

INADEQUATE AFFORDABLE HOUSING IN HOUSTON: CAUSES, EFFECTS, AND SOLUTIONS

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I. INTRODUCTION

In 2015, the United States had about 19 million very low-income renters, but only twenty-five percent of those households received housing assistance.¹ In addition, forty-three percent of these low-income renters face “worst case needs,” meaning paying more than half their incomes for housing, living in severely inadequate units, or both.²

Meanwhile, the number of cost-burdened renters remains well above levels measured a decade ago. In 2016, 10.8 million renters, regardless of income, were “moderately housing burdened” meaning they spend more than thirty percent of their income on rent. Further, 11 million renters were “severely housing burdened” meaning they spend more than fifty percent of their income on rent.³ This burden is consistently high on the lowest-income households: As a whole, 70.3 percent of lowest-income households (earning under \$15,000 a year) face severe housing cost burdens.⁴ This reality should anger us all. Imagine the backlash if only twenty-five percent of eligible families were awarded the mortgage interest deduction on their tax returns or if seventy-five percent of employees were randomly denied their full salary. Unfortunately, because these families are mired in poverty and cannot afford to lobby their elected officials, millions do not receive the benefits for which they qualify.⁵

This reality has several consequences for low-income Americans. First, many families cannot afford housing and therefore remain homeless.⁶ Second, even if a family can find housing, it may be substandard. One study found that housing was often deficient because of “leaking roofs, broken windows, rodents, . . . peeling paint or exposed wiring.”⁷ Third, there are long-term negative

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1. See U.S. DEP’T OF HOUS. & URBAN DEV., *WORST CASE HOUSING NEEDS 2017: REPORT TO CONGRESS* 2, 11 (2017). Very low-income refers to incomes that are no more than fifty percent of the Area Median Income (AMI). *Id.* at 1 fn.4. Nationwide media AMI in 2015 was \$66,700. *Id.*

2. JOINT CTR. FOR HOUS. STUDIES OF HARVARD UNIV., *AMERICA’S RENTAL HOUSING 2017* 5 (2017).

3. *Id.* at 4.

4. JOINT CTR. FOR HOUS. STUDIES OF HARVARD UNIV., *THE STATE OF THE NATION’S HOUSING* 5 (2017).

5. See Martin Gilens & Benjamin I. Page, *Testing Theories of American Politics: Elites, Interest Groups, and Average Citizens*, 12 *PERSP. POLS.* 564, 565 (2014).

6. *Report Ties Lack of Affordable Housing to Family Homelessness*, NAT’L LOW INCOME HOUS. COAL. (Dec. 22, 2014) <http://nlihc.org/article/report-ties-lack-affordable-housing-family-homelessness> [<https://perma.cc/6Y7L-78KU>].

7. Rebekah L. Coley et al., *Relations Between Housing Characteristics and the Well-Being of Low-Income Children and Adolescents*, 49 *DEVELOPMENTAL PSYCHOL.* 1775, 1779 (2013).

consequences of inadequate housing including worse health, educational, and economic outcomes compared to those with adequate housing.⁸ Fourth, as compared with children in families that don't receive housing assistance, low-income children who live in households that receive housing assistance are more likely to graduate high school and improve socio-economically, but less likely to be malnourished and become pregnant as teenagers.⁹ Fifth, trapping families in inadequate housing is fundamentally unfair and prevents many from achieving their own American Dreams.

This paper is organized as follows. Part II highlights a recent academic study regarding the benefits of providing low-income individuals the opportunity to move into high-income areas. Part III discusses the three major programs for providing affordable housing: public housing, housing choice vouchers, and low-income housing tax credits. Part IV profiles Houston as a case study of inadequate affordable housing. Part V explains recent developments both at the federal level and within Houston that affect housing. Part VI identifies some causes of inadequate housing. Part VII provides an argument for why policymakers should act to address inadequate affordable housing. Part VIII offers specific policies to increase the stock of affordable housing. Part IX offers solutions to increase affordable housing in high-opportunity areas. And Part X offers a conclusion.

II. MOVING TO OPPORTUNITY

There have been several studies on the effects of housing assistance including Housing Choice Vouchers, Public Housing, and the Low Income Housing Tax Credits.¹⁰ One such example is the Moving to Opportunity study conducted by Professors Raj Chetty, Nathaniel Hendron, and Larry Katz.¹¹ This project evaluated Housing and Urban Development's (HUD's) Moving To

8. See, e.g., Devan Carlson et al., *The Benefits and Costs of the Section 8 Housing Subsidy Program: A Framework and First-Year Estimates*, J. POL'Y ANALYSIS & MGMT. 233, 235 (2011).

9. See Raj Chetty et al., *The Effects of Exposure to Better Neighborhoods on Children: New Evidence from the Moving to Opportunity Project*, 106 AM. ECON. REV. 855 (2016); see also Barbara Sand & Douglas Rice, *Realizing the Housing Voucher Program's Potential to Enable Families to Move to Better Neighborhoods*, CTR. ON BUDGET & POL'Y PRIORITIES (Jan. 12, 2016), <https://www.cbpp.org/research/housing/realizing-the-housing-voucher-programs-potential-to-enable-families-to-move-to> [https://perma.cc/HH4L-GJA6].

10. See, e.g., Ellen L. Bassuk et al., *The Effectiveness of Housing Interventions and Housing and Service Interventions on Ending Family Homelessness: A Systematic Review*, 84 AM. J. ORTHOPSYCHIATRY 457 (2014); Meryl Finkel & Larry Buron, *Quantitative Study of Success Rates in Metropolitan Areas*, DEP'T HOUS. & URBAN. DEV. (Nov. 2001), <https://www.huduser.gov/publications/pdf/sec8success.pdf> [https://perma.cc/G39V-DEA2]; Douglas Rice, *Major Study: Housing Vouchers Most Effective Tool to End Family Homelessness*, CTR. ON BUDGET & POL'Y PRIORITIES (July 14, 2015), <https://www.cbpp.org/blog/major-study-housing-vouchers-most-effective-tool-to-end-family-homelessness> [https://perma.cc/6SKD-DDJM]; Margery Turner, *Strengths and Weaknesses of the Housing Voucher Program*, URBAN INST. (June 17, 2003), <https://www.urban.org/sites/default/files/publication/64536/900635-Strengths-and-Weaknesses-of-the-Housing-Voucher-Program.pdf> [https://perma.cc/RXL9-ESVX].

11. See Chetty, *supra* note 9.

Opportunity (MTO) program along several variables such as teen pregnancy, social mobility, crime rates, and high school graduation rates.¹² The research found that moving families from high-poverty neighborhoods to low-poverty neighborhoods had a significant positive impact on every metric considered.¹³ The Chetty paper may be the most important study because it is the most recent and has the biggest data set.¹⁴ In fact, previous studies had stopped in 2008, at which point the individuals who moved to low-poverty neighborhoods as children were not yet in the labor market.¹⁵ The Chetty analysis was able to link IRS data to the MTO data to better discern what happened economically to individuals involved in the MTO program.¹⁶

Based on the successes of the Gautreaux Program in Chicago, which provided vouchers that families could only use in high-income areas, in 1990, HUD launched the MTO program.¹⁷ For the MTO program, HUD randomly selected 4,604 families from five cities (Boston, Baltimore, New York City, Chicago, and Los Angeles) and assigned them to one of three groups: (1) the experimental group that received housing vouchers that only subsidized housing in census tracts with poverty rates below 10%; (2) the Section 8 group, which received a standard housing voucher without any geographic limitations; and (3) a control group that did not receive a housing voucher.¹⁸

Chetty's team then compared poverty rates, earnings as an adult, and college attendance among the three groups.¹⁹ Three results stand out and suggest lessons going forward. First, children in the experimental group who moved into the low-poverty neighborhood when they were below 13, had both statistically significant increases in college attendance rates²⁰ and lifetime earnings that were \$302,000 higher than the incomes for those children in the control group.²¹ Second, these children also had statistically significant decreases in poverty rates as compared with children in the control group.²² Third, children who moved from a high-poverty to a low-poverty community when they were above 13 actually had negative long-term impacts.²³ The researchers concluded that "offering low-income families housing vouchers . . . has substantial benefits for the families themselves and for taxpayers. . . . More

12. *See generally id.*

13. *See generally id.*

14. Jonathan Rothwell, *Sociology's Revenge: Moving to Opportunity (MTO) Revisited*, BROOKINGS INST. (May 6, 2015), <https://www.brookings.edu/blog/social-mobility-memos/2015/05/06/sociologys-revenge-moving-to-opportunity-mto-revisited/> [<https://perma.cc/8A9X-Z9NT>].

15. *Id.*

16. *See generally* Chetty, *supra* note 9.

17. James Rosenbaum & Stefanie DeLuca, *Does Changing Neighborhood Change Lives? The Chicago Gautreaux Housing Program*, in *SOCIAL STRATIFICATION: CLASS, RACE, AND GENDER*, in *SOCIOLOGICAL PERSPECTIVE* 393, 394 (3d ed. 2008).

18. *See* Chetty, *supra* note 9, at 860–61.

19. *Id.* at 865–80.

20. *Id.* at 857.

21. *Id.* at 860.

22. *Id.* at 869.

23. *Id.* at 858.

broadly, our findings suggest that efforts to integrate disadvantaged families into mixed-income communities are likely to reduce the persistence of poverty across generations.”²⁴

III. MAJOR FORMS OF HOUSING ASSISTANCE

A. Public Housing

Government-owned public housing is the oldest form of housing assistance in the United States.²⁵ Across the country, 2.1 million Americans live in over 1 million public housing units.²⁶ Under this program, HUD provides Public Housing Authorities (PHAs) with funds that they can use to build and operate multi-family housing units.²⁷

Public housing dates back to the New Deal and the passage of the Housing Act of 1937. Initially, the PHAs carefully screened tenants to ensure they were employed and could pay rent.²⁸ However, after World War II, more Americans (particularly Caucasian Americans)²⁹ purchased homes in suburbs leaving the public housing units vacant.³⁰ PHAs lost money and therefore began charging the remaining tenants (largely African Americans) higher and higher rents.³¹ This culminated with the Brooke Amendment that capped public housing rents at a certain percentage of renters' incomes.³² Although well-intentioned, the Brooke Amendment reduced operating income for PHAs leading to deferred maintenance on public housing units.³³ As public housing quality declined, more individuals left public housing, which further reduced funding for public housing agencies leading to dilapidated PHAs.³⁴ With low support for public housing, the federal government launched two new programs to provide housing assistance: Housing Choice Vouchers and the Low Income Housing Tax Credit.

24. Chetty, *supra* note 9, at 900.

25. See United States Housing Act of 1937, 42 U.S.C. 1437a (1937).

26. *Policy Basics: Public Housing*, CTR. ON BUDGET & POL'Y PRIORITIES (last updated Nov. 15, 2017), <http://www.cbpp.org/research/policy-basics-public-housing> [https://perma.cc/X354-M6G4].

27. *Id.*

28. Alana Semuels, *The Power of Public Housing*, ATLANTIC (Sept. 22, 2015), <http://www.theatlantic.com/business/archive/2015/09/public-housing-success/406561/> [https://perma.cc/4RJD-K57E].

29. Becky Nicolaides & Andrew Wiese, *Suburbanization in the United States After 1945*, OXFORD RES. ENCYCLOPEDIA (Apr. 2017), <http://americanhistory.oxfordre.com/view/10.1093/acrefore/9780199329175.001.0001/acrefore-9780199329175-e-64> [https://perma.cc/2S85-UVN5].

30. Semuels, *supra* note 28.

31. *Id.*

32. *Id.*

33. See Howard Husock, *How Brooke Helped Destroy Public Housing*, FORBES (Jan. 8, 2015, 7:00 AM), <https://www.forbes.com/sites/howardhusock/2015/01/08/how-senator-brooke-helped-destroy-public-housing/#3f7000a23fc3> [https://perma.cc/82QN-CQT4].

34. Katharine L. Shester, *The Local Economic Effects of Public Housing in the United States, 1940-1970*, 73 J. ECON. HIST. 978, 1011-12 (2013).

B. Housing Choice Vouchers

Thirty-seven years after establishing public housing, Congress passed the Housing and Community Development Act of 1974 to create Housing Choice Vouchers (vouchers).³⁵ This program provides low-income families with a voucher they can use to pay rent.³⁶ The program authorizes HUD to set a fair market rent (FMR) for every city. Families are then asked to pay thirty percent of their adjusted gross income, less some exemptions,³⁷ towards this FMR and HUD covers the rest with a voucher.³⁸ For example, in Houston, the 2017 FMR for a two-bedroom unit is \$976 per month.³⁹ With an income of \$2,000 per month, a family of four must pay \$600 towards a unit, and the government will provide a voucher for the remaining \$376 per month. Currently, over two million families totaling more than five million people receive vouchers.⁴⁰ While this program was designed to provide families the opportunity to move into lower-poverty areas, as is discussed below, that dream has unfortunately not been realized.

C. Low Income Housing Tax Credit

When Congress passed the Tax Reform Act of 1986, it created the Low Income Housing Tax Credit (LIHTC).⁴¹ The LIHTC provides developers of affordable housing a tax credit for up to seventy percent of the cost of the development.⁴² The IRS awards credits to states who then administer a competitive program to determine which developers will win the credits.⁴³

35. See Housing and Community Development Act of 1974, Pub. L. No. 93-983, sec. 201(a), § 8, 88 Stat. 633, 662-66 (codified as amended at 42 U.S.C. § 1437f).

36. *Id.*

37. See U.S. DEP'T OF HOUS. & URBAN DEV., HUD OCCUPANCY HANDBOOK: DETERMINING INCOME AND CALCULATING RENT 5-1 (2007), http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_35649.pdf [<https://perma.cc/S74B-E8EZ>].

38. *Policy Basics: The Housing Choice Voucher Program*, CTR. ON BUDGET & POL'Y PRIORITIES (last updated May 3, 2017), <https://www.cbpp.org/research/housing/policy-basics-the-housing-choice-voucher-program> [<https://perma.cc/F2ZM-8T33>].

39. *FY 2017 Fair Market Rent Documentation System*, HUD USER, <https://www.huduser.gov/portal/datasets/fmr.html> (to find the FMR, click "Click Here for FMRs," then select Houston-The Woodlands-Sugarland, TX from the "HUD Metropolitan Fair Market Rent Area dropdown") [<https://perma.cc/UE9M-GTXD>].

40. *Policy Basics: The Housing Choice Voucher Program*, CTR. ON BUDGET & POL'Y PRIORITIES (last updated May 3, 2017), <https://www.cbpp.org/research/housing/policy-basics-the-housing-choice-voucher-program> [<https://perma.cc/4JDX-4VET>].

41. 26 U.S.C. § 42 (2012); Office of the Comptroller of the Currency, *Low-Income Housing Tax Credits: Affordable Housing Investment Opportunities for Banks* (Apr. 2014), <https://www OCC.gov/topics/community-affairs/publications/insights/insights-low-income-housing-tax-credits.pdf> [<https://perma.cc/8DBA-VWUP>].

42. 26 U.S.C. § 42 (2012).

43. The program works as follows: each state gets \$2.20 per person (indexed to inflation) residing in the state. Texas, therefore, is awarded over \$47 million annually. The state then must set up an agency (for example, the Texas Department of Housing and Community Affairs) that publishes an application and scoring criteria. Developers then apply for the tax credit. This process is usually competitive as the tax credit can be incredibly lucrative. Once the tax credit is awarded,

These credits have supported the construction of nearly two and a half million affordable rental-housing units across the country.⁴⁴ Without these tax credits, developers were less likely to build private affordable housing units.⁴⁵

IV. OVERVIEW OF AFFORDABLE HOUSING IN HOUSTON

In this section, I consider affordable housing in Houston because it represents a case study of the challenges facing affordable housing. Houston faces not only a shortage of affordable housing but also a concentration of affordable housing in low-income areas.

Affordable housing in Houston is managed by four agencies: the Houston Housing Authority (HHA),⁴⁶ the Harris County Housing Authority (HCHA),⁴⁷ the City of Houston Housing and Community Development Department (HCD),⁴⁸ and the Houston Housing Financial Corporation (HHFC).⁴⁹

The HHA is Houston's PHA and the HCHA is Harris County's (which encompasses the City of Houston) PHA. Both entities administer housing vouchers⁵⁰ and own and operate public housing units.⁵¹ The HHA also awards grants and provides gap financing to developers who promise to charge below market rents.

The HCD receives \$50 million from HUD to provide financing and grants to support affordable housing units and associated projects (parks, food assistance programs, etc.).⁵² Finally the Texas Legislature created the HHFC as a conduit that issues bonds to facilitate the development of single and multi-family housing.⁵³

A. Shortage of Affordable Housing in Houston

Houston mirrors the national affordable housing situation in its lack of affordable housing. For example, in September 2016, the HHA opened its

developers (whose total federal tax bill is often much less than the value of the credit) will "sell" the tax credit to a corporation who can fully utilize the tax credit, which is often in the millions. See *The Tax Break-Down: The Low-Income Housing Tax Credit*, COMM. FOR RESPONSIBLE FED. BUDGET (Nov. 7, 2013), <http://crfb.org/blogs/tax-break-down-low-income-housing-tax-credit> [<https://perma.cc/Z27P-F4GA>].

44. Office of the Comptroller of the Currency, *supra* note 41.

45. Telephone Interview with Neal Rackleff, Partner, Locke Lord (Sept. 26, 2016).

46. HOUSTON HOUS. AUTH., <http://www.housingforhouston.com/> [<https://perma.cc/C4HF-RXM2>].

47. HARRIS CTY. HOUS. AUTH., <http://hchatexas.org/> [<https://perma.cc/RNS7-AHT6>].

48. *Housing and Community Development Department*, CITY OF HOUSTON (2018), <http://www.houstontx.gov/housing/> [<https://perma.cc/B8RD-E24B>].

49. HOUSTON HOUS. FIN. CORP. (2007), <http://www.houstonhfc.com/> [<https://perma.cc/UCD2-HHAB>].

50. HOUSTON HOUS. AUTH., *supra* note 46; HARRIS CTY. HOUS. AUTH., *supra* note 47.

51. HOUSTON HOUS. AUTH., *supra* note 46; HARRIS CTY. HOUS. AUTH., *supra* note 47.

52. Telephone Interview with Neal Rackleff, Partner, Locke Lord (Sept. 26, 2016).

53. Tex. Loc. Gov't Ann. § 394.001 to .907 (1987).

waitlist for the first time in four years.⁵⁴ The HHA had 30,000 waitlist spots to allocate;⁵⁵ however, the HHA expected over 60,000 applications.⁵⁶ Therefore, at least 30,000 families will not secure a waitlist spot for affordable housing and will likely not even receive a waitlist spot within the next few years. These data lead to the baseline question policymakers must address—how can Houston expand its public housing stock?

B. Housing Segregation in Houston

When considering Houston, only a fraction of the city is considered “high-opportunity” in that there are low rates of poverty, high-quality schools, low crime rates, access to jobs, and limited exposure to environmental pollutants.⁵⁷ For our purposes, a key concern is whether those receiving affordable housing are concentrated in high-opportunity or low-opportunity areas.

Families receiving vouchers or living in public housing or apartments funded through LIHTC are stuck in high-poverty areas.⁵⁸ Eighty-eight percent of voucher-recipients are African American and almost none of those voucher recipients live in the high-opportunity areas.⁵⁹ Moreover, only four of HHA’s twenty-four public housing units are within the high-opportunity area.⁶⁰ Finally, less than ten of the over one hundred developments that receive LIHTC are located within high-opportunity areas.⁶¹

In Houston sixty-six percent of voucher recipients live in census tracts with a poverty rate higher than twenty percent.⁶² Moreover, the majority of the voucher recipients are concentrated in five neighborhoods with “historically

54. Ed Mayberry, *Houston Housing Voucher Program Accepting New Applicants*, HOUSTON PUB. MEDIA (Sept. 15, 2016), <https://www.houstonpublicmedia.org/articles/news/2016/09/15/168220/houston-housing-voucher-program-accepting-new-applicants/> [https://perma.cc/7FDS-VGM7].

55. *Id.*

56. Rebecca Elliott & Keri Blakinger, *Odds Are Long for Housing Vouchers*, HOUS. CHRON. (Sept. 23, 2016), <http://www.houstonchronicle.com/news/houston-texas/houston/article/Odds-are-long-for-housing-vouchers-9243176.php> [https://perma.cc/M9XY-K95G].

57. John Harden, *Interactives Show How Houston’s ‘Arrow’ Divides Communities in More Ways Than One*, HOUS. CHRON. (Dec. 30, 2015), <http://www.houstonchronicle.com/local/article/The-Arrow-6726362.php> [https://perma.cc/68SK-MFGR].

58. Charlie Duncan, *Report: No Good Choice for Houston’s Housing Choice Voucher Holders*, TEX. HOUSERS (Nov. 21, 2015), <https://texashousers.net/2015/11/21/report-no-good-choice-for-houstons-housing-choice-voucher-holders/> [https://perma.cc/4J8N-A8FE].

59. *Id.*

60. John Henneberger, *Houstonians Should Be Angry About Public Housing—Because of Segregation*, TEX. HOUSERS (Feb. 23, 2016), <https://texashousers.net/2016/02/23/houstonians-should-be-angry-about-public-housing-because-of-segregation/> [https://perma.cc/34U3-BEGZ] (showing a map of the housing projects and high-opportunity areas).

61. Will Livesley-O’Neill, *How City Actions Perpetuate Houston’s Housing Segregation and Violate Civil Rights*, TEX. HOUSERS (Dec. 16, 2016), <https://texashousers.net/2016/12/16/how-city-actions-perpetuate-houstons-housing-segregation-and-violate-civil-rights/> [https://perma.cc/Q4MA-C8H6] (showing a map of LIHTC developments and high-opportunity areas).

62. *Id.*

very high poverty rates, severe degrees of African-American residential concentration and neighborhoods that lack critical public infrastructure, [and] experience high crime.”⁶³ Finally, 44% of the voucher recipient children are zoned to schools that were ranked a D or F by Children at Risk.⁶⁴ In the aggregate, these data show that Houstonians receiving housing assistance are concentrated in low-income areas. Policymakers must consider a secondary concern: how to ensure low-income families receiving housing assistance are not mired in low-opportunity communities?

V. RECENT DEVELOPMENTS IN HOUSING

Before examining the causes of Houston’s housing shortage and the concentration of affordable housing in high-poverty areas, two recent developments in affordable housing must be considered. The first is *Inclusive Communities v. Texas Housing and Community Affairs, Inc.*,⁶⁵ and the second is Houston’s rejection of the Fountainview housing project.

A. Inclusive Communities Case

Inclusive Communities is a Dallas non-profit that “seeks to affirmatively further fair housing in Dallas and throughout Texas.”⁶⁶ In 2015, Inclusive Communities sued the Texas Housing and Community Affairs department alleging that its policy of allocating LIHTCs violated the disparate impact provisions of the Fair Housing Act (FHA).⁶⁷ Before reaching the specific question in the case, the Court looked at whether disparate impact claims are permissible under the Fair Housing Act.⁶⁸ Disparate impact claims are those that allege that a practices that have a “disproportionately adverse effect on minorities and are otherwise unjustified by a legitimate rationale.”⁶⁹ A protected class is a group of individuals that share a characteristic like sex, race, or religion and that is protected by statute.⁷⁰

While HUD believed that plaintiffs can advance disparate impact claims under the Fair Housing Act,⁷¹ the Supreme Court had never before held that disparate impact claims were permitted under the Fair Housing Act.

63. *Id.*

64. *Id.*

65. *Tex. Dep't of Hous. & Cmty. Affairs v. Inclusive Cmty. Project, Inc.*, 135 S. Ct. 2507, 2532 (2015).

66. *Inclusive Communities Project*, INCLUSIVE COMMUNITIES, <http://www.inclusivecommunities.net/> [<https://perma.cc/64EU-25Y6>].

67. *Inclusive Cmty. Project*, 135 S. Ct. at 2510.

68. *Id.*

69. *Id.* at 2513 (internal quotation marks omitted)

70. *EEO Terminology*, U.S. NAT'L ARCHIVES, <https://www.archives.gov/eoo/terminology.html#p> [<https://perma.cc/P986-HTVE>].

71. *Implementation of the Fair Housing Act's Discriminatory Effects Standard*, U.S. DEP'T OF HOUS. & URBAN DEV., <http://portal.hud.gov/hudportal/documents/huddoc?id=discriminatoryeffectrule.pdf> [<https://perma.cc/S8JU-A9RX>].

In *Inclusive Communities*, the Supreme Court held:

[T]hat disparate-impact claims are cognizable under the Fair Housing Act upon considering its results-oriented language, the Court's interpretation of similar language in Title VII and the ADEA, Congress' ratification of disparate-impact claims in 1988 against the backdrop of the unanimous view of nine Courts of Appeals, and the statutory purpose.⁷²

The Court also endorsed HUD's three-step burden-shifting framework for adjudicating a disparate impact claim.⁷³ First, the plaintiff must make a *prima facie* showing of discrimination through a causal relationship.⁷⁴ Second, the defendant can then show the policy is necessary to "achieve a substantial and legitimate non-discriminatory interest."⁷⁵ Finally, the plaintiff has an opportunity to show the interest can be achieved in a less discriminatory manner.⁷⁶ The Court did not consider the merits of the case and sent it back to the lower court.⁷⁷ This ruling is critical because it offered another avenue to legally challenge the building of housing in low-income areas.

Inclusive Communities claimed that Texas's administration of the LIHTC program caused a disparate impact on minorities because the Texas Department of Housing and Community Affairs Department (TDHACA) only approved LIHTC projects in high-poverty areas.⁷⁸ As a result, many minority low-income families were trapped in high-poverty areas.⁷⁹ Before reaching a conclusion, the lower court explained Texas's procedure of awarding the LIHTC.

Section 42 of the Federal Tax Code mandates that each state publish a Qualified Allocation Plan (QAP) explaining how it will allocate the tax credits.⁸⁰ Texas's QAP consists of two parts: (1) a self-scoring portion and (2) a departmental review.⁸¹ During the departmental review, the TDHACA issues points based on support letters from the local government,⁸² a qualified

72. *Inclusive Cmty's. Project*, 135 S. Ct. at 2525.

73. *Id.*

74. *Id.* at 2523–24. ("[A] plaintiff who fails to allege facts at the pleading stage or produce statistical evidence demonstrating a causal connection cannot make out a *prima facie* case of disparate impact.").

75. *Id.* at 2514.

76. *Id.*

77. *Id.* at 2526.

78. *Inclusive Cmty's. Project*, 135 S. Ct. at 2514.

79. *Id.*

80. See 26 U.S.C. § 42 (2012).

81. See TEX. GOV'T CODE ANN. § 2306.6710 (2001); see also Charlie Duncan, *2015 Texas Housing Tax Credit Report: How Support Points Limit Housing Options for Low Income Families*, TEX. HOUSERS (Aug. 25, 2015), <https://texashousers.net/2015/08/25/2015-texas-housing-tax-credit-report-how-support-points-limit-housing-options-for-low-income-families/> [<https://perma.cc/Z8C5-X68P>].

82. See TEX. GOV'T CODE ANN. § 2306.6710 (2001). Up to seventeen points are awarded if the City Council passes a resolution supporting the project. See *id.* These could also result in discrimination if the local elected officials have biases or perhaps do not represent the city's demographics. For example, in Houston only one of the sixteen council members is Latino; however, the city is over thirty-seven percent Latino. *City Council*, CITY OF HOUSTON (2018),

community provider,⁸³ a community organization,⁸⁴ and the state legislator who represents the district where the project will be located.⁸⁵ Once the scores are tabulated, the TDHACA awards the LIHTCs based on each project's score.

Relying on the Supreme Court's framework, the District Court ruled that the plaintiff did not show a causal relationship between TDHACA's policy and the resulting distribution of LIHTC properties.⁸⁶ While the plaintiffs showed that TDHACA approves projects in predominantly non-Caucasian areas twice as frequently as those in predominantly Caucasian areas, the District Court held that this was not a *prima facie* claim of discrimination.⁸⁷ Moreover, the TDHACA argued that many projects have the same score, so it uses its discretion to make decisions. The District Court found that discretion does not amount to a policy.⁸⁸ This ruling, therefore, made it more difficult to actually prove a disparate impact claim under the FHA.

B. Fountainview Project

Building on the research showing the positive effects of moving low-income families to high opportunity areas, the HHA decided to build the Fountainview public housing project in an area with a low poverty rate, low crime rate, and high-quality schools.⁸⁹ Plans were set for the project to be operational in 2018;⁹⁰ however, in September 2016, Houston Mayor Sylvester Turner vetoed the project.⁹¹ The mayor's veto exemplifies the challenge of ensuring families have access to affordable housing in high-opportunity areas.

When the HHA announced the project, the community immediately opposed it.⁹² Community members argued that it would increase traffic, was too

<http://www.houstontx.gov/council/> [<https://perma.cc/5B45-HRDV>].

83. See TEX. GOV'T CODE ANN. § 2306.6710 (2001). Up to eight points are awarded if a Qualified Community Provider supports the project. *Id.*

84. See *id.* Up to four points are awarded if a Community Organization supports the project. *Id.*

85. See *id.* Up to eight points are awarded for a positive State Representative letter and up to eight points are deducted for a negative State Representative letter. *Id.*

86. *Inclusive Cmty. Project, Inc. v. Tex. Dep't of Hous. & Cmty. Affairs*, 2016 WL 4494322, at *1 (N.D. Tex. Aug. 26, 2016).

87. *Id.*

88. *Id.* at *6. The court also concluded that although there were two projects that potentially should have been granted in Caucasian areas, two projects do not amount to a policy. *Id.* at *12.

89. Will Livesley-O'Neill, *What's Behind the Opposition to Public Housing in a High Opportunity Area in Houston?*, TEX. HOUSERS (Feb. 9, 2016), <https://texashousers.net/2016/02/09/whats-behind-the-opposition-to-public-housing-in-a-high-opportunity-area-in-houston/> [<https://perma.cc/MF59-FWV2>].

90. *2640 Fountain View Apartments Highlights*, 2640 FOUNTAIN VIEW, <http://hhadevelopment.com/> [<https://perma.cc/HQY9-7PTZ>].

91. Steve Campion, *Houston Mayor Disapproves of Low-Income Housing Plan for Briargrove*, ABC 13 EYEWITNESS NEWS (Aug. 3, 2016), <http://abc13.com/realestate/mayor-disapproves-of-affordable-housing-project-for-briargrove/1456252/> [<https://perma.cc/TU75-LZCJ>].

92. STOP FOUNTAINVIEW PROJECT, <http://stopfountainviewproject.org/> [<https://perma.cc/5PEU-N9JM>].

costly, and would overwhelm the schools.⁹³ However, upon closer examination, the data do not substantiate these potential challenges.⁹⁴ First, the city's traffic engineers found that this project would only add thirteen cars to the 13,000 that travel this area daily.⁹⁵ Moreover, the HHA had been working with the Houston Independent School District to ensure that local schools could meet the increased student body.⁹⁶ Finally, while this project would have cost \$240,000 per unit, it was only 6% more expensive than a recently approved public housing project in a low-income area.⁹⁷

Publically, the Mayor justified his rejection because of "the costs and other concerns."⁹⁸ However, after the Houston Chronicle Editorial Board published a piece criticizing his decision,⁹⁹ the Mayor responded forcefully in his own op-ed.¹⁰⁰ The Mayor, who grew up and still lives in Acres Homes, a low-income community, argued:

[T]he "silver bullet" to eliminating systemic poverty is not moving families from areas that have been overlooked and underserved. Rather, the answer is to invest in these neighborhoods with quality affordable and mixed income housing, good schools, retail and economic development, parks and green space, transit options, and job and business opportunities.¹⁰¹

Mayor Turner is right that revitalizing impoverished communities is part of the solution; however, precisely because there is no silver bullet, cities must both rebuild communities *and* provide underserved individuals the chance to move to high-opportunity areas.

93. Leah Binkovitz, *Q+A: What's Next For the Houston Housing Authority's Fountain View Project*, URBAN EDGE (Aug. 3, 2016), <https://urbanedge.blogs.rice.edu/2016/08/03/qa-whats-next-for-the-houston-housing-authoritys-fountain-view-project/#.WDbrWvkrLb1> [<https://perma.cc/6H34-GTTQ>].

94. *Id.*

95. *Id.*

96. *Id.*

97. Will Livesley-O'Neill, *How City Actions Perpetuate Houston's Housing Segregation and Violate Civil Rights*, TEX. HOUSERS (Dec. 16, 2016), <https://texashousers.net/2016/12/16/how-city-actions-perpetuate-houstons-housing-segregation-and-violate-civil-rights> [<https://perma.cc/85V6-MXJ8>]; see also Rebecca Elliott, *City OKs First New Housing Authority Project in a Decade*, HOUS. CHRON. (Nov. 30, 2016), <http://www.houstonchronicle.com/news/politics/houston/article/City-OKs-first-new-housing-authority-apartment-10645909.php> [<https://perma.cc/S538-DKAC>].

98. Mayor Turner Requests Housing Authority Consider Alternatives to Proposed Fountainview Project, CITY OF HOUSTON (Aug. 1, 2016), <http://www.houstontx.gov/mayor/press/hha-fountainview-alternatives.html> [<https://perma.cc/EUD9-DQB8>].

99. Editorial, *Housing Dreams the Mayor's Reset on an Affordable Housing Project Only Kicks the Can Down the Road*, HOUS. CHRON. (Aug. 5, 2016), <http://www.houstonchronicle.com/opinion/editorials/article/Housing-dreams-9125935.php?t=33cb507e70438d9cbb> [<https://perma.cc/W98K-WA8C>].

100. Sylvester Turner, Editorial, *Turner: Chronicle Editorial Board Criticism About Housing Decision Is Off-Base*, HOUS. CHRON. (Aug. 11, 2016), <http://www.houstonchronicle.com/opinion/outlook/article/Turner-Chronicle-editorial-board-criticism-about-9137677.php> [<https://perma.cc/7ECQ-5BYL>].

101. *Id.*

VI. CAUSES OF SHORTAGE OF HOUSING

Before turning to policy solutions, it is important to consider some of the causes of both the shortage in housing assistance and the concentration of housing assistance in low-income areas.

A. Causes of Shortage of the Public Housing

Inadequate funding causes the shortage in public housing assistance because only 25% of individuals eligible for housing assistance receive it.¹⁰² While the federal government has not allocated enough funding for housing assistance, states and localities have also been slow to increase funding for housing assistance.¹⁰³

B. Causes of Concentration of Public Housing in High-Poverty Areas

As described in Section IV.B., individuals receiving vouchers, families living in private multi-family units funded by the LIHTC, and those residing in public housing are concentrated in low-income areas. Six factors drive the concentration of housing assistance in low-income areas.

First, the FHA does not consider source of income as a protected class that can be discriminated against. Thus, there is no federal law violation if a landlord does not rent to a tenant because he/she receives a voucher.¹⁰⁴ While states can add more regulation, only twelve states including Washington D.C. have decided to prohibit source of income discrimination.¹⁰⁵ As such, in 35 states (including Texas), a landlord may legally discriminate against a family who will use a voucher to partially pay for rent. Because rental markets in high-opportunity areas may be more robust, landlords may be more likely to refuse to rent to tenants with a voucher. This prevents such families from accessing high-opportunity areas.¹⁰⁶

102. Erika Poethig, *One in Four: America's Housing Assistance Lottery*, URBAN INST. (May 28, 2014), <http://www.urban.org/urban-wire/one-four-americas-housing-assistance-lottery> [https://perma.cc/BX9N-9X5A].

103. Across the country, there are 300 state or local programs to provide housing; however, they still are very small relative to both the federal programs and the need. *See Housing Assistance for Low-Income Households: States Do Not Fill the Gap*, NAT'L LOW INCOME HOUS. COAL. (Oct. 2008), <http://nlihc.org/sites/default/files/Housing-Assistance-2008.pdf> [https://perma.cc/28GG-99SZ]. Of course, other factors such as historical redlining also contribute to this reality. *See* Brief of Housing Scholars as Amici Curiae Supporting Respondents at 22, *Tex. Dep't of Hous. & Cmty. Affairs v. Inclusive Cmty. Project, Inc.*, 135 S. Ct. 2507 (2015) (No. 13-1371) [hereinafter *Housing Scholars Brief*].

104. NAT'L MULTIFAMILY HOUS. COUNCIL, *FAIR HOUSING: SOURCE OF INCOME DISCRIMINATION 1* (2014), https://www.nmhc.org/uploadedFiles/Articles/Issue_Fact_Sheet/Fair%20Housing%20Source%20of%20Income%202014-01.pdf [https://perma.cc/DHQ2-RT9W].

105. J. Rosie Tighe et al., *How Fair Housing Programs Can Be Bolstered By Laws Prohibiting Source of Income Discrimination* (2017), <http://www.scholarsstrategynetwork.org/brief/how-fair-housing-programs-can-be-bolstered-laws-prohibiting-source-income-discrimination> [https://perma.cc/N9EH-BEEN].

106. *See Law Aims to End Section 8 Source of Income Discrimination: California Could Be*

Second, public housing units are often built in low-income areas. Historically, this was done intentionally to segregate low-income, largely minority, families.¹⁰⁷ Although PHAs sometimes propose projects in higher-income areas, local governments may block them¹⁰⁸ or private citizens may bring law suits against them.¹⁰⁹ As such, public housing units ultimately remain concentrated in lower-income areas.

Third, the LIHTC program has funded projects in low-income areas. Because the funds are disbursed to states that then allocate the credits, states can use their discretion to ensure credits are allocated to low-income areas.¹¹⁰ Texas's LIHTC-funded properties tend to be located in areas "that have higher poverty rates and lower shares of non-Hispanic whites."¹¹¹ In Texas, points are awarded or deducted based on the approval or disapproval of the State Representative in whose district the project could be built.¹¹² State representatives from wealthy areas will often send letters against potential projects in their areas.¹¹³

Fourth, while families receiving housing assistance are concentrated in low-income areas, governments have traditionally under-invested in these communities. For example, schools in lower-income communities are almost invariably lower-performing than their counterparts in wealthy areas.¹¹⁴ While some argue that increased funding will not improve school quality,¹¹⁵

Next State to Outlaw Section 8 Tenant Discrimination, AFFORDABLE HOUS. ONLINE, <http://affordablehousingonline.com/blog/law-aims-to-end-section-8-source-of-income-discrimination/> [https://perma.cc/CY9X-AXGS].

107. Housing Scholars Brief, *supra* note 103, at 16.

108. See *infra* Section VI.B.

109. See 1717 Bissonnet, L.L.C. v. Loughhead, 500 S.W.3d 488, 491 (Tex. App. 2016).

110. See *The Tax Break-Down: The Low-Income Housing Tax Credit*, COMMITTEE FOR RESPONSIBLE FED. BUDGET (Nov. 7, 2013), <http://crfb.org/blogs/tax-break-down-low-income-housing-tax-credit/> [https://perma.cc/3T4X-Y3KB].

111. CASEY J. DAWKINS, EXPLORING THE SPATIAL DISTRIBUTION OF LOW-INCOME HOUSING TAX CREDIT PROPERTIES iii (2011), http://www.arch.umd.edu/sites/arch.umd.edu/files/attachments/publications/Dawkins_ExploringLIHT_AssistedHousingRCR04.pdf [https://perma.cc/KF3W-R72L].

112. See TEX. DEP'T OF HOUS. & CMTY. AFFAIRS, 2018 QUALIFIED ALLOCATION PLAN 31 (2017), <https://www.tdhca.state.tx.us/multifamily/docs/18-QAP.pdf> [https://perma.cc/5JM7-N9SV]; see also TEX. DEP'T OF HOUS. & CMTY. AFFAIRS, 2017 COMPETITIVE HTC APPLICATION CYCLE FREQUENTLY ASKED QUESTIONS 14 (2017), <https://www.tdhca.state.tx.us/multifamily/docs/17-HTCApplication-FAQ.pdf> [https://perma.cc/4W2G-M7H4].

113. See, e.g., *State Rep. Israel Remains Neutral on Housing Tax Credits*, NORTHWOOD NEIGHBORHOOD ASS'N (Feb. 26, 2016), <https://northwoodna.com/2016/02/26/state-rep-israel-remains-neutral-on-housing-tax-credits/> [https://perma.cc/L8EC-SXW7].

114. See, e.g., *Children at Risk Annual School Rankings*, CHILDREN AT RISK, <http://childrenatrisk.org/2017-school-rankings/> [https://perma.cc/YD37-GSVX] (showing that schools with more low-income students are ranked lower than schools with fewer low-income students); see also CITY OF HOUSTON, PLAN. & DEV. DEP'T, MEDIAN HOUSEHOLD INCOME: CITY OF HOUSTON BY SUPER NEIGHBORHOODS 1-3 (2013), http://www.houstontx.gov/planning/Demographics/docs_pdfs/SN/Median_Household_Income_by_SN.pdf [https://perma.cc/6CR3-LEF3] (showing the median income for each neighborhood).

115. See CJ Szafr & Martin Lueken, *More Spending Doesn't Lead to Improved Student*

investments in schools can improve educational quality and thereby increase opportunities for families in low-income areas.¹¹⁶

Fifth, low-income communities may be food deserts with limited access to healthy, fresh food.¹¹⁷ Thus, children are less likely to receive healthy foods and are more likely to suffer from medical conditions such as diabetes and obesity, which limit future opportunities.¹¹⁸

Sixth, many low-income families suffer from an information barrier because they are unaware of governmental programs that could help their families. The government has failed to invest in providing counselors to help families access information about programs that could help them escape poverty.

VII. A CASE FOR ACTION

Policymakers at the federal, national, or local level must consider the legal, economic, and moral reasons for increasing affordable housing and building affordable housing in high-opportunity areas.

A. Legal Reasons for Action

There are several legal reasons why policymakers should act to improve affordable housing. At the federal level, the U.S. Constitution, the FHA, and HUD rules all regulate affordable housing.¹¹⁹ At the state level, the Texas Fair Housing Act affects Houston's actions regarding affordable housing.¹²⁰ The current policies of not providing enough housing, building housing in low-opportunity areas, and discriminating against families with vouchers may violate these laws. Violating these laws could lead to investigations, lawsuits, and potential sanctions from the government.¹²¹

These legal risks are not simply low-probability events. Legal incidents are

Learning, FORBES (Aug. 8, 2015), <https://www.forbes.com/sites/realspin/2015/05/08/more-spending-doesnt-lead-to-improved-student-learning> [https://perma.cc/CK45-2QNH].

116. See Julien Lafortune et al., *School Finance Reform and the Distribution of Student Achievement*, NAT'L BUREAU ECON. RES. (July 2016), <http://www.nber.org/papers/w22011> [https://perma.cc/Y7SW-XLJ8].

117. Adam Bennet, *Houston Trying to End "Food Deserts"*, KHOU (Sept. 6, 2016), <http://www.khou.com/news/local/houston-trying-to-end-food-deserts/314591844> [https://perma.cc/BC2A-5RFB].

118. Bonnie Ghosh-Dastidar et al., *Distance to Store, Food Prices, and Obesity in Urban Food Deserts*, 47 AM. J. PREVENTIVE MED. 587, 587 (2014).

119. See U.S. CONST. amend. XIV (prohibiting discrimination when there is state action such as allocating housing vouchers); 42 U.S.C. § 3604 (1968) (prohibiting discrimination in housing rental or sale); *Affirmatively Furthering Fair Housing (AFFH)*, HUD EXCHANGE (2018), <https://www.hudexchange.info/programs/affh/> [https://perma.cc/VET4-YS6V] (requiring Public Housing Authorities to "affirmatively further fair housing").

120. See TEX. PROP. CODE ANN. § 301 (West 1993) (prohibiting discrimination in housing sales or rentals).

121. See Rebecca Elliott, *HUD: City's Subsidized Housing Procedure Promotes Segregation, Violate Civil Rights Act*, HOUS. CHRON. (Jan. 13, 2017), <http://www.houstonchronicle.com/news/politics/houston/article/HUD-City-s-subsidized-housing-procedures-promote-10857101.php> [https://perma.cc/BA9Y-A3V9].

already occurring; HUD recently launched an investigation into whether Houston is concentrating its affordable housing in low-opportunity areas.¹²² If HUD finds Houston violated its rule to “affirmatively further fair housing,” Houston may risk losing federal funding and face an even greater shortfall of affordable housing for low-income families.¹²³

B. Economic Reasons for Action

If the legal case for action is not strong enough, there are economic reasons why Houston should increase its affordable housing stock. At the most fundamental level, under-investments in housing will lead to greater poverty, as families spend more on rent and have limited funds for investments in education or health that lead to prosperity.¹²⁴ Moreover, concentrating low-income individuals in low-opportunity areas may result in higher unemployment. This could lead to higher rates of uninsured and thus increased healthcare costs.¹²⁵ Finally, trapping individuals in low-opportunity areas may reduce social mobility, as students attend underperforming schools.¹²⁶ Increased poverty will reduce spending and result in lower revenue for the city.¹²⁷

C. Moral Reasons for Action

Beyond the legal and economic justifications for action, there are moral reasons for to act. The United States is premised on notions such as the American Dream, upward mobility, and equal opportunity.¹²⁸ Most Americans believe that if people work hard they have an opportunity to reach their American Dream.¹²⁹ However, these aspirations are not being fulfilled. Instead, our policies allow the creation of low-opportunity areas, concentrate low-

122. *Id.*

123. *Id.*

124. Jeremy Barofsky & Waseem Nosair, *Investment in Health for Poverty Reduction: New Evidence and Data Challenges*, BROOKINGS INST. (Oct. 8, 2015), <https://www.brookings.edu/blog/africa-in-focus/2015/10/08/investment-in-health-for-poverty-reduction-new-evidence-and-data-challenges/> [<https://perma.cc/PF3J-FHYN>].

125. ANNE K. DRISCOLL & AMY BERNSTEIN, CTRS. FOR DISEASE CONTROL & PREVENTION, HEALTH AND ACCESS TO CARE AMONG EMPLOYED AND UNEMPLOYED ADULTS: UNITED STATES, 2009-2010 1-7 (2012); *Key Facts About the Uninsured Population*, HENRY J. KAISER FAMILY FOUND. (Sep. 19, 2017), <https://www.kff.org/uninsured/fact-sheet/key-facts-about-the-uninsured-population/> [<https://perma.cc/B6HG-TX6R>]; Kathleen Kingsbury, *Do Your Premiums Help Cover the Uninsured?*, TIME (Mar. 25, 2009), <http://content.time.com/time/health/article/0,8599,1887489,00.html> [<https://perma.cc/H8JC-KSF9>].

126. See *infra* Section V.B.

127. See e.g., Joseph E. Stiglitz & Linda J. Bilmes, *The 1 Percent's Problem*, VANITY FAIR (May 31, 2012), <https://www.vanityfair.com/news/2012/05/joseph-stiglitz-the-price-on-inequality> [<https://perma.cc/GB6U-WPZQ>].

128. H.W. BRANDS, THE AGE OF GOLD: THE CALIFORNIA GOLD RUSH AND THE NEW AMERICAN DREAM 442 (2003).

129. *Post-Miller Center Poll: American Dream and Financial Security*, WASH. POST (Nov. 25, 2013), https://www.washingtonpost.com/politics/polling/postmiller-center-poll-american-dream-financial/2013/11/25/b9cec6ca-2892-11e3-8ab3-b5aacc9e1165_page.html [<https://perma.cc/5G4F-C6GE>].

income individuals in these areas, and trap children in cycles of poverty, preventing entire communities from reaching the American Dream.

Philosopher John Rawls proposed the “veil of ignorance” as a thought experiment to consider before adopting policies.¹³⁰ Rawls’ thesis argued that a policy was fair if a person would accept it not knowing “his place in society, his class position or social status; nor . . . his fortune in the distribution of natural assets and abilities, his intelligence and strength, and the like.”¹³¹ In other words, if a person does not know which social class the person will be born into, would the person find the policy regime to be acceptable?

Considering this thought experiment, Houston residents would not be comfortable supporting the status quo. The consequences are too high if a person is without housing, forced to spend fifty percent of income on housing, or consigned to a low-opportunity neighborhood. Because the current policy regime fails the thought experiment, Houston should change course and enact policies to support low-income families.

VIII. POLICY SOLUTIONS TO INCREASE SUPPLY OF AFFORDABLE HOUSING

Enacting the policy reforms described below will require political will. Politicians and policymakers should leverage legal, economic, and moral arguments to move voters to support policies that help low-income families.

A. National Level Policies

The federal government should increase funding for public housing and vouchers. At the most fundamental level, the nation needs more money invested in public housing. When 75% of families (over five million of whom live on less than \$20,000 per year) who qualify for housing assistance do not receive it, the federal government must invest more money.¹³²

The ideal policy solution would be to turn housing assistance into an entitlement where every family across the nation would receive the benefits. This solution would require an increase in the affordable housing budget from about \$50 billion to about \$200 billion.¹³³ While this seems like a massive increase in spending, it only represents four percent of the federal budget.¹³⁴ Moreover, we could find most of the \$150 billion by eliminating tax deductions for mortgage interest and real estate that disproportionately benefit wealthy

130. JOHN RAWLS, A THEORY OF JUSTICE 118 (1999).

131. *Id.* at 11.

132. *See infra* Part I.

133. Will Fischer & Barbara Sard, *Chart Book: Federal Housing Spending is Poorly Matched to Need*, CTR. ON BUDGET POL'Y PRIORITIES (Nov. 4, 2016), <http://www.cbpp.org/research/housing/chart-book-federal-housing-spending-is-poorly-matched-to-need> [<https://perma.cc/U7KE-MHCB>].

134. *See Federal Spending: Where Does the Money Go*, NAT'L PRIORITIES PROJECT, <https://www.nationalpriorities.org/budget-basics/federal-budget-101/spending/> [<https://perma.cc/U8TM-LGRF>]. The federal budget is \$3.8 trillion and \$150 billion is four percent of that.

Americans.¹³⁵ Alternatively, if our elected representatives lack the political willpower to make housing a reality for all Americans, Mayor Turner and other mayors should push for an increase in funding so that every family earning less than \$20,000 is guaranteed access to affordable housing.

Second, the federal government should increase LIHTCs so more projects can be funded. Expanding tax credits may be more politically feasible than expanding vouchers or public housing because Americans tend to prefer market-based initiatives.¹³⁶

B. State Level Policies

Texas should mandate that all Tax Income Reinvestment Zones (TIRZs), regardless of how they are created, must contribute thirty percent of their tax base to affordable housing. A TIRZ is a geographic area within a city that recaptures some of its property tax revenue.¹³⁷ For example, if Houston created a TIRZ in 2014, any property tax revenue generated within the TIRZ above the amount generated in 2014 would not go to the city's general fund. Instead, a TIRZ board would manage it and could only spend the money within the TIRZ's geographic boundaries.¹³⁸

Currently, residents may petition for a TIRZ or a municipality may create it directly.¹³⁹ Texas statute requires all petition-created TIRZs to annually contribute thirty-three percent of their revenue to low-income housing; however, city-created TIRZs do not have such a requirement.¹⁴⁰ Mayor Turner should lobby the Texas Legislature to change the statute and require city-created TIRZs to also contribute thirty-three percent of their revenue to affordable housing.

C. Local Level Policies

Beyond just relying on federal and state policymakers, Houston itself can take specific steps to increase affordable housing.

First, the HHA and HCHA should shift funds away from public housing and towards vouchers.¹⁴¹ Vouchers not only provide families more choice but also, more importantly for the current purpose, reduce overhead costs.¹⁴² Saving

135. Fischer & Sard, *supra* note 133.

136. *70% Prefer Free Market to Government-Managed Economy*, RASMUSSEN REPS. (Jan. 20, 2012), http://www.rasmussenreports.com/public_content/business/general_business/january_2012/70_prefer_free_market_to_government_managed_economy [<https://perma.cc/CUZ7-J9E6>].

137. TEX. TAX CODE ANN. § 311 (West 1987).

138. See DENIS BRAHAM & MARVALETTE HUNTER, MAYOR SYLVESTER TURNER TRANSITION COMMITTEE ON TAX INCREMENT REINVESTMENT ZONES 5–6, <https://www.houstontx.gov/mayor/transitionreports/tirz.pdf> [<https://perma.cc/MN4D-HW74>].

139. *Id.* at 4.

140. Tex. Tax Code § 311.011(f) (1987).

141. There should be an exception to this policy if the public housing unit would be built in a high-opportunity area.

142. Kenneth Conboy, *Vouchers: A Way to Provide Better Housing for America's Poor*, in THE HERITAGE FOUNDATION BACKGROUNDER NO. 582 (May 27, 1987), <http://www.heritage.org/civil-society/report/vouchers-way-provide-better-housing-americas-poor>

administrative costs would allow the agencies to issue more vouchers and, all else equal, provide more families with housing support.

Second, the Mayor should consolidate the HHA within the HCHA to reduce overhead costs and serve more individuals. Big cities (e.g., Houston) and the even bigger counties (e.g., Harris) that encompass those counties often duplicate services leading to an inefficient allocation of resources. For example, both the City of Houston and Harris County maintain their own library systems.¹⁴³ Similarly, in affordable housing, both HHA and HCHA serve the City of Houston. Since the two agencies operate independently, they each have their own administrative staff, legal staffs, finance teams, maintenance personnel, etc. Mayor Turner should work with Judge Ed Emmett¹⁴⁴ and the other County Commissioners to consolidate the two agencies and reduce administrative costs. These cost savings could be funneled directly into expanding housing assistance for low-income families. Such a measure may be feasible, as both Mayor Turner and Judge Emmett have both indicated they are interested in consolidating services to reduce costs.¹⁴⁵

Third, Mayor Turner could review HCD's distribution of grants. The HCD provides gap financing to support affordable housing developments, and its grant distribution could be improved by attracting philanthropic dollars to supplement. Houston has a robust philanthropic community that supports local initiatives. For example, the Houston Endowment gave nearly \$9 million to the Houston Independent School District to fund college counselors.¹⁴⁶ Moreover, JP Morgan recently gave the city of Houston \$1 million to fund homeless initiatives.¹⁴⁷ Perhaps HCD could apply for either corporate or foundation funding to build more affordable housing.

IX. POLICY SOLUTIONS TO ENSURE PUBLIC HOUSING IS BUILT IN HIGH-OPPORTUNITY AREAS

A. National Level Policies

The Federal Government should amend the Fair Housing Act to prohibit

[<https://perma.cc/GWA5-YM8P>].

143. HARRIS CTY. PUB. LIBRARY, <http://www.hcpl.net/> [<https://perma.cc/JHH9-BCY5>]; HOUSTON PUB. LIBRARY, <http://houstonlibrary.org/> [<https://perma.cc/3JCM-TAMB>].

144. Judge Emmett heads the five-person County Commission.

145. Mihir Zaveri & Rebecca Elliott, *Harris County Officials Renew Calls to Merge Crime Labs*, HOUSTON CHRON. (Mar. 27, 2016), <http://www.houstonchronicle.com/news/houston-texas/houston/article/Crime-lab-yyy-yy-y-yy-7210188.php> [<https://perma.cc/TE58-FXVS>].

146. *HIDS Board of Education to Accept \$8.5 Million in Grants for College Readiness Programs*, HIDS NEWS BLOG (Apr. 2, 2015), <http://blogs.houstonisd.org/news/2015/04/01/hisd-board-of-education-to-accept-8-5-million-in-grants-for-college-readiness-programs/> [<https://perma.cc/ZN56-Z2FB>].

147. Ciara Rouege, *Mayor Accepts \$1 Million JP Morgan Chase Donation to Help End Chronic Homelessness in Houston*, NEWSFIX (Oct. 20, 2016), <http://cw39.com/2016/10/20/houston-mayor-accepts-1-million-jp-morgan-chase-donation-to-help-end-chronic-homeless/> [<https://perma.cc/8EKT-G753>].

discrimination against source of income. The FHA prohibits discrimination in renting or selling a dwelling against any person because of race, color, religion, sex, familial status, or national origin.¹⁴⁸ Conspicuously missing from this list is discrimination on the basis of source of income. In other words, under the FHA, a landlord may refuse to rent an apartment to someone solely because she is poor or because he is partially paying for the unit with a voucher. As such, low-income families receiving housing assistance may be unable to rent units in high-opportunity areas.

If every apartment-owner in high-opportunity areas decided not to rent to those receiving vouchers, there may not be a single apartment in a high-opportunity neighborhood available to low-income them.¹⁴⁹ Legally, this disparate impact may violate the FHA or HUD's rule that PHAs must "affirmatively further fair housing."¹⁵⁰ Moreover, this is fundamentally unfair, as it traps children in a cycle of poverty and prevents them from reaching their American Dreams.

Second, the United States should implement the Small Area FMR program nationally. As described in Section III B, HUD first calculates FMRs for each metropolitan area (e.g., Houston). Then, it asks each family to pay thirty percent of its income toward rent with the PHA providing a voucher for difference between the FMR and the family's share of the rent.

The FMR is currently calculated city-wide as an average of rents in wealthy areas and poor areas.¹⁵¹ As such, the FMR is higher than "needed" for an apartment in a low-income neighborhood and lower than "needed" for a unit in a wealthy neighborhood. Given this discrepancy, families may be unable to secure apartments in these areas. HUD could instead calculate FMRs by individual zip-codes. As such, the FMR and voucher amount would be higher in high-opportunity areas. Families would then have the requisite funds to afford apartments in higher-opportunity areas.

HUD ran a program similar to this in Dallas and the preliminary results are promising. Researchers from Stanford and Harvard found that the pilot resulted in: (1) more families who receive Section 8 vouchers moving into higher-opportunity areas, and (2) the program was cost-neutral because voucher amounts increased for some families who lived in high-opportunity areas while falling for families living in poorer areas.¹⁵²

148. Fair Housing Act of 1968, 42 U.S.C. §§ 3601–3619, 3631 (2012).

149. See, e.g., *Pottinger v. City of Miami*, 810 F. Supp. 1551, 1564 (S.D. Fla. 1992); Joseph William Singer, *We Don't Serve Your Kind Here: Public Accommodations and the Mark of Sodom*, 95 B.U. L. REV. 929 (2015).

150. *Affirmatively Furthering Fair Housing (AFFH)*, HUD EXCHANGE (2018), <https://www.hudexchange.info/programs/affh/> [<https://perma.cc/VET4-YS6V>].

151. *U.S. Housing Market Conditions Summary: Fair Market Rents*, U.S. DEP'T OF HOUS. & URB. DEV., <https://www.huduser.gov/periodicals/ushmc/winter98/summary-2.html> [<https://perma.cc/T8BW-YQNN>].

152. See Robert Collison & Peter Ganong, *How Do Changes in Housing Voucher Design Affect Rent and Neighborhood Quality?* 4 (unpublished manuscript) (June 30, 2017), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2255799 [<https://perma.cc/GXB8-TERN>].

B. State Level Policies

Texas, however, should not just rely on the federal government; instead, it can take steps itself to ensure affordable housing is not concentrated in low-income areas.

First, Texas should repeal Section 250.007 of the Texas Local Government Code that bans cities from passing ordinances prohibiting discrimination against source of income.¹⁵³ In 2014, the City of Austin passed an ordinance prohibiting landlords from not renting to tenants based on their source of income.¹⁵⁴ In the following legislative session, in a purely partisan vote (every Republican voted for this and every Democrat voted against it), the Legislature enacted Section 250.007 of the Texas Local Government Code.¹⁵⁵ This statute reduces the likelihood voucher-recipients will be able to secure housing in high-opportunity areas.

If and when the state repeals this bill, Mayor Turner should immediately introduce an ordinance in the Houston City Council that prohibits landlords from discriminating against voucher recipients. While there will be political opposition to such an ordinance, the benefit to low-income families will be immediate.

Second, Texas should not allow State Representatives to influence the allocation of LIHTCs. As described in Section VI, Texas awards its LIHTCs via an application process that awards up to eight points for an affirmative letter from a state representative and deducts up to eight points for a negative letter from a state representative. Since applications may differ by just a few points, the state representative letter can be determinative. This creates a system where state representatives can essentially block any project from receiving funding. State representatives from wealthy districts use this power as a tool to block low-income housing from their districts.¹⁵⁶

Mayor Turner should lobby the state to eliminate the state representative role in the application process. Ideally, the award of LIHTCs would be apolitical, so elected officials would not have a role. Alternatively, the state could lower the influence held by legislators by reducing the points awarded or deducted for the state representative letter.

Even if the state representative role is not eliminated, it should be curtailed. Texas should at least require State Representatives to explain why they oppose a project. Without requiring rationale as to why a State Representative opposes a project, the public is unsure what is motivating the State Representative's

153. Tex. Loc. Gov't Code §250.007 (2015).

154. *Texas Legislature Bans Local Ordinances Protecting Voucher Holders from Discrimination*, NAT'L LOW INCOME HOUS. COAL. (June 1, 2015), <http://nlihc.org/article/texas-legislature-bans-local-ordinances-protecting-voucher-holders-discrimination> [<https://perma.cc/V55F-KK5E>].

155. Tex. Local Government Code §250.007 (2015).

156. See, e.g., *State Rep. Israel Remains Neutral on Housing Tax Credits*, NORTHWOOD NEIGHBORHOOD ASS'N (Feb. 26, 2016), <https://northwoodna.com/2016/02/26/state-rep-israel-remains-neutral-on-housing-tax-credits/> [<https://perma.cc/PZ3M-3DQ7>].

decision. These policy changes would likely result in more projects in high-opportunity areas and thus more low-income families living in these areas.

Admittedly, enacting this policy will be difficult because the very individuals who must vote to change the status quo are voting to curtail their own power. Mayor Turner and his team should focus on legal arguments. They should explain that vetoing projects may subject the state legislators to legal liability either under the FHA or HUD's rules.¹⁵⁷

Third, Texas should increase education funding to low-income schools, so they can provide more opportunities for students. For example, Sunnyside is a particularly low-income area of Houston where over thirty percent of the population is low-income.¹⁵⁸ Within Sunnyside, there is a high concentration of public housing, low-income housing tax credit funded developments, and voucher recipients. The schools within Sunnyside are sub-par, as several of them received a "D" or an "F" in the most recent rankings.¹⁵⁹ While there is no silver bullet for improving these schools, one important solution is increasing funding.¹⁶⁰

While some argue that Texas does not have money to fund education, the reality is Texas can raise money by increasing the Gross Margins tax. Texas could also allocate some funds from its Rainy Day Fund.¹⁶¹ Regardless of the manner, increasing funding for schools will improve school quality in poor areas and in turn increase opportunities.

Lastly, Texas should encourage citizen-petitioned TIRZs to develop affordable housing within their boundaries. TIRZs that are formed through citizen-petition must contribute 33% of their revenue to affordable housing. TIRZs can either build affordable housing within their boundaries or send the money to the city's affordable housing fund. All petition-TIRZs, which tend to be in wealthier areas,¹⁶² have picked the latter option so as not to have to build affordable housing within their boundaries.¹⁶³

Requiring the TIRZs to build affordable housing within their boundaries

157. 24 C.F.R. §§ 5, 91, 92, 570, 574, 576, 903 (2018).

158. John D. Harden, *Prosperity to Poverty*, HOUSTON CHRON. (June 16, 2017), <http://www.houstonchronicle.com/news/houston-texas/houston/article/Loss-of-jobs-business-puts-Sunnyside-in-peril-11226461.php> [<https://perma.cc/3CBA-6PRV>].

159. *Children at Risk School Rankings*, CHILDREN AT RISK (2017), <http://childrenatrisk.org/2017-school-rankings/> [<https://perma.cc/B3BK-QRDJ>].

160. Julien Lafortune et al., *School Finance Reform & the Distribution of Student Achievement* 1 (Nat'l Bureau of Econ. Research, Working Paper No. 22011, 2016), <http://www.nber.org/papers/w22011> [<https://perma.cc/653K-XGL7>].

161. Alex Samuels, *Hey, Texplainer: Can Texas Lawmakers Tap the Rainy Day Fund to Help with Harvey Relief?*, TEX. TRIBUNE (Sept. 1, 2017), <https://www.texastribune.org/2017/09/01/hey-texplainer-can-texas-lawmakers-tap-rainy-day-fund-help-harvey-reli/> [<https://perma.cc/C6M2-9APL>].

162. Steve Jansen, *How Houston Uses the TIRZ System to Benefit High-Dollar Areas and Ignore Poorer Neighborhoods*, HOUSTON PRESS (June 9, 2015), <http://www.houstonpress.com/news/how-houston-uses-the-tirz-system-to-benefit-high-dollar-areas-and-ignore-poorer-neighborhoods-7497253> [<https://perma.cc/6UHN-AX8L>].

163. *Id.*

would necessarily create affordable housing in high-opportunity areas. This would provide more low-income individuals the chance to move into these areas. Alternatively, Mayor Turner could also pursue this policy at a local level by strongly encouraging (perhaps even incentivizing) TIRZs in Houston to build affordable housing within their boundaries. Either way, more affordable housing in high-opportunity areas will help more families escape the cycle of poverty.

C. Local Level Policies

Houston should build public housing projects in high-opportunity areas (like the proposed Fountainview project discussed in Section V.B). Mayor Turner should consider approving future public housing projects that are planned for high-opportunity areas as research shows that moving to higher opportunity areas improves outcomes.¹⁶⁴ Despite the higher cost and the Mayor's laudable goal of improving low-income communities, families cannot afford to wait; we need to give them a chance to move to opportunity immediately.

Houston should create more high-opportunity areas by building on Geoffrey Canada's model and investing in low-income communities. Geoffrey Canada created the Harlem Children's Zone in a ninety-six block zone of Harlem.¹⁶⁵ The Harlem Children's Zone invested significant funds to create all the services a low-income family needs (high-quality schools, afterschool programs, college counseling, legal services, financial services, etc.).¹⁶⁶ Research found that the Harlem Children's Zone improves educational outcomes and reduces the achievement gap.¹⁶⁷ Houston could replicate the same model by building its own Sunnyside Zone or Acres Homes Zone. Mayor Turner should create a task force, led by members of the community itself, to design a plan that replicates and improves on the Harlem Children's Zone.

Such a policy will undoubtedly face opposition, most notably from fiscal conservatives who worry about the cost of the initiative. While these opponents are right that this policy will be expensive, Houston can afford the investment. Houston could repeal its property tax cap that artificially reduces revenue.¹⁶⁸ Alternatively, Houston could issue social impact bonds to fund the program.¹⁶⁹ Regardless of the funding source it ultimately selects, Houston has the money to

164. See generally Chetty, *supra* note 9.

165. Will Dobbie & Ronald G. Fryer, Jr., *Are High-Quality Schools Enough to Increase Achievement Among the Poor? Evidence from the Harlem Children's Zone*, 3 AM. ECON. J.: APPLIED ECON. 158, 161–63 (2011), <https://www.aeaweb.org/articles?id=10.1257/app.3.3.158> [<https://perma.cc/JNZ8-W6C9>].

166. *Id.* at 161.

167. *Id.* at 179–80.

168. *Tax Caps*, CITY OF HOUSTON (2017), <http://www.houstontx.gov/txlege/sb-2-tax-caps> [<https://perma.cc/4KMQ-2WK5>].

169. *Macroeconomic Insights: Social Impact Bonds*, GOLDMAN SACHS (Oct. 2014), <http://www.goldmansachs.com/our-thinking/pages/social-impact-bonds.html> [<https://perma.cc/TKN8-CNUR>].

invest in underserved communities to help increase opportunity in historically low-opportunity areas.

D. Litigation Options

Beyond just legislative solutions, low-income families themselves can turn to the courts to argue that certain policies are unconstitutional at the federal or state level. There are at least two potential legal options for low-income families.

First, an affected individual could sue the State of Texas arguing that SB 267 creates a disparate impact violation of the U.S. FHA.¹⁷⁰ Alternatively, an individual could argue that SB 267 violates Texas's Fair Housing Act because it permits discrimination against voucher recipients.¹⁷¹ Low-income tenants can argue that this policy of prohibiting municipalities from penalizing discrimination on source of income has a disparate impact on minorities, women, and families with children.¹⁷²

Second, an individual could sue HHA arguing that its policy of building public housing in low-income areas creates a disparate impact violation of the U.S. FHA. The tenants may also be able to allege that HHA's policy of concentrating housing options in low-income areas violates HUD's new rule requiring PHAs to "affirmatively further fair housing."¹⁷³

X. CONCLUSION

I started this project with a simple question—how does affordable housing work? I had two hypotheses: (1) affordable housing was a story of government inefficiently throwing money at a problem, and (2) affordable housing was an intractable policy challenge with no real solutions. After spending months of research, both hypotheses were proven wrong. Rather than inefficiently spending money, the government actually leverages the private sector to take the lead on affordable housing (LIHTC and vouchers). Moreover, the policy solutions are clear—invest more money in vouchers and LIHTC, prevent landlords from discriminating against individuals with vouchers, prohibit states from concentrating LIHTC-funded units in low-income communities, and develop low-income communities with improved schools that provide wrap-around services.

Beyond all the policy suggestions, affordable housing is ultimately a story of people. This story is about low-income families who qualify for housing-assistance but do not receive it. This story is about families who receive housing-assistance yet are concentrated in low-income communities. This story

170. *Tex. Dep't of Hous. & Cmty. Affairs v. Inclusive Cmty. Project, Inc.*, 135 S. Ct. 2507, 2532 (2015).

171. *See Tex. Parks & Wildlife Dep't v. Dearing*, 240 S.W.3d 330, 335 (Tex. App. 2007).

172. *See R.I. Comm'n for Human Rights v. Grail*, 120 F. Supp. 3d 110 (D.R.I. 2015); *Ave. 6E Invs. v. City of Yuma*, 818 F.3d 493 (9th Cir. 2016), *cert. denied*, 137 S. Ct. 295 (2016).

173. 24 C.F.R. §§ 5, 91, 92, 570, 574, 576, 903 (2018).

is about legislators who block affordable housing projects in their districts out of fear of losing the next election. This story is about landlords who deny housing to families receiving vouchers. Finally, this story is about children, born into low-income families, who aspire to escape poverty but are trapped, not because of some deficiency or intrinsic "problem," but instead because of policies that exclude them.

But this story is not yet complete. Houston and the nation still have a chance to write the final chapters. America still has an opportunity to help children escape the cycle of poverty to reach their own American Dream. The only remaining question is: will we?