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A. Mechele Dickerson

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SYSTEMIC RACISM AND HOUSING

*A. Mechele Dickerson**

ABSTRACT

After the Great Depression and World War II, political leaders in this country enacted laws and adopted policies that made it easy for families to buy homes and increase their household wealth. This housing relief was limited to whites, though. Blacks and Latinos have always struggled to buy homes or even find safe and affordable rental housing.

State and federal laws now ban discrimination based on race in housing and mortgage lending markets. But the legacy of early racist laws combined with ongoing discrimination by private actors, exclusionary zoning laws, and even ostensibly race-neutral actions like gentrification increase housing costs for Blacks and Latinos and make it harder for them to buy homes, particularly in high-opportunity neighborhoods.

This Essay describes the roles public and private actors have played and continue to play in creating racial disparities in U.S. housing markets. Given the sullied history of racism in housing and lending markets and current facially neutral federal tax and local land use laws, this Essay argues that the only way to close racial housing disparities is to enact laws and policies that are specifically designed to undo prior acts or conduct.

* University Distinguished Teaching Professor and Arthur L. Moller Chair in Bankruptcy Law and Practice. I remain grateful that Professor Dorothy Brown encouraged me (oh so many years ago) to use a race lens in my scholarship. I also thank the editors of the *Emory Law Journal* for their editorial assistance with this Article and for their commitment to dedicating a symposium issue to essays about the critical issue of systemic racism.

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INTRODUCTION

Racist housing law and policies were legal and the norm in this country until the end of the 1960s.¹ It is no longer legal to discriminate against people in housing and mortgage lending markets based on their race. Still, Blacks and Latinos struggle to find affordable housing to buy or to rent because of the legacy of racist laws and policies and also because current race-neutral laws and policies privilege upper-income homeowners, who are disproportionately white.²

This Essay explains how U.S. housing markets systematically discriminate against nonwhites and why prior (now illegal) laws and practices created the existing racial homeownership and wealth gaps. Part I describes how public and private laws, policies, and practices helped whites buy homes after the Depression, but made homeownership virtually impossible for Blacks. Because early federal and state policies deemed Black neighborhoods to be unsafe, unstable, and blighted, it was harder for Black homeowners to buy homes and increase their household wealth or for Black renters to find affordable rental housing.

Part II describes the role white private actors (homeowners, realtors, investors, lenders, and appraisers) played both in increasing housing costs for Blacks and in excluding them from all-white or stably integrated neighborhoods. For example, white homeowners kept Blacks from buying homes in white neighborhoods by agreeing with each other that they would not sell or lease their homes to Blacks. In addition, white real estate speculators made it harder for Blacks to buy high-appreciating homes in stably integrated neighborhoods by using scare tactics in “blockbusting” schemes that caused white homeowners to flee neighborhoods once Blacks moved in. Blockbusting triggered white flight, which caused integrating neighborhoods to re-segregate, and also caused additional white homeowners to sell their homes at below-market prices (to the speculators), which depressed the value of the homes Blacks recently purchased in those neighborhoods.

Although overtly racist public laws and policies are no longer legal and private actors cannot legally discriminate against renters or potential homeowners based on race, Part III shows how federal tax laws and exclusionary land use laws continue to privilege existing homeowners and increase housing

¹ MECHELE DICKERSON, HOMEOWNERSHIP AND AMERICA’S FINANCIAL UNDERCLASS: FLAWED PREMISES, BROKEN PROMISES, NEW PRESCRIPTIONS 191 (2014).

² *Id.* at 186.

costs for economically vulnerable families who seek affordable housing. Part IV then shows how private actors—like banks, real estate agents, and homeowners’ associations (HOAs)—increase the housing costs of Blacks and Latinos and continue to keep them and economically marginalized residents out of high-opportunity neighborhoods.

Part V argues that years of systemic racism in housing laws and policies have created racial homeownership and housing disparities that are exacerbated by newer practices, like gentrification, that reduce the supply of affordable housing. This Essay concludes by arguing that policymakers should enact anti-racist³ laws and policies to remedy the systemic racism that permeates housing markets. Part VI proposes a range of anti-racist solutions (enacting inclusionary zoning laws, repealing homeownership tax subsidies, and giving developers incentives to build affordable housing), which would help make housing more stable and affordable for nonwhites and could also help increase their household wealth.

I. PUBLIC LAWS AND STRUCTURAL RACISM IN HOUSING: THE EARLY YEARS

Before the Depression, most Americans were renters.⁴ To encourage renters to buy homes, the federal government launched an “Everyman’s Home” campaign that promised *everyone*—including the wage-earning plumber and electrician—could increase their household wealth by buying a house.⁵ Most Americans rented before the Depression because of the difficulties they faced if they attempted to buy a home. So, to make it easier for Americans to buy homes, the federal government enacted laws and policies to make home buying cheaper and less risky. It was abundantly clear, however, that the “everyone” envisioned in this homeownership campaign and in laws that facilitated homeownership was white.⁶

Renters struggled to buy homes before the Depression because they needed to make significant down payments, often as much as 50% of the value of a home.⁷ Most pre-Depression mortgage loans had adjustable interest rates, which

³ The landscape and contours of current housing markets were shaped by federal, state, and local policies that were intended to discriminate against Blacks and Latinos or were designed to privilege whites. An *anti-racist* approach to remedying existing housing disparities requires the identification and examination of the consequences of these racist laws and policies and a willingness to enact new laws and policies that seek to ameliorate those negative consequences.

⁴ See DICKERSON, *supra* note 1, at 39–40 (describing features of the pre-Depression housing market that “made homeownership high-risk and high-cost for most potential home buyers”).

⁵ *Id.* at 145.

⁶ *Id.*

⁷ See *id.* at 39.

posed risks for borrowers who might not know the exact amount of their mortgage payments each month or know when or whether payments might increase.⁸ Because these loans did not self-amortize and had relatively short (five- to ten-year) repayment periods, even when borrowers repaid the loans, they had a final (and often substantial) “balloon” payment that they had to make before they owned their homes outright.⁹ Few borrowers could afford to make their monthly mortgage payments and simultaneously save enough for the final balloon payment. Because of this, most borrowers needed to take out another loan to fully pay for their homes.¹⁰

When borrowers defaulted on their mortgages during the Depression, banks were unwilling to restructure loans (or approve new ones) to help homeowners finish paying for their homes. The federal government realized that housing and mortgage lending markets would not rebound until more American families could buy and remain in their homes. The government also understood that banks would not increase mortgage loan originations without the assurance that mortgage loans would be repaid.¹¹ To protect the security and stability of banks and also make it easier for Americans to buy homes, the government enacted banking and housing laws and policies that radically and forever changed how Americans become homeowners.¹²

A. *Creating New Homeowners*

After the Great Depression and World War II, Congress revised federal laws or enacted sweeping new ones to boost homeownership rates and convince banks to approve borrower-friendly mortgage loans. Specifically, Congress changed banking laws to create longer-term (fifteen- or thirty-year), safer (self-amortizing), and more affordable (fixed interest rate) mortgage loans that made homeownership cheaper and less risky for eligible borrowers.¹³ To give banks an incentive to originate more mortgage loans, the government created the Federal Housing Administration (FHA)¹⁴ insurance program, which promised lenders that the U.S. government would repay long-term and fixed-rate private mortgage loans if the borrower was unable to do so.¹⁵ Likewise, the federal

⁸ *Id.* at 39–40.

⁹ *Id.*

¹⁰ *Id.* at 39.

¹¹ *Id.* at 42.

¹² *Id.* at 41.

¹³ *Id.* at 45.

¹⁴ The FHA was created as part of the National Housing Act of 1934. *See* National Housing Act of 1934, Pub. L. No. 73-479, 48 Stat. 1246.

¹⁵ DICKERSON, *supra* note 1, at 43.

government created the Veterans Administration (VA) mortgage program (part of the GI Bill) to help returning veterans buy homes.¹⁶ Like the private mortgage loans the FHA agreed to insure, VA loans had longer terms, were self-amortizing, had fixed interest rates, and allowed eligible veterans to buy homes with relatively small down payments (approximately 20%).¹⁷

The federal government's interventions in mortgage and housing markets helped Americans buy homes using lower-cost and lower-risk mortgage products. But like the "Everyman's Home" campaign, these federal interventions only helped white renters. By design, federal laws and policies made it virtually impossible for Blacks to buy homes using the low-cost and low-risk federally insured mortgage loans white homeowners used to buy homes and increase their household wealth.

B. Discouraging and Thwarting Black Homeowners

The most infamous way the government and private entities made it harder for nonwhites to become homeowners was the development and use of a racist, residential color-coded mapping series commonly known as "redlining." Specifically, realtors and appraisers used pseudoscientific theories to determine whether the home a borrower sought to buy was in a "safe" and "stable" neighborhood. Borrowers who applied for a federally insured loan to buy homes in neighborhoods deemed dangerous or high-risk would be denied credit and the potential home buyer would be forced to pay all cash for the purchase or finance the purchase through other means.¹⁸

All Black or racially mixed neighborhoods were deemed unsafe and outlined in red on the residential mapping series, even though no credible scientific or economic theories then (or now) support the racist view that the presence of Black homeowners in white neighborhoods destabilizes those neighborhoods and causes home values in the neighborhoods to decline.¹⁹ Because of redlining, Blacks could not qualify for low-cost and low-risk federally insured mortgage loans to buy homes in all-Black or racially integrated neighborhoods (deemed unsafe), or even in all-white neighborhoods (presumptively safe) since their

¹⁶ *Id.* at 44; see Servicemen's Readjustment Act of 1944 (G.I. Bill of Rights), Pub. L. No. 78-346, 58 Stat. 284.

¹⁷ DICKERSON, *supra* note 1, at 43-44.

¹⁸ *Id.* at 146.

¹⁹ *Id.* at 13.

presence in white neighborhoods would deem the previously safe neighborhood to be unsafe.²⁰

In addition to making it virtually impossible for Blacks to buy homes using federally insured loans, federal banking policies prevented lenders from offering any self-amortizing, longer-term, or fixed-rate mortgage loans *unless* the loan could be insured by the FHA.²¹ Because banks would not approve loans without a repayment guarantee and federal law prevented them from offering loans with the same favorable terms FHA-insured loans had, Blacks could buy homes and increase their housing wealth only if they paid for the home in cash (which few buyers of any race could do) or found a private insurer who was willing to guarantee their mortgage loans (which few would do).²²

Redlining also depressed the value of homes in nonwhite neighborhoods. Deeming Black residents to be dangerous and suggesting that their presence in a neighborhood creates instability stigmatizes homes in nonwhite neighborhoods. A home buyer who *could* qualify for lower-cost and lower-risk federally insured loans would rationally avoid buying homes in redlined neighborhoods since doing so would increase their home-buying costs because they could not qualify for a low-cost federally insured mortgage.²³ Because whites (who had higher overall household income and homeownership rates) who might have been willing to live in a nonwhite neighborhood would rationally choose to avoid buying homes in those neighborhoods, redlining reduced the supply of potential buyers for homes in Black neighborhoods. This reduced supply depressed the market value of those homes, lowered appreciation rates, and depressed the housing wealth for any Blacks who owned homes in nonwhite neighborhoods.²⁴

Finally, homes in Black neighborhoods were valued less in housing markets relative to homes in white neighborhoods because of inadequate maintenance. Because redlining also made it impossible for Blacks to qualify for federally insured second mortgages to make home repairs, Black-owned homes were

²⁰ The Code admonished realtors not to introduce “into a neighborhood a character of property or occupancy, members of any race or nationality, or any individuals whose presence will clearly be detrimental to property values in that neighborhood.” *Id.* at 146. Though Black *maids* and *servants* had always lived in homes in white neighborhoods, realtors concluded that having Black *homeowners* in a neighborhood would somehow harm the property values of white-owned homes despite the lack of any credible empirical support for this conclusion. *Id.*

²¹ *Id.* at 148.

²² *Id.* at 149.

²³ *Id.*

²⁴ *Id.* at 147.

often less maintained than white-owned homes.²⁵ In addition, because of rampant discrimination in labor markets until the 1960s, Blacks have always had lower household income relative to whites. Because Black homeowners had little disposable income and limited access to capital, they were often forced to defer routine or major home repairs, which caused their homes to be less valuable in housing markets relative to white-owned homes.²⁶

C. *Creating (White) Suburbs*

Cities were allowed to enact and enforce municipal zoning laws that prevented Blacks from living in white neighborhoods until the Supreme Court's 1917 ruling in *Buchanan v. Warley*.²⁷ While this case prevented judges from enforcing racist zoning codes, some Southern cities ignored the Supreme Court's ruling while others attempted to circumvent the ruling by enacting ordinances that segregated neighborhoods based on the race of the residents who lived on a particular city block.²⁸ Though overtly racist zoning laws are no longer constitutional or enforceable, the legacy of those laws and policies live on as they helped create the American suburbs.²⁹

Just as homes in nonwhite neighborhoods were deemed unsafe and unstable, homes in suburban neighborhoods were presumptively deemed safe and viewed as more desirable than homes in older, urban neighborhoods.³⁰ Federal lending policies favored borrowers who sought to buy new, single-family homes in suburban neighborhoods and roughly half of all homes built in the 1950s and 1960s (when the suburbs were expanding) were constructed using FHA-insured loans. Because Blacks could not qualify to buy homes using low-cost and low-risk FHA-insured loans, federal laws made it possible only for whites to buy new and high-appreciating suburban homes.³¹

Federal transportation laws and policies also helped create suburban neighborhoods and ensured that suburban homes would be more appealing to potential buyers. Because most jobs were located in urban city centers, potential

²⁵ *Id.* (noting that redlining made it practically impossible for Blacks to obtain affordable housing loans).

²⁶ FHA policies required lenders to confirm the borrower's "characteristics" (including the borrower's race), required appraisers to disclose whether the borrower intended to buy a home in a racially mixed neighborhood, and required information that disclosed whether the neighborhood was at risk of being "infiltrated" or "invaded" by Blacks or immigrants. *Id.* at 149.

²⁷ *Buchanan v. Warley*, 245 U.S. 60, 82 (1917); *Jackson v. Maryland*, 103 A. 910, 910 (Md. 1918).

²⁸ DICKERSON, *supra* note 1, at 155.

²⁹ *Id.* at 152.

³⁰ *Id.*

³¹ *Id.*

home buyers would be more willing to buy suburban homes if they had a reliable and quick way to commute to their jobs from suburbs.³² The federal government expanded the federal interstate highway system to ease the commutes of (white) suburban workers, but before they could do so, they had to obtain ownership of the land needed to build those highways.³³

The Housing Act of 1949 and Federal-Aid Highway Act of 1956 allowed the government to acquire land to build the interstate system.³⁴ But, just as imperialist federal land policies confiscated Native American land to help the United States expand West, these transportation policies intentionally targeted land in predominately Black neighborhoods, deemed the land or neighborhood to be blighted, then destroyed the houses, churches, schools, and businesses in those neighborhoods.³⁵ One reason central-city Black neighborhoods could so easily be deemed “blighted” and condemned was because banks refused to approve home repair loans for homeowners in those neighborhoods and localities had generally ignored the infrastructure needs of those communities.³⁶ Rather than acknowledge the systemic causes of blight (racist housing, lending, and investment practices), urban removal and destruction programs proceeded to destroy what were often middle-class Black communities to obtain land they needed to build highways for white suburbanites to go to work.³⁷

In addition to condemning and destroying Black neighborhoods to build highways, cities used local blight removal programs to sell or transfer condemned land to private real estate developers who sought to build housing, typically for higher-income white renters or homeowners.³⁸ One example involved New York’s decision in the 1940s to condemn land in Manhattan, destroy a stable lower-income community, and transfer the then-vacant land to

³² *Id.*

³³ See RAYMOND A. MOHL, POVERTY & RACE RSCH. ACTION COUNCIL, THE INTERSTATES AND THE CITIES: HIGHWAYS, HOUSING, AND THE FREEWAY REVOLT 6 (2002) (describing federal land acquisition planning efforts).

³⁴ See *id.*; Federal-Aid Highway Act of 1956, Pub. L. No. 84-627, 70 Stat. 374, 381.

³⁵ DICKERSON, *supra* note 1, at 152; see also MOHL, *supra* note 33, at 20–21.

³⁶ See Alexis C. Madrigal, *The Racist Housing Policy That Made Your Neighborhood*, ATLANTIC (May 22, 2014), <https://www.theatlantic.com/business/archive/2014/05/the-racist-housing-policy-that-made-your-neighborhood/371439/> (explaining that the FHA’s grading scale for neighborhoods and policies of refusing to make loans on “red” neighborhoods characterized by poor housing conditions and “undesirable” populations).

³⁷ Urban planners used racialized terms to define blight and argued that renewal efforts were needed to prevent neighborhoods that were being invaded. For example, early renewal efforts in Chicago sought to dislocate Black residents who recently migrated from the rural South, while New York focused on displacing Jewish and Italian immigrants. See Wendell E. Pritchett, *The ‘Public Menace’ of Blight: Urban Renewal and the Private Uses of Eminent Domain*, 21 YALE L. & POL’Y REV. 6, 17, 20 (2003); see also MOHL, *supra* note 33, at 21–25.

³⁸ DICKERSON, *supra* note 1, at 152–53.

a private developer, Metropolitan Life Insurance Company (“Met Life”). Met Life, which had a history of discriminating against Black renters, developed a massive quasi-public housing apartment complex but would lease units only to white residents.³⁹ Despite immediate unfavorable complaints and protests about Met Life’s refusal to rent to Black tenants, the New York City Council refused to force Met Life to allow Black tenants and, instead, passed a law that prohibited racial discrimination in the tenant selection process in *future* public-private projects.⁴⁰

When the government condemned property or destroyed neighborhoods to build highways or transfer land to private developers, some white tenants were also evicted.⁴¹ But, housing opportunities for displaced white tenants were more plentiful than housing options for nonwhites because displaced whites could qualify for federally insured mortgage loans to buy a suburban home. Or, their whiteness allowed them to rent a home in a higher-opportunity neighborhood.⁴²

D. Limiting Rental Assistance

While most Blacks have always been renters, not all renters during the 1940s were Black. Even though whites could qualify for affordable, federally insured mortgage loans, not all white Americans could afford to buy homes after World War II.⁴³ To help financially struggling renters find safe and affordable housing, Congress enacted a series of laws, including the Housing Act of 1949.⁴⁴ This Act, and local housing policies generally, required landlords to provide safe and sanitary housing conditions for their tenants.⁴⁵ The Act also authorized the construction of subsidized public housing units to give eligible families “a decent home and suitable living environment” and made it easier for states to exercise their eminent domain powers to condemn blighted rental housing.⁴⁶

These rental assistance programs did not and were never designed to guarantee that all financially needy renters would be able to find suitable and

³⁹ Isaac N. Groner & David M. Helfeld, *Race Discrimination in Housing*, 57 YALE L.J. 426, 438–39 (1948).

⁴⁰ *Id.* at 440 n.67; *Exclusion of Negroes from Subsidized Housing Project*, 15 U. CHI. L. REV. 745, 745–47 (1948).

⁴¹ DICKERSON, *supra* note 1, at 153.

⁴² *Id.* at 152–53; STEPHEN GRANT MEYER, AS LONG AS THEY DON’T MOVE NEXT DOOR: SEGREGATION AND RACIAL CONFLICT IN AMERICAN NEIGHBORHOODS 116 (2000).

⁴³ See WILHELMINA A. LEIGH & DANIELLE HUFF, JOINT CTR. FOR POL. & ECON. STUD., AFRICAN AMERICANS AND HOMEOWNERSHIP: SEPARATE AND UNEQUAL, 1940 TO 2006, at 3 (2007).

⁴⁴ MAGGIE MCCARTY, CONG. RSCH. SERV., R41654, INTRODUCTION TO PUBLIC HOUSING 2–3 (2014).

⁴⁵ Housing Act of 1949, Pub. L. 81-171, 63 Stat. 413, 433.

⁴⁶ MCCARTY, *supra* note 44, at 3.

affordable rental housing.⁴⁷ In fact, land use laws and policies have always made it harder for renters to find rental housing in high-opportunity, suburban neighborhoods because those laws and policies have *always* favored homeowners.⁴⁸ Thus, although the U.S. Commerce Department’s Advisory Committee on Zoning proclaimed in the 1920s that zoning regulations should “treat all men alike,”⁴⁹ land use laws have never viewed renters as equals to homeowners, and land use laws have consistently been used to keep multi-family rental housing out of neighborhoods where homeowners live.⁵⁰

An early zoning decision, *Village of Euclid v. Ambler Realty Co.*, illustrates the contempt many local leaders had for renters.⁵¹ The issue in *Euclid* was whether cities could enact zoning laws that kept rental housing out of neighborhoods with single-family, owner-occupied detached homes.⁵² The Supreme Court upheld the power of cities to enact these laws, characterizing an apartment building as a “parasite.”⁵³ In expressing its clear preference for the rights and desires of homeowners, the Court stated that allowing apartments in homeowner neighborhoods could be ruinous to the “character” of a neighborhood, warning that:

[T]he coming of one apartment house is followed by others, interfering by their height and bulk with the free circulation of air and monopolizing the rays of the sun which otherwise would fall upon the smaller homes, and bringing, as their necessary accompaniments, the disturbing noises incident to increased traffic and business, and the occupation, by means of moving and parked automobiles, of larger portions of the streets, thus detracting from their safety and depriving children of the privilege of quiet and open spaces for play, enjoyed by those in more favored localities—until, finally, the residential

⁴⁷ *Id.*; SAM FULWOOD III, CTR. FOR AM. PROG., THE UNITED STATES’ HISTORY OF SEGREGATED HOUSING CONTINUES TO LIMIT AFFORDABLE HOUSING (2016), https://cdn.americanprogress.org/content/uploads/2016/12/13063403/SegregatedHousingBrief3-PDF.pdf?_ga=2.196876847.2033456973.1614892197-240970411.1614892197.

⁴⁸ See JENNY SCHUETZ, BROOKINGS, UNDER US HOUSING POLICIES, HOMEOWNERS MOSTLY WIN, WHILE RENTERS MOSTLY LOSE (2018), <https://www.brookings.edu/research/under-us-housing-policies-homeowners-mostly-win-while-renters-mostly-lose/>.

⁴⁹ Advisory Comm. on Zoning of the Hous. & Bldg. Div., *The Zoning Law and Its Benefits*, N.Y. TIMES, Jun. 25, 1922, at R1.

⁵⁰ Jenny Schuetz, *No Renters in My Suburban Backyard*, 28 J. POL’Y ANALYSIS & MGMT. 296, 300, 317 (2009).

⁵¹ *Vill. of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926).

⁵² *Id.* at 390.

⁵³ *Id.* at 394.

character of the neighborhood and its desirability as a place of detached residences are utterly destroyed.⁵⁴

In addition to favoring homeowners over renters, elected and appointed officials also refused to make it easier for low-income residents to live in safe and affordable public rental housing because of objections from private landlords.⁵⁵ Specifically, real estate developers and landlords engaged in aggressive efforts to block large-scale expansions of federal public rental housing because they worried that an expanded supply of public housing would reduce the number of (poor) people who might rent their apartments.⁵⁶ The federal government ultimately capitulated and imposed stringent income-eligibility requirements that made it impossible for anyone other than the poorest Americans to qualify to live in public rental housing.⁵⁷

In addition to reducing the overall supply of public rental housing, federal authorities acquiesced in the decisions by local public housing authority officials to enact policies that created segregated public housing, which made it virtually impossible for low-income Black renters to live in public rental housing in high-opportunity neighborhoods.⁵⁸ In the 1940s and 1950s, virtually all public housing complexes were racially segregated and built in racially segregated neighborhoods. By the 1960s, most high-density public housing units were overcrowded, unsafe, predominately nonwhite, and located exclusively in nonwhite neighborhoods.⁵⁹ Although federal housing laws and policies did not mandate local officials maintain segregated housing projects, federal housing policies condoned these racist practices by providing funding to localities that overtly discriminated against nonwhite renters.⁶⁰

⁵⁴ *Id.*

⁵⁵ MCCARTY, *supra* note 44, at 1, 3–5.

⁵⁶ Alexander von Hoffman, *A Study in Contradictions: The Origins and Legacy of the Housing Act of 1949*, 11 HOUS. POL'Y DEBATE 299, 304–05 (2000).

⁵⁷ MCCARTY, *supra* note 44, at 5.

⁵⁸ Richard Rothstein, *Race and Public Housing: Revisiting the Federal Role*, 21 POVERTY & RACE ACTION COUNCIL 1, 13–15 (2012).

⁵⁹ *Id.*; William Mullen, *The Road to Hell*, CHI. TRIB. (Mar. 31, 1985), <https://www.chicagotribune.com/news/ct-xpm-1985-03-31-8501180145-story.html>.

⁶⁰ Rothstein, *supra* note 58, at 2. While some whites initially lived in public housing complexes, they were able to move out of public housing units and rent homes in all-white neighborhoods or buy homes using FHA-insured mortgages. Marc Fisher, *Howard Schultz Says He Grew Up in a Poor, Rough Place. Those Who Lived There Called it the 'Country Club of Projects'*, WASH. POST (Mar. 13, 2019, 6:51 PM), https://www.washingtonpost.com/politics/howard-schultz-says-he-grew-up-in-a-poor-rough-place-those-who-lived-there-called-it-the-country-club-of-projects/2019/03/13/4f26b800-39e9-11e9-a06c-3ec8ed509d15_story.html.

II. PRIVATE ACTORS AND STRUCTURAL RACISM IN HOUSING: THE EARLY YEARS

The main reason Blacks and Latinos struggled to buy homes or find safe and affordable rental housing was because of racist public laws and policies. But private actors also made it harder for Blacks to live in white neighborhoods, and they also engaged in acts that increased housing costs for Blacks. The combination of public and private actions virtually guaranteed that Blacks who managed to become homeowners would not receive the same financial benefits as white homeowners.

A. *Terrorizing Black Homeowners and Renters*

Even if a Black renter somehow managed to save (or borrow) enough to buy a high-appreciating home in a white neighborhood, many Blacks were unwilling to integrate all-white neighborhoods in the 1940s and 1950s given the racially hostile climate at that time.⁶¹ Specifically, some Blacks who attempted to integrate all-white neighborhoods were threatened by racist white neighbors, or their homes were vandalized or destroyed. To avoid placing their lives, their families' lives, or their homes at risk, some Blacks chose to remain in neighborhoods with lower-appreciating homes. In addition, even Blacks who might have been willing to integrate a hostile and potentially dangerous white neighborhood often could not do so because of racist restrictive covenants.⁶²

B. *Excluding Black Homeowners: Racist Deed Restrictions*

Race-restrictive covenants were private contracts between white landowners who agreed that neither the current owner nor their heirs would sell, lease, or give their homes to Blacks.⁶³ While governmental entities did not create these racist covenants, the FHA implicitly approved of them and encouraged builders and developers to include them in real estate sales agreements.⁶⁴ Likewise, the federal government condoned these covenants by refusing to approve or insure construction loans unless the homes were built in "stable" neighborhoods, which it defined as ones that were protected from adverse influences and occupied by people from the same social and racial class.⁶⁵

⁶¹ DICKERSON, *supra* note 1, at 147.

⁶² *Id.* at 155–56.

⁶³ *Id.* at 155.

⁶⁴ See Rothstein, *supra* note 58.

⁶⁵ DICKERSON, *supra* note 1, at 148; Groner & Helfeld, *supra* note 39, at 436–37.

The U.S. Supreme Court's 1948 decision in *Shelley v. Kraemer*⁶⁶ eventually ruled that race-restrictive covenants were legally unenforceable.⁶⁷ Like redlining, though, these covenants were in place long enough to help create all-white suburban neighborhoods, including one of the most famous and largest planned communities (at that time): Levittown.⁶⁸ Starting in 1947, Alfred and William Levitt started building approximately 17,000 homes in a planned community in Levittown, Pennsylvania.⁶⁹ These homes originally were to be used as rental housing for returning World War II veterans, though the Levitts ultimately sold the homes to buyers who qualified for FHA-insured mortgage loans.⁷⁰ Because Levittown homes also included racist deed covenants, racist FHA housing policies prevented Black WWII vets from living in Levittown even if they qualified for a VA loan.⁷¹

The Levitts maintained that their decisions were motivated by economics, not race, and that they used these racist deed restrictions only out of concern that potential white buyers would not move into a racially integrated Levittown.⁷² Of course from the perspective of the Blacks who were excluded from Levittown, it was irrelevant whether the Levitts were racist white supremacists or simply making decisions that advanced their personal economic interests. When these private actors chose to embrace racist property covenants and created eligibility rules that excluded Black home buyers, their decisions had long-term economic consequences for Blacks (and their heirs) who were not able to increase their household wealth by buying homes in this high-opportunity planned community.⁷³

⁶⁶ *Shelley v. Kraemer*, 334 U.S. 1 (1948).

⁶⁷ While the Supreme Court ruled that courts could not enforce racially restrictive covenants, those covenants continued to be placed in real estate contracts until the Fair Housing Act of 1968 outlawed racial discrimination in housing. See Dorothy A. Brown, *Homeownership in Black and White: The Role of Tax Policy in Increasing Housing Inequity*, 49 U. MEM. L. REV. 205, 214 (2018).

⁶⁸ See Rothstein, *supra* note 58, at 2.

⁶⁹ *Levittown History*, LEVITTOWN PUB. LIBR., <http://www.levittownpl.org/research-history> (last visited Feb. 1, 2021).

⁷⁰ DAVID KUSHNER, *LEVITTOWN: TWO FAMILIES, ONE TYCOON, AND THE FIGHT FOR CIVIL RIGHTS IN AMERICA'S LEGENDARY SUBURB* 40 (2009).

⁷¹ Groner & Helfeld, *supra* note 39, at 436–37.

⁷² KUSHNER, *supra* note 70, at 40.

⁷³ RICHARD ROTHSTEIN, *THE COLOR OF LAW: A FORGOTTEN HISTORY OF HOW OUR GOVERNMENT SEGREGATED AMERICA* 182 (2017). For more information on the history of Levittown as a planned community, see *Levittown History*, *supra* note 69.

C. *Blockbusting and White Flight*

Blacks who managed to save enough or obtain financing to buy homes in racially integrated neighborhoods in the 1940s and 1950s rarely amassed the same amount of housing wealth as similarly situated white homeowners because Black-owned homes had lower rates of appreciation.⁷⁴ One reason the homes Blacks purchased in white neighborhoods depreciated in value (often as soon as they moved in) is because their white neighbors often moved out when the neighborhood started to racially integrate.⁷⁵ While some whites who fled racially integrating neighborhoods may have been white supremacists, others were duped into fleeing by an odious racist practice known as blockbusting.⁷⁶

Blockbusting was a scheme that involved white investors and arbitrageurs who approached white homeowners to “alert” them that Blacks were buying or were rumored to be buying homes in their neighborhoods.⁷⁷ In the first part of Blockbusting, investors preyed on biases or misconceptions about Blacks and convinced the owners to sell their homes quickly and move before the impending Black “invasion” eroded the value of their homes.⁷⁸ Fleeing whites often sold their homes at rock bottom prices to the investors.⁷⁹ Then, in the second part of Blockbusting, the investors who recently purchased homes at below market prices conspired with appraisers to inflate the value of the homes and sell the homes to Blacks at above-market prices.⁸⁰

Blacks were willing to pay inflated prices for homes for several reasons. First, many had no way to know they were being duped into paying artificially inflated prices for their homes.⁸¹ Also, Blacks who lived in housing that was destroyed in “slum” clearance programs needed to find new housing and were willing to overpay for homes in suburban neighborhoods rather than remain renters in privately owned homes in decaying urban neighborhoods or live in crowded and racially segregated public housing.⁸² In addition, the white investors in Blockbusting schemes offered to finance the home purchases using land installment contracts, which were attractive to Blacks who could not qualify

⁷⁴ ROTHSTEIN, *supra* note 73, at 182.

⁷⁵ DICKERSON, *supra* note 1, at 157.

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ The scheme often included parading lower-income Blacks through all-white neighborhoods to suggest that Blacks had already moved in. *Id.*

⁸¹ *Id.*

⁸² See Mullen, *supra* note 59.

for a federally insured mortgage loan. Though land installment contracts were risky and expensive, Black buyers accepted this financing because they wanted to become homeowners.⁸³

Unlike buyers who finance their home purchases with traditional mortgage loans, buyers who purchase homes using a land installment contract do not accumulate equity in the homes and the sellers retain title to the property until buyers complete all installment payments.⁸⁴ When buyers failed to make monthly installment payments, they were in the same position as a renter: they were evicted from their housing, and they had amassed no equity in the property they purportedly were buying. Then, in the final part of Blockbusting, the sellers (often the investors who engineered the Blockbusting scheme) evicted the existing homeowners then resold the home to another desperate Black family.⁸⁵ The ability to flip the same home multiple times (often in the same year) made this wealth-stripping scheme extraordinarily lucrative to the white sellers, though financially devastating to the Black buyers.⁸⁶

Blockbusting depressed wealth accumulation even for the Black homeowners who managed to keep their homes because triggering white panic sales was an integral part of the scheme.⁸⁷ Each below-market panic sale depressed the value of other homes in the neighborhood, and once all whites left the neighborhood and it resegregated, home values dropped because of the systemic bias the real estate market has against homes in Black neighborhoods. As a result, Black homeowners paid too much for what soon became a rapidly depreciating asset and never amassed the housing wealth that white homeowners did.⁸⁸

While investors and arbitrageurs engineered this contemptible practice, this wealth-stripping scheme would not have succeeded without the explicit assistance of appraisers and without the existence of racist federal housing policies. As noted earlier, although Blacks could not buy homes using low-cost and low-risk federally insured loans, lenders approved federally insured mortgage loans for the white investors and arbitrageurs who orchestrated Blockbusting by buying homes from white sellers. In addition, just as appraisers

⁸³ DICKERSON, *supra* note 1, at 158; *see also* Caelin Moriarity Miltko, Comment, “What Shall I Give My Children?”: *Installment Land Contracts, Homeownership, and the Unexamined Costs of the American Dream*, 87 U. CHI. L. REV. 2273, 2283–84 (2020).

⁸⁴ DICKERSON, *supra* note 1, at 158.

⁸⁵ *Id.*

⁸⁶ *Id.* at 158.

⁸⁷ *Id.* at 157.

⁸⁸ ROTHSTEIN, *supra* note 73, at 182.

provided the pseudoscientific justifications for the racist residential maps used in redlining, appraisers knowingly facilitated Blockbusting by fraudulently inflating the value of the homes realtors and speculators (re)sold to Blacks. Appraisers were not neutral or impartial bystanders: they inflated the prices of the homes even though they understood that the homes had recently been purchased from fleeing whites at below-market panic prices.⁸⁹

III. PUBLIC LAWS AND SYSTEMIC RACISM IN HOUSING: THE MODERN ERA

Systemic racism is embedded in U.S. housing markets. Although tax, lending, and land use laws do not explicitly discriminate against nonwhites, these laws continue to favor homeowners, who remain disproportionately white and higher income. For example, current zoning laws and policies that seek to preserve the “character” of a neighborhoods perpetuate the *status quo* of neighborhoods that were segregated by race and by income. Likewise, municipal redevelopment or revitalization plans that trigger gentrification displace nonwhites and renters and create racially and economically segregated neighborhoods.

A. *Exclusionary Zoning Regulations*

The Chairman of former-President Obama’s White House Council of Economic Advisers recently quipped that facially neutral exclusionary land use laws and policies can best be described as “modern-day Jim Crow through zoning.”⁹⁰ These laws and policies do not explicitly ban nonwhites, renters, or lower- and middle-income families from high-opportunity neighborhoods. But like early zoning laws, current land use laws and policies continue to privilege higher-income families and make it virtually impossible for Black, Latino, and economically marginalized households to live in high-opportunity neighborhoods or have their children attend the high-performing K–12 public schools that children in those neighborhoods are zoned to attend.

Most major cities have exclusionary land use regulations that make it cost-prohibitive for developers to build affordable and multi-family housing in higher-income and predominately white neighborhoods.⁹¹ For example, local

⁸⁹ *Id.*

⁹⁰ Laura Kusito, *As Land-Use Rules Rise, Economic Mobility Slows, Research Says*, WALL ST. J. (Oct. 18, 2016), <https://www.wsj.com/articles/as-land-use-rule-rise-economic-mobility-slows-research-says-1476813771>.

⁹¹ Tim Iglesias, *Our Pluralist Housing Ethics and the Struggle for Affordability*, 42 WAKE FOREST L. REV. 511, 561 (2007).

zoning laws often mandate large minimum lot or floor sizes for single-family homes or impose large minimum lot sizes for multi-family housing.⁹² Other zoning regulations limit the number of occupants who can live in one home, require that all residents be related,⁹³ limit the number of structures that can be built on a single lot, or prevent property owners from placing an additional (smaller) home on their land.⁹⁴ These regulations make it harder for lower-income households to afford to buy or rent homes and also make it harder for multi-generational families or residents who need multiple roommates to occupy homes in high-opportunity neighborhoods. Despite the burden these regulations place on lower-income residents, the regulations are constitutional because they are not *explicitly* race-based.⁹⁵

Although restrictive land use laws are race-neutral, the residents of neighborhoods with strict zoning requirements are disproportionately white and upper-income. These residents lack standing to sue to enforce municipal zoning laws, but they typically receive notice if a developer applies for a zoning variance to build rental or affordable housing.⁹⁶ With notice, these well-heeled homeowners can galvanize support, hire lawyers, and use their political and economic clout and expertise to block rezoning requests. Their organized efforts typically succeed in pushing multi-family and other affordable housing out of their neighborhoods and into lower-income (and often nonwhite) neighborhoods.⁹⁷

Private homeowners also keep affordable housing out of their neighborhoods by arguing that builders failed to adequately consider a housing development's environmental impact, often citing anti/no/slow/managed/smart-growth movements and open space or "green" laws and policies that are intended to preserve or create community gardens, hiking and biking trails, and parks.⁹⁸ Ostensibly race-neutral open space requirements are not inherently objectionable, but when existing residents use these policies to block new

⁹² Michael C. Lens & Paavo Monkkonen, *Do Strict Land Use Regulations Make Metropolitan Areas More Segregated by Income?*, 82 J. AM. PLAN. ASS'N 6, 12 (2016).

⁹³ Iglesias, *supra* note 91, at 560.

⁹⁴ See DICKERSON, *supra* note 1, at 186.

⁹⁵ Vill. of Arlington Heights v. Metro. Hous. Dev. Corp., 429 U.S. 252 (1977); Vill. of Belle Terre v. Boraas, 416 U.S. 1 (1974); Iglesias, *supra* note 91, at 559–60.

⁹⁶ Existing homeowners and their HOAs can easily organize and lobby against a request for a zoning variance to build affordable housing because their individual property interests are clearly identifiable. In contrast, the owners or renters of the not-yet-built affordable housing units are unknown, so it is virtually impossible for them to lobby in favor of the proposed rezoning.

⁹⁷ Kusito, *supra* note 90.

⁹⁸ DICKERSON, *supra* note 1, at 61.

construction in their neighborhoods, they decrease the availability of developable land.⁹⁹

Open space and anti-growth policies are most often associated with progressive politics, though these policies reduce the supply of affordable housing almost as efficiently as overtly racist or classist zoning laws did in the past.¹⁰⁰ Like the Levitt brothers who vehemently denied they were racists and claimed they used racist deed restrictions solely for “economic” reasons, liberal and progressive homeowners are able to disguise potentially elitist and racist views by insisting that they support exclusionary land use laws simply because they are trying to protect Mother Earth. Despite their stated reasons for supporting policies that make land scarce and increase the price of developable land, homeowners who further their own personal and economic interests and support exclusionary zoning laws help perpetuate systemic racism and classism in U.S. housing markets.¹⁰¹

B. Gentrification

Gentrification occurs when an impoverished or under-resourced neighborhood is deemed to need revitalization to prevent the area from becoming (or remaining) blighted. Gentrification is a public-private venture in that cities increase municipal services and capital investments in the neighborhood’s infrastructure,¹⁰² and also provide tax incentives to businesses to encourage them to open bank branches, restaurants, and other retail establishments in the neighborhood that is being revitalized.¹⁰³ Like early urban

⁹⁹ Mark Bobrowski, *Affordable Housing v. Open Space: A Proposal for Reconciliation*, 30 B.C. ENV’T AFFS. L. REV. 487, 488 (2003); John M. Quigley & Larry A. Rosenthal, *The Effects of Land Use Regulation on the Price of Housing: What Do We Know? What Can We Learn?*, 8 CITYSCAPE 69 (2005), <https://www.huduser.gov/periodicals/cityscape/vol8num1/ch3.pdf>.

¹⁰⁰ DICKERSON, *supra* note 1, at 62; Lens & Monkkonen, *supra* note 92, at 11.

¹⁰¹ See LEE ANNE FENNELL, *THE UNBOUNDED HOME: PROPERTY VALUES BEYOND PROPERTY LINES* (2009). Exclusionary zoning regulations do more than just exclude lower-income residents from upper-income neighborhoods. The children of the excluded renters or residents are also denied access to the high-performing public schools in those neighborhoods. While no child has a legal right to attend any given public school, most school attendance zones are based on street addresses, and only children who live in neighborhoods zoned for high-performing public schools can attend those schools. As such, in addition to perpetuating systemic racism in housing, exclusionary zoning regulations also perpetuate and exacerbate systemic racism in public K–12 school education. See Elizabeth Winkler, “*Snob Zoning*” *Is Racial Housing Segregation by Another Name*, WASH. POST (Sept. 25, 2017), https://www.washingtonpost.com/news/wonk/wp/2017/09/25/snob-zoning-is-racial-housing-segregation-by-another-name/?utm_term=.8699d5d60f4e.

¹⁰² Diane K. Levy, Jennifer Comey & Sandra Padilla, *In the Face of Gentrification: Case Studies of Local Efforts to Mitigate Displacement*, 16 J. AFFORDABLE HOUS. & CMTY. DEV. L. 238, 248 (2007) (providing an example of increasing investments in infrastructure).

¹⁰³ *Id.* at 246.

renewal programs, local political leaders embrace gentrification even though the neighborhoods that are being “revitalized” are lower- or middle-income (and almost always nonwhite), and the existing residents are replaced by higher-income residents (who are overwhelmingly white).¹⁰⁴

Local leaders support gentrification because it encourages young, wealthy workers to move to downtown neighborhoods. Younger workers, particularly if they do not have children, generally prefer to live close to where they work and to live near trendy restaurants and other retail establishments.¹⁰⁵ While gentrification, like earlier urban renewal programs, improves the physical appearance of neighborhoods by demolishing and replacing older and sometimes dilapidated housing and buildings with newer housing and buildings, the existing lower- or middle-income residents rarely enjoy the financial or social benefits of gentrification because gentrification is designed to create a neighborhood of wealthier residents.

Once richer residents move into a neighborhood, housing prices and property taxes increase and often price out the existing lower-income and nonwhite residents, *particularly* older homeowners who live on fixed incomes and cannot afford the higher property taxes.¹⁰⁶ In addition, higher taxes often force property owners who lease their properties to increase rent, which often prices out the existing tenants.¹⁰⁷ As was true when cities demolished buildings in “slum” clearance programs, cities typically make no efforts to help the largely nonwhite residents pushed out by gentrification find affordable housing. Likewise, even though city leaders can see when a neighborhood is gentrifying, most do little to prevent the newly gentrified, formerly nonwhite neighborhood from resegregating racially and economically.¹⁰⁸

¹⁰⁴ *Id.* at 240.

¹⁰⁵ Twila L. Perry, *Housing the “New” Household*, 43 *FORDHAM URB. L.J.* 1205, 1214–15 (2016).

¹⁰⁶ *Id.* at 240.

¹⁰⁷ JASON RICHARDSON, BRUCE MITCHELL & JUAN FRANCO, NCRC, *SHIFTING NEIGHBORHOODS: GENTRIFICATION AND CULTURAL DISPLACEMENT IN AMERICAN CITIES* 26 (2019) (demonstrating Black displacement as the white population increases).

¹⁰⁸ See, e.g., Cameron Hightower & James C. Fraser, *The Raced-Space of Gentrification: “Reverse Blockbusting,” Home Selling, and Neighborhood Remake in North Nashville*, 19 *CITY & CMTY.* 223 (2020) (finding complicating factors that work against potential home equity realization for Black homeowners in the historically Black neighborhoods of north Nashville); Hannah Weinstein, *Fighting for a Place Called Home: Litigation Strategies for Challenging Gentrification*, 62 *UCLA L. REV.* 794 (2015); Bethany Y. Li, *Now Is the Time!: Challenging Resegregation and Displacement in the Age of Hypergentrification*, 85 *FORDHAM L. REV.* 1189 (2016). But see Julie Gilgoff, *Local Responses to Today’s Housing Crisis: Permanently Affordable Housing Models*, 20 *CUNY L. REV.* 587 (2017) (outlining the use of models like Community Land Trusts in New York City and the San Francisco Bay Area).

C. Federal Homeowner Tax Subsidies

Race-neutral federal tax homeownership subsidies perpetuate and exacerbate existing racial disparities in housing and disproportionately help white homeowners. U.S. housing policies continue to favor homeowners, who receive roughly 70% of all federal housing subsidies,¹⁰⁹ higher-income homeowners receive a disproportionate share of federal tax subsidies, and higher-income families are mostly white.¹¹⁰ The federal homeownership tax subsidies are enormous. For example, homeowners are not fully taxed on the capital gains they earn when they sell their houses, and they can deduct some of the state and local property taxes (SALT) they pay on their homes.¹¹¹ In addition, the mortgage interest deduction (MID), perhaps the most popular and well-known homeownership tax subsidy, lets homeowners deduct most of the interest they pay on the mortgage loans they used to buy their homes.¹¹²

Only taxpayers who itemize their deductions receive benefits from the MID and SALT, and tax data show that households who earn more than \$100,000 annually receive almost 77% of the MID benefits.¹¹³ Households with over \$100,000 in annual income also receive nearly 60% of all federal housing subsidies, and these homeownership subsidies are massive.¹¹⁴ In 2015, the price tag for the MID was *more than double* the combined cost of all rental assistance programs.¹¹⁵ By 2016, the MID was still the fifth-largest tax break even though the Tax Cuts and Jobs Act of 2017 (TCJA) made it less beneficial for homeowners to itemize their deductions.¹¹⁶

¹⁰⁹ WILL FISCHER & BARBARA SARD, CENTER ON BUDGET AND POLICY PRIORITIES, CHART BOOK: FEDERAL HOUSING SPENDING IS POORLY MATCHED TO NEED 5 (2017).

¹¹⁰ Dennis J. Ventry, Jr., *The Accidental Deduction: A History and Critique of the Tax Subsidy for Mortgage Interest*, 73 LAW & CONTEMP. PROBS. 233, 279–80 (2010); see Roberta F. Mann, *The (Not So) Little House on the Prairie: The Hidden Costs of the Home Mortgage Interest Deduction*, 32 ARIZ. ST. L.J. 1347, 1365 (2000) (demonstrating the discriminatory nature of the home mortgage interest deduction).

¹¹¹ Ventry, *supra* note 110, at 235 n.27 (listing the numerous subsidies related to housing).

¹¹² Brown, *supra* note 67, at 207.

¹¹³ *Id.* at 210.

¹¹⁴ FISCHER & SARD, *supra* note 109, at 2.

¹¹⁵ David Meni & Ezra Levin, *The Biggest Beneficiaries of Housing Subsidies? The Wealthy*, GREATER WASH. (Aug. 24, 2016), <https://ggwash.org/view/42632/the-biggest-beneficiaries-of-housing-subsidies-the-wealthy>.

¹¹⁶ AUSTIN J. DRUKKER, TED GAYER & HARVEY S. ROSEN, TAX POL'Y CTR., THE MORTGAGE INTEREST DEDUCTION: REVENUE AND DISTRIBUTIONAL EFFECTS 1 (2018), https://www.urban.org/sites/default/files/publication/98928/the_mortgage_interest_deduction_revenue_and_distributional_effects_1.pdf; Ilya Somin, *Mortgage Interest Deduction Mostly Benefits the Rich — End It*, HILL (Nov. 6, 2016), <https://thehill.com/opinion/finance/358922-mortgage-interest-deduction-mostly-benefits-the-rich-end-it>.

Higher-income homeowners are more likely to be itemizers because they borrow more to buy bigger homes¹¹⁷ and consequently pay more mortgage interest on these larger loans.¹¹⁸ In contrast, because lower- and middle-income homeowners take out smaller mortgages to buy modestly priced houses, they are less likely to itemize, more likely to take the standard deduction, and typically do not receive these homeownership tax subsidies.¹¹⁹ While the TCJA makes the MID less valuable because it increased the size of the standard deduction, higher-income taxpayers remain disproportionately more likely to be itemizers so they continue to receive significantly larger housing subsidies than other taxpayers (including other homeowners and all renters).

Homeownership subsidies do more, though, than just *decrease* housing costs for higher-income taxpayers: these subsidies drive up overall housing costs because it gives buyers an incentive to buy larger and more expensive homes.¹²⁰ Because they can deduct interest on mortgage loans to buy larger and more expensive homes, home buyers more willing to make offers above the asking price, and this often triggers bidding wars that lower- and middle-income potential buyers will almost always lose.¹²¹ In addition to being priced out of homes by tax-itemizer buyers, people in search of affordable housing are priced out of some neighborhoods altogether because real estate appraisers value homes based on recent sales of neighboring homes and bidding wars increase the fair market value of all surrounding homes.¹²²

D. Paltry Rental Assistance

Because prior blatantly racist housing policies embedded racism in U.S. rental housing markets, renters (who are disproportionately likely to be nonwhite) struggle to find safe and affordable housing whether publicly or privately owned.¹²³ By the 1980s, public housing projects became stigmatized and were viewed as the housing of last resort for poor Blacks.¹²⁴ To respond to chronic problems and complaints about dilapidated and unsafe public housing

¹¹⁷ Somin, *supra* note 116.

¹¹⁸ *See id.*; *see also* Brown, *supra* note 67, at 209.

¹¹⁹ Brown, *supra* note 67, at 209; *see also* Michelle D. Layser, *How Federal Tax Law Rewards Housing Segregation*, 93 IND. L.J. 915, 947 (2018).

¹²⁰ Somin, *supra* note 116.

¹²¹ *Id.*

¹²² Adam J. Levitin & Susan M. Wachter, *Explaining the Housing Bubble*, 100 GEO. L.J. 1177, 1182, 1184, 1201 (2012); Kamila Sommer & Paul Sullivan, *Implications of US Tax Policy for House Prices, Rents, and Homeownership*, 108 AM. ECON. REV. 241, 268 (2018).

¹²³ Layser, *supra* note 119, at 918.

¹²⁴ Rothstein, *supra* note 58, at 1–2.

complexes, Congress established a National Commission on Severely Distressed Public Housing in 1989 and charged the Commission with proposing a national plan to provide decent, safe, and sanitary public housing for low-income tenants by the year 2000.¹²⁵

The government never accomplished its stated goal of creating an adequate supply of public housing for low-income renters, and federal leaders still do not have the political will to insist that public rental housing be sited in high-opportunity neighborhoods. Although large, multi-unit public housing complexes that were dangerous and unsafe (like Chicago's all-Black Cabrini-Green) have been demolished,¹²⁶ as was true when states used their eminent domain power to condemn land in Black communities and build highways, few efforts were made to help displaced Black residents of public housing find affordable housing to rent or to buy, particularly in high-opportunity neighborhoods.¹²⁷ Instead, low-income renters who were pushed out of demolished public housing typically rented housing in other predominately nonwhite and lower-income neighborhoods.¹²⁸

Renters now outnumber homeowners in most large cities, but the federal government spends less than half the amount on rental subsidies as it does on subsidies for homeowners (particularly higher-income homeowners).¹²⁹ One program the federal government created to help subsidize rental costs is a market-based program called the Housing Choice Voucher (HCV) program, formerly known as the Section 8 program.¹³⁰ Renters who participate in the HCV program are required to devote no more than 30% of their income to rent privately owned housing. Landlords receive the remaining balance of the monthly rent from the local public housing agency.¹³¹

Unfortunately, only 25% of eligible lower-income families receive housing subsidies through this or other related housing assistance programs. Moreover,

¹²⁵ Letter from Hon. Bill Green, Rep., U.S. House of Reps., and Vincent Lane, Chairman, Chi. Hous. Auth., to Hon. Dan Quayle, President, U.S. Sen. 1 (Aug. 10, 1992) (available at https://www.hud.gov/sites/documents/DOC_9836.PDF) (detailing the founding and goals of the National Commission on Severely Distressed Public Housing as relayed by the Commission's Co-Chairmen).

¹²⁶ William Voegeli, *Public Housing's Most Notorious Failure*, CITY J. (2018), <https://www.city-journal.org/html/cabrini-green-homes-16037.html>.

¹²⁷ See *Some Can't Find New Homes as Demolition of Public Housing Nears*, TEX. AFFILIATION AFFORDABLE HOUS. PROVIDERS (Sept. 23, 2016), <https://taahp.org/some-cant-find-new-homes-as-demolition-of-public-housing-nears/>.

¹²⁸ *Id.*

¹²⁹ FISCHER & SARD, *supra* note 109, at 5.

¹³⁰ 24 C.F.R. § 982.1 (2020).

¹³¹ *Id.*

because private property owners are not legally required to accept vouchers as payment for rent, most low-income renters continue to live in low-income neighborhoods.¹³² Thus, while HCV vouchers help a limited number of renters find safe and affordable housing, because property owners in high-opportunity neighborhoods are not required to rent to lower-income residents, this federal assistance program does not ensure an adequate supply of low-income rental housing in high-opportunity neighborhoods.¹³³

Another public-private rental assistance program, the low-income housing tax credit (LIHTC), gives developers financial incentives to build new (or renovate existing) affordable housing.¹³⁴ Like earlier urban renewal programs and federal initiatives that built public housing complexes, this program also does not require developers to place any of the affordable housing units in racially diverse or high-opportunity neighborhoods.¹³⁵ As a result, most housing units developers created using the LIHTC are also located in low-income and predominantly nonwhite neighborhoods.¹³⁶

IV. PRIVATE ACTORS AND SYSTEMIC RACISM IN HOUSING: THE MODERN ERA

Neither federal and local laws nor private actors can legally prevent nonwhites from moving into predominately white neighborhoods. Nonetheless, realtors continue to steer nonwhites away from white neighborhoods. Moreover, even if they move into a white neighborhood, nothing prevents white homeowners from fleeing the integrating neighborhoods. Because of ongoing discrimination in mortgage markets, white flight, and lower appraisals for homes in nonwhite neighborhoods, nonwhite homeowners continue to have lower overall housing and household wealth relative to similarly situated whites.

A. Homeowners

While no one can be excluded from a neighborhood because of their race, no one is forced to live in an economically or racially integrated neighborhood. Similarly, while homeowners cannot exclude residents because of their race,

¹³² FISCHER & SARD, *supra* note 109, at 10 (noting that programs, including HCV, Section 8 Project-Based Rental Assistance, and public housing programs, only provide assistance for 25% of low-income, at-risk renters).

¹³³ Miriam E. Rofael, *Improving the Housing Choice Voucher Program Through Source of Income Discrimination Laws*, 107 CALIF. L. REV. 1635, 1637 (2019).

¹³⁴ PHUONG TSENG, HEATHER BROMFIELD, SAMIR GAMBHIR & STEPHEN MENENDIAN, HAAS INST., OPPORTUNITY, RACE, AND LOW INCOME HOUSING TAX CREDIT PROJECTS 13 (2017), https://www.novoco.com/sites/default/files/atoms/files/hass_institute_lihtc_analysis_031617.pdf.

¹³⁵ Laysen, *supra* note 119, at 934 n.60.

¹³⁶ *Id.* at 928; TSENG ET AL., *supra* note 134, at 13.

HOAs can legally include private covenants in their governing documents that make it less likely that renters and marginalized groups will live in their neighborhoods. Thus, while Not in My Backyard (NIMBY) objections and other private landowner actions that exclude affordable housing from neighborhoods are legal, these actions disproportionately harm nonwhites and occur so easily because of the racism and classism that is embedded in housing markets.

1. *White Flight Redux*

Blockbusting schemes that induce whites to leave their neighborhoods when Blacks move in are illegal, and opinion polls and surveys regularly report that most Americans (including whites) prefer to live in racially integrated neighborhoods and have their children attend integrated schools.¹³⁷ Though neighborhoods cannot be legally segregated, whites avoid racially integrated neighborhoods, and most white home buyers do not view urban neighborhoods as attractive unless the neighborhood is gentrifying. Whites generally rate housing in non-gentrifying urban neighborhoods as less desirable than housing in predominately white suburban neighborhoods and will not buy homes that otherwise meet their housing needs (in terms of price, number of rooms, and other amenities) if significant numbers of Blacks live in the neighborhood, *even if* the neighborhood has good schools and low crime rates.¹³⁸

Although white homeowners flee their *own* neighborhoods if even a negligible number of Black residents (sometimes as small as 5%) move in,¹³⁹ they may not be fleeing because they are white supremacists. Like the Levitts and progressive homeowners who support “green” or open space policies, it is likely that some whites who avoid or flee racially integrated (but non-gentrifying) neighborhoods do so because they fear their homes will decrease in value if they have Black neighbors.¹⁴⁰ This fear is not irrational.

Comparable homes theoretically should experience the same rate of appreciation regardless of who lives in the neighborhood. But homes in Black

¹³⁷ See, e.g., *Americans Say They Like Diverse Communities; Election, Census Trends Suggest Otherwise*, PEW RSCH. CTR. (Dec. 2, 2008), <https://www.pewresearch.org/social-trends/2008/12/02/americans-say-they-like-diverse-communities-election-census-trends-suggest-otherwise/> [hereinafter *Americans Say They Like Diverse Communities*].

¹³⁸ See Sapna Swaroop & Maria Krysan, *The Determinants of Neighborhood Satisfaction: Racial Proximity Revisited*, 48 DEMOGRAPHY 1203, 1223–27 (2011); *Americans Say They Like Diverse Communities*, *supra* note 137.

¹³⁹ DICKERSON, *supra* note 1, at 160.

¹⁴⁰ See Maria Krysan, *Whites Who Say They'd Flee: Who Are They and Why Would They Leave?*, 39 DEMOGRAPHY 675, 684–91 (2002); Chenoa Flippen, *Unequal Returns to Housing Investments? A Study of Real Housing Appreciation Among Black, White, and Hispanic Households*, 82 SOC. FORCES 1543–47 (2004).

neighborhoods and homes owned by Blacks in *any* neighborhood are routinely valued less than homes in white neighborhoods.¹⁴¹ One reason Black-owned homes are worth less is because modern real estate appraisers, like the ones involved with redlining and Blockbusting schemes, place lower market values on homes in nonwhite neighborhoods and view those neighborhoods as less safe. Appraisers devalue nonwhite neighborhoods even if the neighborhood (1) has the same economic makeup as the white neighborhood, (2) does not have high crime rates, and (3) has well-maintained homes.¹⁴²

Appraisers also deem Black-owned homes to be less valuable than white-owned homes, even if they are in the same neighborhood.¹⁴³ For example, a Black woman who co-owned a home with her white husband revealed in a highly publicized 2020 story that she felt the low value an appraiser placed on their home was because she is Black.¹⁴⁴ To test her suspicion, the couple removed all evidence (pictures, art, etc.) from the home that indicated that a Black person was one of the owners and then had the home reappraised.¹⁴⁵ When the appraiser came to the home for the second appraisal, the (Black) wife and their child were not in the home, and the (white) husband met with the appraiser.¹⁴⁶ Confirming the Black owner's suspicions, this time the home was valued \$135,000 higher than the first appraisal.¹⁴⁷

2. Homeowner Associations

While racist deed restrictions are legally unenforceable, race-neutral private deed covenants found in HOA agreements now shape who will live in many U.S. neighborhoods.¹⁴⁸ HOAs are private, quasi-governmental entities that restrict

¹⁴¹ See ANDRE PERRY, JONATHAN ROTHWELL & DAVID HARSHBARGER, METRO. POL'Y PROGRAM AT BROOKINGS, THE DEVALUATION OF ASSETS IN BLACK NEIGHBORHOODS: THE CASE OF RESIDENTIAL PROPERTY (2018), https://www.brookings.edu/wp-content/uploads/2018/11/2018.11_Brookings-Metro_Devaluation-Assets-Black-Neighborhoods_final.pdf; Brown, *supra* note 67, at 215.

¹⁴² See Junia Howell & Elizabeth Korver-Glenn, *The Increasing Effect of Neighborhood Racial Composition on Housing Values, 1980–2015*, SOC. PROBS. (Sept. 4, 2020), <https://academic.oup.com/socpro/advance-article-abstract/doi/10.1093/socpro/spaa033/5900507>; Junia Howell & Elizabeth Korver-Glenn, *Neighborhoods, Race, and the Twenty-First-Century Housing Appraisal Industry*, 4 SOCIO. RACE & ETHNICITY 473 (2018); Elizabeth Korver-Glenn, *Compounding Inequalities: How Racial Stereotypes and Discrimination Accumulate Across the Stages of the Housing Exchange*, 83 AM. SOCIO. REV. 627 (2018).

¹⁴³ Brown, *supra* note 67, at 214–15.

¹⁴⁴ Debra Kamin, *Black Homeowners Face Discrimination in Appraisals*, NY. TIMES (Aug. 27, 2020), <https://www.nytimes.com/2020/08/25/realestate/blacks-minorities-appraisals-discrimination.html>.

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ See DICKERSON, *supra* note 1, at 55.

what homeowners can do with or on their property.¹⁴⁹ HOAs have expanded in number and in influence over the last fifty years, and homeowners have been willing to surrender some of their personal freedom in exchange for the benefits they perceive that they receive from being members of an HOA.¹⁵⁰

Homeowners give their HOAs the authority to enforce deed restrictions that, ostensibly, are designed to protect property values and prevent homeowners from participating in activities, like renting out a house through Airbnb, which would be inconsistent with or detrimental to a residential neighborhood's character and aesthetic.¹⁵¹ Many HOA regulations are relatively benign and dictate things like where owners can park their cars, where owners can place their trash cans or recycling bins, and what type of mailbox owners can install.¹⁵² While regulating what owners can do on their property may marginally increase the cost of owning a home, more intrusive HOA regulations do more than just regulate what owners can do *on* their property. Like many race-neutral zoning laws, facially neutral HOA rules also make it harder to build affordable housing, and this disproportionately affects Blacks and Latinos.¹⁵³

Like public exclusionary zoning laws, private HOA rules often dictate minimum lot sizes, whether owners can build additional housing units on their property, and whether multi-family units can be built anywhere in the community.¹⁵⁴ In addition, some HOAs contain a right of first refusal that gives the HOA the option to buy an owner's home before it is placed on the market,¹⁵⁵ while other HOA regulations prevent owners from selling their homes without the prior approval of the remaining property owners.¹⁵⁶ HOA restrictions that dictate what owners can do *with* their property and whether multi-family units can be built in the neighborhood help ensure that only the "right" type of neighbor can reside in the neighborhood.¹⁵⁷ Because high-income

¹⁴⁹ *Id.* at 55–56.

¹⁵⁰ *Id.*; see Ron Cheung & Rachel Meltzer, *Why and Where Do Homeowners Associations Form?*, 16 CITYSCAPE 69, 71 (2014) (discussing the growth of HOAs in the United States).

¹⁵¹ DICKERSON, *supra* note 1, at 55.

¹⁵² *Id.* at 56. Other relatively benign regulations include how owners must maintain their lawns or shrubbery, what they can place in or on their front laws, when (or how) they can renovate their homes or build fences, and when or where they can display (or must remove) holiday decorations. *See id.*

¹⁵³ *See id.* at 60; Daniel S. Scheller, *Neighborhood Racial Composition, Public Goods Provision, and Homeowners Associations: Bridging the Literatures and Future Directions for Research*, 25 J. REAL ESTATE LITERATURE 283 (2017).

¹⁵⁴ DICKERSON, *supra* note 1, at 55.

¹⁵⁵ *Id.* at 56.

¹⁵⁶ *Id.* at 55.

¹⁵⁷ *Id.* at 56; see Tara Mastroeni, *What Is a Right of First Refusal in Refusal? Getting First Dibs on Making an Offer*, REALTOR.COM (Jan. 21, 2020), <https://www.realtor.com/advice/buy/right-of-first-refusal/>.

neighborhoods are disproportionately more likely to have HOAs and those neighborhoods are disproportionately white, HOA rules exclude lower- and middle-income families almost as effectively as racist zoning laws and deed covenants did in the past.¹⁵⁸

3. NIMBYs

Just as there has been a marked increase in the number of HOAs in this country, there has also been a dramatic rise in the number of Americans who believe they have the personal right to control what and who can be in their neighborhoods. Although NIMBY residents do not have the actual right to exclude affordable housing from their neighborhoods, they often succeed at controlling who will live in their neighborhoods, *especially* if they are upper income.¹⁵⁹ Like the Levitts, residents who support “green” laws, and homeowners who refuse to own personal homes in racially diverse neighborhoods, NIMBYs reject the accusation that they are elitists or racists. Instead, when they defend land use regulations that exclude affordable housing or object to rezoning proposals that would allow developers to build affordable housing in their neighborhoods,¹⁶⁰ they often mask their exclusionary (and sometimes racist) views with neutral and non-offensive words.¹⁶¹

For example, NIMBYs contend that smaller homes, group homes (including residential substance abuse facilities), and multi-family units should be excluded from their neighborhoods because that type of housing would affect the character of their neighborhood.¹⁶² Likewise, rather than confess that they believe the mere presence of Blacks, Latinos, renters, or poor people in their neighborhoods will depress their homes’ values, NIMBYs argue that multi-family housing would increase density and traffic.¹⁶³ Moreover, NIMBY parents regularly oppose efforts to place multi-family housing in their neighborhoods by suggesting that this would cause neighborhood schools to become overcrowded and increase the number of academically unprepared (i.e., Black, Latino, or

¹⁵⁸ See Cheung & Meltzer, *supra* note 150, at 75–76 (discussing the social effects of HOAs); Scheller, *supra* note 153 (discussing the interaction among HOAs, the provision of public goods, and neighborhood racial composition).

¹⁵⁹ See DICKERSON, *supra* note 1, at 59–60.

¹⁶⁰ See *id.* at 61–62.

¹⁶¹ See *id.*

¹⁶² See, e.g., Leslee Bassman, *Westlake Sober Living Home Gets Green Light from Judge*, STATESMAN (Feb. 20, 2020, 6:39 PM), <https://www.statesman.com/news/20200220/westlake-sober-living-home-gets-green-light-from-judge> (detailing one lawsuit by an HOA against a sober living facility in a gated community); see also DICKERSON, *supra* note 1, at 61 (discussing these arguments more generally).

¹⁶³ See DICKERSON, *supra* note 1, at 58.

poor) students, which consequently would harm *their* neighborhood public K–12 schools' academic rating and performance.¹⁶⁴

Local leaders who cave to NIMBY demands never acknowledge the external costs NIMBYism has on other residents. Specifically, NIMBYs argue that placing affordable housing in a neighborhood imposes economic (lower property values), infrastructure (increased traffic), and social (poorer and weaker students in neighborhood schools) costs on them. If NIMBYs are correct, then the decision to exclude affordable housing from NIMBY neighborhoods shifts those costs to less politically influential homeowners in other neighborhoods without compensating these less politically powerful homeowners for that potential harm.¹⁶⁵ In addition to ignoring the potentially racist and classist consequences of NIMBYism, political leaders who cave to the demands of politically powerful NIMBYs essentially give NIMBYs free home value insurance that protects them against any potential negative costs associated with affordable housing without simultaneously ensuring there is an adequate supply of affordable housing in high-opportunity neighborhoods.¹⁶⁶

B. Lenders: Redlining 2.0

The overtly racist housing and lending practices discussed earlier in this Essay are no longer legal. For example, redlining was banned in the 1960s,¹⁶⁷ and the Fair Housing Act of 1968 makes it illegal for lenders to deny credit to borrowers solely because of their race.¹⁶⁸ Nonetheless, the history of racist housing laws in and policies in this country has embedded racism in current housing markets, which is why most neighborhoods that were redlined after World War II remain racially and economically segregated (unless they have been gentrified), and many covenanted communities (like Levittown) remain all-white.¹⁶⁹

¹⁶⁴ See *id.* at 58, 61; LEEANN LANDS, *THE CULTURE OF PROPERTY: RACE, CLASS, AND HOUSING LANDSCAPES IN ATLANTA, 1880–1950*, at 212–13 (2009); see also Jennifer Jellison Holme, Erica Frankenberg, Joanna Sanchez, Kendra Taylor, Sara De La Garza & Michelle Kennedy, *Subsidized Housing and School Segregation: Examining the Relationship Between Federally Subsidized Affordable Housing and Economic Isolation in Schools*, EDUC. POL'Y ANALYSIS ARCHIVES (Nov. 9, 2020), <https://epaa.asu.edu/ojs/article/view/5290/2544> (showing that most children who live in public or low-income housing are zoned for low-performing schools).

¹⁶⁵ See DICKERSON, *supra* note 1, at 197–200.

¹⁶⁶ *Id.* at 56.

¹⁶⁷ *Id.* at 150. Redlining was derived in large part from a Realtors Code of Ethics, developed in the 1920s, that was unabashedly racist. *Id.* at 146.

¹⁶⁸ *Id.* at 13.

¹⁶⁹ See ROTHSTEIN, *supra* note 73, at 210–11; *Data USA: Levittown, N.Y.*, DATA USA, <https://datausa.io/profile/geo/levittown-ny/#demographics> (last visited Mar. 15, 2021). For example, while race-restrictive

In addition to the challenges Blacks and Latinos face because of the vestiges of earlier racist lending and housing policies, they continue to face mortgage lending discrimination, as was painfully evident during the 2007–2009 Great Recession. When real estate markets were on the verge of collapsing in the early 1990s, lenders, realtors, and the federal government realized that the white population was aging, white birth rates were slowing, and more Blacks and Latinos needed to buy homes.¹⁷⁰ Home buyers at that time generally could not qualify for a mortgage unless they had a sizeable down payment (typically 10%) and good credit.¹⁷¹ Just as the federal government intervened in banking and lending markets after the Great Depression to boost home sales, both the Clinton and George W. Bush Administrations encouraged banks to “innovate” mortgage products to avoid a housing crisis and increase housing sales.¹⁷²

Banks responded to this call to action by creating mortgage products with flexible terms that could help all borrowers, but especially Blacks and Latinos, buy homes.¹⁷³ To encourage more home sales, banks relaxed many of their eligibility standards and developed mortgage products with higher interest rates that allowed borrowers to make a small (or no) down payment or make monthly loan payments on interest (not principal).¹⁷⁴ Likewise, banks started approving higher interest rate loans for borrowers with blemished credit or borrowers who did (or could) not document their income or assets.¹⁷⁵ While these innovative lending products helped some Blacks and Latinos buy homes, lenders appeared to engage in “reverse redlining” by offering these non-traditional and higher-priced subprime mortgage products to Blacks and Latinos for reasons that were not based on risk factors.¹⁷⁶

As was true when the federal government found ways to lower home buying costs for whites after the Great Depression, lenders during the housing bubble found innovative ways to reduce white borrowers’ home buying costs but

covenants are not enforceable, these odious clauses continue to appear in real estate deeds. See ROTHSTEIN, *supra* note 73, at 90–91. Likewise, nearly 75% of Levittown’s current residents are white while less than 1% of Levittown’s current residents are Black. *Data USA: Levittown, N.Y.*, *supra*. The politically progressive Marin County, California, was also built using racist real estate covenants and, like Levittown, remains largely all-white. See Liam Dillon, *Marin County Has Long Resisted Growth in the Name of Environmentalism. But High-Housing Costs and Segregation Persist*, L.A. TIMES (Jan. 7, 2018, 12:05 AM), <https://www.latimes.com/politics/la-pol-ca-marin-county-affordable-housing-20170107-story.html>.

¹⁷⁰ See DICKERSON, *supra* note 1, at 72–73, 202–05.

¹⁷¹ *See id.* at 42–45.

¹⁷² *Id.* at 72–73.

¹⁷³ *See id.* at 72.

¹⁷⁴ *See id.* at 46–48.

¹⁷⁵ *See id.* at 170, 173, 253–54.

¹⁷⁶ *See id.* at 164–72.

increase home buying costs for Blacks and Latinos. Research conducted after the housing boom disclosed that lenders steered Blacks and Latinos *to* higher-cost and higher-risk mortgage products but steered whites *away* from those riskier and higher-cost loans.¹⁷⁷ For example, in paired testing studies, whites were assigned slightly less favorable financial qualifications (lower credit scores, slightly lower incomes, and shorter employment records) than Black and Latino testers.¹⁷⁸ Despite being more creditworthy, Black and Latino testers who posed as applicants for mortgage loans were more likely to be steered to high-cost subprime mortgages that stripped them of home equity and household wealth.¹⁷⁹ In addition to steering them to higher-cost products, mortgage brokers or loan officers were about half as likely to discuss different rates, fees, or structures that might lower home buying costs with Black and Latino testers as they were with white testers.¹⁸⁰

Researchers who conducted and evaluated these paired testing studies concluded that Redlining 2.0 lowered home buying costs for potential white home buyers (just as redlining did after World War II) while simultaneously increasing buying costs for Blacks.¹⁸¹ One model suggests that Redlining 2.0 may have increased buying costs for Black and Latino borrowers by as much as \$5,000.¹⁸² These amounts, if invested at a 5% rate of return, would increase a hypothetical homeowner's net worth by more than \$11,000.¹⁸³

In addition to steering nonwhites to higher-cost mortgage loans, lenders approved whites for lower-cost loans at rates that exceeded the approval rate for Blacks and Latinos with similar household income.¹⁸⁴ That is, lower-income Blacks who applied for mortgage loans were more than three times as likely (almost 40%) to receive subprime mortgages compared to lower-income white home buyers (only 13%).¹⁸⁵ Similarly, higher-income Black borrowers were more than four times as likely (23%) to receive a subprime mortgage as higher-

¹⁷⁷ *See id.* at 166–68.

¹⁷⁸ *See id.*

¹⁷⁹ *See id.*

¹⁸⁰ *See id.*

¹⁸¹ *See id.*; NAT'L FAIR HOUS. ALL., THE CRISIS OF HOUSING SEGREGATION: 2007 FAIR HOUSING TRENDS REPORT 5–7 (2007), https://nationalfairhousing.org/wp-content/uploads/2017/04/2007_fair_housing_trends_report.pdf; Andra C. Ghent, Rub. . . n Hernández-Murillo & Michael T. Owyang, *Differences in Subprime Loan Pricing Across Race and Neighborhoods* (Fed. Rsrv. Bank of St. Louis., Working Paper No. 2011-033C, 2011), <https://files.stlouisfed.org/files/htdocs/wp/2011/2011-033.pdf>.

¹⁸² Lauren J. Krivo & Robert L. Kaufman, *Housing and Wealth Inequality: Racial-Ethnic Differences in Home Equity in the United States*, 41 DEMOGRAPHY 585, 593 (2004).

¹⁸³ *Id.*

¹⁸⁴ *See* DICKERSON, *supra* note 1, at 165–67.

¹⁸⁵ *Id.* at 166.

income whites (5%), and higher-income Latino residents were more than three times as likely (17%) to receive such a mortgage as higher-income whites.¹⁸⁶ The starkest disparity was between *lower-income* whites and *higher-income* Blacks and Latinos, as the percentage of *higher-income* Black (23%) and Latino (17%) borrowers who received a subprime, high-cost mortgage product was significantly higher than the percentage of *lower-income* white (13%) borrowers who received high-cost loans.¹⁸⁷

Testimony from former bank employees confirmed that systemic racism increased housing costs for Blacks and Latinos and made it harder for them to accumulate housing wealth.¹⁸⁸ Specifically, when comparing borrowers with similar income and applicable credit risk factors, lenders steered Black and Latino borrowers to higher-cost loans and intentionally failed to tell Black and Latino borrowers that their credit rating was high enough for them to qualify for a lower-cost mortgage product.¹⁸⁹ In addition to what could perhaps be characterized as implicit racial bias, these witnesses also revealed lenders' overtly racist behavior in referring to Black neighborhoods as slums or "the hood" and calling the subprime loans they pushed on borrowers in Black neighborhoods "ghetto loans."¹⁹⁰

C. Realtors

Private realtors can no longer legally discriminate against potential home buyers by, for example, refusing to show them homes in neighborhoods based on their race. But, just as lenders continued to steer Blacks to high-cost mortgage products during the housing bubble, paired testing studies revealed that realtors steered white purchasers to predominately white neighborhoods and nonwhite purchasers (particularly Blacks) away from those neighborhoods.¹⁹¹ Like other paired testing studies, Black and Latino testers were assigned slightly more favorable financial qualifications than white testers to eliminate the possibility that the realtor might have legitimate economic grounds to steer them away from certain neighborhoods.¹⁹²

These studies, like the lender Redlining 2.0 studies, confirm that realtors showed Blacks and Latinos fewer units, provided them less information overall,

¹⁸⁶ *Id.*

¹⁸⁷ *Id.* at 167.

¹⁸⁸ *See id.* at 169–71.

¹⁸⁹ *See id.* at 169–70.

¹⁹⁰ *Id.* at 170–71.

¹⁹¹ *See id.* at 150.

¹⁹² *See id.* at 150–51.

and gave them more misleading information about available housing options relative to white testers.¹⁹³ For example, when Black and Latino teams in one study contacted a real estate office to seek information about available housing opportunities, they were steered to racially integrated neighborhoods, while white testers were steered to white neighborhoods.¹⁹⁴ When realtors showed white testers homes in nonwhite neighborhoods, they referred to the quality of the neighborhood public schools in ways designed to signal that they should not be buying homes in those areas.¹⁹⁵ A 2017 Robert Wood Johnson Foundation survey revealed that systemic discrimination has continued; 45% of African Americans, 25% of Asian Americans, and 31% of Latinos reported that they had been discriminated against when they sought housing after the housing bubble and Great Recession.¹⁹⁶

A more recent 2019 news investigation examined discriminatory realtor practices in Long Island, New York, which has always been one of the most racially segregated areas in the United States.¹⁹⁷ This study confirmed that Long Island real estate agents *still* engage in illegal steering, and treated Blacks (49%) and Hispanics (39%) worse overall than white home searchers by steering Blacks and Latinos to neighborhoods with gang activity.¹⁹⁸ Although realtors cannot legally discuss the characteristics of people who reside in neighborhoods when they show homes to potential clients, Long Island realtors warned white clients to do research on gang activity in the neighborhoods while simultaneously encouraging nonwhites to move into those neighborhoods.¹⁹⁹

Finally, studies show that realtors also discriminate against potential buyers who they *perceive* to be “ethnic,” and are more likely to deny or cancel an appointment with home buyers that have ethnic sounding names or voices than a buyer the realtor perceives to be white.²⁰⁰ Realtors also showed nonwhite home

¹⁹³ See *id.* at 150.

¹⁹⁴ See *id.* at 150–51.

¹⁹⁵ *Id.* at 151.

¹⁹⁶ NAT’L PUB. RADIO, ROBERT WOOD JOHNSON FOUND. & HARVARD SCH. OF PUB. HEALTH, DISCRIMINATION IN AMERICA: FINAL SUMMARY 11 (2018), <https://www.rwjf.org/en/library/research/2017/10/discrimination-in-america—experiences-and-views.html>.

¹⁹⁷ See Ann Choi, Keith Herbert & Olivia Winslow, *Long Island Divided*, NEWSDAY (Nov. 17, 2019), <https://projects.newsday.com/long-island/real-estate-agents-investigation/>.

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

²⁰⁰ DICKERSON, *supra* note 1, at 151; see MARGERY AUSTIN TURNER, RON SANTOS, DIANE K. LEVY, DOUG WISSOKER, CLAUDIA ARANDA, ROB PITINGOLO & URB. INST., HOUSING DISCRIMINATION AGAINST RACIAL AND ETHNIC MINORITIES 2012: EXECUTIVE SUMMARY 8 (2013), https://www.huduser.gov/portal/Publications/pdf/HUD-514_HDS2012_execsumm.pdf.

buyers (or those perceived to be nonwhite) fewer houses and gave them limited or misleading information about their housing options.²⁰¹

D. Real Estate Investors: Blockbusting 2.0

Real estate investors no longer engage in the same type of wealth-stripping Blockbusting schemes that occurred from the 1940s to the 1960s. Nonetheless, real estate speculators found ways to strip wealth from potential home buyers, many of whom were lower-income Blacks and Latinos, during the 2007–2009 Great Recession. That is, when housing markets collapsed in major cities throughout the United States, real estate investors bought dilapidated homes in foreclosure or through tax sales, then resold them to cash-strapped renters.²⁰² As was true in Blockbusting, the investors made cosmetic repairs to the homes, but left structural damage unrepaired. As was true when Blacks bought homes during Blockbusting schemes, investors often sold the homes using land installment contracts, also known as “rent-to-own” (RTO) contracts or contracts for deeds,²⁰³ because many of the buyers could not qualify for traditional mortgage loans.²⁰⁴

The buyers who participated in these contracts were overwhelmingly cash-strapped Blacks or Latinos, and they rarely remained homeowners long term because of the way they financed their home purchases.²⁰⁵ Buyers often did not realize until well after they agreed to buy the homes that they needed to make (or were responsible for paying for) costly repairs or that they might be required to bring their homes into a habitable condition or comply with applicable housing codes, sometimes in as short as six months, before they could occupy those homes.²⁰⁶ Moreover, even if the buyers were allowed to immediately possess these houses, until they completed the repairs, buyers would not be

²⁰¹ DICKERSON, *supra* note 1, at 145, 151; *see* TURNER ET AL., *supra* note 200, at 4–8.

²⁰² *See, e.g.*, Matthew Goldstein & Alexandra Stevenson, ‘Contract for Deed’ Lending Gets Federal Scrutiny, N.Y. TIMES (May 10, 2016), <https://www.nytimes.com/2016/05/11/business/dealbook/contract-for-deed-lending-gets-federal-scrutiny.html>; Julieta Chiquillo, *Dallas Firm Faces Complaints of Selling Money Pit Homes to People Who Can’t Afford Them*, DALL. MORNING NEWS (Feb. 21, 2016, 12:10 PM), <https://www.dallasnews.com/news/2016/02/21/dallas-firm-faces-complaints-of-selling-money-pit-homes-to-people-who-can-t-afford-them/>.

²⁰³ *See* Miltko, *supra* note 83, at 2275–76.

²⁰⁴ *See, e.g.*, Gayle Reeves, *Buying False Hope – FW Tornado Victims Learn Pitfalls of Home Contracts for Deed*, DALL. MORNING NEWS, July 30, 2000, at 1A.

²⁰⁵ *See, e.g.*, Sarah Mancini & Margot Saunders, *Land Installment Contracts: The Newest Wave of Predatory Lending Threatening Communities of Color*, CMTYS. & BANKING, Spring 2017, at 9.

²⁰⁶ *See* Miltko, *supra* note 83, at 2297; Jeffrey Meitrodt, *Contract for Deed Can Be House of Horror for Buyers*, STAR TRIB. (July 5, 2013, 5:27 AM), <https://www.startribune.com/jan-14-contract-for-deed-can-be-house-of-horror-for-buyers/185756982/>; Reeves, *supra* note 204.

deemed true owners and did not build equity in these houses. In addition, like the buyers who were duped in Blockbusting schemes, these buyers also did not own their homes until they paid off a substantial percentage of the contract price.²⁰⁷

As was true during Blockbusting, cash-strapped buyers were willing to buy homes using high-cost and high-risk installment contracts because of the perception that this was an inexpensive way for them to achieve the middle-class dream of homeownership,²⁰⁸ and because they believed there was no other way for them to become homeowners.²⁰⁹ For many, the American Dream became a nightmare as some RTO buyers continued to live in (and pay for) dilapidated and unsafe housing.²¹⁰ In addition, like the buyers in Blockbusting schemes, eviction rates were high for RTO buyers because they often could not afford to pay for the repairs or their monthly contract payments. Likewise, once sellers evict one buyer, they typically make minimal repairs before selling the home to another unsuspecting buyer.²¹¹

Private investors who purchase homes from Black homeowners in gentrifying neighborhoods also profit from embedded racism in housing markets in other ways that strip housing wealth from Blacks. A recent study found that real estate developers bought homes from homeowners who had little experience buying or selling homes and paid the sellers (often older Blacks) below market prices for these homes. As was true during Blockbusting when investors paid fleeing whites below market prices for their homes, these private investors typically resell the homes to buyers, most often whites, at a significant profit.²¹²

While (Black) homeowners who sell their houses in neighborhoods that are gentrifying are generally paid more than the amount they originally paid for their homes, (white) developers make substantial profits by flipping the homes. Even armed with cash from the sale of their home, Black sellers in expensive real estate markets struggle to find affordable housing near their now-gentrified neighborhood or in any other geographically comparable area.²¹³ Because gentrification, by design, transforms under-resourced neighborhoods into higher-income neighborhoods, gentrification involves multiple home purchases

²⁰⁷ See, e.g., Meitrodt, *supra* note 206; Reaves, *supra* note 204.

²⁰⁸ See Seong-hee Lee, Comment, *Installment Land Contracts in Purchaser Bankruptcy*, 29 EMORY BANKR. DEVS. J. 425, 427, 431–32 (2013).

²⁰⁹ See DICKERSON, *supra* note 1, at 157–58.

²¹⁰ See Mancini & Saunders, *supra* note 205, at 10.

²¹¹ See DICKERSON, *supra* note 1, at 157–58; Milkto, *supra* note 83, at 2286.

²¹² See Hightower & Fraser, *supra* note 108, at 232–34, 239.

²¹³ See *id.*

before the neighborhood is fully gentrified. While legal, gentrification is essentially a reverse Blockbusting scheme that systematically pushes lower-income Blacks out of neighborhoods so higher-income whites can move in.²¹⁴

V. THE FINANCIAL CONSEQUENCES OF STRUCTURAL RACISM

Racist housing and lending policies continue to make it hard for Blacks and Latinos to buy homes and increase their housing wealth. Laws, policies, and the actions of private actors also make it hard for nonwhites to live in high-opportunity neighborhoods. While overtly racist laws and policies are illegal, racism is embedded in U.S. housing markets and, as a result, whether they seek to buy or rent, Blacks and Latinos still struggle to find safe and affordable housing.

A. Racial Homeownership Disparities

Regardless of age, income group, or educational attainment level, Blacks and Latinos are more likely to be renters, and their homeownership rates have always lagged white rates by about 25%.²¹⁵ For example, most whites (57%) were homeowners by 1950, while Black homeownership rates lagged white rates by more than 20%.²¹⁶ White homeownership rates increased to around 64% by 1960 while Black rates were only around 38% that year.²¹⁷ In 1980, homeownership rates for both Blacks and Latinos (both less than 45%) were lower than white ownership rates *twenty years earlier* and were essentially the same as the overall homeownership rate *in 1940*.²¹⁸

The racial homeownership gap remains, in part, because Blacks and Latinos have lower overall household income, weaker credit histories, lower household savings, and less knowledge about the home buying process.²¹⁹ Even though the racial homeownership gap did start to narrow once the Clinton and George W. Bush Administrations made increasing minority homeownership rates a

²¹⁴ See *id.* at 238–39.

²¹⁵ See F. JOHN DEVANEY, U.S. DEP'T OF COM., CURRENT HOUSING REPORTS H121/94-1, TRACKING THE AMERICAN DREAM: 50 YEARS OF HOUSING HISTORY FROM THE CENSUS BUREAU: 1940 TO 1990, at 28–29 (1994); Jung Hyun Choi, *Breaking Down the Black-White Homeownership Gap*, URB. INST. (Feb. 21, 2020), <https://www.urban.org/urban-wire/breaking-down-black-white-homeownership-gap>; George S. Masnick, HOMEOWNERSHIP RATE DIFFERENCES BETWEEN HISPANICS AND NON-HISPANIC WHITES: REGIONAL VARIATION AT THE COUNTY LEVEL (2006), https://www.huduser.gov/Publications/PDF/hisp_homeown7.pdf.

²¹⁶ DEVANEY, *supra* note 215.

²¹⁷ *Id.*; see DICKERSON, *supra* note 1, at 181–82.

²¹⁸ DEVANEY, *supra* note 215.

²¹⁹ See DICKERSON, *supra* note 1, at 15, 175–77, 246.

priority,²²⁰ the homeownership gap persists because of the vestiges of racist housing and lending policies and the ongoing mortgage lending discrimination.

Black and Latino households (especially those with graduate degrees) had the highest increases in homeownership rates during the housing boom. They accounted for slightly less than 14% of total homeowners but represented roughly 30% of the total increase in homeowners during Clinton's first term.²²¹ In addition, nonwhites were approximately 40% of the net new growth in homeowners during the housing boom²²² and, for the ten-year period starting in the mid-1990s, the increase in Black homeownership rates (25%) was almost double the increase in overall homeownership rates (14%).²²³

The call to arms to innovate mortgage products and increase home sales to nonwhites was successful, at least temporarily. The increase in Black homeownership rates (25%) was more than three times the increase in white homeownership rates (7%).²²⁴ The increase in the number of Latino homeowners was even starker, as the increase in their homeownership rates during the housing boom was more than four times the increase in overall homeownership rates.²²⁵ Despite this progress, the racial homeownership gap has never closed. In fact, though Black and Latino homeownership rates increased during the housing boom, they suffered a net loss of ownership because of their disproportionately high foreclosure rates during the recession.²²⁶

Research conducted after the housing bust revealed that the level of racial segregation in a neighborhood predicted foreclosure activities in those neighborhoods.²²⁷ That is, while the majority of the approximately four million foreclosures caused by the 2007–2009 Great Recession were homes owned by white families, Black and Latino families who took out loans to buy homes just before the housing market crashed were disproportionately more likely to lose their homes, regardless of income.²²⁸ Indeed, even more than two years after the

²²⁰ See *id.* at 72–73.

²²¹ *Id.* at 184.

²²² *Id.*

²²³ *Id.*

²²⁴ *Id.* at 184–85.

²²⁵ *Id.* at 185.

²²⁶ See *id.* at 14–15.

²²⁷ See, e.g., Jacob S. Rugh & Douglas S. Massey, *Racial Segregation and the American Foreclosure Crisis*, 75 AM. SOCIO. REV. 629, 630–34 (2010).

²²⁸ See DICKERSON, *supra* note 1, at 15.

Great Recession ended, Latino and Black foreclosure or mortgage loan delinquency rates were nearly twice the rates of white homeowners.²²⁹

After the recession, the Black-white homeownership gap increased to nearly 30% and was wider than the 25% and 26% gaps in 1990 and 2000.²³⁰ And, despite homeownership gains for Latinos, their 2010 homeownership rates also lagged behind white homeownership rates by almost 25%.²³¹ While white homeownership rates peaked in 2005 at 76% and have never been *lower* than 70% since 1995, Black and Hispanic homeownership rates have *never* exceeded 70%.²³² In fact, Black homeownership rates have never been higher than 50%, and the white-nonwhite homeownership gap will likely increase as the COVID-19 pandemic has exacerbated housing insecurity for Blacks and Hispanics.²³³

B. Housing Wealth Disparities

Racist lending and housing practices have deprived Blacks and Latinos of decades of housing wealth accumulation. Even when Blacks and Latinos could finally buy homes, they were at a disadvantage relative to the white Silent Generation and Baby Boomers who were able to buy single-family starter homes in the 1940s and 1950s using low-cost and low-risk federally insured mortgage loans. People who owned homes in the 1960s reaped enormous benefits, as the median sales price for single-family homes increased from \$23,900 in 1970 to \$63,700 in 1980.²³⁴ Prices continued to increase to \$130,000 by 1995 and to

²²⁹ See Carlos Garriga, Lowell R. Ricketts & Don E. Schlagenhauf, *The Homeownership Experience of Minorities During the Great Recession*, 99 FED. RES. ST. LOUIS REV. 139, 148–50 (2017); see also DEBBIE GRUENSTEIN BOCIAN, WEI LI & KEITH S. ERNST, CTR. FOR RESPONSIBLE LENDING, FORECLOSURES BY RACE AND ETHNICITY: THE DEMOGRAPHICS OF A CRISIS 5, 8 (2010), <https://www.responsiblelending.org/mortgage-lending/research-analysis/foreclosures-by-race-and-ethnicity.pdf>; Rugh & Massey, *supra* note 227; ELLEN SCHLOEMER, WEI LI, KEITH ERNST & KATHLEEN KEEST, CTR. FOR RESPONSIBLE LENDING, LOSING GROUND: FORECLOSURES IN THE SUBPRIME MARKET AND THEIR COST TO HOMEOWNERS 23 (2006), <https://www.responsiblelending.org/mortgage-lending/research-analysis/foreclosure-paper-report-2-17.pdf>.

²³⁰ DICKERSON, *supra* note 1, at 185.

²³¹ *Id.* To place the disparities in perspective, the Black homeownership rate exceeded 50% in only four states while the white homeownership rate was not less than 50% in any state. *Home Ownership and Housing: Homeownership Rate*, PROSPERITY NOW SCORECARD, <https://scorecard.prosperitynow.org/data-by-issue/#housing/outcome/homeownership-rate> (follow “Data by Race” hyperlink under “View”) (last visited Mar. 15, 2021).

²³² Laurie S. Goodman & Christopher Mayer, *Homeownership and the American Dream*, 32 J. ECON. PERSPS. 31, 36 (2018).

²³³ See Yixia Cai & Shawn Fremstad, *Pandemic Leads to More Precarious Housing Situation*, Ctr. for Econ. & Pol’y Rsch. (Aug. 14, 2020), <https://cepr.net/pandemic-leads-to-more-precarious-housing-situation/> (discussing the effects of COVID-19 on housing for Blacks and Hispanics); Dickerson, *supra* note 1, at 181 (tracking Black homeownership rates over time).

²³⁴ *Median Sales Price of Houses Sold for the United States*, FRED, <https://fred.stlouisfed.org/series/MSPUS> (last visited Jan. 28, 2021); see DICKERSON, *supra* note 1, at 65–66.

\$232,500 a decade later.²³⁵ By the beginning of the Great Recession in 2007, median housing prices in the country increased to \$257,400.²³⁶

Decades after federal laws and policies helped white renters become homeowners, those white homeowners had the options of cashing-in their housing wealth and buying a bigger home, or selling their homes to pay their retirement expenses and bequeathing any remaining wealth to their heirs.²³⁷ In contrast, by the time overtly racist housing policies were outlawed and nonwhite families could buy high-appreciating homes using low-cost mortgage products, there was already a gaping racial homeownership and wealth gap.²³⁸ Though homeownership rates for Blacks and Latinos have increased since the 1940s, the racial housing wealth gap has continued to increase. One reason the housing wealth gap expanded after the recession is because of the particularly devastating effect the housing crash had on Black and Latino household wealth. That is, while middle-class households of all races hold most of their wealth in housing, housing equity constitutes a disproportionate amount of Black (almost 60%) and Latino (approximately 65%) overall wealth relative to white (44%) household wealth.²³⁹

A recent practice involving young potential home buyers also shows the devastating consequences of systemic racism in the home buying market. Income for young adults (and all other households except the highest earners) has been stagnant for decades, and young adults had unstable employment even before the COVID-19 pandemic.²⁴⁰ Moreover, while COVID increased overall household savings rates,²⁴¹ most lower- and middle-income families (including young, recent college graduates) have had little in savings for decades.²⁴² With stagnant income, little saved for a down payment, unstable employment, and outstanding student loan debt,²⁴³ many young renters have struggled for years to qualify for a mortgage loan *particularly* in hot housing markets.

While most young renters are financially fragile, one renter profile has managed to buy homes even in hot housing markets: renters with parents or

²³⁵ *Median Sales Price of Houses Held for the United States*, *supra* note 234.

²³⁶ *Id.*

²³⁷ *See* DICKERSON, *supra* note 1, at 254–59.

²³⁸ *See id.*

²³⁹ *Id.* at 193.

²⁴⁰ *Id.* at 116.

²⁴¹ *Personal Saving Rate*, FRED, <https://fred.stlouisfed.org/series/PSAVERT> (last visited Feb. 26, 2021).

²⁴² *See* DICKERSON, *supra* note 1, at 67–68.

²⁴³ *See* Alvaro Mezza, Daniel Ringo & Kamila Sommer, *Can Student Loan Debt Explain Low Homeownership Rates for Young Adults*, CONSUMER & CMTY. CONTEXT, Jan. 2019, at 2.

relatives with housing wealth. As was true during the housing bubble, many young buyers in hot housing markets find themselves in bidding wars even for modest starter homes.²⁴⁴ Lenders often refuse to approve mortgage loans to buy homes that are listed at prices that exceed the appraised value of the home, so the norm in these hot markets has been for buyers to make all-cash offers,²⁴⁵ and the ability to make all-cash offers gives the buyer a competitive advantage over buyers who need to finance the home purchase by qualifying for a mortgage.²⁴⁶

In a trend that epitomizes how this country's racist past continues to influence current opportunities, the young lower- or middle-income buyers with no savings who have been able to make all-cash payments have done so by relying on family wealth. Specifically, parents or grandparents are agreeing to take out (or refinance) a mortgage loan or home equity line of credit and then loaning (or gifting) their young relatives the cash they need for an all-cash home purchase (or for a large down payment that can reduce the amount they need to borrow).²⁴⁷ After the all-cash purchase, the young buyers then take out a mortgage loan on their debt-free home to repay their parents or grandparents.²⁴⁸ While parent- or grandparent-funded all-cash purchases help some young adults become homeowners, this method only works for buyers whose relatives have liquid wealth or own homes they can use as collateral for a mortgage loan or a home equity line of credit.²⁴⁹

As discussed throughout this Essay, it is less likely that Blacks and Latinos will be homeowners because of barriers they have always faced in housing and lending markets. Moreover, because of systemic racism in appraisal markets, the homes nonwhites own generally are valued less than white-owned homes. Because young Black and Latino renters are less likely to have parents or grandparents who own homes whose market value is high enough for them to be able to take out cash for their descendants, this new trend toward all-cash purchases further exacerbates racial homeownership and racial wealth gaps because it only benefits buyers from families with housing wealth.

²⁴⁴ Leigh Kamping-Carder, *Millennials' New Weapon in Bidding Wars: A Parent's Home Equity*, WALL ST. J. (Oct. 13, 2017, 2:46 PM), <https://www.wsj.com/articles/millennialss-new-weapon-in-bidding-wars-a-parents-home-equity-1507645135>.

²⁴⁵ *Id.*

²⁴⁶ *Id.*

²⁴⁷ *Id.*

²⁴⁸ *Id.*

²⁴⁹ *Id.*

VI. ERASING SYSTEMIC RACISM IN HOUSING WITH ANTI-RACIST REMEDIES

Until political leaders are willing to adopt anti-racist responses to remedy the disparities caused by prior racist federal, state, and local housing policies that favor higher-income homeowners, racial housing disparities will always exist. Because Blacks and Latinos constitute approximately 30% of the U.S. population but 41% of the residents of high-poverty, high-inequality counties,²⁵⁰ few can afford to buy homes in neighborhoods that have exclusionary zoning laws or in neighborhoods with a strong NIMBY presence. To remedy this, local leaders must oppose NIMBY efforts to exclude affordable housing projects from high-opportunity residential neighborhoods. In addition, local leaders must embrace affordable housing with the same zeal that they embrace gentrification and developers who propose to build large luxury condominium units. Just as cities eagerly provide incentives to encourage developers to build high-rise condominiums, they should also provide comparable incentives to developers who propose building or redeveloping high-density affordable apartment units.

Blacks and Latinos who owned homes in redlined communities accumulated less housing wealth than whites. To remedy this, governmental entities should create down payment assistance programs to help former residents (or their descendants) of redlined neighborhoods find housing in high-opportunity neighborhoods. Similarly, nonwhites who were pushed out of neighborhoods that were revitalized by urban renewal programs or gentrification should receive down payment assistance to buy homes in their former neighborhoods and cities should adopt policies that give those residents a chance to return to their former neighborhoods.²⁵¹

Local elected and appointed officials should also enact inclusionary zoning laws that give developers of high-density residential projects incentives to reserve a certain number or percentage of units for lower- or middle-income tenants. For example, developers could be offered tax abatements or zoning variances to build more units if they agree to dedicate a share of units in their new developments for middle-income tenants. Given the role that states played in destroying affordable housing in Black and Latino communities to build

²⁵⁰ Mark Mather & Beth Jarosz, *Where Poverty and Inequality Intersect in the U.S.*, PRB (Nov. 17, 2014), <https://www.prb.org/us-inequality-poverty/>.

²⁵¹ See, e.g., *Portland Is Trying to Help People Return to Gentrified Areas. Austin Has Similar Plans.*, KUT 90.5 (Nov. 16, 2018, 12:15 PM), <https://www.kut.org/austin/2018-11-16/portland-is-trying-to-help-people-return-to-gentrified-areas-austin-has-similar-plans>.

highways or transfer land to private developers, no state should legislatively override local inclusionary land use policies (as the State of Texas has done).²⁵²

Finally, to help close racial wealth gaps that exist because of homeownership privileges that primarily benefit higher-income white taxpayers, Congress should modify or eliminate the MID and the SALT. At the local level, to increase the supply of affordable housing, localities should relax land use laws that preference homeowners and allow more innovation in housing developments. For example, localities should enact zoning and land use laws that make it easier for homeowners to build garage or attic apartments on existing homes or build mini homes in their backyards. Likewise, public entities must be willing to engage in public-private partnerships with private or non-profit organizations that seek to build or retrofit more dense multi-family housing, including duplexes or triplexes, or to build affordable housing on vacant or dilapidated publicly owned lands.

CONCLUSION

Federal, state, and local housing policies have consistently made it easier for whites to become homeowners and increase their household wealth. These same policies made it harder for Blacks and Latinos to buy homes or even find affordable rental housing, *particularly* in high-opportunity neighborhoods. Given how deeply embedded racism is in this country's housing laws and policies, Blacks and Latinos will continue to languish in housing markets unless federal, state, and local governments commit to adopting anti-racism laws and policies to remedy the harm caused by prior racist laws and policies.

²⁵² See, e.g., Teresa Wiltz, *In Shift, States Step In on Affordable Housing*, PEW TRUSTS (Oct. 15, 2018), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2018/10/15/in-shift-states-step-in-on-affordable-housing>.