

FAIR HOUSING AND COMMUNITY DEVELOPMENT: TIME TO COME TOGETHER

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INTRODUCTION

Forty years ago, shortly before the passage of the Fair Housing Act,¹ the National Advisory Commission on Civil Disorders, more generally known as the Kerner Commission, famously declared that the country was “moving toward two societies, one black, one white—separate and unequal.”² The Commission urged, among other things, the enactment of a “comprehensive and enforceable federal open housing law.”³ It recognized, however, that many poor people of color were locked in the ghettos of the inner city by a poverty that had its roots deep in the soil of segregation and that discrimination and prejudice in the public and private housing markets would not abate overnight.⁴ The report concluded that “no matter how ambitious or energetic the program, few Negroes now living in central cities can be quickly integrated” and called for large scale “enrichment” of the Black ghetto as an adjunct strategy to address the findings regarding race, housing, and community conditions in America.⁵

Two months after the Kerner Commission issued its report and call for action, Congress passed the Fair Housing Act.⁶ While the bill was not the

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1. The Fair Housing Act became law on April 11, 1968. Title VIII of the Civil Rights Act of 1968, Pub. L. No. 90-284, 82 Stat. 73, 81-89 (1968) (codified as amended at 42 U.S.C. §§ 3601-3619 (2000)).

2. REPORT OF THE NAT’L ADVISORY COMM’N ON CIVIL DISORDERS (1968) [hereinafter KERNER REPORT]. President Johnson appointed the Kerner Commission on July 28, 1967, to investigate urban riots in the United States that began in the summer of 1965 and brought civil disorder to black sections of many major cities, including Los Angeles (1965), Chicago (1966), and Newark (1967). *See id.* The Commission concluded in March 1968 that urban violence reflected the profound frustration of inner-city blacks and that racism was deeply embedded in American society. *Id.*

3. *Id.*

4. *Id.*

5. *Id.*

6. Title VIII of the Civil Rights Act of 1968, Pub. L. No. 90-284, 82 Stat. 73, 81-89 (1968) (codified as amended at 42 U.S.C. §§ 3601-3619 (2000)). *See generally* Leonard S. Rubinowitz & Kathryn Shelton, *Non-Violent Direct Action and the Legislative Process: The Chicago Freedom*

“comprehensive and enforceable federal open housing law” urged by the report, the sponsors hoped that its passage would usher in a society in which residential segregation would no longer define American housing patterns and community landscape.⁷ It was the last major piece of civil rights legislation of the 1960s and struck at the heart of our attitudes about race: who could live next door.⁸ It was long overdue.

However, passage of the Fair Housing Act, which came in the wake of the assassination of Dr. King on April 4, 1968, did not abate white resistance to residential integration.⁹ Progressives quickly turned to the second recommendation of the Kerner Commission, “enrichment” of the black ghetto, to address the problems that existed in minority communities as a result of Jim Crow.¹⁰ During the 1968 presidential campaign, when Robert Kennedy, vying for the Democratic Party nomination, proposed “community development” as a counter to Eugene McCarthy’s support for letting minorities move to white areas, it was seen by some as a crass political move.¹¹ But it was also a practical and realistic effort to respond to the frustration felt by many blacks who saw their communities struggling with the legacy of segregation: extreme poverty, dilapidated and deteriorating housing stock, inadequate public services, and little or no investment—much less re-investment—by the public or private sectors. Place-based community development initiatives appeared to offer a more empowering way for people of color to deal with the harms of segregation, one that did not require the receptiveness of white people. While it would entail public expenditure, it meant that blacks would be staying where they belonged, and not demanding to come where they did not, i.e., white neighborhoods. For white liberals, it provided a respectable alternative to taking on a fight that was both socially uncomfortable and politically difficult. The modern community development movement was born.

The fundamental rights that the Fair Housing Act explicated were already

Movement and the Federal Fair Housing Act, 41 IND. L. REV. 663 (2008).

7. CHARLES M. LAMB, HOUSING SEGREGATION IN SUBURBAN AMERICA SINCE 1960, at 47-50 (2005).

8. See Voting Rights Act of 1965, Pub. L. No. 89-110, 79 Stat. 437 (1965) (codified as amended at 42 U.S.C. §§ 1971, 1973 to 1973bb-1 (2000)); Civil Rights Act of 1964 (codified as amended at 42 U.S.C. §§ 2000a to 2000h-6 (2000)).

9. Indeed, white resistance to the appearance of non-white neighbors, particularly in the form of affordable housing, has been a longstanding, continuing part of life in most American cities to this day. See John M. Goering, *Introduction to HOUSING DESEGREGATION AND FEDERAL POLICY* 9, 9 (John M. Goering ed., 1986)); see also Jeannine Bell, *The Fair Housing Act and Extralegal Terror*, 41 IND. L. REV. 537, 545-46 (2008); Rubinowitz & Shelton, *supra* note 6, at 675-76; see generally STEPHEN GRANT MEYER, AS LONG AS THEY DON’T MOVE NEXT DOOR: SEGREGATION AND RACIAL CONFLICT IN AMERICAN NEIGHBORHOODS (2000); Leonard S. Rubinowitz & Imani Perty, *Crimes Without Punishment: White Neighbors’ Resistance to Black Entry*, 92 J. CRIM. L. & CRIMINOLOGY 335 (2002) (reviewing MEYER, *supra*).

10. KERNER REPORT, *supra* note 2.

11. See ARTHUR M. SCHLESINGER, JR., ROBERT KENNEDY AND HIS TIMES 910-11 (1978).

imbedded in our Constitution and legal rulings before they were recognized by the people's representatives.¹² The Fair Housing Act was nevertheless an important statement of national purpose. However, forty years after the passage of the Fair Housing Act, the dream of its sponsors has not been realized. In many ways segregation seems more entrenched than ever, particularly, but not exclusively, for lower income people of color.¹³ Moreover, discrimination continues to limit housing choice for people of color at every income level.¹⁴ The reasons for that can be debated, but the reality of it cannot. Neither can the relationship between geography and opportunity. Today it is truer than ever that where you live determines what sort of life chances you and, perhaps more importantly, your children will have, and where you live depends a great deal on your race and income.¹⁵

It is at the intersection of race and poverty where the fair housing and community development movements have had their greatest challenges.¹⁶ Both are progressive movements seeking to address either explicitly or implicitly the negative impact that racial segregation and discrimination had on minority individuals and communities. However, over the past forty years, neither movement has been individually successful in either creating open and inclusive communities of opportunity or making separate equal. At best the movements have seemed to operate in parallel universes and, at worst, have reflected tension

12. See 42 U.S.C. § 1982 (2000); *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409 (1968); *Shelley v. Kraemer*, 334 U.S. 1 (1948); see also LAMB, *supra* note 7, at 18.

13. While a great deal has been written on the difficult problem of housing segregation, three books authored or compiled between 1986 and 2005 provide a comprehensive look at our segregated condition and the role that public policy has played in both perpetuating as well as seeking to eradicate it. The following three books should be the starting place for anyone seeking to understand the issue and contribute constructively to addressing it. See generally HOUSING DESEGREGATION AND FEDERAL POLICY, *supra* note 9 (providing an insider's perspective of the role that federal housing policy has played historically in both creating and perpetuating housing segregation, with attention to the political environment in which that has occurred); DOUGLAS S. MASSEY & NANCY A. DENTON, AMERICAN APARTHEID: SEGREGATION AND THE MAKING OF THE UNDERCLASS (1993) (providing the definitive work on the role housing segregation has played to create minority "underclass"); THE GEOGRAPHY OF OPPORTUNITY: RACE AND HOUSING CHOICE IN METROPOLITAN AMERICA (Xavier de Souza Briggs ed., 2005) [hereinafter THE GEOGRAPHY OF OPPORTUNITY] (offering a comprehensive look through a compilation of essays at the way our continued segregated condition operates to prevent access to opportunity for people of color as compared to white people even as we grow more racially and ethnically diverse by the day, with particular emphasis on the need for new public policy attention to the issue of housing segregation).

14. See MARGERY AUSTIN TURNER ET AL., URBAN INST., DISCRIMINATION IN METROPOLITAN HOUSING MARKETS: NATIONAL RESULTS FROM PHASE 1 HOUSING DISCRIMINATION STUDY 2000, at 8-1 to -12 (2002), available at <http://www.huduser.org/publications/hsgfin/phase1.html>.

15. See Xavier de Souza Briggs, *More Pluribus, Less Unum? The Changing Geography of Race and Opportunity*, in THE GEOGRAPHY OF OPPORTUNITY, *supra* note 13, at 35-37.

16. See MASSEY & DENTON, *supra* note 13, at 142; see generally THE GEOGRAPHY OF OPPORTUNITY, *supra* note 13.

and even conflict that belie their common commitment to social and racial justice. That tension is clearly related in part to the perceived inconsistency between the goal of “integration” and the goal of strengthening existing minority communities. But is it also related to the reality of scarce resources? The fundamental principles of housing choice and equal opportunity appear to collide with the perceived need to focus those scarce resources, particularly federal housing dollars, on community revitalization work. However, this is a false dichotomy. Fair housing and community development are two sides of the same coin. They grew out of the need to address the twin evils of Jim Crow: separate and unequal. It is the thesis of this Article that the two goals are best advanced together.

This Article begins in Parts I and II by setting out the contexts of the births of the fair housing and community development movements, respectively. Part III looks at the efforts toward and attitudes about the creation of an open, inclusive society that impacts racial housing patterns. The tensions between the fair housing/civil rights advocates and community development advocates are examined in Part IV in the context of Public Housing/HOPE VI Program, the Low Income Housing Tax Credit Program, and local zoning and land use policies. Finally, Part V calls for a “coming together” of all low-income housing advocates in a way that provides for true housing choice regardless of race and income.

I. THE FAIR HOUSING MOVEMENT

We're going to make this an open city, because it's right. We're going to make it an open city, because it's practical. We're going to make it an open city, because it's sound economics. We're going to make it an open city, because we're tired of being humiliated.—Rev. Dr. Martin Luther King, Jr. Chicago 1966.¹⁷

The modern fair housing movement, theoretically empowered by passage of the Fair Housing Act, has not made significant strides toward creating a nation of open and inclusive communities of opportunity.¹⁸ There are, no doubt, many

17. Rob Breymaier, *Affirmative Furthering of Fair Housing: The 21st Century Challenge*, POVERTY & RACE, May-June 2007, at 10, 10.

18. See MASSEY & DENTON, *supra* note 13, at 224; Robert G. Schwemm, *Why Do Landlords Still Discriminate (And What Can Be Done About It)?*, 40 J. MARSHALL L. REV. 455, 456-57, 471 (2007) [hereinafter Schwemm, *Why Do Landlords Still Discriminate?*] (stating that “[t]he most recent nationwide study by [HUD], based on thousands of paired tests in dozens of metropolitan areas in 2000, showed that, in rental tests, whites were favored over blacks 21.6% of the time and over Hispanics 25.7% of the time. The rate of rental discrimination against Hispanics was actually higher than had been shown in a similar study in 1989, and the 2000 figure for blacks was down only a few percentage points compared to its 1989 counterpart”) (footnote omitted); see also Robert G. Schwemm, Cox, Halprin, and *Discriminatory Municipal Services Under the Fair Housing Act*, 41 IND. L. REV. 717, 718 n.4, 718-19 (2008); Margery Austin Turner, *Limits On Housing and*

reasons for that, including ambivalence about the goal of racial integration. Certainly, the political environments in which the movement has operated over the past forty plus years and the shortcomings of the Act itself, particularly related to enforcement, contributed as well.¹⁹ The Act reflected the difficult compromises involved in securing its adoption, and it was never as effective of a tool to promote real residential integration or to deal with the complicated legacy of segregation at the community level as proponents had hoped.²⁰ This has been due, in part, to the relatively singular focus of the fair housing movement on individual acts of discrimination in real estate-related transactions and its failure to effectively collaborate with other community-based social justice efforts in the face of governmental policies that reinforce segregation at every turn.²¹

However, the overarching failure has been that of political will. The alchemy of race and housing has seldom produced a politician's finest moments, nor our people's.²² The failures have been, and continue to be, bi-partisan failures.²³ Segregation by race and income presents the progressive community with one of its greatest challenges, and our response in the coming decades will determine the country we become.

II. THE COMMUNITY DEVELOPMENT MOVEMENT

Despite forty years of work, the investment of considerable public and private resources, and greater political support than the fair housing movement, the community development movement working in low-income minority

Neighborhood Choice: Discrimination and Segregation in U.S. Housing Markets, 41 *IND. L. REV.* 797, 797-800 (2008).

19. See LAMB, *supra* note 7, at 41-42; MASSEY & DENTON, *supra* note 13, at 195-216.

20. LAMB, *supra* note 7, at 41-42.

21. See Schwemm, *Why Do Landlords Still Discriminate?*, *supra* note 18, at 460-72; Mara S. Sidney, *Fair Housing and Affordable Housing Advocacy: Reconciling the Dual Agenda*, in *THE GEOGRAPHY OF OPPORTUNITY*, *supra* note 13, at 266-67.

22. An exception was Vito Marcantonio's speech on the floor of the House of Representatives during the debate over the 1949 Housing Act. *I VOTE MY CONSCIENCE: DEBATES, SPEECHES AND WRITINGS OF VITO MARCANTONIO 1935-1950*, at 307-08 (Annette T. Rubinstein & Assocs. eds., 1956) [hereinafter MARCANTONIO]. At issue was whether to permit racial segregation in the public housing that would be created by the bill. *Id.* at 307. Liberal Democrats, fearful that to do so would cause the bill to fail, rejected his plea to amend the bill to prohibit racial segregation. *Id.* The bill passed, and segregation in federally funded low-income housing was the rule. Housing Act of 1949, Pub. L. No. 81-171, 63 Stat. 413 (codified as amended at 12 U.S.C. § 1701h (2000) and scattered sections of 42 U.S.C.); see generally Elizabeth K. Julian & Michael M. Daniel, *Separate and Unequal: The Root and Branch of Public Housing Segregation*, 23 *CLEARINGHOUSE REV.* 666, 668-71 (1989) (discussing arguments for choosing not to seek relief from racial segregation).

23. See LAMB, *supra* note 7, at 165-203.

communities has failed to make separate equal.²⁴ Critics have faulted the community development movement for overlooking the role of race in creating unacceptable living conditions and limited opportunities in many low-income communities.²⁵ While a plethora of public and private programs and associated resources have “targeted” struggling low-income communities for “revitalization,” the conditions in underserved minority neighborhoods were rarely dressed *as legacies of segregation*.²⁶ The reluctance to do so and to employ strategies, including litigation, which seek remedies for racial discrimination and the structural conditions that it begat have resulted in the movement’s limited effectiveness.²⁷ In criticizing the community “revitalization” movement for not taking “structural racism and social class inequality” into account in either defining the problem or formulating solutions, Henry Louis Taylor, Jr. suggests a new way of thinking about community development.²⁸ This perspective acknowledges that the adverse conditions in low income communities have often resulted from decades of illegal racial and class-based segregation.²⁹ Remedies must therefore be structural and comprehensive in nature, and the demand for them must derive its legitimacy from civil rights law, not just moral or political authority.³⁰

III. AMIABLE APARTHEID

During the past forty years, the importance of eradicating segregation and the value of living in diverse communities have been challenged and debated. In addition to white attitudes, ambivalent at best and hostile at worst, minority attitudes, which have always rightly found offensive any notion that they must live among whites to be able to access equal opportunity, have increasingly grown tired of the effort—an attitude that Sheryll Cashin describes clearly in her

24. See Nicholas Lemann, *The Myth of Community Development*, N.Y. TIMES, Jan. 9, 1994, at § 6, 27.

25. See generally Alice O’Connor, *Historical Perspectives on Race and Community Revitalization*, ASPEN INST., <http://www.aspeninstitute.org/atf/cf/%7BDEB6F227-659B-4EC8-8F84-8DF23CA704F5%7D/9OConnor.pdf> (last visited Apr. 9, 2008).

26. See Phil Tegeler, *Segregation in Housing Programs*, in THE GEOGRAPHY OF OPPORTUNITY, *supra* note 13, at 203-05 (discussing the Community Reinvestment Act and civil rights concerns); see also Elizabeth Julian, *An Unfinished Agenda: Why It’s Time for Fair Housing and Community Development to Reunite to Fight the Vestiges of Segregation*, SHELTERFORCE, Winter 2007, <http://www.nhi.org/online/issues/152/unfinishedagenda.html> (discussing why it is time for the fair housing and community development movements to reunite to fight the vestiges of segregation).

27. See Julian, *supra* note 26.

28. HENRY LOUIS TAYLOR, JR. & SAM COLE, CTR. FOR URBAN STUDIES, STRUCTURAL RACISM AND EFFORTS TO RACIALLY RECONSTRUCT THE INNER-CITY BUILT ENVIRONMENT 1 (2001), <http://www.thecyberhood.net/documents/papers/taylor01.pdf>.

29. See *id.* at 5-6.

30. See generally TAYLOR & COLE, *supra* note 28.

book, *The Failures of Integration*.³¹ It may be argued that we have not sufficiently/meaningfully attempted integration, but in any event the appetite for dealing with the issue of segregation in the early part of the twenty-first century is not hearty. Despite sometimes sympathetic rhetoric and token efforts, significant segments of the progressive community—including anti-poverty, affordable housing, and environmental advocates, following in the footsteps of their community development counterparts—have not embraced the principle of fair housing and an open society as an essential component of their work.³² Moreover, conservative whites, hardly enthusiastic supporters of the goals of the Fair Housing Act in the first place, have been happy to watch “those people” struggle to deal with the effect of segregation and the structural racism that it begat in “their” communities from across the tracks, the river, the levee, or whatever “natural” divide separates those who have from those who have not, secure in their belief that no political will exists to bridge or breach it.³³

Along with the demographic data that shows our continuing segregated condition,³⁴ recent academic studies and legal developments have reinvigorated those who would argue that the goal of an integrated society is utopian at best and undesirable or even illegal at worst. The Supreme Court’s recent decisions in the Seattle and Kentucky public education cases have, in an almost complete rejection of the heart and soul of *Brown v. Board of Education*,³⁵ limited the most reasonable voluntary tools to address racial segregation in public education.³⁶ Arguments in the briefs filed by amici curiae on behalf of fair housing and civil rights groups regarding the effects of housing segregation on the ability to desegregate public schools were generally ignored by the Court.³⁷ The silver lining may be, however, that by erecting barriers to voluntary local efforts to provide desegregated educational opportunities, the Court’s decision has put the issue of housing segregation back on the national agenda.³⁸

31. SHERYLL CASHIN, *THE FAILURES OF INTEGRATION* 17-28 (2004).

32. See, e.g., ROBERT D. BULLARD, *DUMPING IN DIXIE: RACE, CLASS, AND ENVIRONMENTAL QUALITY* 1 (1990), available at <http://www.ciesin.org/docs/010-278/010-278chpt1.html>.

33. *Id.*

34. See U.S. CENSUS BUREAU, *RACIAL AND ETHNIC RESIDENTIAL SEGREGATION IN THE UNITED STATES: 1980-2000*, at 15 (2002), http://www.censusbureau.biz/hhes/www/housing/housing_patterns/pdf/paa_paper.pdf (showing continued patterns of segregation, though overall incremental declines for all groups in segregation indices with blacks remaining the most segregated of all groups); see also Briggs, *supra* note 15, at 17, 22-29 (observing the continuing “distressingly high” levels of absolute segregation of blacks).

35. 347 U.S. 483 (1954).

36. *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 127 S. Ct. 2738, 2768 (2007) (Roberts, C.J.).

37. Brief of Amici Curiae Housing Scholars and Research & Advocacy Organizations in Support of Respondents, *Parents Involved*, 127 S. Ct. 2738 (2007) (Nos. 05-908 & 05-915), 2006 WL 2927078.

38. See generally *Parents Involved*, 127 S. Ct. 2738; see generally Julian, *supra* note 26, at 20.

The recent research of Robert Putnam, based upon an extensive survey taken at the time of the 2000 Census of people living in a range of diverse and homogenous environments, has likewise given succor to those who would declare the goal of an integrated society unworthy.³⁹ Putnam concludes, he says reluctantly, that at least in the “short run” living in a racially and ethnically diverse environment is stressful and difficult.⁴⁰ He finds that such environments result in loss of a sense of community and cause us to withdraw from desirable social interaction to stay at home and watch T.V.⁴¹

Not surprisingly, these rather grim research findings have resulted in widespread discussion in the popular media and communication venues suggesting that the national belief in the value of diversity is misplaced. As one major newspaper characterized the Putnam findings: “diversity hurts civic life.”⁴² Another commentator opined: “Greater Diversity Equals More Misery.”⁴³ While Putnam’s research will likely be used in connection with the debate on immigration, it also poses serious issues given our already diverse population and projections that we will become increasingly so regardless of immigration policies.⁴⁴ A critique of the conclusions and methodology of the research is beyond the scope of this Article, but a discussion of its implications for fair housing and open communities is not. If we are not currently comfortable living in racially and ethnically diverse environments, does the research suggest that we can never be so? Does it suggest that we would be happy, socially and civically engaged citizens if we were just allowed to retreat to our racial or ethnic enclaves? And, if so, can society choose policies that foster that condition if they only serve to undercut our ideal of a free, open society where people can choose where to live, regardless of race? The implications of the Putnam research are not so much about the validity of its conclusions about our *present*, which after all capture attitudes toward race less than fifty years after we outlawed official segregation. They are about what sort of *future* we believe is possible. Can we continue to honor the principles of our Constitution and laws, and acknowledge the mistakes of our past, if we embrace segregation as a goal for our future?

Another instance of research being used to argue against policies that support racial and economic integration is found in the recent work on HUD’s Moving

39. See generally Robert D. Putnam, *E Pluribus Unum: Diversity and Community in the Twenty-first Century*, 30 SCANDINAVIAN POL. STUD. 137 (2007), available at <http://www.blackwell-synergy.com/doi/pdf/10.1111/j.1467-9477.2007.00176.x>.

40. *Id.* at 149-51.

41. *Id.*; James A. Kushner, *Urban Neighborhood Regeneration and the Phases of Community Evolution After World War II in the United States*, 41 IND. L. REV. 575, 599-600 (2008).

42. Michael Jonas, *The Downside of Diversity*, BOSTON GLOBE, Aug. 5, 2007, at D1.

43. Ilana Mercer, *Greater Diversity Equals More Misery; Harvard Political Scientist Robert Putnam Has Found That Diversity Is Not a Strength, but a Weakness*, ORANGE COUNTY REG., July 22, 2007, <http://www.ocregister.com/opinion/putnam-diversity-social-1781099-racial-greater>.

44. See generally DEP’T OF COMMERCE & U.S. CENSUS BUREAU, *DYNAMIC DIVERSITY: PROJECTED CHANGES IN U.S. RACE AND ETHNIC COMPOSITION 1995 TO 2050*, at 1-3 (1999), available at <http://www.mbda.gov/documents/unpubtext.pdf>.

To Opportunity (MTO) Demonstration⁴⁵ that concluded that “[a]t least for the children in the Moving to Opportunity experiment, the promise that better neighborhoods would bring greater academic achievement has thus far gone unfulfilled.”⁴⁶ These findings again have prompted calls for an end to initiatives that create opportunities for those who are poor to live among those who are not poor (and, implicitly, racial minorities to live among whites).⁴⁷ MTO was designed in response to research regarding the effect of the *Gautreaux* housing mobility program in Chicago, part of the remedy in a public housing desegregation lawsuit, *Gautreaux v. Chicago Housing Authority*.⁴⁸ The *Gautreaux* program, because it was a remedy in a civil rights lawsuit, was explicitly designed to remedy racial discrimination.⁴⁹ Families choosing a housing mobility remedy moved to both lower poverty and non-minority suburban neighborhoods and communities.⁵⁰ Unlike *Gautreaux*, MTO did not include a racial component to the movers’ opportunities.⁵¹ Many MTO participants who moved to lower poverty areas continued to live in overwhelmingly minority communities, a point particularly worth noting given the relation of racial geography to opportunity so compellingly set out in *The Geography of Opportunity*.⁵² The *Gautreaux* research gives a more positive

45. The Moving To Opportunity experiment was a demonstration program implemented during the 1990s by HUD to study the effects of low-income families moving from high poverty areas to low poverty areas. See generally John Goering, *Expanding Housing Choice and Integrating Neighborhoods: The MTO Experiment*, in *THE GEOGRAPHY OF OPPORTUNITY*, *supra* note 13, at 127.

46. Lisa Sanbonmatsu et al., *New Kids on the Block: Results from the Moving to Opportunity Experiment*, EDUC. NEXT, Fall 2007, at G1, G2 available at http://media.hoover.org/documents/ednext_20074_60.pdf; see also Stefanie DeLuca, *All Over the Map: Explaining Educational Outcomes of the Moving to Opportunity Program*, EDUC. NEXT, Fall 2007, at 29, 29 available at http://media.org/documents/edunext_20074_28.pdf.

47. Press Release, Hoover Inst., Relocating Poor Families to More-Affluent Neighborhoods Doesn’t Necessarily Lead to Improved Student Achievement (Aug. 14, 2007), <http://www.hoover.org/publications/ednext/9126936.html>.

48. See *Gautreaux v. Pierce*, 690 F.2d 616, 622-24, 638 (7th Cir. 1982) (affirming the lower court’s approval of the settlement); James Rosenbaum et al., *New Capabilities in New Places: Low-Income Black Families in Suburbia*, in *THE GEOGRAPHY OF OPPORTUNITY*, *supra* note 13, at 150, 156; Inst. for Policy Research, Nw. Univ., IPR Research on *Gautreaux* and Other Housing Mobility Programs, <http://www.northwestern.edu/ipr/publications/Gautreaux.html> (last visited Apr. 9, 2008); see also James E. Rosenbaum & Stefanie DeLuca, *What Kinds of Neighborhoods Change Lives? The Chicago Gautreaux Housing Program and Recent Mobility Programs*, 41 IND. L. REV. 653, 659-62 (2008).

49. See *Gautreaux*, 690 F.2d at 619.

50. See *id.* at 622-24.

51. Notice of Funding Availability (NOFA) and Program Guidelines for the Moving to Opportunity for Fair Housing Demonstration for Fiscal Year 1993, 58 Fed. Reg. 43,458, 43,458-59 (Aug. 16, 1993) (generally describing the demonstration’s design).

52. See Xavier De Souza Briggs, *Introduction*, in *THE GEOGRAPHY OF OPPORTUNITY*, *supra*

picture of the impact on the families, particularly the children, who made a mobility move.⁵³ That research, by James Rosenbaum and others, followed families over a much longer period than the MTO experiment and focused on a number of quality of life conditions that improved for movers, including education.⁵⁴

The rush to declare housing mobility a “failed social policy” based on the limited results from the MTO program, particularly as it relates to providing a remedy to racial segregation, reflects less a policy concern that housing mobility will not succeed than a political concern that it will. There are already indications that such policies might find support in the next national administration. As part of his progressive message during his 2008 campaign, presidential candidate John Edwards spoke specifically of the need to use housing vouchers to allow families to live in housing outside of minority concentrated, high poverty areas.⁵⁵ While the top two contenders⁵⁶ have not made low-income housing a part of their stump speech, if there is a new Democratic administration it is likely that the idea of housing mobility will continue to find its way into anti-poverty and civil rights policy discussions for the reason so eloquently articulated by Senator Edwards and others.⁵⁷ Indeed, Alex Polikoff, the indefatigable father of *Gautreaux*, has already developed a policy proposal for the next administration to consider that would create a *Gautreaux*-style housing mobility program on a national scale.⁵⁸ No doubt the naysayers will continue their efforts to dismiss and discredit efforts to give low income minority families an escape route out of the ghetto; however, conductors on the modern day “Underground Railroad” like Polikoff can be expected to press for such policies as one of the most effective ways to provide relief to individual families who want access to the greater opportunities that exist beyond the borders of the ghetto.

It remains to be seen how best to respond to the challenges these developments present. Advocates and others in the progressive community who find abandoning the goal of an open inclusive society unacceptable and

note 13, at 1, 13 (“[T]he lack of attention to persistently high segregation is dangerous in at least two respects. First, it ignores the huge contribution that segregated living makes to inequality in education, employment, health, and other areas.”).

53. See Rosenbaum et al., *supra* note 48, at 150, 157-58.

54. *Id.*

55. David Brooks, Op-Ed, *Edwards, Obama and the Poor*, N.Y. TIMES, July 31, 2007, at A19; Alec MacGillis, *On Poverty, Edwards Faces Old Hurdles: Critics Say He Brings Few Fresh Ideas to Signature Issue*, WASH. POST, May 7, 2007, at A01.

56. Senators Hillary Clinton and Barack Obama were the remaining two democratic contenders at the time of writing.

57. See sources cited *supra* note 55 and accompanying text.

58. Alex Polikoff, *A Vision for the Future: Bringing Gautreaux to Scale*, in KEEPING THE PROMISE: PRESERVING AND ENHANCING HOUSING MOBILITY IN THE SECTION 8 HOUSING CHOICE VOUCHER PROGRAM 137, 141-50 (Phillip Tegeler et al. eds., 2005), available at <http://www.prac.org/pdf/KeepingPromise.pdf>.

unsupportable need to be more engaged and aggressive in stating that position. Advocates who recognize that conditions in low-income communities are often vestiges of segregation should insist that the nation not move on until it effectively addresses that legacy. It is especially important that advocates from the fair housing and community development movements overcome their longstanding divide in order to ensure that a new strain of an old disease does not take hold in our body politic.

IV. THE BATTLEGROUNDS: LOW-INCOME HOUSING

The tensions between fair housing/civil rights and community development often play themselves out in the realm of low-income housing policy. Despite barriers that have been removed to housing choice and opportunity for more affluent people of color over the past forty years, low-income families of color continue to be dependent upon public policy decisions about where they can live. In recent years these tensions and conflicts have surfaced in the policy discussions and advocacy work surrounding public housing and the low-income housing tax credit program, as well as in the context of zoning and other local land use policies.

The public housing program, which began in 1937,⁵⁹ was expanded and institutionalized in 1949.⁶⁰ The program continues to provide affordable housing to very low-income people in communities throughout the country.⁶¹ Public housing's current incarnation is most visible in the HOPE VI program that provides funds for the transformation of public housing using a mixed income housing model.⁶²

The Low Income Housing Tax Credit program (LIHTC) was first authorized by Congress in 1987 and has financed approximately 1.5 million units of affordable housing nationwide,⁶³ using a tax incentive-based, private development and management approach.⁶⁴ Both are housing programs, but have increasingly come to be viewed as instruments of community development. Both have also perpetuated, rather than ameliorated, existing housing and community segregation, despite the mandates of the Fair Housing Act that federal housing

59. See United States Housing Act of 1937, Pub. L. No. 75-412, 50 Stat. 888 (codified as amended at 42 U.S.C. §§ 1437-1437bbb-9 (2000)); see also U.S. Dep't of Hous. and Urban Dev., HUD Historical Background, <http://www.hud.gov/offices/adm/about/admguid/history.cfm> (last visited Apr. 9, 2008).

60. See Housing Act of 1949, Pub. L. No. 81-171, 63 Stat. 413 (codified as amended at 12 U.S.C. § 1701h (2000) and in scattered sections of 42 U.S.C.).

61. See *id.*

62. Homeownership and Opportunity for People Everywhere Program (HOPE VI Program), 42 U.S.C.A. § 1437v (West 2003 & Supp. 2007).

63. HUD User, HUD Data Sets, Low Income Housing Tax Credits, <http://www.huduser.org/datasets/lihtc.htm> (last visited July 10, 2008).

64. See Tax Reform Act of 1986, § 252(a), 26 U.S.C.A. § 42 (West Supp. 2007).

and community development programs “affirmatively further fair housing.”⁶⁵

A. *Public Housing/HOPE VI*

The role of federal housing policy in creating a public housing system that is both separate and unequal has been the subject of extensive litigation and academic and political commentary.⁶⁶ However, effective remedies for those conditions continue to evade both advocates and public policy makers.

During the Clinton Administration, efforts were made to affirmatively further fair housing when resolving civil rights litigation against federal and local housing agencies, albeit with limited success.⁶⁷ These initiatives sought to transform the ghetto conditions in public housing communities, expand housing opportunities by deconcentrating the location of public housing, and create more choices through the administration of the voucher program.⁶⁸ Civil rights advocates successfully litigated and argued that continuation of the status quo with regard to low-income housing policy perpetuated prior official segregation and was not only bad policy, but also unconstitutional.⁶⁹ Remedies negotiated by the plaintiffs and HUD focused on increasing housing choices and addressing the large public housing projects that were built to segregate and had deteriorated to the point that they blighted communities and destroyed lives.⁷⁰

The litigation settlements evolved alongside the policy imperative of expansion of the voucher program and public housing transformation, most visibly in the implementation of the HOPE VI Program.⁷¹ The story of HOPE VI is a story of improved housing opportunities and revitalized communities, but it is also a story of broken promises, missed opportunities, outright failures, and bad faith.⁷² Rather than using the HOPE VI program to remedy the harmful

65. See Exec. Order No. 12892, 59 Fed. Reg. 2939 (Jan. 17, 1994); see also 42 U.S.C. § 3608 (2000).

66. See Florence Wagman Roisman, *Keeping The Promise: Ending Racial Discrimination and Segregation in Federally Financed Housing*, 48 HOW. L.J. 913, 913-16 (2005).

67. See Elizabeth Julian, “Deconcentration” as Policy: HUD and Housing Policy in the 1990s, in THE NIMBY REPORT, DECONSTRUCTING “DECONCENTRATION” 5, 6-8 (Mar. 2004).

68. *Id.*

69. See generally Florence Wagman Roisman, *Affirmatively Furthering Fair Housing in Regional Housing Markets: The Baltimore Public Housing Desegregation Litigation*, 42 WAKE FOREST L. REV. 333, 336-46 (2007) (detailing the history of public housing desegregation litigation).

70. *Id.*

71. Julian, *supra* note 26.

72. HOPE VI has been criticized by many low-income housing advocates for many reasons. Some object to any demolition of public housing for any reason. Some object to demolition with one-for-one replacement of the low-income housing inventory given the great need for affordable housing for very low-income families. Others object to the failure to insure that all families displaced by redevelopment have either an opportunity to return or housing in as good a condition or location elsewhere. Civil rights advocates have criticized HUD for failing to use the demolition

legacy of segregation that public housing represented, the program became the vehicle by which many local communities and developers sought to implement a revitalization strategy without sufficient regard to what happened to the people who were displaced. In other communities, the HOPE VI process was used to continue the containment of low-income minority families in segregated conditions by rebuilding as much housing as possible on sites in blighted communities. Despite an undisputed need for such housing, policymakers refused to insure that all housing units being demolished for "revitalization" purposes were replaced, opting instead for a strategy that both reduced the low-income housing inventory and perpetuated segregation.⁷³

As a democratically controlled Congress moves to re-authorize the HOPE VI program, advocates for low-income families have sought to make it a more fair and effective tool for improving lives and communities.⁷⁴ In the course of that involvement, the tension and even overt conflict between fair housing/civil rights advocates and some community based advocates has been brought to the fore.⁷⁵ The activists involved all consider themselves part of a progressive tradition that values and supports social justice for low-income people and the communities in which they live. All strongly support one-for-one replacement of any public housing that is demolished and protecting the rights of those currently living in public housing to return to the redeveloped community if they so choose.⁷⁶ However, some advocates maintain that HOPE VI is first and foremost a community building program and that any replacement housing must be located back on the original site or in the surrounding neighborhoods, regardless of the history of segregation in the affected community or the desires of those who wish

and replacement opportunities provided by a HOPE VI grant to expand housing opportunities for low-income minority families throughout the community, instead using public housing to continue the segregation and containment of low-income minority families in low-income minority communities.

73. The Author was an official at HUD during the mid-1990s when HOPE VI was being implemented. While there were many well meaning and conscientious people who believed they were doing what was best under the circumstances, many of the criticisms are valid, though the issues varied by location. The Chicago experience, which has been the subject of much study, underscores particularly the challenges faced in the HOPE VI context. *See generally* Susan J. Popkin & Mary K. Cunningham, *Beyond the Projects: Lessons from Public Housing Transformation in Chicago*, in *THE GEOGRAPHY OF OPPORTUNITY*, *supra* note 13, at 176-94.

74. *See* Letter from William P. Wilson, Dir. of Hous. Litig., Hous. Justice Network, to Dominique McCoy, Counsel, House Comm. on Fin. Servs. (Sept. 18, 2007) (on file with author).

75. The Author has been a participant in these discussions, some of the substance of which is reflected in letters exchanged between the different participants, all of which have been made public.

76. *See* Letter from Philip Tegeler, Executive Dir., Poverty & Race Research Action Council et. al., to the Honorable Barney Frank, Chair, House Fin. Servs. Comm., and the Honorable Maxine Waters, Chair, House Subcomm. on Hous. and Cmty. Opportunity (Oct. 19, 2007) (on file with author).

to move.⁷⁷ They oppose policies that would create greater housing choice for low-income families outside of locations where public housing was originally built.⁷⁸

While committed to protecting the rights of those who currently live in public housing, fair housing/civil rights advocates support an approach that respects both the interests of those currently living in the affected developments who wish to stay and/or return, as well as those who would make other choices, today and in the future.⁷⁹ This position is set out in a Statement of Principles that the advocates argue should guide public policy in the context not only of HOPE VI, but of all demolition and replacement.⁸⁰ The bill passed by the House does not directly address the issue of segregation, but efforts will continue as the Senate considers HOPE VI reauthorization over the next year.⁸¹

While an in-depth discussion of New Orleans public housing debate following the Katrina disaster is beyond the scope of this Article, that situation highlights the need to realize a more equitable, expansive vision for the future of low-income housing. Stacy Seicshnaydre, founder of the Greater New Orleans Fair Housing Center and professor at the Tulane University School of Law, has written a compelling piece, entitled *The More Things Change, the More They Stay the Same: In Search of a Just Public Housing Policy Post-Katrina*.⁸² In the article, Seicshnaydre pleads with those who are truly concerned about the future of New Orleans public housing and its residents, past and future, to embrace a more just and more demanding vision for low-income housing in the New Orleans region.⁸³ The fundamental issue in New Orleans today, and in the public housing debate in general, is whether segregation is a problem that must or even should be addressed at the national level. Before the passage of the 1949 Housing Act, the argument made against addressing segregation was one of

77. See Letter from Elizabeth K. Julian, President, Inclusive Cmtys. Project et al., to Sam Finkelstein, Nat'l Hous. Organizer, Nat'l Training and Info. Ctr. (Oct. 11, 2007) (on file with author); Letter from Inez Killingsworth, Co-Chair, Nat'l People's Action, to Elizabeth Julian, President, Inclusive Cmtys. Project et al. (Nov. 8, 2007) (on file with author).

78. See sources cited *supra* note 77.

79. Letter from Elizabeth K. Julian, President, Inclusive Cmtys. Project et al., to Inez Killingsworth, Co-Chair, Nat'l People's Action et al. (Nov. 21, 2007) (on file with author).

80. Press Release, Poverty & Race Research Action Council et al., Statement of Fair Housing and Civil Rights Advocates on HOPE VI Reauthorization (Dec. 2007), <http://lsnc.net/equity/ImgUpload/StatementPrinciples.pdf>.

81. The House passed H.R. 3524 on January 16, 2008, without reference to the need to address segregation in public housing beyond vague references to "affirmatively further fair housing" which can be expected to be as effective in undoing the vestiges of public housing segregation in the future as that reference in the Fair Housing Act has been for the past forty years. HOPE VI Improvement and Reauthorization Act of 2007, H.R. 3542, 110th Cong. (2007).

82. Stacy E. Seicshnaydre, *The More Things Change, the More They Stay the Same: In Search of a Just Public Housing Policy Post-Katrina*, POVERTY & RACE, Sept.-Oct. 2007, at 3.

83. See *id.* at 5-6.

postponement—get the housing now, and we can integrate it later.⁸⁴ Today, that argument is being supplanted by the contention that concerns about segregation are out of date and that the value of integration and diversity in contemporary American culture is open to serious question. This is an opportunity for civil rights/fair housing advocates and community development/low-income housing advocates to find common ground and support policies that do not repeat the mistakes of the past, but rather address them with a new vision and vigor.

B. Low Income Housing Tax Credit Program

The Low Income Housing Tax Credit Program (“LIHTC program”) is the leading source of new housing units for low-income families.⁸⁵ It is also the most recent example of the federal government’s failure to incorporate fair housing principles in the administration of a low-income housing program.⁸⁶ The LIHTC program was initiated long after the passage of the Fair Housing Act and in full light of the growing awareness of the role that federal housing policy played in creating and exacerbating housing segregation for low-income families.⁸⁷ Despite that knowledge, there has been virtually no effort to ensure that the LIHTC program does not continue to perpetuate segregation, and criticism of the program on those grounds has been growing over the past fifteen years.⁸⁸ While the tax credit agencies are not required to maintain civil rights related data regarding the developments, available information suggests that in many places the LIHTC program is continuing the pattern of concentrating developments in high poverty, predominately minority areas or failing to ensure that units built in non-minority areas are available to low-income minority families.⁸⁹ For those familiar with the history of public housing, it is a new version of an old story.

As finally happened with public housing, litigation has begun to challenge the administration of the LIHTC program for perpetuation of segregation and failure to affirmatively further fair housing as required by the Fair Housing Act. In New Jersey, fair housing advocates challenged the State’s Qualified Allocation Plan⁹⁰ for failing to affirmatively further fair housing by concentrating

84. Julian & Daniel, *supra* note 22, at 668-69.

85. Florence Wagman Roisman, *Mandates Unsatisfied: The Low Income Housing Tax Credit Program and the Civil Rights Laws*, 52 U. MIAMI L. REV. 1011, 1012 n.1 (1998) (citing U.S. Gen. Accounting Office, Tax Credits: Opportunities to Improve Oversight of the Low Income Housing Program Sec. 2 (Mar. 1997)); see also LANCE FREEMAN, SITING AFFORDABLE HOUSING: LOCATION AND NEIGHBORHOOD TRENDS OF LOW INCOME HOUSING TAX CREDIT DEVELOPMENTS IN THE 1990S, at 2 (2004), available at http://www.brookings.edu/~media/Files/rc/reports/2004/04metropolitan_policy_freeman/20040405_Freeman.pdf.

86. See Roisman, *supra* note 85, at 1012-13.

87. See *id.*

88. See *id.*

89. See *id.* at 1012-13, 1019-22.

90. See 26 U.S.C.A. § 42(m)(1)(B) (West Supp. 2007) (explaining that the Qualified Allocation Plan is the annual plan adopted by individual state housing finance agencies that set out

tax credit units in the predominantly minority urban areas, thereby perpetuating the historic residential segregation.⁹¹ Community based organizations and others active on low-income housing issues (such as the Local Initiatives Support Corporation, known as LISC) came to the State's defense. They argued that tax credits should be used as tools of community development and given to inner city non-profits rather than to developers who would produce units for occupancy in the whiter, more affluent, and higher opportunity suburbs.⁹² The New Jersey Superior Court struck down the challenge, deferring to the state housing finance agency's determination about how to allocate credits in a way that "affirmatively further[s]" fair housing.⁹³ To date, a federal court has not spoken on the issue of the LIHTC program's obligations under the Fair Housing Act, but there is every indication that further litigation is planned which will remedy that lack of perspective. Recognizing that it is now the primary vehicle for the production of affordable housing units, national and local civil rights advocates have turned their attention to the LIHTC program, after years of urging by a few visionary scholar/advocates who understand the implications of this important program for addressing the difficult problem of segregation.

The debate continues about the responsibilities of the public housing and LIHTC programs under the Fair Housing Act and other civil rights laws. This debate provides an important opportunity for fair housing, civil rights, low-income housing, and community development advocates to develop a unified agenda to provide housing in higher opportunity areas as well as in areas where the provision of such resources will further the revitalization of a community and prevent unwelcome displacement. This sort of balance was urged upon the court by the Institute for Social Justice in New Jersey in its very persuasive amicus brief before the New Jersey Supreme Court.⁹⁴ Such an approach would build upon the work of those who, in many ways, should be natural allies in pursuing racial justice and equal opportunity in low-income housing. The policies must acknowledge the role that race has played in the challenges faced by low-income people of color and the communities in which they live. They must not assume that the people affected are monolithic in the choices they will make or the paths that they wish to take, today or for the next generation. Those who consider themselves part of the fair housing, low-income housing, and community development movements should come together on this pivotal issue to stand up

the terms by which the tax credits will be allocated in that state for the coming year).

91. *In re* Adoption of the 2003 Low Income Hous. Tax Credit Qualified Allocation Plan, 848 A.2d 1, 9-10 (N.J. Super. Ct. App. Div. 2004).

92. Amicus Curiae, Brief on Behalf of Local Initiatives Support Corporation at 1-3, *In re* Adoption of the 2003 Low Income Housing Tax Credit Qualified Allocation Plan, 848 A.2d 1 (N.J. Super. Ct. App. Div. 2004) (No. A-10-02T2) (on file with author).

93. *In re* Adoption of the 2003 Low Income Housing Tax Credit Qualified Allocation Plan, 848 A.2d at 27.

94. Brief in Support of Motion to Appear as Amici Curiae and on the Merits at 1-3, *In re* Adoption of the 2003 Low Income Housing Tax Credit Qualified Allocation Plan, 848 A.2d 1 (No. A-10-02T2) (on file with author).

for the rights of low-income people of color in hope of providing them real and effective choices about where they live, who they live with, and the opportunities that those choices bring.

V. COMING TOGETHER

Why, one might ask, should we? In a world of limited resources, every dollar spent to open an exclusive white suburb is one less dollar spent to improve or protect an existing minority neighborhood or community and vice versa. It is true that resources dedicated to addressing the evils of racism and poverty are, of course, particularly scarce. However, during the past forty years the divided fair housing and community development movements have not succeeded in either dismantling the vestiges of segregation in communities of color or in creating an open and inclusive society. These movements have just causes that are best advanced together.⁹⁵ If the deal is implicitly made that addressing the vestiges of segregation in minority neighborhoods will keep people of color out of white neighborhoods, it is a deal that should fail. If the deal is implicitly made that making resources available for housing mobility and choice can excuse the neglect of minority communities, or permit gentrification and “disperse” people regardless of their wishes, it is a deal that should fail. Finally, if the deal is that “we’ll take the east side and you can take the west side,” such racial partitioning of our nation’s people and geography is inconsistent with our highest ideals and most concrete promises, and it should fail.

As the above discussion suggests, one of the most effective replacements for old de jure segregationist strictures has been local land use policy in the form of zoning ordinances and similar municipal laws.⁹⁶ While neutral on their face, they are as effective, and perhaps even more effective than their predecessor laws, in effectuating racial exclusion, racial containment, and racial oppression.⁹⁷ Some

95. MARCANTONIO, *supra* note 22, at 307-08.

Housing and civil rights are an integral part of each other. Housing is advanced in the interest of the general welfare and in the interest of strengthening democracy. When you separate civil rights from housing you weaken that general welfare. You weaken that democracy that you pretend to strengthen. . . . [The] attempt to separate civil rights from housing is dishonest political opportunism.

Id. (“Congressman Marcantonio argued [on June 29, 1949] in support of his amendment to a bill providing [f]ederal funds for housing. The amendment prohibited the use of such funds to all projects which permitted segregation or any other form of discrimination.”). This point was made forty years ago and is still true today.

96. Kushner, *supra* note 41, at 602 (noting that “traditional urban planning and land regulation have rendered the nation more segregated by race, ethnicity, and class”); Florence Wagman Roisman, *Opening the Suburbs to Racial Integration: Lessons for the 21st Century*, 23 W. NEW ENG. L. REV. 65, 92-95 (2001); David D. Troutt, *Katrina’s Window: Localism, Resegregation, and Equitable Regionalism*, 55 BUFF. L. REV. 1109, 1141-71 (2008).

97. See generally *Huntington Branch, NAACP v. Town of Huntington*, 844 F.2d 926 (2d Cir.), *aff’d per curiam*, 488 U.S. 15 (1988); *Metro. Hous. Dev. Corp. v. Vill. of Arlington Heights*;

communities may forbid multifamily development altogether, or use density standards or design requirements to price affordable development out of the municipality. Other communities use zoning and land use policies to continue the placement of undesirable uses, such as landfills and other environmental hazards, in low-income minority communities, while protecting predominately white communities from such impacts, or to ensure that the housing stock in minority communities is kept modest, while allowing growing white communities to use lot size and other policies to ensure that their tax base grows, and their population is affluent. Place-based community development corporations generally do not challenge these local laws because the policies either exist in places where community development corporations do not operate and will not go, or the cost of legal challenges, both financial and political, is beyond their capacity. Fair housing organizations also leave these conditions unchallenged because the policies involve systemic structures of racial exclusion and are not about individual acts of discrimination. As a consequence, neither movement is currently positioned to make real change. That can be overcome, but it will require that the community development and fair housing movements, along with their more muscled affordable housing and civil rights advocates at the national level, come together to forge a common agenda to address these challenges.⁹⁸

Such an agenda must be based upon the belief that people who live in this country have the right to live where they choose and to access opportunity wherever it can be found, unlimited by de jure or de facto assumptions about race. We must invest in the difficult task of creating inclusive communities of opportunity, and truly take seriously the Fair Housing Act mandate to “affirmatively further fair housing” in every aspect of our housing and community development work. Many might suggest that the urgency surrounding the continued devastating impact of poverty, environmental degradation, and the very real affordable housing crisis may have made the issue of segregation seem too controversial to take on and that “fair housing” is a baggage that those issues cannot afford to carry; however, these conceptions are wrong. Housing is more than shelter and there is a racial dimension at work in all those areas. Housing can be an instrument of social containment and oppression or a means to access opportunity, security, and wealth. While poverty afflicts people of all races, the debilitating effects of concentrated poverty are not visited upon poor whites to the same degree as upon low income people of color, and the communities in which poor whites live are not marred by the same sort of indicators of “distress” as those in which poor people of color reside.⁹⁹

558 F.2d 1283 (7th Cir. 1977); *Miller v. City of Dallas*, No. Civ.A. 3:98-CV-2955-D, 2002 WL 230834 (N.D. Tex. Feb. 14, 2002).

98. Exciting work in this regard is being done by Policy Link, a California-based organization which promotes what it calls the “equitable development movement”—a movement “anchored by the fair distribution of affordable and racially inclusionary housing.” See Angela Glover Blackwell & Judith Bell, *Equitable Development for a Stronger Nation: Lessons from the Field*, in *THE GEOGRAPHY OF OPPORTUNITY*, *supra* note 13, at 289, 289.

99. DIANE L. HOUK ET AL., *INCREASING ACCESS TO LOW-POVERTY AREAS BY CREATING*

However, even if one believes that “separate” can be “equal” and is a more desirable social organizing principle, opportunities in our nation still depend greatly on where one lives, and where one lives depends greatly on one’s race. Fair housers should join community development practitioners in making the unequal conditions and mistreatment of minority communities a civil rights issue, and demanding a remedy in the statehouse and the courthouse. People of color, particularly those who find themselves at the intersection of race and poverty, should be able to access the opportunities that already exist in more racially diverse or white communities and should be supported in that choice. Failure to help low-income people of color in asserting that right does not strengthen the community development movement and indeed will only perpetuate the injustice it seeks to overcome.

CONCLUSION

America is growing more diverse by the day. Individuals cannot be forced to stay in or return to their respective racial enclaves in order to capture the range of social and financial capital that such an arrangement might provide, however attractive that might seem from a community development perspective. In spite of all odds, and for many reasons, people will continue to choose to live outside their racial and economic comfort zone if provided the opportunity. Those choices must be supported, and we must build a theory of community that values those choices.

The legal and moral imperative of fair housing is real and can be put to effective use as part of a combined fair and affordable housing and equitable community development agenda. Fair housing, affordable housing, and community development activists can continue to fight over the small pie that is currently available to feed our hunger for racial and social justice, or they can come together to demand a bigger pie that can be distributed more equitably. The current political environment should be receptive to the agenda of social justice advocates able to find common ground on the issues of fair housing and community development that will finally erase the vestiges of segregation. For that reason, fair housing/civil rights and community development/affordable housing advocates should come together and begin to build their respective movements anew on a foundation that respects and supports the other’s core values. They must understand their dual histories, including where goals have diverged and why, and how they can become stronger by coming together around an agenda that deals honestly but optimistically with the issue of race.

As advocates seek to preserve old communities or build new ones, they should commit themselves to the principle that those communities must be inclusive, and find ways to make such a proposition less threatening. These ultimately are not legal challenges, though legal tools will continue to be useful. They are personal and group challenges to our own identities and call upon our

individual and collective sense of responsibility and possibility. A community development movement that embraces fair housing as a meaningful component of its mission will be a more powerful and effective movement going forward. A fair housing movement that recovers its birthright, and moves from the fringes to the forefront of the battle for a truly open society of equal opportunity, will be more powerful and relevant going forward. These social justice movements can unite around a commitment to equal opportunity for all, created through access to safe neighborhoods, affordable housing, good schools, jobs, and a healthy environment in open, equitably developed, and inclusive communities. It is a vision and a goal worthy of our future.