Kennedy, who sided with Justice Roberts in the final decision, but did not sign on to his full opinion. Justice Kennedy wrote instead that “parts of the opinion by the Chief Justice imply an all-too-unyielding insistence that race cannot be a factor in instances when, in my view, it may be taken into

176. Id. at 748.
Justice Kennedy, and the other members of the Court, would be wise going forward to give more deference to racial considerations intended to remedy the inequities of past racism, particularly given that it is the government's own economic regulation that entrenches these inequities.

Much of this paper has focused on the economic elements of concentrated African-American poverty. The reason for this is that the perpetuation of concentrated poverty since the civil rights movement has been primarily an economic rather than racial phenomenon, and the efforts of advocacy organizations working to combat this inequality have been largely misdirected. But it is important not to lose sight of the fact that a hugely disproportionate number of the residents of impoverished urban neighborhoods are African American, and that they disproportionately suffer for a reason: because of the generations of private and governmental racism that proceeded the 1960s. Just as advocacy organizations should shift their organizational focus to the deregulatory policy proposals recommended above, the Supreme Court must remain cognizant of this history and give government the constitutional flexibility necessary to alleviate all the racial inequality that it caused.

177. Id. at 787 (Kennedy, J., concurring).