

# Black, Poor, and Gone: Civil Rights Law's Inner-City Crisis

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*In recent years, academics committed to a new law and sociology of poverty and inequality have sounded a call to revisit the inner city as a site of cultural and socio-legal research. Both advocates in anti-poverty and civil rights organizations, and scholars in law school clinical and university social policy programs, have echoed this call. Together they have embraced the inner city as a context for experiential learning, qualitative research, and legal-political advocacy regarding concentrated poverty, neighborhood disadvantage, residential segregation, and mass incarceration. Indeed, for academics, advocates, and activists alike, the inner city stands out as a focal point of innovative theory-practice integration in the fields of civil and criminal justice.*

*Today, in the post-civil rights era, new socio-legal research on the inner city casts a specially instructive light on the past, present, and future work of community-based advocacy groups, anti-poverty and civil rights organizations, and law school clinical programs. That light illuminates the socioeconomic conditions that cause and perpetuate poverty, and, equally important, the government (federal, state, and local) policies and practices that spawn mass eviction and reinforce residential segregation. Widely adopted by municipalities, those displacement-producing and segregation-enforcing policies and practices—neighborhood zoning, land use designation, building condemnation and demolition, and housing code under- or over-enforcement—have caused and will continue to cause the involuntary removal of low-income tenants and homeowners from gentrifying urban spaces and their forced out-migration to impoverished suburban spaces.*

*Despite more than fifty years of law reform campaigns in the field of fair housing, neither legal advocates nor civic activists in gentrifying neighborhoods across the nation have been able to halt the pace of eviction or reduce the intensity of residential segregation. Moreover, neither advocates nor activists have been able to refocus law reform campaigns on the vital intersection of fair housing, concentrated poverty, and public health in the built environment. As a result of this twin failure, both fair housing advocates and activists bear daily witness to civil rights law's inner-city crisis.*

*To understand the crisis of civil rights law in failing to alleviate poverty and ameliorate segregation in the nation's urban and suburban areas and failing to envision fair housing in the broader terms of environmental health and justice, this Article maps the current landscape of poverty, displacement, and seg-*

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*regation in American metropolitan areas, examines fair housing litigation theories of disparate-impact and segregative-effect liability, and evaluates the promise of fair housing law reform campaigns in combating concentrated poverty and residential segregation and in integrating a vision of environmental health and justice.*

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## INTRODUCTION

*“All the tenants are gone.”<sup>1</sup>*

In January 2018, at the close of the board of directors’ meeting of the St. Paul Community Development Corporation (“St. Paul CDC”), a nonprofit corporation affiliated with Greater St. Paul A.M.E. Church on Thomas Avenue in Miami, Florida, Melanie Jenkins,<sup>2</sup> a long-time board member and congregant, approached me and the young, newly appointed pastor, Reverend Nathaniel Robinson III, and said, “You have brought the light to this community.” Located on the Jim Crow west side of the affluent Coconut Grove neighborhood, “this community,” historically branded as Colored Town or the Black Grove and colloquially known as the West Grove, has long suffered the harms that come with post-bellum segregation, economic

<sup>1</sup> Interview with Clarice Cooper, President, Coconut Grove Village West Homeowners and Tenants Association, and Co-Chair, Coconut Grove Village West Housing and Community Development Task Force, in Miami, Fla. (Dec. 27, 2018).

<sup>2</sup> Interview with Melanie Jenkins, Member, Board of Directors, St. Paul Community Development Corporation, in Miami, Fla. (Feb. 28, 2019).

disinvestment, middle-class black flight, and private low-income rental market extraction and exploitation.

Earlier that January evening, at the outset of the St. Paul CDC's board meeting, Reverend Robinson had called for action that could, as Melanie Jenkins declared, bring light into the West Grove. In his remarks, Reverend Robinson pointed out the need to restructure the board, develop a strategic plan to better serve the surrounding predominantly low-income community, and more forcefully address the intractable poverty of the West Grove as a whole. Part of that strategic plan, he noted, included the formation of a housing committee to be staffed materially by the University of Miami School of Law's Environmental Justice Clinic<sup>3</sup> and Historic Black Church Program,<sup>4</sup> two community-based law reform projects conducting anti-poverty, civil rights, and environmental health advocacy campaigns in partnership with numerous inner-city black churches and civic-minded groups in South Florida.<sup>5</sup> To implement St. Paul CDC's strategic plan, Reverend Robinson charged the housing committee with the mandate to investigate, research, and remedy the widening patterns of tenant displacement and homeowner harassment plaguing the West Grove.

Visiting Greater St. Paul A.M.E. Church in January 2018 and again in early 2019, there remains little evidence of light on Thomas Avenue, only a

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<sup>3</sup> On the work of the Environmental Justice Clinic, see CTR. FOR ETHICS & PUB. SERV., U. MIAMI SCH. OF LAW, 2017–2018 ANNUAL REPORT 2 (2018), <https://miami.app.box.com/ceps-annual-report-2017-2018>, archived at <https://perma.cc/P5HE-Z3JC>; *Community Campaigns: Natural Environment, Dunbar Ft. Myers*, 16 CTR. FOR ETHICS & PUB. SERV. NEWSLETTER (Univ. of Miami Sch. of Law, Miami, Fla.), Fall 2017–Spring 2018, at 1–5, available at [http://www.law.miami.edu/ceps/images/spring\\_2018.pdf](http://www.law.miami.edu/ceps/images/spring_2018.pdf), archived at <https://perma.cc/42KU-59ZY> (reporting on Environmental Justice Clinic's community campaigns in South Florida).

<sup>4</sup> Housed by the Center for Ethics and Public Service at the University of Miami School of Law, the Historic Black Church Program ("HBCP") operates community outreach and rights education projects in anti-poverty and civil rights partnerships with more than 60 inner-city, faith-based groups, nonprofit corporations, and civic and neighborhood associations in South Florida. See CTR. FOR ETHICS & PUB. SERV., *supra* note 3, at 2. Prior HBCP partnerships encompassed "community-based advocacy and organizing in support of the *West Grove Trolley Garage Campaign*, which halted the discriminatory placement of a City of Coral Gables municipal bus depot in the historically segregated neighborhood of Coconut Grove Village West, and in the *East Gables Trolley Access Campaign*, which won municipal trolley service for residents of the historically segregated MacFarlane Homestead Subdivision and the Golden Gates District of East Coral Gables." *Id.* (footnote omitted). For case studies of HBCP's community-based work, see Anthony V. Alfieri, *Community Education and Access to Justice in a Time of Scarcity: Notes From the West Grove Trolley Garage Case*, 2013 WIS. L. REV. 121, 125–33 (discussing HBCP's community education and research work in the *West Grove Trolley Garage Campaign*); Anthony V. Alfieri, *Rebellious Pedagogy and Practice*, 23 CLINICAL L. REV. 5, 23–26 (2016) (recounting the design and organization of HBCP's Oral History and Documentary Film Project); Anthony V. Alfieri, *Resistance Songs: Mobilizing the Law and Politics of Community*, 93 TEX. L. REV. 1459, 1460–63 (2015) (book review) (describing HBCP's environmental justice work in the Old Smokey Clean-up Campaign).

<sup>5</sup> Throughout this Article, I capitalize the terms "Black" and "White" only when used as nouns to describe a racialized group. As in prior work, I use the term "Blacks," rather than the term "African Americans," because it is more inclusive. See Anthony V. Alfieri & Angela Onwuachi-Willig, *Next-Generation Civil Rights Lawyers: Race and Representation in the Age of Identity Performance*, 122 YALE L.J. 1484, 1488 n.5 (2013).

mix of dilapidated wood-frame Bahamian shotgun houses that endured mid-century slum clearance programs<sup>6</sup> and derelict post-war multifamily rental housing developments, the “concrete monsters” of Miami’s Negro Removal era.<sup>7</sup> Unlike residents of nearby Liberty City and Overtown as well as other distressed Miami neighborhoods who lost their homes during the Great Recession,<sup>8</sup> some Thomas Avenue homeowners and tenants outlasted the subprime lending and foreclosure crisis<sup>9</sup> and eviction epidemic<sup>10</sup> of the last decade and stayed in place. Now, however, they and scores of others are falling besieged to “landgrab” speculators and absentee landlords who want the Afro-Caribbean and African American inhabitants of the century-old West Grove to be gone.<sup>11</sup>

Like many in gentrifying communities of color, both tenants and homeowners on Thomas Avenue face the growing risk of displacement and

<sup>6</sup> See Samantha J. Gross & David Smiley, *West Coconut Grove Could Become Miami’s Next Historic District*, MIAMI HERALD (July 27, 2017), <http://www.miamiherald.com/news/local/community/miami-dade/article164062042.html>, archived at <https://perma.cc/E76C-PVJX>.

<sup>7</sup> See N.D.B. CONNOLLY, *A WORLD MORE CONCRETE: REAL ESTATE AND THE REMAKING OF JIM CROW SOUTH FLORIDA* 144, 186 (2014); see also Chanelle Nyree Rose, *Neither Southern Nor Northern: Miami, Florida and the Black Freedom Struggle in America’s Tourist Paradise, 1896–1968* 400 (Dec. 2007) (unpublished Ph.D. thesis, University of Miami) (on file with author) (“Many [Miami] blacks began calling urban renewal ‘Negro Removal’ because of the large displacement of so many people . . .”).

<sup>8</sup> A recent Urban Institute study reports that as a result of the Great Recession and its associated “housing crisis, Miami experienced severe challenges, including the nation’s highest rates of mortgages at risk of foreclosure, as well as one of the nation’s longest foreclosure processes.” DIANA ELLIOTT, TANAYA SRINI, SHIVA KOORAGAYALA, & CARL HEDMAN, *MIAMI AND THE STATE OF LOW- AND MIDDLE-INCOME HOUSING* 4 (Urban Institute, Mar. 2017). The study explains that the housing crisis adversely impacted Miami’s low- and middle-income (LMI) homeowners in two interrelated ways: “First, many low- and middle-income LMI homeowners experienced housing distress, particularly because of defaults from the subprime lending crisis and then from the aftermath of rising unemployment. Second, because of the housing crisis, access to credit tightened, which affects low- and middle-income LMI prospective homeowners’ abilities to purchase homes.” *Id.* (footnotes omitted). See also Jerry Iannelli, *Only 11 Percent of Miami Home Values Have Recovered Postrecession, and the Poor Are Getting Screwed*, MIAMI NEW TIMES (May 4, 2017) (reporting that home values in “Miami’s poorest communities, such as Liberty City and Overtown, have been hit hardest” by the Great Recession), <https://www.miaminewtimes.com/news/homeland-security-monitored-miami-immigration-protest-intercept-reports-11159935>, archived at <https://perma.cc/JQ3Z-YLGL>.

<sup>9</sup> For background on the foreclosure crisis, see Nicholas Hartigan, Comment, *No One Leaves: Community Mobilization as a Response to the Foreclosure Crisis in Massachusetts*, 45 HARV. C.R.-C.L. L. REV. 181, 187 (2010); John A. Powell, *Housing, Race, and Opportunity, in FROM FORECLOSURE TO FAIR LENDING: ADVOCACY, ORGANIZING, OCCUPY, AND THE PURSUIT OF EQUITABLE CREDIT* 249–50 (Chester Hartman & Gregory D. Squires eds., 2013); Jenny Schuetz, Vicki Been, & Ingrid Gould Ellen, *Neighborhood Effects of Concentrated Mortgage Foreclosures*, 17 J. HOUSING ECON. 306, 306 (2008).

<sup>10</sup> See MATTHEW DESMOND, *EVICTED: POVERTY AND PROFIT IN THE AMERICAN CITY* 4–5 (2016).

<sup>11</sup> See David Smiley, *Evictions, Profits and Slum: the Slow Fade of Grand Avenue* (Dec. 2, 2016), <https://www.miamiherald.com/news/local/community/miami-dade/article118514978.html#storylink=cpy>, archived at <https://perma.cc/6HA7-G6A2>; Andres Viglucci, *Will This Plan Save the West Grove? A Developer Has Big Dreams for Grand Avenue*, MIAMI HERALD (Nov. 27, 2018), <https://www.miamiherald.com/news/local/community/miami-dade/coconut-grove/article222032010.html#storylink=cpy>, archived at <https://perma.cc/88YT-TDSB>.

resegregation. Displacement refers to the involuntary removal of tenants and homeowners caused by evictions and foreclosures, building condemnations and demolitions, and government slum clearance and urban renewal or revitalization programs.<sup>12</sup> Resegregation refers to the economically forced out-migration of tenants and homeowners to segregated and hypersegregated<sup>13</sup> low-income “black housing”<sup>14</sup> districts inside the City of Miami (“the City” or “Miami”) or outside the City in the incorporated and unincorporated suburbs of southwest Miami-Dade County.<sup>15</sup> Ostensibly state-sanctioned racial enclaves, these southern *second ghettos*<sup>16</sup> are marked by segregated schools, low-wage labor markets and high unemployment rates, scarce public transportation, private and nonprofit sector neglect, gun violence, and mass incarceration.

On both sides of Thomas Avenue, one quickly sees what sociology Professor Matthew Desmond describes as society’s collective failure “to fully appreciate how deeply housing is implicated in the creation of poverty.”<sup>17</sup> Dismayed by that destructive nexus, Desmond urges academics and advocates in the fields of civil rights and poverty law to move beyond the conventional ethnographic and sociological study of structural forces (e.g., historical discrimination and industrial globalization)<sup>18</sup> and individual deficiencies (i.e., the “culture” or “pathology” of poverty)<sup>19</sup> to make visible the

<sup>12</sup> DESMOND, *supra* note 10, at 4–5. On urban revitalization and social equity, see generally SEAN ZIELENBACH, *THE ART OF REVITALIZATION: IMPROVING CONDITIONS IN DISTRESSED INNER-CITY NEIGHBORHOODS* 261–67 (2000); Michèle Alexandre, “*Love Don’t Live Here Anymore*: Economic Incentives for a More Equitable Model of Urban Redevelopment,” 35 B.C. ENVTL. AFF. L. REV. 1, 13–31 (2008); J. Peter Byrne, *Two Cheers for Gentrification*, 46 HOW. L.J. 405, 408–24 (2003); James Geoffrey Durham & Dean E. Sheldon III, *Mitigating the Effects of Private Revitalization on Housing for the Poor*, 70 MARQ. L. REV. 1, 3–19 (1986); Richard T. LeGates & Chester Hartman, *The Anatomy of Displacement in the United States*, in *GENTRIFICATION OF THE CITY* 178–200 (Neil Smith & Peter Williams eds., 1986).

<sup>13</sup> See Douglas S. Massey & Nancy A. Denton, *Hypersegregation in U.S. Metropolitan Areas: Black and Hispanic Segregation Along Five Dimensions*, 26 DEMOGRAPHY 373, 383 (1989).

<sup>14</sup> See MARVIN DUNN, *BLACK MIAMI IN THE TWENTIETH CENTURY* 206 (1997).

<sup>15</sup> See Anthony V. Alfieri, *Inner-City Anti-Poverty Campaigns*, 64 UCLA L. REV. 1374, 1396 (2017).

<sup>16</sup> On the contested nature of the term “second ghetto” in urban history and sociology, see ARNOLD HIRSCH, *MAKING THE SECOND GHETTO: RACE AND HOUSING IN CHICAGO, 1940-1960* 1–39, 212–58 (1983); Gilbert Osofsky, *The Enduring Ghetto*, 55 J. AM. HIST. 243 (1968); see also RONALD H. BAYOR, *RACE AND THE SHAPING OF TWENTIETH-CENTURY ATLANTA* 53–92, 255–60 (1996); THOMAS J. SUGRUE, *THE ORIGINS OF THE URBAN CRISIS: RACE AND INEQUALITY IN POSTWAR DETROIT* 32–88 (1996); Amanda Irene Seligman, *What is the Second Ghetto?*, 29 J. URB. HIST. 272, 273–74 (Mar. 2003).

<sup>17</sup> DESMOND, *supra* note 10, at 5.

<sup>18</sup> For research on structural forces in poverty, see WILLIAM JULIUS WILSON, *WHEN WORK DISAPPEARS: THE WORLD OF THE NEW URBAN POOR* 3–24, 51–86 (1996); William Julius Wilson, *Why Both Social Structure and Culture Matter in a Holistic Analysis of Inner-City Poverty*, 629 ANNALS AM. ACAD. POL. & SOC. SCI. 200, 203 (2010).

<sup>19</sup> On the treatment of individual deficiencies in poverty research, see Elijah Anderson, *The Iconic Ghetto*, 642 ANNALS AM. ACAD. POL. & SOC. SCI. 8, 13–14 (2012). Professor Anderson comments: “The inner-city poor are still commonly regarded as caught in a ‘tangle of pathology’ that reproduces a cycle or culture of poverty through generations of men who fail

often unseen socioeconomic dynamics and processes of impoverishment, such as the process of eviction within the private rental housing markets of urban neighborhoods like the West Grove.<sup>20</sup> Once made visible, the eviction of the poor in cities like Miami, New York, San Francisco, and Washington, D.C., no longer appears “exceptional, but rather the norm, part of landlords’ business models and poor people’s way of life.”<sup>21</sup>

For academics committed to a new law and sociology of poverty and inequality, and for legal advocates and policy reformers in anti-poverty and civil rights organizations as well as law school clinical programs and university research centers,<sup>22</sup> Reverend Robinson, Desmond, and others sound a call to revisit the inner city as a site of cultural and socio-legal study, and, moreover, as a context for experiential learning, qualitative research, and legal-political advocacy around concentrated poverty, neighborhood disadvantage, residential segregation, and public health in the built environment.<sup>23</sup> Their collective call arrives at a moment of renewed academic interest in the inner city<sup>24</sup> and resurgent grassroots activism in inner cities across the nation. For advocates waging fair housing and social justice campaigns, for academics studying poverty and inequality, and for activists struggling to

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as providers, women who bear children ‘out of wedlock,’ and youths who grow up without discipline. Increasingly, the well-off and the privileged are inclined to blame the state of the ghetto poor on the poor themselves, or on the policies developed to ameliorate persistent poverty.” *Id.* at 14 (quoting DANIEL PATRICK MOYNIHAN, OFFICE OF POLICY PLANNING AND RESEARCH, U.S. DEP’T OF LABOR, *THE NEGRO FAMILY: THE CASE FOR NATIONAL ACTION* (1965)); see generally Michèle Lamont & Mario Luis Small, *How Culture Matters: Enriching Our Understanding of Poverty*, in *THE COLORS OF POVERTY: WHY RACIAL AND ETHNIC DISPARITIES PERSIST* 76, 90–93 (Ann Chih Lin & David R. Harris eds., 2008); Mario Luis Small et al., *Reconsidering Culture and Poverty*, 629 *ANNALS AM. ACAD. POL. & SOC. SCI.* 6, 9–13 (2010).

<sup>20</sup> DESMOND, *supra* note 10, at 316–17.

<sup>21</sup> See David A. Dana, *An Invisible Crisis in Plain Sight: The Emergence of the “Eviction Economy,” Its Causes, and the Possibilities for Reform in Legal Regulation and Education*, 115 *MICH. L. REV.* 935, 935 (2017) (reviewing MATTHEW DESMOND, *EVICTED: POVERTY AND PROFIT IN THE AMERICAN CITY* (2016)); Jennifer Schuessler, *A Harvard Sociologist on Watching Families Lose Their Homes*, *N.Y. TIMES* (Feb. 19, 2016), <http://www.nytimes.com/2016/02/20/books/a-harvard-sociologist-on-watching-families-lose-their-homes.html>, archived at <https://perma.cc/RSB3-EUXS>.

<sup>22</sup> See, e.g., Joint Center for Housing Studies of Harvard University; Penn Institute for Urban Research; The Eviction Lab at Princeton University; Stanford Center on Poverty and Inequality; and Northwestern University / University of Chicago Joint Center for Poverty Research.

<sup>23</sup> On concentrated poverty, see William Julius Wilson, *Combating Concentrated Poverty in Urban Neighborhoods*, 7 *J. APPLIED SOC. SCI.* 135, 136–41 (2013); William Julius Wilson, *The Political and Economic Forces Shaping Concentrated Poverty*, 123 *POL. SCI. Q.* 555, 568–71 (2008–09); William Julius Wilson, *Understanding the Emergence and Persistence of Concentrated Urban Poverty*, in *AMERICAN DEMOCRACY AND THE PURSUIT OF EQUALITY* 117, 127–31 (Merlin Chowkwanyun & Randa Serhan eds., 2011).

<sup>24</sup> For recent studies of the inner city, see MITCHELL DUNEIER, *GHETTO: THE INVENTION OF A PLACE, THE HISTORY OF AN IDEA* 26–216, 217–37 (2016); Peter Marcuse, *De-spatialization and Dilution of the Ghetto: Current Trends in the United States*, in *THE GHETTO: CONTEMPORARY GLOBAL ISSUES AND CONTROVERSIES* 33–66 (Ray Hutchison & Bruce D. Haynes eds., 2012); Anmol Chaddha & William Julius Wilson, *Reconsidering the “Ghetto,”* 7 *CITY & COMMUNITY* 384, 384–88 (2008).

mobilize low-income communities of color in crisis, the subject of the inner city continues to be a focal point of innovative theory-practice integration in the fields of civil<sup>25</sup> and criminal justice.<sup>26</sup>

Indeed, today the inner city constitutes a critical point of convergence for scholarship on urban sociology<sup>27</sup> and anti-poverty and civil rights advocacy, especially in documenting and resisting the adverse health and social outcomes associated with neighborhood disadvantage<sup>28</sup> and residential segregation.<sup>29</sup> That resistance, displayed inside community meetings, legislative hearings, and federal and state courtrooms, spurs a renewed appreciation for the legal-political promise of the 1968 Fair Housing Act,<sup>30</sup> even when viewed in the doleful shadow of the Holy Week Uprisings of 1968,<sup>31</sup> the Report of the National Advisory Commission on Civil Disorders (“Kerner

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<sup>25</sup> See DEBORAH L. RHODE, ACCESS TO JUSTICE 19–24, 103–21 (2004); Sara Sternberg Greene, *Race, Class, and Access to Civil Justice*, 101 IOWA L. REV. 1263, 1278–81, 1313–16 (2016); Deborah L. Rhode & Scott L. Cummings, *Access to Justice: Looking Back, Thinking Ahead*, 30 GEO. J. LEGAL ETHICS 485, 486–90 (2017); Rebecca L. Sandefur, *Accessing Justice in the Contemporary USA: Findings from the Community Needs and Services Study* 4–10 (Am. Bar Found. 2014), [http://www.americanbarfoundation.org/uploads/cms/documents/sandefur\\_accessing\\_justice\\_in\\_the\\_contemporary\\_usa\\_aug\\_2014.pdf](http://www.americanbarfoundation.org/uploads/cms/documents/sandefur_accessing_justice_in_the_contemporary_usa_aug_2014.pdf), archived at <https://perma.cc/6HFX-86MV>; Rebecca L. Sandefur, *Access to Civil Justice and Race, Class, and Gender Inequality*, 34 ANN. REV. SOC. 339, 346–52 (2008).

<sup>26</sup> See generally MICHELLE ALEXANDER, THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS 178–220 (rev. ed. 2012); JAMES FORMAN JR., LOCKING UP OUR OWN: CRIME AND PUNISHMENT IN BLACK AMERICA 185–215 (2017); ELIZABETH HINTON, FROM THE WAR ON POVERTY TO THE WAR ON CRIME: THE MAKING OF MASS INCARCERATION IN AMERICA 250–332 (2016).

<sup>27</sup> See WILLIAM JULIUS WILSON, MORE THAN JUST RACE: BEING BLACK AND POOR IN THE INNER CITY 1–61, 133–55 (2009); WILLIAM JULIUS WILSON, THE DECLINING SIGNIFICANCE OF RACE: BLACKS AND CHANGING AMERICAN INSTITUTIONS 1–23, 62–121, 144–206 (3d ed. 2012); see also DOUGLAS S. MASSEY & NANCY A. DENTON, AMERICAN APARTHEID: SEGREGATION AND THE MAKING OF THE UNDERCLASS 1–82, 186–236 (1993).

<sup>28</sup> On predatory lending and neighborhood disadvantage, see Creola Johnson, *Fight Blight: Cities Sue to Hold Lenders Responsible for the Rise in Foreclosures and Abandoned Properties*, 2008 UTAH L. REV. 1169, 1173–87; *Bank of America Corp. v. City of Miami, Florida*, 137 S. Ct. 1296, 1301, 1304 (2017).

<sup>29</sup> On disparate impact and residential segregation, see Jonathan Zasloff, *The Price of Equality: Fair Housing, Land Use, and Disparate Impact*, 48 COLUM. HUM. RTS. L. REV. 98, 104–13 (2017); *Texas Dep’t of Hous. & Cmty. Affairs v. Inclusive Cmty. Project, Inc.*, 135 S. Ct. 2507, 2513, 2516 (2015).

<sup>30</sup> See Title VIII of the Civil Rights Act of 1968, Pub. L. No. 90-284, 82 Stat. 73 (1968), codified at 42 U.S.C. §§ 3601–3619 (2018).

<sup>31</sup> See PETER B. LEVY, THE GREAT UPRISING: RACE RIOTS IN URBAN AMERICA DURING THE 1960s 153–88, (2018).

Commission Report”),<sup>32</sup> and the assassination of the Reverend Martin Luther King, Jr. in April, 1968.<sup>33</sup>

Situated at the junction between urban sociology and civil rights law, the Fair Housing Act presents opportunities for collaborative, community-based advocacy around local, regional, and national issues of concentrated poverty, displacement, environmental health, and residential segregation. Despite those opportunities and more than fifty years of law reform campaigns in the field of fair housing, neither legal advocates nor political activists in gentrifying neighborhoods across the nation have been able to halt the pace of eviction or reduce the intensity of residential segregation.<sup>34</sup> Moreover, neither advocates nor activists have been able to refocus law reform campaigns on the vital intersection of fair housing, concentrated poverty, and environmental health and justice. On valences of efficacy and intersectionality, fair housing advocates and activists, along with hundreds of displaced low-income tenants and homeowners in the West Grove and other

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<sup>32</sup> See Report of the National Advisory Commission on Civil Disorders: Summary of Report (1968), <https://www.hsd.org/?view&did=35837>, archived at <https://perma.cc/6ETS-X62R>. Released in early 1968, the Kerner Commission Report presented findings of “[p]ervasive discrimination and segregation in employment, education and housing.” *Id.* at 9. The Report recommended that “[f]ederal housing programs . . . be given a new thrust aimed at overcoming the prevailing patterns of racial segregation.” *Id.* at 24; see also Janelle Jones, John Schmitt & Valerie Wilson, *50 Years After the Kerner Commission: African Americans Are Better Off in Many Ways But Are Still Disadvantaged by Racial Inequality*, ECON. POL’Y INST. 1 (2018), <https://www.epi.org/files/pdf/142084.pdf>, archived at <https://perma.cc/27UN-VADA>.

<sup>33</sup> The U.S. Department of Housing and Urban Development (“HUD”) links the passage of the Fair Housing Act to both the King assassination and the subsequent Holy Week Uprisings. In chronicling this history, HUD states: “The enactment of the federal Fair Housing Act on April 11, 1968 came only after a long and difficult journey. From 1966-1967, Congress regularly considered the fair housing bill, but failed to garner a strong enough majority for its passage. However, when the Rev. Dr. Martin Luther King, Jr. was assassinated on April 4, 1968, President Lyndon Johnson utilized this national tragedy to urge for the bill’s speedy Congressional approval. . . . With the cities rioting after Dr. King’s assassination, and destruction mounting in every part of the United States, the words of President Johnson and Congressional leaders rang the Bell of Reason for the House of Representatives, who subsequently passed the Fair Housing Act. Without debate, the Senate followed the House in its passage of the Act, which President Johnson then signed into law.” *History of Fair Housing*, U.S. DEP’T OF HOUSING AND URB. DEV., [https://www.hud.gov/program\\_offices/fair\\_housing\\_equal\\_opp/about/foeo/history](https://www.hud.gov/program_offices/fair_housing_equal_opp/about/foeo/history), archived at <https://perma.cc/U77D-74RZ> (last visited Mar. 10, 2019).

<sup>34</sup> For useful studies of eviction and residential segregation, see Antony Chum, *The Impact of Gentrification on Residential Evictions*, 36 URB. GEOGRAPHY 1083, 1096 (2015) (offering evidence that early-stage gentrification “may lead to increased housing demand and rent increases that precipitate heightened levels of evictions”); Ingrid Gould Ellen & Gerard Torrats-Espinoso, *Gentrification and Fair Housing: Does Gentrification Further Integration?*, HOUSING POL’Y DEBATE 11 (Aug. 19, 2018), [http://furmancenter.org/files/publications/gentrification\\_and\\_fair\\_housing.pdf](http://furmancenter.org/files/publications/gentrification_and_fair_housing.pdf), archived at <https://perma.cc/WRJ4-NGYZ> (“[S]ome predominantly minority neighborhoods that gentrified during the 1980s were potentially on a path to becoming predominantly white and experiencing the resegregation that many fear. More importantly, the predominantly minority neighborhoods that have gentrified since the year 2000 have experienced a more significant rise in white population in the short-run, and thus they may not see the same racial stability in the longer-run.”).

predominantly black inner-city Miami neighborhoods, bear daily witness to civil rights law's inner-city crisis.

In order to understand the crisis of fair housing law, and civil rights law more generally, in failing to alleviate concentrated poverty and ameliorate residential segregation in the nation's urban and suburban neighborhoods, and no less in failing to envision fair housing in the broader terms of environmental health and justice, this Article turns to law reform within the crucible of community-centered clinical practice. For academics teaching in interdisciplinary classrooms, researching in clinical field laboratories, and serving as advisors, counselors, or partners to community-based organizations, law reform combines the familiar practices of advocacy in administrative, legislative, and judicial settings with the collaborative practices of community outreach, education, and mobilization in secular and sometimes sacred spaces. Positioned in a university-housed law school clinical context, community-based law reform poses distinct pedagogical, institutional, and organizational challenges independent of social movement alliances. Acute treatments of those challenges may be found elsewhere.<sup>35</sup>

The purpose of this Article is not to debate the clinical pedagogy of community or social movement lawyering or to map a fair housing litigation war of maneuver, but to sketch a more modest, everyday practice of anti-poverty and civil rights advocacy rooted in a specific time and place. Like much of my recent writing, the Article arises out of a long, community-based law reform partnership between the University of Miami School of Law's Center for Ethics and Public Service ("the Center")<sup>36</sup> and a collection of local churches, nonprofit organizations, and civic associations today cooperating under the auspices of the Coconut Grove Village West Housing and Community Development Task Force ("Task Force"). Expanding upon the earlier work of the Center's Historic Black Church Program and Environmental Justice Clinic, the partnership enables law students, faculty, and staff to provide resources (e.g., rights education, fact investigation, and multidisciplinary research) to the Task Force in ways that are not only consistent with an integrated vision of fair housing, poverty law, and environmental justice, but also responsive to the self-determined needs and objectives of a vulnerable, underserved community. Initially spearheaded by the Coconut Grove Ministerial Alliance, a consortium of a dozen black churches located in the West Grove and in the abutting East Gables,<sup>37</sup> and the Coconut Grove

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<sup>35</sup> See Sameer M. Ashar, *Law Clinics and Collective Mobilization*, 14 CLINICAL L. REV. 355, 357 (2008); Sameer M. Ashar, *Public Interest Lawyers and Resistance Movements*, 95 CAL. L. REV. 1879, 1922 (2007).

<sup>36</sup> See CTR. FOR ETHICS & PUB. SERV., *supra* note 3, at 1.

<sup>37</sup> For discussion of the Coconut Grove Ministerial Alliance, see Anthony V. Alfieri, *Post-Racialism in the Inner City: Structure and Culture in Lawyering*, 98 GEO. L.J. 921, 927 (2010); Matthew Fowler, *Building Social Capital Through Place-Based Lawmaking: Case Studies of Two Afro-Caribbean Communities in Miami—The West Grove and Little Haiti*, 45 U. MIAMI INTER-AM. L. REV. 425, 438 n.65 (2014); Robert C. Jones, Jr., *Lifting Up the West Grove*, VERITAS ARCHIVE (Nov. 18, 2011), <https://web.archive.org/web/20111128145601/everi>

Village West Homeowners and Tenants Association, the Task Force daily demonstrates the promise of multidimensional advocacy for vulnerable communities and the potential of multidimensional advocacy training for their law school and university partners.<sup>38</sup>

The Article proceeds in four parts. Part I describes the current landscape of urban poverty and suburban impoverishment in America. Part II discusses inner-city displacement and suburban resegregation in Miami and other American metropolitan areas. Part III reviews fair housing litigation theories of disparate-impact and segregative-effect liability. Part IV examines the promise of fair housing law reform campaigns in combating concentrated poverty and residential segregation, and in integrating a vision of environmental health and justice.

## I. URBAN POVERTY AND SUBURBAN IMPOVERISHMENT

*“No, we don’t own no property.”*<sup>39</sup>

Poverty and segregation have marred America’s built environment for more than two centuries. This Part describes the current landscape of urban poverty and suburban impoverishment in Miami and other American metropolitan areas. The first section considers urban poverty, particularly the trauma of severe deprivation.

### A. Urban Poverty

Poverty scholars increasingly lament that the analytic tools of “mainstream social science” fail to grasp the complexities of economic hardship experienced by low-income individuals and families.<sup>40</sup> For scholars like Desmond and for advocates working at the juncture between housing and

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tas.univmiami.net/2011/11/18/lifting-up-the-west-grove/, archived at <https://perma.cc/CJ83-VQZ5>.

<sup>38</sup> See Scott L. Cummings & Douglas NeJaime, *Lawyering for Marriage Equality*, 57 UCLA L. REV. 1235, 1312–18 (2010); Sheila R. Foster & Brian Glick, *Integrative Lawyering: Navigating the Political Economy of Urban Redevelopment*, 95 CALIF. L. REV. 1999, 2004–05 (2007).

<sup>39</sup> Kirk Nielsen, *Fables of the Reconstruction*, MIAMI NEW TIMES (July 14, 2005) (quoting a 19-year-old resident of the West Grove), <https://www.miaminewtimes.com/news/fables-of-the-reconstruction-6339633>, archived at <https://perma.cc/N9LR-BBV9>.

<sup>40</sup> In discussing economic hardship, Desmond distinguishes between the economic status of the working and nonworking poor. He remarks: “Spending on welfare programs for the poor has increased substantially, but the beneficiaries of this spending have been the working poor and families just above or just below the federal poverty line. Three decades ago, the poorest families in America received most (56 percent) of the transfers going to families with private incomes below 200 percent of the federal poverty threshold; in recent years, those families received less than one-third (32 percent) of the transfers.” Matthew Desmond, *Severe Deprivation in America: An Introduction*, 1 RUSSELL SAGE FOUND. J. SOC. SCI. 1, 7 (2015) (footnote omitted); see also ARNE KALLEBERG, GOOD JOBS, BAD JOBS: THE RISE OF POLARIZED AND PRECARIOUS EMPLOYMENT SYSTEMS IN THE UNITED STATES, 1970s TO 2000s 2, 82–104 (2011) (documenting the spread of long-term unemployment).

environmental justice, for example the Poverty & Race Research Action Council,<sup>41</sup> the hardship of poverty extends beyond a simple quantitative calculus of family household income transfers and in-kind benefits.<sup>42</sup> Qualitatively, material deprivation varies in depth and breadth,<sup>43</sup> ranging from deep poverty<sup>44</sup> to extreme poverty<sup>45</sup> and overlapping political, economic, residential, and familial spheres.<sup>46</sup> In this sense, poverty is multidimensional, affecting individuals, households, institutions, and the built environment itself. The multidimensional quality of poverty, Desmond explains, implicates culture, psychology, and inequality through the accretion of past hardships, traumas, and disadvantages.<sup>47</sup>

Advocates and ethnographers frequently hear low-income tenants and homeowners talk frankly and obliquely of past hardships, traumas, and disadvantages in private interviews, public forums, and oral histories. At West Grove Task Force meetings, for example, we hear such talk routinely, talk of struggling families, near bankrupt churches, underfunded schools, and derelict houses. And yet, Desmond points out, neither the survey data nor the ethnographic fieldwork of social science provides the methodologies or concepts sufficient to capture the full scope—material scarcity, psychological turmoil, degree of hardship, and social suffering—of the experience of poverty.<sup>48</sup> The absence of social science methodologies and concepts well-suited to rendering the injuries of inner-city life noticeable to policymakers,

<sup>41</sup> Founded in 1989, the Poverty & Race Research Action Council (“PRRAC”) is a Washington, D.C.-based civil rights law and policy organization dedicated to the promotion of “research-based advocacy strategies to address structural inequality and disrupt the systems that disadvantage low-income people of color.” *About, POVERTY & RACE RESEARCH ACTION COUNSEL*, <https://prrac.org/vision/>, archived at <https://perma.cc/D5WZ-9QHJ>. PRRAC’s “current work focuses on the areas of housing, education, and environmental justice, with a focus on developing actionable policies to overcome the mechanisms that continue to reproduce historical patterns of racial segregation.” *Id.*

<sup>42</sup> See *How Is Poverty Measured in the United States?*, CTR. FOR POVERTY RESEARCH, UNIV. OF CAL., DAVIS, <https://poverty.ucdavis.edu/faq/how-poverty-measured-united-states>, archived at <https://perma.cc/36WK-LLAY> (last updated Dec. 17, 2018).

<sup>43</sup> See Helen Levy, *Income, Poverty, and Material Hardship Among Older Americans*, 1 RUSSELL SAGE FOUND. J. SOC. SCI. 55, 56 (2015).

<sup>44</sup> See Desmond, *supra* note 40, at 89; see also LAUDAN ARON, WENDY JACOBSON, & MARGERY AUSTIN TURNER, ADDRESSING DEEP AND PERSISTENT POVERTY: A FRAMEWORK FOR PHILANTHROPIC PLANNING AND INVESTMENT 3, 7–12 (2013); Liana Fox et al., *Trends in Deep Poverty from 1968 to 2011: The Influence of Family Structure, Employment Patterns, and the Safety Net*, 1 RUSSELL SAGE FOUND. J. SOC. SCI. 14, 15 (2015).

<sup>45</sup> See Desmond, *supra* note 40, at 2; see also H. Luke Shaefer, Kathryn Edin, & Elizabeth Talbert, *Understanding the Dynamics of \$2-a-Day Poverty in the United States*, 1 RUSSELL SAGE FOUND. J. SOC. SCI. 120, 121 (2015).

<sup>46</sup> Desmond, *supra* note 40, at 2.

<sup>47</sup> *Id.* See generally Lamont & Small, *supra* note 19, at 90; Orlando Patterson, *The Social and Cultural Matrix of Black Youth*, in *The Cultural Matrix: Understanding Black Youth* 45–135 (Orlando Patterson ed., 2015); KRISTIN L. PERKINS & ROBERT J. SAMPSON, *Compounded Deprivation in the Transition to Adulthood: The Intersection of Racial and Economic Inequality Among Chicagoans, 1995–2013*, 1 RUSSELL SAGE FOUND. J. SOC. SCI. 35, 36 (2015).

<sup>48</sup> Desmond, *supra* note 40, at 3.

translatable to courts, and conveyable to citizens in the public square hinders the ability of advocates to describe the experience of poverty.

Desmond's ethnographic recasting of poverty in terms of "the accumulation of multiple disadvantages across various dimensions and institutions"<sup>49</sup> and his relational correlation of poverty to adversity shifts the descriptive project of fair housing and environmental health advocacy from isolating a specific marker or narrative of poverty, such as eviction, to encapsulating the multifaceted dynamics of accumulated disadvantage, such as racial segregation and neighborhood instability. This pluralistic narrative departs from descriptions of poverty as a single, totalizing trait that universally characterizes all individuals and families,<sup>50</sup> pivoting instead to relational descriptions of socio-legal power struggles and outcomes, such as discrimination and displacement.<sup>51</sup> From this narrative and methodological perspective, poverty emerges in the West Grove as a function of racialized power. Accordingly, in the advocacy narratives of the West Grove Task Force, poverty ceases to be about the claimed racial inferiority of Afro-Caribbean and African American culture, the apathy and passivity of Afro-Caribbean and African American society, or the corruption and incompetence of Afro-Caribbean and African American leadership. Rather, poverty and the degradation of the built environment signify the historical outcome of racialized power relations between black tenants and white landlords, an outcome correctly ascribed to enduring, government-sanctioned racial discrimination and violence (threats, intimidation, and coercion).

Albeit more accurate, the Task Force's narrative redescription of the experience of poverty for tenants and homeowners in the West Grove is insufficient to overturn entrenched, racialized power relations regulating inner-city housing and the built environment. To realign hierarchical relations among low-income tenants and homeowners, landlords and developers, and government powerbrokers, fair housing advocates must acquire a deeper appreciation of tenant, homeowner, and neighborhood vulnerability – its origins, indicators, and holistic accounts. In fair housing law reform campaigns, acknowledging such vulnerability is crucial to establishing trust, safeguard-

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<sup>49</sup> Matthew Desmond & Bruce Western, *Poverty in America: New Directions and Debates*, 44 ANN. REV. SOC. 305, 314 (2018) ("Often, poverty is also addiction, mental illness, violence, residential instability, poor health, and unsafe neighborhoods."). *But see* Michael Burawoy, *On Desmond: the Limits of Spontaneous Sociology*, 46 THEORY & SOC'Y 261, 262 (2017) (assailing Desmond's relational ethnography as "problematic—both with respect to how it positions ethnography within the field of sociology and to how it limits his own scientific practice").

<sup>50</sup> Desmond & Western, *supra* note 49, at 314. *See generally* Matthew Desmond, *Relational Ethnography*, 43 THEORY & SOC'Y 547 (2014); Matthew Desmond, *How Should We Study Human Suffering?*, 37 ETHNIC & RACIAL STUD. 1761, 1763 (2014).

<sup>51</sup> Desmond & Western, *supra* note 49, at 314 ("Power is expressed through exploitation in housing and employment. Sometimes power is expressed through a political process that institutionalizes segregation and social closure; other times, it is enforced through terroristic violence or the confiscation of property.").

ing rights, encouraging inter-group cooperation, and rallying community-wide participation.

Desmond's notion of severe deprivation elucidates the experience of housing and neighborhood vulnerability. For Desmond, severe deprivation comprises acute, compounded, and persistent hardship.<sup>52</sup> Acute hardship denotes the economic condition of deep poverty experienced by households below the federal poverty line.<sup>53</sup> Defined by the U.S. Census Bureau, deep poverty designates "a household with a total cash income below 50 percent of its poverty threshold."<sup>54</sup> According to 2017 U.S. Census Bureau data, 39.7 million Americans lived below the federal poverty threshold<sup>55</sup> and 18.5 million lived in deep poverty.<sup>56</sup> In Miami-Dade County, 505,182 residents—approximately 19 percent of the total population—lived below the federal poverty threshold,<sup>57</sup> and 193,357—roughly 7 percent of the total popula-

<sup>52</sup> Desmond, *supra* note 40, at 3; *see also* LaShawnDa Pittman, *How Well Does the "Safety Net" Work for Family Safety Nets? Economic Survival Strategies Among Grandmother Caregivers in Severe Deprivation*, 1 RUSSELL SAGE FOUND. J. SOC. SCI. 78, 94 (2015); Kristin S. Seefeldt & Heather Sandstrom, *When There Is No Welfare: The Income Packaging Strategies of Mothers Without Earnings or Cash Assistance Following an Economic Downturn*, 1 RUSSELL SAGE FOUND. J. SOC. SCI. 139, 141 (2015).

<sup>53</sup> PETER EDELMAN, *SO RICH, SO POOR: WHY IT'S SO HARD TO END POVERTY IN AMERICA* 28, 81-100 (2012); Martha Bailey & Sheldon Danziger, *Legacies of the War on Poverty, in LEGACIES OF THE WAR ON POVERTY 1-36* (Martha Bailey & Sheldon Danziger eds., 2013).

<sup>54</sup> *See What is "Deep Poverty"?*, CENTER FOR POVERTY RESEARCH AT THE UNIVERSITY OF CALIFORNIA, DAVIS, <https://poverty.ucdavis.edu/faq/what-deep-poverty>, archived at <https://perma.cc/P7FJ-3DYL>; KAYLA FONTENOT, JESSICA SEMEGA, & MELISSA KOLLAR, *INCOME AND POVERTY IN THE UNITED STATES: 2017 11* (U.S. Census Bureau Sept. 2018), <https://www.census.gov/content/dam/Census/library/publications/2018/demo/p60-263.pdf>, archived at <https://perma.cc/VX2D-EFK2>; Serena Lei, *The Unwaged War on Deep Poverty*, URBAN INSTITUTE (Dec. 15, 2013) ("Deep poverty is defined as having income below half the federal poverty level . . ."), <https://www.urban.org/features/unwaged-war-deep-poverty>, archived at <https://perma.cc/8NHR-YTBG>. Unsurprisingly, "[d]eep poverty is associated with greater levels of material hardship—particularly food insecurity—than is poverty closer to the poverty threshold." H. Luke Shaefer, Marybeth Mattingly, & Kathryn Edin, *State of the Union 2018: Poverty, in PATHWAYS: THE POVERTY AND INEQUALITY REPORT - GENDER 23, 23-24* (Stanford Center on Poverty and Inequality 2018) ("Deep poverty appears to be more 'sticky' as well, in the sense that those experiencing it tend to remain in it for longer spells.") (footnote omitted), [https://inequality.stanford.edu/sites/default/files/Pathways\\_SOTU\\_2018\\_poverty.pdf](https://inequality.stanford.edu/sites/default/files/Pathways_SOTU_2018_poverty.pdf), archived at <https://perma.cc/M2ZM-6PAX>.

<sup>55</sup> KAYLA FONTENOT, JESSICA SEMEGA, & MELISSA KOLLAR, *INCOME AND POVERTY IN THE UNITED STATES: 2017 11* (U.S. Census Bureau Sept. 2018), <https://www.census.gov/content/dam/Census/library/publications/2018/demo/p60-263.pdf>, archived at <https://perma.cc/VX2D-EFK2> ("In 2017, there were 39.7 million people in poverty, not statistically different from the number in poverty in 2016.") (citations omitted).

<sup>56</sup> *Id.* at 17 ("In 2017, 18.5 million people reported family income below one-half of their poverty threshold."). In urban areas, defined as living "inside principal cities," 16.572 million Americans lived below the federal poverty threshold. *Id.* at 16. In Florida, 3,070,972 residents lived below the federal poverty threshold and 1,344,631 lived in deep poverty. *See What Is the Current Poverty Rate in the United States?*, CENTER FOR POVERTY RESEARCH AT THE UNIVERSITY OF CALIFORNIA AT DAVIS, <https://poverty.ucdavis.edu/faq/what-current-poverty-rate-united-states>, archived at <https://perma.cc/B759-VAPB> (last visited Apr. 14, 2019).

<sup>57</sup> U.S. Census Bureau, American FactFinder, Poverty Status in the Past 12 Months: 2013-2017 American Community Survey 5-Year Estimates, Table at 1 (Miami-Dade County, Florida), <https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=cf>.

tion—lived in deep poverty.<sup>58</sup> In the City of Miami, 112,478 residents—25.8 percent of the total population—lived below the federal poverty threshold,<sup>59</sup> and 40,700—9 percent of the total population—lived in deep poverty.<sup>60</sup> Within the population of the City of Miami, “Haitians and African Americans are more likely than any other major ethnic groups to live in poverty, with poverty rates of 45% and 44%, respectively.”<sup>61</sup>

In Miami’s West Grove, where “almost half (46%) of . . . households earn less than 25k,”<sup>62</sup> the acute hardship of deep poverty is exacerbated by the accumulation and aggregation of disadvantage. Desmond’s concept of compounded hardship emphasizes “the clustering of different kinds of disadvantage across multiple dimensions (psychological, social, material) and institutions (work, family, prison).”<sup>63</sup> This clustering highlights “the *linked ecology* of social maladies and broken institutions” for low-income tenants and homeowners.<sup>64</sup> To Desmond, these compounded hardships give rise to persistent disadvantage manifested in “the lasting effects of early-life trauma, including abuse, hunger, and violence,”<sup>65</sup> the effects of “deprivation experienced over long stretches, even lifetimes,”<sup>66</sup> and the effects of “generational poverty passed down from parents to children.”<sup>67</sup> Even without evi-

<sup>58</sup> *Id.* at 2. The FIU Metropolitan Center reports that “Miami-Dade County’s poverty rate since 2000 has been consistently above the national average.” FLA. INT’L UNIV. METRO. CTR., MIAMI-DADE COUNTY PROSPERITY INITIATIVES FEASIBILITY STUDY 16 (May 2016), [https://metropolitan.fiu.edu/research/services/economic-and-housing-market-analysis/prosperity-initiative-research-study\\_final.pdf](https://metropolitan.fiu.edu/research/services/economic-and-housing-market-analysis/prosperity-initiative-research-study_final.pdf), archived at <https://perma.cc/H939-CPXP>.

<sup>59</sup> U.S. Census Bureau, American FactFinder, Poverty Status in the Past 12 Months: 2013-2017 American Community Survey 5-Year Estimates, Table at 3 (City of Miami, Florida), <https://factfinder.census.gov/aces/tables/services/jsf/pages/productview.xhtml?src=cf>.

<sup>60</sup> *Id.* at 3.

<sup>61</sup> CORP. FOR ENTER. DEV., RACIAL WEALTH DIVIDE IN MIAMI 3 (Oct. 2016), [https://prosperitynow.org/files/resources/Racial\\_Wealth\\_Divide\\_in\\_Miami\\_OptimizedforScreenReaders.pdf](https://prosperitynow.org/files/resources/Racial_Wealth_Divide_in_Miami_OptimizedforScreenReaders.pdf), archived at [perma.cc/UM7H-N9V2](https://perma.cc/UM7H-N9V2).

<sup>62</sup> See FLA. INT’L UNIV. METRO. CTR., PERIODIC PUBLICATIONS: NEIGHBORHOOD CHANGES, <https://metropolitan.fiu.edu/research/periodic-publications/neighborhood-changes/>, archived at <https://perma.cc/8GYJ-VXRF> (last visited Feb. 25, 2019).

<sup>63</sup> Desmond, *supra* note 40, at 3; see also Sabina Alkire & James Foster, *Counting and Multidimensional Poverty Measurement*, 95 J. PUB. ECON. 476, 479 (2011). On community reentry obstacles for ex-offenders in the areas of housing, education, and employment, see Michael Pinard, *Collateral Consequences of Criminal Convictions: Confronting Issues of Race and Dignity*, 85 N.Y.U. L. REV. 457, 490 (2010); Anthony C. Thompson, *Navigating the Hidden Obstacles to Ex-Offender Reentry*, 45 B.C. L. REV. 255, 258 (2004); Christy A. Visher, Sara A. Debus-Sherrill, & Jennifer Yahner, *Employment After Prison: A Longitudinal Study of Former Prisoners*, 28 JUST. Q. 698, 700 (2010); Bruce Western et al., *Stress and Hardship After Prison*, 120 AM. J. SOC. 1512, 1540 (2015).

<sup>64</sup> Desmond, *supra* note 40, at 4.

<sup>65</sup> *Id.* (emphasis omitted); see also Jack Shonkoff et al., *The Lifelong Effects of Early Childhood Adversity and Toxic Stress*, 129 PEDIATRICS 232, 236 (2012).

<sup>66</sup> Desmond, *supra* note 40, at 4 (emphasis omitted); see also CHRISTOPHER JENCKS, RE-THINKING SOCIAL POLICY: RACE, POVERTY, AND THE UNDERCLASS 120-203 (1992); Jeanne Brooks-Gunn & Greg Duncan, *The Effects of Poverty on Children*, 7 THE FUTURE OF CHILDREN 55, 56-57, 67-68 (1997).

<sup>67</sup> Desmond, *supra* note 40, at 4 (emphasis omitted); see also PATRICK SHARKEY, STUCK IN PLACE: URBAN NEIGHBORHOODS AND THE END OF PROGRESS TOWARD RACIAL EQUALITY 24-46, 91-135 (2013).

dence of early-life trauma, West Grove tenants and homeowners manifest the lingering influences of past wrongs and inter-generational disadvantages, for some in the form of incarceration,<sup>68</sup> a disadvantage Task Force partners allude to reluctantly in veiled references to family members, school classmates, and next-door neighbors.

For the Task Force and for other fair housing and environmental health coalitions piloting law reform campaigns, Desmond's move toward a more comprehensive sociology of poverty is instructive because it underscores both the complexity and the trauma of deprivation.<sup>69</sup> Declining to rehearse the distinction between the deserving and undeserving poor<sup>70</sup> or to revisit previous debate on the underclass,<sup>71</sup> Desmond employs the concept of severe deprivation to discern the vulnerability of individuals and families across the multiple vectors of their lives, as tenants and homeowners, parents and parishioners, and schoolmates and neighbors.<sup>72</sup> His research affords fair housing advocates guidance in collaborating with, and preserving the rights of, West Grove tenants and homeowners traumatized by a lifetime of *de jure* and *de facto* segregation.

For more than a century, the Afro-Caribbean and African American tenants and homeowners of the West Grove have experienced the acute, compounded, and persistent hardship of severe deprivation. Originally a Jim Crow-segregated, 65-block, half-square-mile<sup>73</sup> enclave founded in the 1880s,

<sup>68</sup> See DAVID COLE, *NO EQUAL JUSTICE: RACE AND CLASS IN THE AMERICAN CRIMINAL JUSTICE SYSTEM* 16–62, 169–80 (1999); Elizabeth Hinton, “A War within Our Own Boundaries”: *Lyndon Johnson’s Great Society and the Rise of the Carceral State*, 102 J. AM. HIST. 100, 102 (2015); Heather Ann Thompson, *Why Mass Incarceration Matters: Rethinking Crisis, Decline, and Transformation in Postwar American History*, 97 J. AM. HIST. 703, 714 (2010); Jonathan Simon, *Is Mass Incarceration History?*, 95 TEX. L. REV. 1077, 1101 (2017) (reviewing ELIZABETH HINTON, *FROM THE WAR ON POVERTY TO THE WAR ON CRIME: THE MAKING OF MASS INCARCERATION IN AMERICA* (2016)).

<sup>69</sup> Desmond, *supra* note 40, at 9; see also David Dante Troutt, *Trapped in Tragedies: Childhood Trauma, Spatial Inequality, and Law*, 101 MARQ. L. REV. 601, 605 (2018) (“The multidisciplinary literature will show that the severest conditions of structural (or place-based) inequality are internalized by human beings through complex psychological trauma, with devastating effects on health as well as social capital and personal mobility.”) (footnote omitted).

<sup>70</sup> MICHAEL B. KATZ, *THE UNDESERVING POOR* 1-49 (2d ed. 2013); Khiara M. Bridges, *The Deserving Poor, the Undeserving Poor, and Class-Based Affirmative Action*, 66 EMORY L.J. 1049, 1052 (2017); Christopher D. DeSante, *Working Twice as Hard To Get Half as Far: Race, Work Ethic, and America’s Deserving Poor*, 57 AM. J. POL. SCI. 342, 352 (2013); Robert Moffitt, *The Deserving Poor, the Family, and the U.S. Welfare System*, 52 DEMOGRAPHY 729, 745 (2015). But see Noah D. Zatz, *Poverty Unmodified?: Critical Reflections on the Deserving/Undeserving Distinction*, 59 UCLA L. REV. 550, 573 (2012).

<sup>71</sup> See WILLIAM JULIUS WILSON, *THE TRULY DISADVANTAGED: THE INNER CITY, THE UNDERCLASS, AND PUBLIC POLICY* 251–301 (2d ed. 2012); Loïc J.D. Wacquant & William Julius Wilson, *The Cost of Racial and Class Exclusion in the Inner City, in THE GHETTO UNDERCLASS: SOCIAL SCIENCE PERSPECTIVES* 25–42 (William Julius Wilson ed., 1993).

<sup>72</sup> Desmond, *supra* note 40, at 4. See also Luke H. Shaefer & Kathryn Edin, *Rising Extreme Poverty in the United States and the Response of Federal Means-Tested Transfer Programs*, 87 SOC. SERV. REV. 250 (2013).

<sup>73</sup> Robert C. Jones, Jr., *West Side Story*, MIAMI MAGAZINE (Spring 2002), <http://www6.miami.edu/miami-magazine/spring02/westside.html>, archived at <https://perma.cc/7QK9-QJEW>.

the West Grove served as a “home to Miami’s early black Bahamian settlers[,]”<sup>74</sup> and later as a sociocultural space for African Americans laboring on the Florida East Coast Railway<sup>75</sup> and fleeing the racial violence (lynching and mob violence) of the Deep South.<sup>76</sup> In 1896, “Black male registered voters were used to achieve the required number of voters needed to incorporate the new city of Miami . . . .”<sup>77</sup> They were “later disenfranchised.”<sup>78</sup> Starting in 1925, with the annexation of Coconut Grove by the City of Miami, “resources to the [West] Grove’s black communities dwindled, kicking off a slow decline.”<sup>79</sup> During the 1940s, small “businesses along the [West Grove’s] once thriving Grand Avenue closed down and houses fell into disrepair.”<sup>80</sup> In the late 1950s, Dade County “demolished swathes of single-family homes, replacing them with concrete public housing projects with absentee landlords.”<sup>81</sup> Inner-city residents evicted from slum clearance projects in north Miami’s Central Negro District, now Overtown, “moved

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<sup>74</sup> Roshan Nebhrajani, *West Grove Wants to Make a Comeback on Its Own Terms*, NEW TROPIC (May 17, 2016), <https://thenewtropic.com/west-grove-development/>, archived at <https://perma.cc/BJ5G-T6JK>; see also ARVA MOORE PARKS & BO BENNETT, *IMAGES OF COCONUT GROVE 27–29* (2010); Arva Moore Parks, *History of West Coconut Grove in the Context of Miami*, in *THE LIVING TRADITIONS OF COCONUT GROVE* 38, 39 (Samina Quraeshi ed., 2002). See generally Raymond A. Mohl, *Black Immigrants: Bahamians in Early Twentieth-Century Miami*, 65 FLA. HIST. Q. 271, 271–72 (1987).

<sup>75</sup> In the late 1800s, black rail workers in Miami established the Railroad Shop Colored Addition (“Railroad Shop”), a black residential neighborhood in the central city district. See *The Miami Housing Policy Timeline*, Miami Housing Solutions Lab, Office of Civic and Community Engagement, <http://cdn.miami.edu/wda/cce/Documents/Miami-Housing-Solutions-Lab/raceAndProperty.html>, archived at <https://perma.cc/NDG3-6SLC>. Residents of the Railroad Shop community “were evicted in the late 1940s to build new public amenities for nearby white households.” *Id.*; Bryan Bowman & Kathy Roberts Forde, *How Slave Labor Built the State of Florida — Decades After the Civil War*, WASH. POST (May 17, 2018) (reporting that “[t]hroughout the 1880s and 1890s, [Henry] Flagler, like many white industrialists across the South, leased African American convict labor from the state.”), [https://www.washingtonpost.com/news/made-by-history/wp/2018/05/17/how-slave-labor-built-the-state-of-florida-decades-after-the-civil-war/?utm\\_term=.8f9407a73afb](https://www.washingtonpost.com/news/made-by-history/wp/2018/05/17/how-slave-labor-built-the-state-of-florida-decades-after-the-civil-war/?utm_term=.8f9407a73afb), archived at [perma.cc/WQ28-T7335](https://perma.cc/WQ28-T7335); Henry S. Marks, *Labor Problems Of The Florida East Coast Railway Extension From Homestead To Key West: 1905-1907*, 32 TEQUESTA 28, 32 (1972).

<sup>76</sup> See DUNN, *supra* note 14, at 161 (“At the end of the Second World War, blacks in great numbers began to migrate from the rural South into the cities of the Northeast and into growing southern cities such as Atlanta, Richmond, and Miami.”); Andres Viglucci, *Gentrification of West Grove: Redevelopment Comes to West Grove, But Not Everyone’s Cheering*, MIAMI HERALD, Oct. 31, 2010, at A1 (“Bolstered by black settlers from Georgia and the Carolinas, the [West Grove] enclave grew through the years of legally enforced segregation into the 1960s, becoming an economically diverse, self-contained community that included business people, teachers, police officers, doctors and lawyers, while always retaining a Bahamian character.”).

<sup>77</sup> THE KIRWAN INSTITUTE FOR THE STUDY OF RACE AND ETHNICITY AT THE OHIO STATE UNIVERSITY ET AL., *THE COLOR OF WEALTH IN MIAMI* 13 (Feb. 2019), <http://kirwaninstitute.osu.edu/wp-content/uploads/2019/02/The-Color-of-Wealth-in-Miami-Metro.pdf>, archived at <https://perma.cc/5PC4-DCQL>.

<sup>78</sup> *Id.*

<sup>79</sup> Nebhrajani, *supra* note 74.

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

into the large apartment buildings that were replacing some houses.”<sup>82</sup> In the 1960s and 1970s, many of West Grove’s “early Bahamian families moved away . . . tearing apart the rich social fabric of the community.”<sup>83</sup> Not unexpectedly, “[i]ntegration in the 1960s led to the exodus of many middle-class families to wealthier communities like Richmond Heights, in southwest Miami-Dade County.”<sup>84</sup> Soon “drugs and crime took over the neighborhood.”<sup>85</sup> In recent years, “city and county officials and developers made a slew of promises to revitalize the [West Grove]— among them a central business district along Grand Avenue, historic preservation for the neighborhood’s early Bahamian homes, and community-centered affordable housing options.”<sup>86</sup> Yet, “nothing happened.”<sup>87</sup>

Today, in the West Grove, “more than 40 percent of 3,000 residents live below the poverty level and median household income is less than a third that of neighboring Coral Gables.”<sup>88</sup> Distressed physically, the landscape of the West Grove is disfigured by “abandoned buildings and vacant lots, almost 200 at last count . . . .”<sup>89</sup> Similarly, a substantial portion of the population of the West Grove is scarred by the acute hardship of deep poverty. Here and elsewhere in Miami, deep poverty compounds the hardship of race by clustering disadvantage across manifold dimensions (psychological, so-

<sup>82</sup> Robert Silk, *Area Chooses Path for Redevelopment*, SUN-SENTINEL (Nov. 24, 2002), <https://www.sun-sentinel.com/news/fl-xpm-2002-11-24-0211230469-story.html>, archived at <https://perma.cc/GW2R-GDF2>. On the history of the Central Negro District and Overtown, see Andrea Eaton, *Impact of Urban Renewal or Land Development Initiatives on African-American Neighborhoods in Dade County Florida*, 3 HOW. SCROLL SOC. JUST. L. REV. 49, 53 (1995) (“Colored Town . . . was covered with tiny dilapidated shacks, sometimes as many as fifteen on a single fifty-by-one hundred foot lot. Most buildings lacked electricity, toilets, bathing facilities, and hot water. Municipal services were noticeable by their absence, streets were unpaved and unlit, and contagious diseases were rampant . . . Blacks were heavily concentrated in this shack town because there were few other places for them to live in Miami at the time.”) (citing Richard A. Mohl, *Trouble in Paradise: Race and Housing in Miami during the New Deal Era*, 19 PROLOGUE 9 (Spring 1987)) (footnote omitted).

<sup>83</sup> Nebhrajani, *supra* note 74.

<sup>84</sup> Silk, *supra* note 82. Anderson explains that structural economic changes impinging on inner-city ghettos — increasing impoverishment and social isolation — “undermined the quality of life in many inner-city communities and accelerated the departure of well-educated, middle-class families for neighborhoods with better schools and services. This exodus deprived the black community of many of its leaders and role models.” Anderson, *supra* note 19, at 13–14 (“The black professionals who head social service agencies and health centers are not an adequate substitute for the scores of local businesspeople, ministers, teachers, lawyers, doctors, and nurses who lived in the community and led many black organizations.”) (citations omitted).

<sup>85</sup> Nebhrajani, *supra* note 74; see also Naomi Schoenbaum, *Stuck or Rooted? The Costs of Mobility and the Value of Place*, 127 YALE L.J. F. 458 (2017), <https://www.yalelawjournal.org/forum/stuck-or-rooted>, archived at <https://perma.cc/9ZTC-G33N>.

<sup>86</sup> Nebhrajani, *supra* note 74.

<sup>87</sup> *Id.*

<sup>88</sup> Jones, Jr., *West Side Story*, *supra* note 73; see also Anthony Chase, *In the Jungle of Cities*, 84 MICH. L. REV. 737, 755, n.46 (1986) (book review) (noting “the unusual proximity of very wealthy whites and very poor blacks in some parts of residential Miami” and history of “racially mixed neighborhood patterns”).

<sup>89</sup> Jones, Jr., *West Side Story*, *supra* note 73.

cial, and material), around multiple institutions (family, school, and workplace), and among inner-city and outer-ring neighborhoods.<sup>90</sup>

Every day the Task Force confronts the psychological, social, and material dimensions of neighborhood disadvantage. Among the common indicators of disadvantage encountered in the West Grove are chronic stress and disease, environmental contamination, eviction and harassment, food insecurity, premature mortality, violence, and incarceration. The neighborhood-based clustering of individual, group, and institutional disadvantage produces permanent hardship for tenants and homeowners weighted by the effects of early-life trauma, long-term deprivation, and inter-generational poverty.<sup>91</sup> In these respects, the West Grove illustrates the lingering, traumatic effects of poverty, environmental despoliation, and the Jim Crow legacies of systemic racism. The ongoing mass eviction, displacement, and forced out-migration of black tenants and homeowners from the West Grove geographically extends the traumatic effects of poverty and the legacies of systemic racism to the outer-ring suburbs of Miami-Dade County, reproducing an impoverished and segregated built environment akin to the former Jim Crow neighborhoods of inner-city Miami. The next section traces the history of black suburban migration, tracking sociodemographic shifts out of the inner city propelled by the rising economic opportunity, housing integration, and voluntary class flight of the late twentieth century and later slowed by the mounting economic inequality, residential segregation, and involuntary displacement of the early twenty-first century.

### B. Suburban Migration and Impoverishment

This section addresses the suburban impoverishment attendant to the inner-city displacement and out-migration of low-income tenants and homeowners from the West Grove to the inner- and outer-ring suburbs of Miami-Dade County. Long underway in Miami and other metropolitan regions of the nation, out-migration reproduces the conditions of poverty and segregation and results in adverse health and social outcomes for individuals, families, and the surrounding built environment.<sup>92</sup> Gauged by public

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<sup>90</sup> See MARVIN DUNN, A HISTORY OF FLORIDA: THROUGH BLACK EYES 76–77, 192–210 (2016); Eaton, *supra* note 82, at 50–60; Richard A. Mohl, *Trouble in Paradise: Race and Housing in Miami During the New Deal Era*, 19 PROLOGUE 9 (1987).

<sup>91</sup> See ALEJANDRO PORTES & ALEXANDER STEPICK, CITY ON THE EDGE: THE TRANSFORMATION OF MIAMI 176–202 (1994).

<sup>92</sup> See Andrea Cases et al., *Housing Relocation Policy and Violence: A Literature Review*, 17 TRAUMA, VIOLENCE, & ABUSE 601, 601 (2016) (reviewing literature on violent crime in destination neighborhoods post relocation and finding that relocated residents may not experience less violence or improved safety in their new communities); Matthew Desmond & Tracey Shollenberger, *Forced Displacement From Rental Housing: Prevalence and Neighborhood Consequences*, 52 DEMOGRAPHY 1751, 1763 (2015) (estimating that renters who experienced a forced move live in neighborhoods with significantly higher poverty and crime rates than those who moved voluntarily and finding evidence that black renters experienced significant increases in both neighborhood poverty and crime rates between moves relative to white renters)

administrative operations and service delivery functions, the predominantly black, low-income suburban municipalities prevalent in Miami-Dade County and elsewhere suffer from inadequate public education, recreation, social service, and transportation systems<sup>93</sup> as well as meager private labor market opportunities largely confined to low-wage industries.<sup>94</sup> Such minimal private and public infrastructure scaffolding impedes residential mobility<sup>95</sup> and stifles economic productivity.<sup>96</sup> The concentration of “[p]ersistent geographic poverty” in Miami-Dade County, the Florida International University Metropolitan Center (“FIU Metropolitan Center”) reports, “results in higher crime rates, underperforming public schools, poor housing and health conditions, as well as limited access to private services and job opportunities.”<sup>97</sup> The “urgency and complexity” of the conditions of concentrated poverty, the FIU Metropolitan Center adds, places a heavy “burden on community development organizations with limited financial resources and management capacity.”<sup>98</sup>

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(footnotes omitted); Danya E. Keene & Arline T. Geronimus, “Weathering” *HOPE VI: the Importance of Evaluating the Population Health Impact of Public Housing Demolition and Displacement*, 88 J. URB. HEALTH 417, 417 (2011) (concluding that relocated HOPE VI residents experienced few improvements to the living conditions and economic realities that are likely sources of stress and illness and finding that relocated residents must contend with new material realities without the health-protective, community-based social resources that they often rely on in public housing); Deborah Wallace, *Discriminatory Mass De-Housing and Low-Weight Births: Scales of Geography, Time, and Level*, 88 J. URB. HEALTH 454, 454 (2011) (finding that New York City housing destruction of the 1970s continued to influence low birthweight incidence indirectly in 2008).

<sup>93</sup> See Michelle Wilde Anderson, *New Minimal Cities*, 123 YALE L.J. 1118, 1157–73 (2014); Michelle Wilde Anderson, *Cities Inside Out: Race, Poverty, and Exclusion at the Urban Fringe*, 55 UCLA L. REV. 1095, 1100–12 (2008); see also David Schleicher, *City Unplanning*, 122 YALE L.J. 1670, 1679 (2013).

<sup>94</sup> Tanvi Misra, *Confronting the Myths of Suburban Poverty*, CITY LAB (July 6, 2017) (interview with Scott Allard) (explaining that “there are no longer large numbers of good-paying, low-skilled jobs in suburban regions”), <https://www.citylab.com/solutions/2017/07/confronting-the-myths-about-suburban-poverty/532680/>, archived at <https://perma.cc/7G5T-LWG2>; see also SCOTT ALLARD, PLACES IN NEED 19–100 (2017); Ifeoma Ajunwa & Angela Onwuachi-Willig, *Combating Discrimination Against the Formerly Incarcerated in the Labor Market*, 112 NW. U. L. REV. 1385 (2018).

<sup>95</sup> See Michelle Wilde Anderson, *Losing the War of Attrition: Mobility, Chronic Decline, and Infrastructure*, 127 YALE L.J. F. 522, 523 (2017), <http://www.yalelawjournal.org/forum/losing-the-war-of-attrition>, archived at <https://perma.cc/M5DG-7Q5S>; Sheila R. Foster, *The Limits of Mobility and the Persistence of Urban Inequality*, 127 YALE L.J. F. 480 (2017), <http://www.yalelawjournal.org/forum/the-limits-of-mobility-and-the-persistence-of-urban-inequality>, archived at <https://perma.cc/8QYW-JQWE>; Naomi Schoenbaum, *Mobility Measures*, 2012 BYU L. REV. 1169, 1235 (2012).

<sup>96</sup> See David Schleicher, *Stuck! The Law and Economics of Residential Stagnation*, 27 YALE L.J. 78, 84 (2017).

<sup>97</sup> See KEVIN T. GREINER, FLA. INT’L. U. METROPOLITAN CTR., MIAMI-DADE COUNTY PROSPERITY INITIATIVES FEASIBILITY STUDY 39, 52 (May 2016), [https://metropolitan.fiu.edu/research/services/economic-and-housing-market-analysis/prosperity-initiative-research-study\\_final.pdf](https://metropolitan.fiu.edu/research/services/economic-and-housing-market-analysis/prosperity-initiative-research-study_final.pdf), archived at <https://perma.cc/KK7U-YXGC> (finding evidence of persistent geographic poverty, unemployment, and income inequality in Miami-Dade County and concluding that “even in times of rapid economic expansion, a number of communities have not, and are not, participating in the economic growth of the region”).

<sup>98</sup> *Id.* at 39.

The engine of low-income black suburban out-migration in Miami-Dade County is fueled by displacement, persistent poverty, and economic distress.<sup>99</sup> Maps produced by the FIU Metropolitan Center tracking the geography of income, employment, and educational attainment across every census tract in Miami-Dade County from 2000 to 2014 reveal “clear patterns” showing not only “a fixed concentration of the highest poverty, unemployment, and lowest incomes, in the same communities over time,” but also an increasing “number of census tracts with high levels of distress — high unemployment, low income and low educational attainment” in the outer-ring suburbs southwest of the City of Miami.<sup>100</sup> By contrast, the post-war black suburban movement was stimulated by rising economic opportunity, expanding housing integration, and voluntary class flight. Unlike the spiraling black suburban migration and impoverishment dampening the socioeconomic status of Miami-Dade County, the economic opportunity and housing integration accompanying the black suburban movement of the late twentieth century yielded an improved geography of income, employment, and educational attainment.

Nationwide, black suburbanization evolved in three waves.<sup>101</sup> The first wave of black suburbanization, covering 1950 to 1970, spread among a collection of ring suburbs outside central cities like Chicago and Detroit sparked by regional “job creation and population growth.”<sup>102</sup> Post-war black ring spillover suburbs, including *de jure* segregated, single-family housing developments like Miami-Dade County’s Richmond Heights,<sup>103</sup> were “more isolated, less affluent, and less exclusive than [w]hite suburban communities.”<sup>104</sup> In spillover suburbs, isolation and exclusionary zoning gave rise to a dual, segregated housing market sullied by “older homes, denser development, smaller lots, and fewer convenient services,” and often encircled by

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<sup>99</sup> See *id.* (discussing the consistent concentration of poverty in certain neighborhoods over time).

<sup>100</sup> *Id.* at 40–43.

<sup>101</sup> See generally KARYN R. LACY, *BLUE-CHIP BLACK: RACE, CLASS, AND STATUS IN THE NEW BLACK MIDDLE CLASS* 1–50 (2007); ANDREW WIESE, *PLACES OF THEIR OWN: AFRICAN AMERICAN SUBURBANIZATION IN THE TWENTIETH CENTURY* 21–42 (2004).

<sup>102</sup> See Mary Jo Wiggins, *Race, Class, and Suburbia: The Modern Black Suburb as a “Race-Making Situation,”* 35 U. MICH. J.L. REFORM 749, 753 (2002).

<sup>103</sup> Dorothy Jenkins Fields, *Friends, Relatives to Celebrate 102nd Birthday of Richmond Heights’ Last Living Founder*, MIAMI HERALD (Oct. 5, 2016), <https://www.miamiherald.com/news/local/community/miami-dade/community-voices/article106184397.html>, archived at <https://perma.cc/ZSQ6-FENZ> (“Constructed between 1949–50, this subdivision is the first private development in Miami-Dade County established exclusively for black African-American World War II veterans.”). Cf. *Ammons v. Dade City, Fla.*, 594 F. Supp. 1274, 1281 (M.D. Fla. 1984), *aff’d*, 783 F.2d 982 (11th Cir. 1986) (“Beginning in 1948, the City played a more active role in developing a segregated black community by specifically setting aside on the ‘other side of the tracks,’ land for a negro subdivision.”).

<sup>104</sup> Wiggins, *supra* note 102, at 753.

the environmental segregation of “nuisance uses,” for example junkyards, toxic dumps, and trash incinerators.<sup>105</sup>

The second wave of black suburbanization, spanning 1970 to 1985, unfolded in the post-civil rights era when middle-class Blacks migrated into traditionally all-white suburbs, producing both predominately black and racially-mixed suburban landscapes.<sup>106</sup> During this 15-year period and continuing into the next decades, the black suburban population increased nationwide from 3.6 million to 10.6 million, exceeding the Great Migration from 1915 to 1970<sup>107</sup> by 4.4 million<sup>108</sup> and doubling the overall proportion of Blacks living in suburbs “from less than one-sixth to nearly one-third.”<sup>109</sup>

The third wave of black suburbanization, extending from 1985 to the present day, enlarged the scale of predominately black middle-class, low density suburbs,<sup>110</sup> in part as a consequence of rising in-migration to southern metropolitan areas.<sup>111</sup> Demographic evidence shows sizable southern metropolitan black flight, in-migration from major Northern cities — Detroit, Chicago, and New York — and black flight, out-migration to the suburban areas of Southern and Western cities — Atlanta, Dallas, Houston, and Los Angeles.<sup>112</sup> Fully “[s]ixteen of the 25 cities with the largest black populations (including nine of the 10 largest) registered declines in their black populations over the 2000s, compared with just eight in the 1990s.”<sup>113</sup> In the aftermath of these demographic changes, today more than half of the black

<sup>105</sup> *Id.* at 756–57 (footnote omitted); see also ROBERT D. BULLARD ET AL., UNITED CHURCH OF CHRIST, TOXIC WASTES AND RACE AT TWENTY 1987-2007 79–81 (2007); Jon C. Dubin, *From Junkyards to Gentrification: Explicating a Right to Protective Zoning in Low-Income Communities of Color*, 77 MINN. L. REV. 739, 764–65 (1993); Rachel D. Godsil, *Viewing the Cathedral from Behind the Color Line: Property Rules, Liability Rules, and Environmental Racism*, 53 EMORY L.J. 1807, 1815 (2004); Swati Prakash, *Racial Dimensions of Property Value Protection Under the Fair Housing Act*, 101 CAL. L. REV. 1437, 1455 (2013).

<sup>106</sup> Wiggins, *supra* note 102, at 763.

<sup>107</sup> See generally ISABEL WILKERSON, THE WARMTH OF OTHER SUNS: THE EPIC STORY OF AMERICA’S GREAT MIGRATION (2010); Demoral Davis, *Toward a Socio-Historical and Demographic Portrait of Twentieth-Century African-Americans*, in BLACK EXODUS: THE GREAT MIGRATION FROM THE AMERICAN SOUTH 1–19 (Alferdteen Harrison ed., 1991).

<sup>108</sup> Sheryll D. Cashin, *Middle-Class Black Suburbs and the State of Integration: A Post-Integrationist Vision for Metropolitan America*, 86 CORNELL L. REV. 729, 736 (2001).

<sup>109</sup> Nicole Stelle Garnett, *Suburbs as Exit, Suburbs as Entrance*, 106 MICH. L. REV. 277, 288 (2007).

<sup>110</sup> See Wiggins, *supra* note 102, at 766–69; Garnett, *supra* note 109, at 289; see also Scott N. Markley, *New Urbanism and Race: An Analysis of Neighborhood Racial Change in Suburban Atlanta* 40 J. URB. AFF. 1115, 1118 (2018).

<sup>111</sup> See Heather A. O’Connell, *Linking Racial Composition, Black–White Inequality, and Regional Difference: The Role of Migration*, 59 SOC. Q. 128, 138–40 (2018); Sabrina Pendergrass, *No Longer Bound for the “Promised Land”: African Americans’ Religious Experiences in the Reversal of the Great Migration*, 9 RACE & SOC. PROBS. 19, 19–20 (2017); Sabrina Pendergrass, *Routing Black Migration to the Urban US South: Social Class and Sources of Social Capital in the Destination Selection Process*, 39 J. ETHNIC & MIGRATION STUD. 1441, 1441–42 (2013).

<sup>112</sup> William H. Frey, METROPOLITAN POLICY PROGRAM AT BROOKINGS, MELTING POT CITIES AND SUBURBS: RACIAL AND ETHNIC CHANGE IN METRO AMERICA IN THE 2000S 6–7 (May 2011).

<sup>113</sup> *Id.*

populations of large metropolitan areas reside in the suburbs, in spite of decades-long suburban housing discrimination, race-based suburban economic disparities,<sup>114</sup> suburban economic disinvestment, and lower historical rates of suburbanization for black populations.<sup>115</sup>

Notwithstanding the modern demographics of black suburban migration, the poor<sup>116</sup> and working-class<sup>117</sup> black suburbs of Miami-Dade County — for example, the municipalities of Miami Gardens and Opa-locka as well as the unincorporated enclaves of Brownsville and Richmond Heights — remain economically vulnerable.<sup>118</sup> Studies show that Miami-Dade County continues to be “one of the poorest regions in the country.”<sup>119</sup> In fact, Miami-Dade County is the third least affordable metropolitan area in the country and its median household income falls in the bottom 8 percent of all U.S. counties with a population greater than 250,000.<sup>120</sup>

The vulnerability of Miami-Dade County’s black suburbs is shared regionally and nationally. Contemporary studies show that “poverty has skyrocketed in American suburbs throughout the country.”<sup>121</sup> To Desmond, suburban out-migration alters the “location of disadvantage” of chronic poverty from the inner or central city to the urban fringe pushing across municipal and county borders,<sup>122</sup> exactly as exhibited in Miami-Dade County. He attributes this demographic change “to rising housing costs in cities, an aging population, shifting patterns of immigration, changes in federal housing programs, and patterns of downward mobility[.]”<sup>123</sup> Other social science scholars add that regional forces — population dynamics, housing trends, and labor market forces — interlace urban, suburban, and exurban develop-

<sup>114</sup> 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, 591 (2008) (“Majority-black suburban neighborhoods generally provide fewer economic opportunities in terms of rising home values and access to good schools and jobs, making it harder for blacks to catch up and keep up financially with whites.”) (footnote omitted).

<sup>115</sup> Frey, *supra* note 112, at 9 (“[Blacks’] 51 percent suburban share is up from 44 percent in 2000 and 37 percent in 1990.”).

<sup>116</sup> See Eaton, *supra* note 82, at 56–57 (“By the 1970’s, Liberty City, Overtown and Brownsville each constituted suburbs of the City of Miami. They remain distinct African-American neighborhoods in Dade County. In 1980, Liberty City essentially functioned as a ‘warehouse for storing cheap labor to be employed by the low-wage hotels and restaurants that form the backbone of Miami’s tourist industry.’”) (footnotes omitted).

<sup>117</sup> Gregory Smithsimon, *Are African American Families More Vulnerable in a Largely White Neighborhood?*, THE GUARDIAN (Feb. 21, 2018), <https://www.theguardian.com/books/2018/feb/21/racial-segregation-in-america-causes>, archived at <https://perma.cc/U6GM-RLKF> (“Today, many working-class black neighborhoods are characterized by long periods of calm and moments of acute crisis: everything goes smoothly until the foreclosure crisis, a hurricane, job loss, or a recession throws things into uncertainty.”).

<sup>118</sup> See Nestor M. Davidson, *Property and Identity: Vulnerability and Insecurity in the Housing Crisis*, 47 HARV. C.R.-C.L. L. REV. 119, 130–31 (2012).

<sup>119</sup> KIRWAN INSTITUTE, *supra* note 77, at 17.

<sup>120</sup> *Id.* (citations omitted).

<sup>121</sup> Desmond, *supra* note 40, at 6; see also ELIZABETH KNEEBONE & ALAN BERUBE, *CONFRONTING SUBURBAN POVERTY IN AMERICA* 1–54 (2013).

<sup>122</sup> Desmond, *supra* note 40, at 6.

<sup>123</sup> *Id.*

ments “to create an evolving map of both barriers and access to opportunity.”<sup>124</sup>

Within Miami-Dade County, the working and nonworking poor displaced from inner-city neighborhoods to low-density suburban districts suffer isolation from family networks, high-wage labor markets, and accessible public transit hubs. Desmond points out that the suburban poor are “either living their lives on buses and trains or on foot, enduring long commutes, or enduring life alone in neighborhoods never designed for community.”<sup>125</sup> Deprived of key institutions (churches, community centers, and grocery stores) and infrastructure systems (social services, hospitals, and schools), suburban regions across all metropolitan areas, new and old, have fallen vulnerable to pervasive poverty.<sup>126</sup>

Data from 2000 and 2012 shows that suburban poverty nationwide grew by 65 percent, increasing at a rate “more than twice the pace of growth in big cities and rural communities.”<sup>127</sup> By 2012, older, inner-ring suburbs and newer, exurban suburbs “were home to three million more poor residents than big cities.”<sup>128</sup> Although the rates of demographic change appear more pronounced in newer suburbs erected after 1970, low-income households, particularly single-parent households, in both newer and older suburbs lack access to “advanced training or education past high school” and employment opportunities sufficient to “lift their families out of poverty.”<sup>129</sup> In this way, low-income suburban households “often experience isolation from opportunity, racial segregation, and a marginalization from politics.”<sup>130</sup> Such households, usually those composed of immigrant<sup>131</sup> and minority groups, also consistently encounter bare-bones municipal services and thin civic governance structures, “strained and patchy” nonprofit and public sector safety nets,<sup>132</sup> and over-policing practices.<sup>133</sup> The next Part considers the linkage between urban displacement and suburban resegregation.

<sup>124</sup> Elizabeth Kneebone, *Urban and Suburban Poverty: The Changing Geography of Disadvantage*, Penn Institute for Urban Research (Feb. 10, 2016), <https://pennur.upenn.edu/publications/urban-and-suburban-poverty-the-changing-geography-of-disadvantage>, archived at <http://perma.cc/6JYR-33A2>; Elizabeth Kneebone, *The Changing Geography of Disadvantage*, in *SHARED PROSPERITY IN AMERICA'S COMMUNITIES* 41, 56 (Susan Wachter & Lei Ding eds., 2016).

<sup>125</sup> Desmond, *supra* note 40, at 6; *see also* Alexandra Murphy & Danielle Wallace, *Opportunities for Making Ends Meet and Upward Mobility: Differences in Organizational Deprivation Across Urban and Suburban Poor Neighborhoods*, 91 *Soc. Sci. Q.* 1164, 1180–83 (2010).

<sup>126</sup> Desmond, *supra* note 40, at 6; Misra, *supra* note 94; *see also* ALLARD, *supra* note 94, at 3–17.

<sup>127</sup> Kneebone, *Urban and Suburban Poverty*, *supra* note 124.

<sup>128</sup> *Id.*

<sup>129</sup> Misra, *supra* note 94; *see also* ALLARD, *supra* note 94, at 3–17.

<sup>130</sup> Misra, *supra* note 94; *see also* ALLARD, *supra* note 94, at 3–17.

<sup>131</sup> Misra, *supra* note 94 (“Today, more immigrants to the U.S. locate in suburbs upon arrival than at any point in American history. And these immigrant families are working often multiple jobs but not earning enough to lift their families out of poverty.”).

<sup>132</sup> Kneebone, *Urban and Suburban Poverty*, *supra* note 124. *See generally* SCOTT W. ALLARD & BENJAMIN ROTH, *METROPOLITAN POLICY PROGRAM AT BROOKINGS, STRAINED SUBURBS: THE SOCIAL SERVICE CHALLENGES OF RISING SUBURBAN POVERTY* (2010).

## II. URBAN DISPLACEMENT AND SUBURBAN RESEGREGATION

*“We’re not opposed to development, but we’re opposed to any development that would precipitously remove a significant historical population from the Grove.”*<sup>134</sup>

### A. Urban Displacement

The urban displacement of low-income black tenants and homeowners from the West Grove and their suburban resegregation in Miami-Dade County’s outer-ring black districts reproduce neighborhood disadvantage and instability.<sup>135</sup> In Miami, both neighborhood disadvantage and instability are byproducts of racialized economic exploitation. Endemic to low-income housing and inner-city community development, exploitation takes several forms: private, public, and joint public-private partnership. The landlord-controlled extraction of profits from low-income rental housing markets like the West Grove illustrates a blunt, private form of exploitation. The municipal failure to oversee or correct the dilapidated living conditions of low-income rental and subsidized housing in the West Grove and elsewhere in Miami through the enforcement of health and safety codes exemplifies an entrenched, public form of exploitation.<sup>136</sup> Likewise, the incidence of public-

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<sup>133</sup> See Monica C. Bell, Response, *Hidden Laws of the Time of Ferguson*, 132 HARV. L. REV. F. 1 (2018), <https://harvardlawreview.org/2018/10/hidden-laws-of-the-time-of-ferguson/>, archived at <https://perma.cc/PF8D-9DZJ>; CIVIL RIGHTS DIV., U.S. DEP’T OF JUSTICE, INVESTIGATION OF THE FERGUSON POLICE DEPARTMENT (2015), [https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson\\_police\\_department\\_report.pdf](https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf), archived at <https://perma.cc/994R-P9GL>; see also Ayobami Laniyonu, *Coffee Shops and Street Stops: Policing Practices in Gentrifying Neighborhoods*, 54 URB. AFF. REV. 898, 904 (2017).

<sup>134</sup> Tariq Osborne, *Is the “Black Grove” Being Whitewashed?*, MIAMI TIMES, NOV. 19, 2008, at 5A, 7B (quoting Pierre Sands, a former president of the Coconut Grove Village West Homeowners and Tenants Association).

<sup>135</sup> On neighborhood disadvantage and the spatial organization of poverty, see Paul A. Jargowsky, The Century Found. and Rutgers Ctr. for Urb. Res. & Educ., *Concentration of Poverty in the New Millennium: Changes in the Prevalence, Composition, and Location of High-Poverty Neighborhoods* 15 (2013), [https://tcf.org/assets/downloads/Concentration\\_of\\_Poverty\\_in\\_the\\_New\\_Millennium.pdf](https://tcf.org/assets/downloads/Concentration_of_Poverty_in_the_New_Millennium.pdf), archived at [perma.cc/4C8X-ZDWZ](https://perma.cc/4C8X-ZDWZ) (“For many poor families . . . the problems of poverty include concerns that have a neighborhood basis, such as the quality of housing, the effectiveness of schools, and the prevalence of crime, drugs, and violence. Neighborhood characteristics affect the day-to-day quality of life, and may also hinder poor families as they seek to cope with and work their way out of poverty. Given the susceptibility of children to peer influences, the spatial organization of poverty is particularly detrimental for poor families with school-age children.”).

<sup>136</sup> See, e.g., Maya Kaufman & Jay Weaver, *Mold, Roaches, Sewage—What This Low-Income Housing Looks Like After a Pricey Rehab*, MIAMI HERALD (Dec. 12, 2018), <https://www.miamiherald.com/news/local/community/miami-dade/miami-gardens/article221665635.html>, archived at [perma.cc/D52W-6D2Z](https://perma.cc/D52W-6D2Z); Luis Ferré-Sadurni & Benjamin Weiser, *Judge Rejects Deal to Overhaul City’s Public Housing*, N.Y. TIMES (Nov. 14, 2018), <https://www.nytimes.com/2018/11/14/nyregion/nycha-settlement-court-ruling.html>, archived at [perma.cc/TB K4-DZFP](https://perma.cc/TB K4-DZFP) (discussing federal court’s rejection of a “sweeping settlement that would have appointed a monitor to oversee the troubled New York City Housing Authority and required the

private partnership, even when “championed as an effective vehicle through which to address social problems,”<sup>137</sup> predictably “leaves the relationship between poverty and profit intact,” allowing “landlords [to] drive up rent to maximize their rate of return.”<sup>138</sup> For Desmond, exploitation in all of its private, public, and public-private forms not only “contributes to the reproduction of urban poverty[,]” but also poses an impediment “to saving, social mobility, decent housing, and self-reliance.”<sup>139</sup> In the City of Miami, for example, “renewed investment and revitalization” steered by “developers targeting traditionally black and Latinx urban neighborhoods, including parts of Overtown, Little Haiti and Little Havana, in search of cheaper rents and opportunities to buy property . . . has raised housing costs in these neighborhoods and begun to displace black and Latinx low-income residents[,]”<sup>140</sup> thereby impeding residential integration and undermining neighborhood stability.

Inner-city displacement driven by the exploitive practice of private landlord rate of return maximization underpins neighborhood gentrification.<sup>141</sup> Acclaimed by developers, investors, and captive politicians as a model of neighborhood revitalization, gentrification carries a “dismal history” of race-tainted harassment, intimidation, and displacement.<sup>142</sup> By all

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city to pump at least \$1.2 billion into repairs”); Luis Ferré-Sadurní, *The Rise and Fall of New York Public Housing: An Oral History*, N.Y. TIMES (July 9, 2018), <https://www.nytimes.com/interactive/2018/06/25/nyregion/new-york-city-public-housing-history.html>, archived at [perma.cc/Z6DZ-42FU](http://perma.cc/Z6DZ-42FU).

<sup>137</sup> Desmond, *supra* note 40, at 7; see also Nestor M. Davidson, *Values and Value Creation in Public-Private Transactions*, 94 IOWA L. REV. 937, 944 (2009) (discussing role of transactional attorneys in enhancing the advantages and muting the concerns associated with public-private partnerships); Audrey G. McFarlane, *Putting the “Public” Back into Public-Private Partnerships for Economic Development*, 30 W. NEW ENG. L. REV. 39, 39 (2007) (discussing structural disadvantage for community residents and property owners in public-private partnerships). See generally AFFORDABLE HOUSING AND PUBLIC-PRIVATE PARTNERSHIPS (Nestor M. Davidson & Robin Paul Malloy eds., 2019).

<sup>138</sup> Desmond, *supra* note 40, at 7.

<sup>139</sup> *Id.*

<sup>140</sup> KIRWAN INSTITUTE, *supra* note 77, at 18 (“These more recent developments have fueled debates over the extent of increasing disparities as speculators have been reported to look for property on higher ground where many communities of color live, given documented rising tides stemming from climate change.”) (citations omitted).

<sup>141</sup> See John a. Powell & Marguerite L. Spencer, *Giving Them the Old One-Two: Gentrification and the K.O. of Impoverished Urban Dwellers of Color*, 46 HOWARD L.J. 433 (2002-03). See generally ROLF GOETZE, UNDERSTANDING NEIGHBORHOOD CHANGE: THE ROLE OF EXPECTATIONS IN URBAN REVITALIZATION (1979); Maureen Kennedy & Paul Leonard, *Dealing With Neighborhood Change: A Primer on Gentrification and Policy Choices* (Brookings Inst., Ctr. on Urb. and Metro. Pol’y, 2001); NEIL SMITH, THE NEW URBAN FRONTIER: GENTRIFICATION AND THE REVANCHIST CITY (1996).

<sup>142</sup> Andrea J. Boyack, *Side by Side: Revitalizing Urban Cores and Ensuring Residential Diversity*, 92 CHI.-KENT L. REV. 435, 457-58 (2017); see also Richard T. LeGates & Chester Hartman, *Gentrification-Caused Displacement*, 14 URB. LAW. 31, 51-52 (1982); Harold A. McDougall, *Gentrification: The Class Conflict Over Urban Space Moves into the Courts*, 10 FORDHAM URB. L.J. 177, 177-81 (1982). On racialized space, see generally STEVE MACEK, URBAN NIGHTMARES: THE MEDIA, THE RIGHT, AND THE MORAL PANIC OVER THE CITY (2006); DAVID SIBLEY, GEOGRAPHIES OF EXCLUSION: SOCIETY AND DIFFERENCE IN THE WEST (1995); MARY E. TRICE, URBAN RENEWAL AND RESISTANCE: RACE, SPACE, AND THE CITY IN THE

accounts, “[n]early all city revitalization efforts over the past century” in American metropolitan areas “have resulted in relocating impoverished households out of their communities in an effort to replace lower-income earners with higher-income earners.”<sup>143</sup> Those efforts encompass urban renewal programs of the 1950s and 1960s,<sup>144</sup> blight removal projects of the 1970s and 1980s,<sup>145</sup> and urban core revitalization initiatives of the 1990s and 2000s.<sup>146</sup>

The revitalization of the urban core in Miami is commanded by individual landlords and real estate development firms<sup>147</sup> employing what history Professor N.D.B. Connolly calls the “benign tools of segregation,” most prominently “racist zoning practices.”<sup>148</sup> Less reliant on antecedent white

LATE TWENTIETH TO THE EARLY TWENTY-FIRST CENTURY (2016); Elijah Anderson, “*The White Space*,” 1 SOC. RACE & ETHNICITY 10, 10 (2015); John O. Calmore, *A Call to Context: The Professional Challenges of Cause Lawyering at the Intersection of Race, Space, and Poverty*, 67 FORDHAM L. REV. 1927 (1999); John O. Calmore, *Racialized Space and the Culture of Segregation: Hewing a Stone of Hope from a Mountain of Despair*, 143 U. PA. L. REV. 1233 (1995).

<sup>143</sup> BOYACK, *supra* note 142, at 457 (footnote omitted).

<sup>144</sup> See LAWRENCE M. FRIEDMAN, GOVERNMENT AND SLUM HOUSING: A CENTURY OF FRUSTRATION 117 (1968); JON C. TEAFORD, THE ROUGH ROAD TO RENAISSANCE: URBAN REVITALIZATION IN AMERICA, 1940–1985 44 (1990). See generally URBAN RENEWAL: THE RECORD AND THE CONTROVERSY (James Q. Wilson ed., 1966).

<sup>145</sup> See Lawrence K. Kolodney, *Eviction Free Zones: The Economics of Legal Bricolage in the Fight Against Displacement*, 18 FORDHAM URB. L.J. 507, 508 (1991); Peter Marcuse, *To Control Gentrification: Anti-Displacement Zoning and Planning for Stable Residential Districts*, 13 N.Y.U. REV. L. & SOC. CHANGE 931, 931–32 (1985); Henry W. McGee, Jr., *Afro-American Resistance to Gentrification and the Demise of Integrationist Ideology in the United States*, 23 URB. LAW. 25, 27 (1991); Wendell E. Pritchett, *The “Public Menace” of Blight: Urban Renewal and the Private Uses of Eminent Domain*, 21 YALE L. & POL’Y REV. 1, 2 (2003).

<sup>146</sup> Boyack, *supra* note 142, at 457–58; see also Lance Freeman & Frank Braconi, *Gentrification and Displacement: New York City in the 1990s*, 70 J. AM. PLAN. ASS’N 39 (2004); Deliah D. Lawrence, *Can Communities Effectively Fight Displacement Caused by Gentrification?*, 11 J. AFFORDABLE HOUSING & CMTY. DEV. L. 357, 360 (2002); Diane K. Levy et al., *In the Face of Gentrification: Case Studies of Local Efforts to Mitigate Displacement*, 16 J. AFFORDABLE HOUSING & CMTY. DEV. L. 238, 239 (2007); David J. Murrasse & Jaelyn B. Bliss, *Comprehensive Approaches to Urban Development: Gentrification, Community, and Business in Harlem, New York*, 1 N.W. J.L. & SOC. POL’Y 127, 129 (2006); Henry W. McGee, Jr., *Seattle’s Central District, 1990–2006: Integration or Displacement?*, 39 URB. LAW. 167, 172–73 (2007).

<sup>147</sup> See Luther Campbell, *As Developers Target Miami’s Poorest Neighborhoods, Minorities Get Kicked Out*, MIAMI NEW TIMES (Feb. 8, 2018), <https://www.miaminewtimes.com/news/uncle-luke-gentrification-is-coming-for-miamis-black-residents-10064162>, archived at [perma.cc/E5DS-TY9D](https://perma.cc/E5DS-TY9D) (“Everywhere you turn in Miami, gentrification is in full swing. Real-estate prices are booming in Allapattah, Brownsville, Little Haiti, Liberty City, and Overtown as the same developers who bought up and transformed South Beach and Wynwood set their sights on new territories to exploit.”); Rene Rodriguez, *These Little Haiti Businesses Have a New Landlord: A Developer Who Wants Them Out*, MIAMI HERALD (Apr. 27, 2018), <https://www.miamiherald.com/news/business/real-estate-news/article209843594.html>, archived at [perma.cc/B3YJ-BREZ](https://perma.cc/B3YJ-BREZ); K. Barrett Bilali, *Miami Gardens: Developers’ Paradise?: Commercial Real Estate Booms as Shopping Center Opens*, MIAMI TIMES (Nov. 28, 2018), [https://www.miamitimesonline.com/news/commercial-real-estate-booms-as-shopping-center-opens/article\\_78d7342c-f326-11e8-9de2-63a7b8be87ed.html](https://www.miamitimesonline.com/news/commercial-real-estate-booms-as-shopping-center-opens/article_78d7342c-f326-11e8-9de2-63a7b8be87ed.html), archived at [perma.cc/2X36-U9NJ](https://perma.cc/2X36-U9NJ).

<sup>148</sup> CONNOLLY, *supra* note 7, at 5–6.

vigilante violence and forced land expropriation, those practices have acquired the “unexceptional and mundane qualities of racial governance” imposed on the “built environment,” qualities obscuring the “white-over-black system” of real estate exploitation long dominant in Miami.<sup>149</sup> Faithful to exploitive rent-seeking behavior, both landlords and development firms grasp that gentrifying neighborhoods ignite rent rate escalation, stimulate housing rehabilitation, and increase nearby commercial and residential land valuation.<sup>150</sup>

More than a decade of community outreach, fact investigation, and oral history research conducted by students and faculty affiliated with the Center for Ethics and Public Service in the West Grove makes plain that landlords and development firms pursue assorted kinds of rent-seeking behavior in gentrifying low-income black neighborhoods. They increase rent charges for low-income rental apartment units, spurring existing tenants *voluntarily* to relocate, and then replace them with higher-income tenants.<sup>151</sup> They decline to renew low-income rental month-to-month leases,<sup>152</sup> prompting existing tenants to relocate, and again replace them with higher-income tenants. And they fail to maintain or repair the condition of low-income rental apartment units, notwithstanding the implied warranty of habitability,<sup>153</sup> goading existing tenants to relocate, and then rehabilitate the units for higher-income, successor tenants.

Additionally, landlords and development firms harass, threaten, and intimidate existing low-income tenants,<sup>154</sup> provoking their *voluntary* lease termination and relocation, and then replace them with higher-income tenants or rehabilitate the vacant rental apartment units for higher-income tenants. They also terminate low-income rental apartment leases and recover possession of the dwelling units via eviction proceedings,<sup>155</sup> forcing existing te-

<sup>149</sup> *Id.*

<sup>150</sup> See Hannah Weinstein, *Fighting for A Place Called Home: Litigation Strategies for Challenging Gentrification*, 62 UCLA L. REV. 794, 801–02 (2015) (footnotes omitted).

<sup>151</sup> On the logic of “rent gap” economics, see *id.* at 804 (“This so-called rent gap between current and potential rents exists in neighborhoods within cities that have tight housing markets, that have other more expensive neighborhoods, and that are close to a growing job center.”) (footnote omitted).

<sup>152</sup> See Robert G. Schwemm, *Why Do Landlords Still Discriminate (And What Can Be Done About It)?*, 40 J. MARSHALL L. REV. 455, 456–57 n.6 (2007).

<sup>153</sup> See David A. Super, *The Rise and Fall of the Implied Warranty of Habitability*, 99 CALIF. L. REV. 389, 391 (2011).

<sup>154</sup> See Jeannine Bell, *The Fair Housing Act and Extralegal Terror*, 41 IND. L. REV. 537, 549 (2008); Aric Short, *Post-Acquisition Harassment and The Scope of the Fair Housing Act*, 58 ALA. L. REV. 203, 208 (2006). On sexual harassment in fair housing, see Kate Sablosky Elengold, *Structural Subjugation: Theorizing Racialized Sexual Harassment in Housing*, 27 YALE J.L. & FEMINISM 227, 231 (2016); Rigel C. Oliveri, *Sexual Harassment of Low-Income Women in Housing: Pilot Study Results*, 83 MO. L. REV. 597, 598 (2018).

<sup>155</sup> See Matthew Desmond, *Eviction and the Reproduction of Urban Poverty*, 118 AM. J. SOC. 88, 90 (2012) (reviewing eviction literature). Professor Vicki Been and Leila Bozorg report that since 2014, New York City has dedicated \$57 million “to provide legal services to low-income tenants in danger of losing their homes to eviction or displacement by harassment (with an additional \$62 million dedicated for 2017).” Vicki Been & Leila Bozorg, *Spiraling:*

nants to relocate, and once again replace them with higher-income tenants. And they purchase one or more often adjacent low-income rental apartment properties, evict the existing tenants,<sup>156</sup> and then demolish and redevelop the massed properties for higher intensity (height and density) commercial, residential, or mixed-use purposes by way of upzoning. At times, such demolition and redevelopment may absorb whole city blocks.<sup>157</sup>

In the West Grove, the exploitive, rent-seeking behavior of opportunistic landlords and development firms has severely disrupted the private low-income housing market and neighborhood stability. Based on U.S. Census data culled from 2000 to 2014, the FIU Metropolitan Center reports a 6% decrease in renter-occupied units and a 37% decrease in the Black or African American population in Coconut Grove.<sup>158</sup> Likewise, during the same 14-year period, the FIU Metropolitan Center reports a 13% decrease in the African American population in Liberty City and a 26% decrease in the African American population in Overtown,<sup>159</sup> both historically black inner-city neighborhoods.

The end result of private rent-seeking behavior for the West Grove housing market is that “[i]nvestors, many of whom are land-banking vacant lots amid shotgun shacks and pastel-colored Mediterranean houses, now own a bulk of the property in the neighborhood.”<sup>160</sup> For more than a decade, West Grove “real estate speculators” have “gobbled up homes and properties,” especially on Grand Avenue where “various failed plans for redevelopment have threatened for years to knock down what housing hasn’t already been razed.”<sup>161</sup> In 2011, for example, the City of Miami approved a Major Use Special Permit (“MUSP”) Development Order<sup>162</sup> for a Grove-

*Evictions and Other Causes and Consequences of Housing Instability*, 130 HARV. L. REV. 1408, 1416 (2017) (footnote omitted) (reviewing MATTHEW DESMOND, *EVICTED: POVERTY AND PROFIT IN THE AMERICAN CITY* (2016)). As a partial consequence, the legal representation of tenants in New York City’s “housing court increased from 1% in 2013 to 27% in 2016, and residential evictions by city marshals declined by 24% in 2015 (compared to 2013).” *Id.*

<sup>156</sup> See Rigel C. Oliveri, *Is Acquisition Everything? Protecting the Rights of Occupants Under the Fair Housing Act*, 43 HARV. C.R.-C.L. REV. 1, 6 (2008).

<sup>157</sup> In December 2006, for example, a private development group began acquiring land parcels “stretching from Margaret Street to Plaza Street along Grand Avenue,” a six-block area in the West Grove for the purpose of constructing Grove Village, a mixed use office, retail, and residential rental apartment project “unveiled” in January 2008. Fanny Olmo & Jose Pagliery, *Grand Ave. Upgrade to Cover Farmers’ Market*, MIAMI HERALD, Feb. 7, 2008, at 3GR.

<sup>158</sup> See FLA. INT’L UNIV. METRO. CTR., *NEIGHBORHOOD CHANGES: COCONUT GROVE 2000–2014*, <https://metropolitan.fiu.edu/research/periodic-publications/neighborhood-changes/coconut-grove.pdf>, archived at [perma.cc/N6GC-NPK3](https://perma.cc/N6GC-NPK3).

<sup>159</sup> See FLA. INT’L UNIV. METRO. CTR., *NEIGHBORHOOD CHANGES: LIBERTY CITY 2000–2014*, <https://metropolitan.fiu.edu/research/periodic-publications/neighborhood-changes/liberty-city.pdf>, archived at [perma.cc/JPTC-V5JR](https://perma.cc/JPTC-V5JR); FLA. INT’L UNIV. METRO. CTR., *NEIGHBORHOOD CHANGES: OVERTOWN 2000–2014*, <https://metropolitan.fiu.edu/research/periodic-publications/neighborhood-changes/overtown-00-14-1-1.pdf>, archived at [perma.cc/559B-N5ER](https://perma.cc/559B-N5ER).

<sup>160</sup> Smiley, *Evictions, Profits and Slum*, *supra* note 11.

<sup>161</sup> *Id.*

<sup>162</sup> City of Miami Legis., Res. R-11-0538, at 2, 7 (Dec. 15, 2011). For background on the Major Use Special Permit process in Miami, see MIAMI, FLA. ZONING ORDINANCE 11000, art.

based developer's Bahamian-style mixed-use redevelopment project proposing hundreds of residential apartment units as well as "shops, a supermarket and offices"<sup>163</sup> called Grove Village.<sup>164</sup> In approving the Grove Village MUSP, the City of Miami issued findings and conclusions of "favorable impact" pertaining to the municipal "economy,"<sup>165</sup> the need for "adequate" and "reasonably accessible" housing,<sup>166</sup> and the "public welfare."<sup>167</sup> Nowhere in its MUSP Development Order does the City find evidence of, or make provision to mitigate, any "adverse[ ] affect" on neighborhood "living conditions" in the West Grove or "any potentially adverse effects" on West Grove tenants and homeowners in the form of eviction, displacement, or resegregation.<sup>168</sup> The MUSP Development Order merely states that "any potentially adverse effects" of the Grove Village project "will be mitigated through conditions of" the MUSP.<sup>169</sup>

Essential to the economic viability of the project, the Grove Village MUSP Development Order enabled the developer to increase the maximum height of the proposed six mixed use buildings from 50 feet<sup>170</sup> to "approximately 62 feet to 82 feet,"<sup>171</sup> and to increase the density of the residential

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13, § 1301.4 (2010) (superseded by Miami 21 Zoning Code). Prior to 2010, the City of Miami required Major Use Special Permits "where specified uses and/or occupancies involve matters deemed to be of City-wide or area-wide importance." *Id.* ("The City of Miami Commission shall be solely responsible for determinations on applications for Major Use Special Permits . . .").

<sup>163</sup> David Smiley, *New Developer Eyes Grand Avenue Amid Slum and Suits*, MIAMI HERALD (Nov. 28, 2016), <https://www.miamiherald.com/news/local/community/miami-dade/cocoanut-grove/article117608043.html>, archived at [perma.cc/8LP5-F9L8](https://perma.cc/8LP5-F9L8).

<sup>164</sup> See Andres Viglucci, *Miami Takes Up Proposed Development That Would Transform Coconut Grove*, MIAMI HERALD (Nov. 17, 2011) ("The city of Miami appears poised to approve a massive redevelopment project in historically black West Coconut Grove that promises to radically transform its down-at-the-heels main street, by replacing six blocks of vacant lots and rundown apartments on Grand Avenue with multi-story shops, offices, new homes and a major supermarket — the first in the heart of the Grove in decades. The *Grove Village* proposal, which will be reviewed Thursday by the City Commission, has sharply divided the West Grove, where some say it will resuscitate a dying neighborhood, while others fear it could gentrify it out of existence."), NEWSBANK, [infoweb.newsbank.com/apps/news/document-view?p=WORLDNEWS&docref=news/13B14332E9746958](http://infoweb.newsbank.com/apps/news/document-view?p=WORLDNEWS&docref=news/13B14332E9746958). Viglucci, *Gentrification of West Grove*, *supra* note 76, at A1 ("Some longtime residents fear a massive redevelopment project could wipe out much of what's left of Miami's longest-settled black neighborhood. The private project, in the works for three years, would almost entirely clear six large blocks along Grand and rebuild them with a mix of multistory apartments and townhomes, shops, offices and — according to city officials — a new Publix supermarket.").

<sup>165</sup> More specifically, the City of Miami found that the Grove Village MUSP would "employ approximately 306 workers during construction" and "will also result in the creation of approximately 219 permanent new jobs . . . and will generate approximately \$1,797,577 annually in tax revenues . . ." City of Miami Legis., Res. R-11-0538, at 5, 13 (Dec. 15, 2011).

<sup>166</sup> *Id.*

<sup>167</sup> *Id.* at 6, 13.

<sup>168</sup> *Id.* at 5.

<sup>169</sup> *Id.* at 6, 13.

<sup>170</sup> MIAMI, FLA. ZONING ORDINANCE 11000, art. 6, § 602.9 (June 15, 2010) (SD-2 Coconut Grove Central Commercial District Maximum Height) ("Height within this district shall be limited to fifty (50) feet.").

<sup>171</sup> City of Miami Legis., Res. R-11-0538, at 2, 7 (Dec. 15, 2011); City of Miami Planning Department, Analysis of Major Use Special Permit for Grove Village 2 (2010).

component to 343 dwelling units.<sup>172</sup> At a City of Miami Commission hearing on December 15, 2011, the City's Director of Planning and Zoning testified that increasing both "density and intensity" in this way rendered Grove Village "a viable project to the benefit of the developer."<sup>173</sup> Located along six central blocks of Grand Avenue and spanning more than 49 extant buildings<sup>174</sup> across 17 "gross lot area" acres,<sup>175</sup> the Grove Village project stoked "fears of gentrification in the mostly poor community."<sup>176</sup> Despite the Grove Village developer's insistence that the project "'will have a favorable impact on . . . housing supply within the immediate neighborhood'" and "will benefit the area by creating additional residential . . . opportunities" in the West Grove,<sup>177</sup> community activists and investigative reporters estimated that the "Bahamian-themed" project "would eliminate at least 168 units of affordable housing,"<sup>178</sup> and "189-occupied apartment units" without replacement.<sup>179</sup>

In the eight years since the City of Miami's approval of the Grove Village development project, the "revamp for the depressed Grand Avenue corridor, once the thriving heart of the Bahamian West Grove community" badly "stalled."<sup>180</sup> Apart from emptying and demolishing countless commercial and residential buildings, the Grove-based developer "never put a shovel in the ground."<sup>181</sup> In the face of the privately aborted "redevelopment scheme" for Grand Avenue and the publicly acknowledged "gentrification, population loss and deteriorating housing"<sup>182</sup> in the West Grove, the City of Miami took no significant remedial action to halt or even slow the displacement of low-income tenants and homeowners.<sup>183</sup> As a result of this municipi-

<sup>172</sup> City of Miami Legis., Res. R-11-0538, at 7 (Dec. 15, 2011).

<sup>173</sup> City of Miami Commission Hr'g (Dec. 15, 2011, 7:48:57) (testimony of Francisco J. Garcia, City of Miami Director of Planning and Zoning).

<sup>174</sup> City of Miami Commission Hr'g (Dec. 15, 2011, 6:41:44) (testimony of Williams Armbrister, West Grove homeowner).

<sup>175</sup> City of Miami Legis., Res. R-11-0538, at 7 (Dec. 15, 2011).

<sup>176</sup> Andres Vignucci, *Who is Buying Six Key Properties in This Historic Black Neighborhood? So Far, It's a Mystery*, MIAMI HERALD (Nov. 3, 2017), <https://www.miamiherald.com/news/local/community/miami-dade/coconut-grove/article182659841.html>, archived at [perma.cc/SZA6-9AYL](https://perma.cc/SZA6-9AYL) ("The original Pointe Group, now part of Collier's International, was never able to close on the majority of the assemblage, today a hardscrabble collection of mostly deteriorated apartments and vacant lots."); Osborne, *supra* note 134, at 5A, 7B ("The Pointe Group Advisors, a real estate and asset management company, have already received approval from the City's Advisory board to re-zone the 3500 block of Grand Avenue for commercial use.");

<sup>177</sup> City of Miami Planning Department, Analysis of Major Use Special Permit for Grove Village 6 (2010).

<sup>178</sup> Osborne, *supra* note 134, at 5A.

<sup>179</sup> David Smiley, *Coconut Grove: Grand Village Plan Still Has Some Wrinkles*, MIAMI HERALD, Apr. 20, 2008, at GR3.

<sup>180</sup> Vignucci, *Who is Buying*, *supra* note 176.

<sup>181</sup> Smiley, *New Developer*, *supra* note 163.

<sup>182</sup> Andres Vignucci, *The Buyers of Six Key Lots in West Grove Aren't So Mysterious After All*, MIAMI HERALD (Nov. 9, 2017), <https://www.miamiherald.com/news/local/community/miami-dade/coconut-grove/article183764491.html>, archived at [perma.cc/55CR-RT5M](https://perma.cc/55CR-RT5M).

<sup>183</sup> See Felipe Rivas, *Future of Quaint Coconut Grove Homes on Hold: City Commissioners Do Nothing About Development, Displacement*, MIAMI TIMES (Mar. 6, 2019), <https://www.miamiherald.com/news/local/community/miami-dade/coconut-grove/article183764491.html>.

pal inaction, more West Grove “apartment buildings fell into disrepair, businesses closed and homes were razed to make way for new construction that never came.”<sup>184</sup>

The decades-long razing and ruin of Grand Avenue and adjacent blocks north on Florida Avenue and south on Thomas Avenue entangles private rent-seeking behavior with the displacement-producing machinations of municipally-administered condemnation and demolition proceedings.<sup>185</sup> Initiated by permit application<sup>186</sup> or court order, the upshot of both condemnation and demolition is mass eviction.<sup>187</sup> In the West Grove, developer-instigated condemnation and demolition occurred and continues to occur on a neighborhood-wide scale, spreading building-by-building and block-by-block.<sup>188</sup> Unless hard pressed by public protest to intercede,<sup>189</sup> for instance in recently suing a group of development firms for “allowing a dozen apartment buildings to become, in effect, slums[,]”<sup>190</sup> the City of Miami seems indifferent

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[www.miamitimesonline.com/news/future-of-quaint-coconut-grove-homes-on-hold/article\\_6d8cf864-4028-11e9-914a-2757b86413f4.html](http://www.miamitimesonline.com/news/future-of-quaint-coconut-grove-homes-on-hold/article_6d8cf864-4028-11e9-914a-2757b86413f4.html), archived at <https://perma.cc/RT54-LFWX> (“Miami City Commissioners didn’t make any decision about curbing development and gentrification in the West Grove at Thursday’s meeting.”); Smiley, *Evictions, Profits and Slum*, *supra* note 11 (“But some say that’s too little from a government that should have done more to enforce Miami-Dade’s minimum housing standards and regulate the real estate market in a neighborhood primed for redevelopment.”); Jessica Lipscomb, *Miami Sues Coconut Grove Landlords for Renting Moldy, Sewage-Filled Apartments*, MIAMI NEW TIMES (Aug. 22, 2016), <https://www.miaminewtimes.com/news/miami-sues-coconut-grove-landlords-for-renting-moldy-sewage-filled-apartments-8699775>, archived at <https://perma.cc/W9GC-FM4M> (“Some community leaders, however, think the city should have intervened earlier.”).

<sup>184</sup> Smiley, *New Developer*, *supra* note 163.

<sup>185</sup> In the City of Miami, condemnation proceedings are governed by the Unsafe Structures Panel, a quasi-judicial tribunal. MIAMI, FLA., CODE OF ORDINANCES, chap. 10, art. VI, § 10-101 (2018).

<sup>186</sup> *Id.*

<sup>187</sup> See Edward Imperatore, Note, *Discriminatory Condemnations and the Fair Housing Act*, 96 GEO. L.J. 1027, 1030–33 (2008).

<sup>188</sup> See Viglucci, *Will This Plan*, *supra* note 11 (“Grand Avenue, once the lively and sometimes raucous main street of one of Miami’s oldest neighborhoods, a segregated district founded by Bahamian settlers in the 1880s. Once lined by inexpensive apartment buildings, the avenue today is mostly vacant after most of the slum dwellings were demolished and residents evicted over the years.”); Jessica Lipscomb, *Many of Last Affordable Apartments in West Grove Demolished After Years of Neglect*, MIAMI NEW TIMES (Apr. 13, 2018), <https://www.miaminewtimes.com/news/after-years-of-neglect-west-grove-apartments-are-demolished-10259436>, archived at <https://perma.cc/94B4-SFTR> (“Just this month, one of the apartment buildings, at 3410 Hibiscus St., was demolished, displacing about a dozen families. Soon, four other buildings will come crumbling down, leaving hundreds of people scrambling to sign new leases. And because finding affordable housing is a near-impossible feat in the rapidly gentrifying area, many fear that longtime residents will be displaced to the outer edges of the county, far from their jobs and children’s schools.”); Lipscomb, *supra* note 183 (“This is the situation that occurs in pretty much all of the minority communities in Miami, where the landlords just sort of give up on the property and then sell it and wash their hands of it, without a care for the tenants. It just comes down to the tenants being forgotten.”) (quoting Guerby Noel, Staff Attorney, Legal Services of Greater Miami, Inc.).

<sup>189</sup> Smiley, *New Developer*, *supra* note 163 (“The buildings’ tenants . . . protested in the streets and camped in vacant lots along Grand Avenue this month after evictions began.”).

<sup>190</sup> *Id.* (“The city’s complaint asked a judge to force the landlord to make repairs or deal with code violations at buildings with a combined 183 rental units — some of which they said had leaky roofs and back-flowing sewage — and find new housing for tenants living month to

to the adverse health and social consequences of the condemnation and demolition process, effectively giving landlords and development firms license to exploit the West Grove with impunity.

Further, private rent-seeking behavior may embroil individual landlords and development firms in bankruptcy proceedings, which in turn help shape the displacement process by facilitating the eviction of tenants, the demolition of apartment buildings, and the obliteration of residential blocks into vacant lots. In the West Grove, for example “[a] mystery buyer” recently “snagged six hotly contested lots along Grand Avenue” out of protracted bankruptcy proceedings “that were once part of [the Grove Village project’s] massive assemblage of properties for an ambitious but dormant redevelopment scheme.”<sup>191</sup> During the bankruptcy proceedings, neither the debtors nor the creditors nor the court called for the appointment of a committee or a trustee to represent the stakeholder interests of at-risk or adversely affected tenants.<sup>192</sup> Moreover, neither the City of Miami nor any West Grove nonprofit organization moved to intervene in the bankruptcy proceedings.<sup>193</sup> The vacant lots and apartment buildings at stake were originally assembled by “about a dozen” corporations controlled by a small investor group that “began buying up West Grove property in the early 2000s.”<sup>194</sup> As properties “began to change hands,” community activists spoke out, complaining: “Every apartment, cottage and business on Grand Avenue, up to the 3600 block, is now in the hands of or under contract by a developer.”<sup>195</sup> In the ensuing years, developers evicted scores of minority tenants from the properties.<sup>196</sup>

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month on \$400 rent. In September, Miami sought to foreclose a lien on a 28-unit rental building on Hibiscus Street currently under a demolition order.”)

<sup>191</sup> Vigiucci, *Who is Buying*, *supra* note 176 (“A corporation registered in Delaware, B and B Grove Properties, submitted the highest bid for the half-dozen properties in U.S. bankruptcy court in Miami.”).

<sup>192</sup> Bankruptcy court dockets of the proceedings make no reference to the appointment of a committee or a trustee to represent the affected tenants. *See* Docket, Grand Abbaco Dev. of Vill. West Corp., No. 1:16-BK-14286 (Bankr. S.D. Fla. filed Mar. 27, 2016); Docket, In re Nassau Dev. of Vill. W. Corp., No. 1:15-BK-27691 (Bankr. S.D. Fla. filed Oct. 2, 2015).

<sup>193</sup> Bankruptcy court dockets of the proceedings offer no evidence of intervention by the City of Miami or any West Grove nonprofit organization. *See* Docket, Grand Abbaco Dev. of Vill. West Corp., *supra* note 192; Docket, *In re Nassau Dev. of Vill. W. Corp.*, *supra* note 192. For a defense of municipal resident participatory standing and public law-oriented judicial intervention in bankruptcy proceedings, see C. Scott Pryor, *Who Bears the Burden? The Place for Participation of Municipal Residents in Chapter 9*, 37 CAMPBELL L. REV. 161, 162 (2015) (arguing that “[t]he standing of municipal residents finds warrant in the notion that the bankruptcy discharge is a public right”) (footnote omitted); *see also* Edward J. Janger, *Towards A Jurisprudence of Public Law Bankruptcy Judging*, 12 BROOK. J. CORP. FIN. & COMMERCIAL L. 39, 46 (2018) (arguing that “the bankruptcy court can be a forum for adjudication, a location for bargaining, and a facilitator of conciliation”).

<sup>194</sup> Smiley, *New Developer*, *supra* note 163; Smiley, *Evictions, Profits and Slum*, *supra* note 11.

<sup>195</sup> Will Johnson, *Infuse of Money Could Destroy Groveites’ Identity*, MIAMI HERALD, May 22, 2005, at 4GR.

<sup>196</sup> Martin Vassolo, *Miami Leaders OK Extended Notice for Tenants Facing Displacement*, MIAMI HERALD, June 10, 2017, at 3A (referencing “watching developers empty 120 units in

Despite a continuing cycle of building condemnation and demolition that has “ravaged” the West Grove, homeowners and tenants “are reluctant to pick up and go,” epitomizing “a community clinging to the last pieces of its heritage” even amid “crumbling” living conditions.<sup>197</sup> Echoing this reluctance, Renescha Coats, a now-displaced West Grove tenant and the mother of four children, recently exclaimed: “Our jobs are here. Our kids go to school here. . . . It’s not that we want to stay here. Where else are we going to go?”<sup>198</sup> In point of fact, Professor Vicki Been and Leila Bozorg, Deputy Commissioner for Neighborhood Strategies at the New York City Department of Housing Preservation and Development, report that “many low-income households are tied to their current neighborhood by social networks, childcare arrangements, family ties, relationships with providers of medical care, and other connections.”<sup>199</sup> Been and Bozorg admit that low-income households “might be able to make other (and perhaps better) arrangements in a new neighborhood,” conceding that “the prospect is daunting for many households, especially those stretched by financial and emotional challenges.”<sup>200</sup>

Like the West Grove, many inner-city neighborhoods in the United States are undergoing rapid and substantial demographic transition,<sup>201</sup> shifting from majority-minority to majority-white populations with correspondingly higher incomes<sup>202</sup> and, in doing so, displacing low-income residents of color<sup>203</sup> and resegregating central city neighborhoods.<sup>204</sup> Miami, in fact, is “ranked among the most racially segregated cities in the country.”<sup>205</sup> As six-year West Grove resident, Leonardo Bangerter, recently observed: “What used to be a black neighborhood just ain’t anymore. . . . In the few years that I’ve lived here, this place has changed quite a bit. The black community is

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the historically black *West Grove* neighborhood”); Viglucchi, *Miami Takes Up*, *supra* note 164 (noting “the dilapidated but low-cost apartments that have been or would be razed along the six blocks, which take up both sides of Grand from Margaret Street west to Plaza Street” by the Grove Village developers).

<sup>197</sup> Smiley, *New Developer*, *supra* note 11.

<sup>198</sup> *Id.*

<sup>199</sup> Been & Bozorg, *supra* note 155, at 1423–24.

<sup>200</sup> *Id.* at 1424 (mentioning that tenants “may also be trapped in their current neighborhoods by de facto segregation”).

<sup>201</sup> See, e.g., John J. Betancur, *The Politics of Gentrification: The Case of West Town in Chicago*, 37 URB. AFF. REV. 780, 792 (2002); Jackelyn Hwang & Robert J. Sampson, *Divergent Pathways of Gentrification: Racial Inequality and the Social Order of Renewal in Chicago Neighborhoods*, 79 AM. SOC. REV. 726, 726 (2014).

<sup>202</sup> See Weinstein, *supra* note 150, at 796–807.

<sup>203</sup> See Peter Marcuse et al., *Off-Site Displacement: How the Changing Economic Tide of a Neighborhood Can Drown Out the Poor*, 22 CLEARINGHOUSE REV. 1352, 1353 (1989).

<sup>204</sup> See generally DAVID LEY, *THE NEW MIDDLE CLASS AND THE REMAKING OF THE CENTRAL CITY* (1996); ZIELENBACH, *supra* note 12 (discussing the patterns of revitalization and decline in Chicago neighborhoods).

<sup>205</sup> KIRWAN INSTITUTE, *supra* note 77, at 17.

being forced out because of real estate . . . .”<sup>206</sup> Bangerter added: “I’m not gonna lie to you — the house that I live in, the old tenant had to leave. She was a black woman who lived here many, many years and could no longer afford the rent.”<sup>207</sup>

The displacement and resegregation of low-income black tenants and homeowners from the West Grove and other inner-city neighborhoods isolate out-migrating residents in outer-ring suburbs at a distance from family and peer networks,<sup>208</sup> labor markets, and mass transit centers, oftentimes triggering negative health and social outcomes.<sup>209</sup> Research suggests that both voluntary and involuntary neighborhood migration to new educational and social environments, even within the same city, may generate negative outcomes related to academic performance, educational attainment, and adolescent risk-taking behavior (e.g., drug use and sexual activity), markedly when the new neighborhood proves violent, segregated, and impoverished.<sup>210</sup> The next section considers the suburban resegregation of evicted and displaced low-income black tenants and homeowners from the West Grove and other Miami inner-city neighborhoods, including the structural fallout of forced migration displayed in terms of race-concentrated poverty and racialized socio-spatial geography.

### B. Suburban Resegregation

Displacement-caused suburban resegregation is increasingly concentrated in the inner-ring and outer-ring areas of metropolitan regions like Miami-Dade County “where communities are often starkly segregated by

<sup>206</sup> Molly Minta, *West Grove Residents Worry New Bed and Breakfast Will Gentrify Historic Neighborhood*, NEW TIMES (June 15, 2018), <https://www.miaminewtimes.com/content/printView/10442512>, archived at <https://perma.cc/M469-TC76>.

<sup>207</sup> *Id.*

<sup>208</sup> See generally Matthew Desmond, *Disposable Ties and the Urban Poor*, 117 AM. J. SOC. 1295, 1296–97 (2012).

<sup>209</sup> See Jason Corburn, *Reconnecting With Our Roots: American Urban Planning and Public Health in the Twenty-First Century*, 42 URB. AFF. REV. 688, 699 (2007) (mentioning a study that “suggested that residential upheaval and lack of resettlement from urban renewal programs continue to have mental and physical health impacts on African-Americans”); see also Diana Hernández, *‘Extra Oomph’: Addressing Housing Disparities Through Medical-Legal Partnership Interventions*, 31 HOUSING STUD. 871, 882 (2016); Christopher Muller, Robert J. Sampson, & Alix S. Winter, *Environmental Inequality: The Social Causes and Consequences of Lead Exposure*, 44 ANN. REV. SOC. 263, 266–67 (2018); B. Cameron Webb & Dayna Bowen, *Housing: A Case for The Medicalization of Poverty*, 46 J. LAW, MED. & ETHICS 588, 591–92 (2018); Roger T. Webb et al., *Adverse Outcomes to Early Middle Age Linked with Childhood Residential Mobility*, 51 AM. J. PREVENTIVE MED. 291, 296–98 (2016).

<sup>210</sup> See David Freedman & George W. Woods, *Neighborhood Effects, Mental Illness and Criminal Behavior: A Review*, 6 J. POL. & L. 1, 6 (2013); Robert J. Sampson et al., *Assessing “Neighborhood Effects”: Social Processes and New Directions in Research*, 28 ANN. REV. SOC. 443, 446 (2002); Robert J. Sampson, *Moving to Inequality: Neighborhood Effects and Experiments Meet Social Structure*, 114 AM. J. SOC. 189, 193 (2008); Patrick Sharkey & Robert J. Sampson, *Destination Effects: Residential Mobility and Trajectories of Adolescent Violence in a Stratified Metropolis*, 48 CRIMINOLOGY 639, 666 (2010).

race, ethnicity, and/or national origin and resources . . . .”<sup>211</sup> Unlike the modern black suburban movement triggered by economic opportunity, housing integration, and class flight, the suburban resegregation of Miami-Dade County is not a function of upward social mobility. It instead is a signal of racialized out-migration and suburban ghettoization.

The evolution of suburban ghettos contrasts with the late nineteenth and early twentieth century history of inner-city ghettos,<sup>212</sup> for example Chicago<sup>213</sup> and New York,<sup>214</sup> and other ethnic and immigrant enclaves.<sup>215</sup> Unlike earlier inner-city ghettos, the suburban ghettos of gentrifying metropolitan regions stem from the forced mobility of displacement and exclusion wrought by urban revitalization.<sup>216</sup> Denoted by formal and informal evictions, foreclosures, building condemnations and demolitions, and governmental slum clearance, forced residential mobility describes the involuntary displacement or removal, rather than the escape or flight,<sup>217</sup> of low-income families from their inner-city homes.<sup>218</sup>

National surveys of involuntary displacement and related studies of material hardship, Desmond and Professor Monica Bell point out, “significantly underestimate[ ] the prevalence of involuntary removal among renters because tenants often have narrow views of what constitutes an

<sup>211</sup> KIRWAN INSTITUTE, *supra* note 77, at 19.

<sup>212</sup> See Peter Marcuse, *The Enclave, the Citadel, and the Ghetto: What has Changed in the Post-Fordist U.S. City*, 33 URB. AFF. REV. 228, 229 (1997).

<sup>213</sup> See ST. CLAIR DRAKE & HORACE R. CAYTON BLACK METROPOLIS: A STUDY OF NEGRO LIFE IN A NORTHERN CITY 17–18 (1945); THOMAS LEE PHILPOTT, THE SLUM AND THE GHETTO: NEIGHBORHOOD DETERIORATION AND MIDDLE-CLASS REFORM, CHICAGO, 1880-1930 ix–xiii (1978); ALLEN SPEAR, BLACK CHICAGO: THE MAKING OF A NEGRO GHETTO 1890-1920 223–24 (1967).

<sup>214</sup> See GILBERT OSOFSKY, HARLEM: THE MAKING OF A GHETTO: NEGRO NEW YORK 1890-1930 17-149 (1963); John R. Logan, Zhang Weiwei, & Chunyu Miao David, *Emergent Ghettos: Black Neighborhoods in New York and Chicago, 1880-1940*, 120 AM. J. SOC. 1055, 1090–92 (2015).

<sup>215</sup> See, e.g., John Logan, Alba Richard, & Zhang Wenquan, *Immigrant Enclaves and Ethnic Communities in New York and Los Angeles*, 67 AM. SOC. REV. 299, 301 (2002) (noting research that “black residential choice is highly constrained by a dual housing market”) (citations omitted).

<sup>216</sup> For studies of urban revitalization, see ALAN EHRENHALT, THE GREAT INVERSION AND THE FUTURE OF THE AMERICAN CITY 3–21, 96–97, 227–236 (2012); RICHARD FLORIDA, CITIES AND THE CREATIVE CLASS 172 (2004); EDWARD GLAESER, TRIUMPH OF THE CITY: HOW OUR GREATEST INVENTION MAKES US RICHER, SMARTER, GREENER, HEALTHIER, AND HAPPIER 84 (2011); Edward L. Glaeser & Joshua D. Gottlieb, *Urban Resurgence and the Consumer City*, 43 URB. STUD. 1275, 1297 (2006); Richard Florida, *The ‘Big Liberal City’ Isn’t Big Enough*, CITYLAB (Mar. 30, 2017), <http://www.citylab.com/life/2017/03/the-big-liberal-city-isnt-big-enough/521094>, archived at <http://perma.cc/ZS2M-NSNG>.

<sup>217</sup> On sociodemographic and racial characteristics that impede or facilitate residential mobility between poor and nonpoor neighborhoods, see Scott South & Kyle Crowder, *Escaping Distressed Communities: Individual, Community, and Metropolitan Influences*, 4 AM. J. SOC. 1040 (1997).

<sup>218</sup> See Matthew Desmond & Monica Bell, *Housing, Poverty, and the Law*, 11 ANN. REV. LAW & SOC. SCI. 15, 23–27 (2015).

‘eviction.’”<sup>219</sup> Alternative court record studies, Desmond and Bell note, “find considerably higher rates of eviction than those based on self-reports,” yet “overlook other types of forced moves low-income families experience, including ‘informal evictions,’ involving landlords forcibly removing tenants . . . .”<sup>220</sup> That omission is likely to “underestimate drastically the prevalence of involuntary displacement among low-income renters.”<sup>221</sup>

Underestimating the rates of forced housing displacement and residential instability among low-income families, Desmond and Bell caution, holds serious consequences for the urban out-migration of low-income black and Latinx families “disproportionately subjected to forced displacement.”<sup>222</sup> For such already vulnerable households, the “fallout of forced displacement” — eviction and foreclosure — for children, families, and communities emerges in palpable forms of material hardship, impaired health, and diminished neighborhood quality, all indicators of a distressed built environment.<sup>223</sup> Desmond and Bell cite research linking foreclosures to health complications and tying evictions to adverse mental health effects for mothers.<sup>224</sup> Furthermore, they confirm that “families forced from their homes often relocate to substandard housing in disadvantaged neighborhoods.”<sup>225</sup> In this generative sense, they remark, “involuntary displacement is a cause, not simply a condition, of poverty and social suffering.”<sup>226</sup>

The growing suburban second ghettos of Miami-Dade County are neighborhoods disadvantaged by poverty, residential and school segregation, and government *de jure* and *de facto* discrimination. The historian Richard Rothstein uses the term ghetto “to describe low-income African American neighborhoods, created by public policy, with a shortage of opportunity, and with barriers to exit.”<sup>227</sup> To Rothstein, an inner-city or suburban ghetto “accurately describes a neighborhood where government has not only concen-

<sup>219</sup> *Id.* at 24 (“Many who were forced from their homes do not recognize or admit as much in the context of a survey.”) (footnote omitted).

<sup>220</sup> *Id.*

<sup>221</sup> *Id.*

<sup>222</sup> *Id.*

<sup>223</sup> *Id.* (calling for “[r]esearch that calculated an improved national eviction rate as well as documented significant variation in displacement rates between municipalities”); *see also* Abigail A. Sewell, *Opening the Black Box of Segregation: Real Estate and Racial Health Disparities*, in *RACE AND REAL ESTATE* 87–108 (Adrienne Brown & Valerie Smith eds., 2015).

<sup>224</sup> Desmond & Bell, *supra* note 218, at 25 (observing that “the moment of losing your home itself, above and beyond the consequences that follow, is a traumatic event that compromises well-being”) (footnotes omitted).

<sup>225</sup> *Id.*

<sup>226</sup> *Id.*

<sup>227</sup> *See* RICHARD ROTHSTEIN, *THE COLOR OF LAW: A FORGOTTEN HISTORY OF HOW OUR GOVERNMENT SEGREGATED AMERICA* xvi (2017); *see also* KENNETH B. CLARK, *DARK GHETTO: DILEMMAS OF SOCIAL POWER* (2d ed. 1965) (studying the social and political dynamics of Harlem); HIRSCH, *supra* note 16, at 11; KENNETH L. KUSMER, *A GHETTO TAKES SHAPE: BLACK CLEVELAND, 1870-1930* 174–90 (1978) (investigating patterns of residential segregation and racial discrimination in Cleveland). *But see* Mario Luis Small, *Four Reasons to Abandon the Idea of “The Ghetto,”* 7 *CITY & COMMUNITY* 389, 289–90 (2008).

trated a minority but established barriers to its exit.”<sup>228</sup> Likewise, for sociology Professor Elijah Anderson, ghetto “refers powerfully to the neighborhoods in which blacks have been concentrated[.]”<sup>229</sup> Amplifying the notion of socio-spatial concentration, Professor David Troutt conceptualizes ghetto poverty in “racial, economic, and spatial terms,” linking it to “structural factors, such as race discrimination in employment, segregation in housing, and structural changes in employment and wages.”<sup>230</sup> For Troutt, such poverty “is geographically concentrated” and “increasingly isolated from the non-poor . . . .”<sup>231</sup>

Taken together, Rothstein, Anderson, and Troutt expose the racialized economics, politics, and spatial geography of urban and suburban ghettos in America. Their structural accounts of race-concentrated poverty, discriminatory housing policies, differential employment opportunities, and exit and mobility barriers summarize the current socio-spatial status of the suburban ghettos of incorporated and unincorporated Miami-Dade County. Like the extant inner-city ghettos of northern and southern metropolitan areas, Miami-Dade County’s suburban ghettos are demarcated by residential segregation and a “growing prosperity gap.”<sup>232</sup> Because it is escalating and “unchecked,” the FIU Metropolitan Center warns, that “prosperity gap risks becoming a permanent structural characteristic of the County’s economy, labor, and housing markets, posing economic hardships for those least able to absorb them and thwarting the desires of workers and families to lift themselves up the regional income ladder.”<sup>233</sup> The gap persists in part because of the lack of “an effective community development infrastructure.”<sup>234</sup>

Anderson notes that “the conjoined processes of racial segregation and black community formation led to the concentration of black city-dwellers in specific neighborhoods even before Emancipation.”<sup>235</sup> Braced by the structural forces of the post-industrial global economy,<sup>236</sup> the segregated residential boundaries of outer-ring suburbs now exist independent of private

<sup>228</sup> ROTHSTEIN, *supra* note 227, at xvi.

<sup>229</sup> Anderson, *supra* note 19, at 9.

<sup>230</sup> David D. Troutt, *Katrina’s Window: Localism, Resegregation, and Equitable Regionalism*, 55 BUFF. L. REV. 1109, 1134 (2008) (footnotes omitted).

<sup>231</sup> *Id.* at 1134–35.

<sup>232</sup> See GREINER, *supra* note 97, at 53.

<sup>233</sup> *Id.* (noting that “[d]eclining opportunity for households at the lower end of the income spectrum will also pose steadily increasing costs to the County, including policing expenditures, social services, hospitals and health care services, increased affordable housing costs, lost property taxes and lost spending power”).

<sup>234</sup> *Id.* at 29.

<sup>235</sup> Anderson, *supra* note 19, at 9–10; see also John R. Logan et al., *Creating the Black Ghetto: Black Residential Patterns Before and During the Great Migration*, 660 ANNALS AM. ACAD. POL. & SOC. SCI. 18, 19 (2015) (employing “fine-area data to study racial residential patterns for many cities over several decades in the early twentieth century”).

<sup>236</sup> On the post-industrial, structural intersection of race, poverty, and inequality, see generally William Julius Wilson, *Framing Race and Poverty*, 8 CONTEXTS 84, 84 (2009); William Julius Wilson, *Toward a Framework for Understanding Forces that Contribute to or Reinforce Racial Inequality*, 1 RACE & SOC. PROBLEMS 3, 10–11 (2009).

practices of discrimination and public policies of *de jure* segregation effected through racial covenants,<sup>237</sup> redlining,<sup>238</sup> reverse redlining,<sup>239</sup> and state-sanctioned vigilante violence.<sup>240</sup> In Miami-Dade County, Ferguson, Missouri, and other black metropolitan suburbs, the boundaries of *de facto* segregation and concentrated poverty are enforced through state sanctioned surveillance, policing, and punishment,<sup>241</sup> carceral artifacts of Reconstruction era Black Codes.<sup>242</sup> Desmond mentions that “many disadvantaged minority neighborhoods are today characterized by heightened surveillance and police presence,” adding that reliance on the criminal justice system to enforce segregated suburban borders yields negative health and social outcomes, conspicuously for poor black and Latinx men.<sup>243</sup> Traceable to displacement and resegregation, these negative outcomes intensify the crisis of urban poverty and suburban impoverishment in Miami and other metropolitan areas.

For the West Grove Task Force, the deepening local crisis of eviction, demolition, displacement, and resegregation provoked a legal-political turn to the Fair Housing Act and a canvassing of its language, legislative and regulatory archive, doctrinal history, and policy record. At first glance, the turn to the Fair Housing Act for legal-political direction may seem like a reflexive recourse to conventional rights-based discourse. But a close reading of the statute reveals more than a standard rights discourse of narrow,

<sup>237</sup> See Kevin Fox Gotham, *Urban Space, Restrictive Covenants and the Origins of Racial Residential Segregation in a US City, 1900–50*, 24 INT’L J. URB. & REGIONAL RES. 616, 617 (2000); Carol M. Rose & Richard R.W. Brooks, *Racial Covenants and Housing Segregation, Yesterday and Today*, in RACE AND REAL ESTATE 161, 162–65.

<sup>238</sup> See Georgette Chapman Phillips, *Black, Brown, and Green: The Persistent Effect of Race in Home Mortgage Lending*, in RACE AND REAL ESTATE 15, 16.

<sup>239</sup> See Shaytonna V. Bullock, *Fee Simple Subject to Executory Interest: An Analysis of the Preemption and Revocation of Black Property Rights*, 12 S.J. POL’Y & JUST. 205, 230–36 (2018).

<sup>240</sup> See JEANNINE BELL, HATE THY NEIGHBOR: RACIAL VIOLENCE AND THE PERSISTENCE OF SEGREGATION IN AMERICAN HOUSING 1–52 (2013); Jeannine Bell, *Can’t We Be Your Neighbor? Trayvon Martin, George Zimmerman, and the Resistance to Blacks as Neighbors*, 95 B.U. L. REV. 851, 853 (2015); Jeannine Bell, *Hate Next Door: Housing Integration and Racialized Boundaries*, in RACE AND REAL ESTATE 31, 35–38.

<sup>241</sup> See ALEXES HARRIS, A POUND OF FLESH: MONETARY SANCTIONS AS PUNISHMENT FOR THE POOR 1–17 (2016); JONATHAN SIMON, POOR DISCIPLINE: PAROLE AND THE SOCIAL CONTROL OF THE UNDERCLASS, 1890–1990 526 (1993); LOIC WACQUANT, PUNISHING THE POOR 41–75 (2009); Jeannine Bell, *Police Violence and Ferguson: (En)Racing Criminal Procedure*, 65 J. LEGAL EDUC. 306, 307–09 (2015).

<sup>242</sup> On the history of the Black Codes, see DOUGLAS A. BLACKMON, SLAVERY BY ANOTHER NAME: THE RE-ENSLAVEMENT OF BLACK AMERICANS FROM THE CIVIL WAR TO WORLD WAR II (2008); DAVID M. OSHINSKY, “WORSE THAN SLAVERY”: PARCHMAN FARM AND THE ORDEAL OF JIM CROW JUSTICE (1997).

<sup>243</sup> Desmond, *supra* note 40, at 6 (“The violence and isolation of incarceration, as well as the mark of a criminal record, have steep consequences for mental health, employment, family life, and social mobility.”); see also Asad L. Asad & Matthew Clair, *Racialized Legal Status as a Social Determinant of Health*, 199 SOC. SCI. & MED. 19, 22 (2018); David S. Kirk & Robert J. Samson, *Juvenile Arrest and Collateral Educational Damage in the Transition to Adulthood*, 86 SOC. EDUC. 36, 42 (2013); Jason Schnittker, Michael Massoglia, & Christopher Uggen, *Incarceration and the Health of the African American Community*, 8 DU BOIS REV. 133, 140 (2011).

atomistic claims of individual or group discrimination. When carefully searched, the annals of the Fair Housing Act disclose deep positive law commitments to individual, anti-discrimination norms of equal opportunity and integration as well as collective, anti-subordination norms of interracial association and neighborhood inclusion. Those norms inform particularized claims of discrimination under disparate-impact theory and community-wide claims of discrimination under segregative-effect theory. Institutional constraints aside,<sup>244</sup> both disparate-impact and segregative-effect theories of liability provide catalytic legal-political organizing narratives, tactics, and strategies for West Grove advocates and activists conducting fact investigations, building coalitions, negotiating community benefits agreements, and petitioning for legislative policy changes. To that end, beginning in late 2018 the Task Force gathered academics, public interest and pro bono advocates, clergy, and tenant-and-homeowner activists in church halls throughout the West Grove to document patterns of eviction, displacement, and resegregation, research the Fair Housing Act and related federal, state, and local civil rights and land use statutes, collect and supply public health data on the built environment, and debate legal-political tactics at regular community education, direct action, and strategic planning workshops. The next Part reviews the core fair housing litigation theories of disparate-impact and segregative-effect liability studied by the Task Force.

### III. FAIR HOUSING LITIGATION THEORY

*“They’re pushing us out. And no one cares. People are being uprooted from their homes.”*<sup>245</sup>

For the West Grove Task Force, fair housing litigation theory provides a means to protect low-income tenants and homeowners from the trauma of displacement, prevent neighborhood disadvantage and instability, and remedy segregation and its associated negative health and social outcomes. Although the conduct of private and nonprofit actors is oftentimes implicated in fair housing and community development battles, it was the West Grove-targeted conduct of the City of Miami in permitting the large scale upzoning and demolition of minority-occupied multifamily rental properties, for example the Grove Village MUSP Development Order, that originally shaped the mission of the Task Force. Gradually, however, accumulating evidence of collective harm broadened this initial remedial focus, combining prospective, prophylactic relief, such as upzoning and demolition moratoriums and community benefits agreements, with retrospective, compensatory relief,

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<sup>244</sup> See RISA L. GOLUBOFF, *THE LOST PROMISE OF CIVIL RIGHTS* 1–50, 238–70 (2007); GERALD N. ROSENBERG, *THE HOLLOW HOPE: CAN COURTS BRING ABOUT SOCIAL CHANGE?* 1–169 (1991); Kimberlé Williams Crenshaw, *Race Liberalism and the Deradicalization of Racial Reform*, 130 *HARV. L. REV.* 2298, 2302 (2017).

<sup>245</sup> Smiley, *Evictions, Profits and Slum*, *supra* note 11 (quoting Renescha Coats).

such as displacement-specific reparations and right-to-return preferences. Reconciling the competing remedial claims of Task Force coalition partners and accommodating the statutory constraints of fair housing litigation and the constitutional strictures of equal protection jurisprudence require both a normative and instrumental reading of the Fair Housing Act and its principal theories of disparate impact and segregative effect.<sup>246</sup>

Fair housing litigation commands a wide literature germane to law reform theories of disparate impact,<sup>247</sup> segregative effect,<sup>248</sup> and municipal equity more generally.<sup>249</sup> Litigation spawned by the passage of the 1968 Fair

<sup>246</sup> The Task Force's statutory emphasis on the FHA springs in part from the current content of equal protection doctrine and the requisite standard of discriminatory intent. In a careful parsing of discriminatory intent, Professors Mario Barnes and Erwin Chemerinsky contend that "a discriminatory motivation will rarely, if ever, be expressed and benign purposes can typically be articulated for most laws." Mario L. Barnes & Erwin Chemerinsky, *What Can Brown Do for You?: Addressing McCleskey v. Kemp As a Flawed Standard for Measuring the Constitutionally Significant Risk of Race Bias*, 112 NW. U. L. REV. 1293, 1302–06 (2018) (explaining why purposeful discrimination as a standard fails to capture much of the social behavior around race and decision-making); see also Aziz Z. Huq, *What Is Discriminatory Intent?*, 103 CORNELL L. REV. 1211, 1215 (2018) (mapping competing definitional and evidentiary strands of discriminatory intent). Barnes and Chemerinsky maintain that "many laws with both a discriminatory purpose and effect will be upheld simply because of evidentiary problems inherent in requiring proof of such a purpose." Barnes & Chemerinsky, *supra* at 1303. Relying on the science of implicit bias, they argue that "actors do not always have conscious, intentional control over the processes of social perception, impression formation, and judgment that motivate their actions." *Id.* (footnote omitted). Indeed, they point to unconscious racial biases that "influence decision-making processes in ways of which [decision makers] are completely unaware." *Id.* (footnotes omitted). In this regard, they conclude, "the requirement of a discriminatory purpose in order to prove the existence of an equal protection violation fails to account for the reality of implicit bias." *Id.* at 1304–06 (citing "other social cognition phenomena connected to motivation and behavior such as in-group favoritism, confirmation bias, stereotype threat, heuristics, moral credentialing, and of course, covert (conscious) bias") (footnotes omitted).

<sup>247</sup> See Michael G. Allen, Jamie L. Crook, & John P. Relman, *Assessing HUD's Disparate Impact Rule: A Practitioner's Perspective*, 49 HARV. C.R.–C.L. L. REV. 155, 160 (2014); Rigel C. Oliveri, *Beyond Disparate Impact: How the Fair Housing Movement Can Move On*, 54 WASHBURN L.J. 625, 633 (2015); Valerie Schneider, *In Defense of Disparate Impact: Urban Redevelopment and the Supreme Court's Recent Interest in the Fair Housing Act*, 79 MO. L. REV. 539, 544 (2014); Stacy E. Seicshnaydre, *Is Disparate Impact Having Any Impact? An Appellate Analysis of Forty Years of Disparate Impact Claims under the Fair Housing Act*, 63 AM. U. L. REV. 357, 400 (2013); Robert G. Schwemm & Calvin Bradford, *Proving Disparate Impact in Fair Housing Cases After Inclusive Communities*, 19 N.Y.U. J. LEGIS. & PUB. POL'Y 685, 689 (2016); see also Susan D. Carle, *A Social Movement History of Title VII Disparate Impact Analysis*, 63 FLA. L. REV. 251 (2011); Olatunde C.A. Johnson, *The Agency Roots of Disparate Impact*, 49 HARV. C.R.–C.L. L. REV. 125, 128 (2014).

<sup>248</sup> See Megan Haberle, *Introducing HUD's Implementation of the Fair Housing Act's Discriminatory Effects Standard*, 47 CLEARINGHOUSE REV. 211, 213 (2013); Robert G. Schwemm, *Segregative-Effect Claims Under the Fair Housing Act*, 20 N.Y.U. J. LEGIS. & PUB. POL'Y 709, 710 (2017).

<sup>249</sup> Situated in predominantly minority neighborhoods, municipal equity claims may be grounded in evidence of government discrimination in housing or in the allocation of resources and delivery of services (garbage collection, fire protection and police protection, street paving and lighting, sanitary sewers and surface water drainage, water mains, and fire hydrants). See Robert G. Schwemm, Cox, Halprin, and *Discriminatory Municipal Services Under the Fair Housing Act*, 41 IND. L. REV. 717, 721 (2008); see also Benjamin A. Schepis, *Making the Fair Housing Act More Fair: Permitting Section 3604(b) to Provide Relief for Post-Occupancy*

Housing Act (“FHA”),<sup>250</sup> and successive disputes over the meaning of its affirmative mandate<sup>251</sup> and regulatory prohibitions, lay the groundwork to mount FHA-based impact and effect challenges to municipal land use and zoning policies and practices,<sup>252</sup> for example, the upzoning, condemnation, demolition, and code-enforcement policies of the City of Miami at work in the West Grove.<sup>253</sup> Consider disparate-impact theory first.

### A. *Disparate Impact*

Federal courts recognize both disparate-impact and segregative-effect claims of housing discrimination under the FHA. Four years ago, in *Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc.* (“*Inclusive Communities*”),<sup>254</sup> the United States Supreme Court

*Discrimination in the Provision of Municipal Services – A Historical View*, 41 U. TOUL. L. REV. 411, 443–44 (2010) (arguing that “the statutory text, including HUD regulations, as well as the traditionally broad interpretation given to the FHA militate a broad reading that would include claims arising after a sale or rental, particularly when a municipality discriminates against its citizens”). See generally Max Schanzenbach & Nadav Shoked, *Reclaiming Fiduciary Law for the City*, 70 STAN. L. REV. 565, 593–608 (2018).

<sup>250</sup> 42 U.S.C. §§ 3601–3619 (2018). See generally ROBERT G. SCHWEMM, HOUSING DISCRIMINATION: LAW AND LITIGATION § 10:7 n.1 (2017).

<sup>251</sup> See Affirmatively Furthering Fair Housing, 80 Fed. Reg. 42,272 (July 16, 2015) (finalizing HUD rules governing Assessment of Fair Housing planning process); Affirmatively Furthering Fair Housing: Extension of Deadline for Submission of Assessment of Fair Housing for Consolidated Plan Participants, 83 Fed. Reg. 683 (Jan. 5, 2018) (suspending local government obligation to complete the Assessment of Fair Housing until after October 31, 2020); Thomas Silverstein & Diane Glauber, *Leveraging the Besieged Assessment of Fair Housing Process to Create Common Ground Among Fair Housing Advocates and Community Developers*, 27 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 33, 36 (2018) (“The HUD [2018] notice is a major setback and will result in significant backsliding in some communities, particularly with regard to the obligation to follow up fair housing planning with effective action.”). See generally Megan Haberle, Philip Tegeler, & Ebony Gayles, *Affirmatively Furthering Fair Housing in HUD Housing Programs: A First Term Report Card*, 22 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 27, 28 (2013); Robert G. Schwemm, *Overcoming Structural Barriers to Integrated Housing: A Back-to-the-Future Reflection on the Fair Housing Act’s “Affirmatively Further” Mandate*, 100 KY. L.J. 125, 132 (2012).

<sup>252</sup> See Schwemm & Bradford, *supra* note 247, at 688–90 (noting that numerous courts and HUD agreed that a FHA plaintiff may present evidence supporting both types of discriminatory-effect claims in a single case) (footnotes omitted).

<sup>253</sup> See Richard W. Bartke & John S. Lamb, *Upzoning, Public Policy, and Fairness – A Study and Proposal*, 17 WM. & MARY L. REV. 701, 702 n.10 (1976) (“‘Upzoning’ is a change in zoning classification from less intensive to more intensive; ‘downzoning’ refers to the opposite phenomenon. The change may be in the use (e.g., from single family to multiple residential use), bulk (e.g., from 15,000 sq. ft. minimum lot size to 7,500 sq. ft.), or height (e.g., from 30 ft. maximum height to 60 ft. maximum); occasionally upzoning may involve all three elements.”).

<sup>254</sup> 135 S. Ct. 2507 (2015) (writing for the Court, Justice Kennedy was joined by Justices Ginsburg, Breyer, Sotomayor, and Kagan). For analysis of the decision, see Rigel C. Oliveri, *Disparate Impact and Integration: With TDHCA v. Inclusive Communities the Supreme Court Retains an Uneasy Status Quo*, 24 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 267, 276–85 (2015); Robert G. Schwemm, *Fair Housing Litigation After Inclusive Communities: What’s New and What’s Not*, 115 COLUMBIA L. REV. SIDEBAR 106 (2015), <http://columbialawreview.org/content/fair-housing-litigation-after-inclusive-communities-whats-new-and-whats-not/>, archived at <https://perma.cc/9U83-YXDR>.

explicitly addressed FHA disparate-impact theories of liability.<sup>255</sup> Against the background of the FHA's purpose and language, the judicial interpretation of similar language in two preceding antidiscrimination statutes (Title VII of the Civil Rights Act of 1964<sup>256</sup> and the Age Discrimination in Employment Act of 1967),<sup>257</sup> congressional ratification of disparate-impact claims in 1988, and the unanimous view of nine federal courts of appeals,<sup>258</sup> the Supreme Court held that disparate-impact claims are cognizable under the FHA.<sup>259</sup>

In reaching this statutory conclusion, the Court relied on two central provisions (sections 804(a) and 805(a)) of the FHA,<sup>260</sup> and a corresponding federal regulation issued in 2013 by the Secretary of Housing and Urban Development ("HUD"),<sup>261</sup> addressing the denial of housing opportunities on the basis of "race, color, religion, or national origin."<sup>262</sup> Section 804(a) of the FHA expressly provides that it shall be unlawful: "To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or *otherwise make unavailable* or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin."<sup>263</sup> Additionally, section 805(a) provides: "It shall be unlawful for any person or other entity whose business includes engaging in real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of race, color, religion, sex, handicap, familial status, or national origin."<sup>264</sup>

To guide interpretation of FHA liability, HUD regulations establish a three-step burden-shifting framework for determining the "discriminatory effect" of disparate-impact claims.<sup>265</sup> Both the FHA statutory and HUD regulatory proscriptions governing disparate-impact liability apply to state and private entities as well as private persons.<sup>266</sup> Controlling HUD regulations

<sup>255</sup> *Inclusive Cmty. Project*, 135 S. Ct. at 2513.

<sup>256</sup> Civil Rights Act of 1964 § 703(a), 42 U.S.C. § 2000e (2018).

<sup>257</sup> Age Discrimination in Employment Act of 1967, 29 U.S.C. § 623 (2018).

<sup>258</sup> See *Huntington Branch, NAACP v. Huntington*, 844 F.2d 926, 935–936 (2d Cir. 1988); *Resident Advisory Bd. v. Rizzo*, 564 F.2d 126, 146 (3d Cir. 1977); *Smith v. Clarkton*, 682 F.2d 1055, 1065 (4th Cir. 1982); *Hanson v. Veterans Admin.*, 800 F.2d 1381, 1386 (5th Cir. 1986); *Arthur v. Toledo*, 782 F.2d 565, 574–75 (6th Cir. 1986); *Metro. Hous. Dev. Corp. v. Arlington Heights*, 558 F.2d 1283, 1290 (7th Cir. 1977); *United States v. Black Jack*, 508 F.2d 1179, 1184–85 (8th Cir. 1974); *Halet v. Wend Inv. Co.*, 672 F.2d 1305, 1311 (9th Cir. 1982); *United States v. Marengo Cty. Comm'n*, 731 F.2d 1546, 1559, n.20 (11th Cir. 1984).

<sup>259</sup> *Inclusive Cmty. Project*, 135 S. Ct. at 2525.

<sup>260</sup> *Id.* at 2520; see Civil Rights Act of 1968, §§ 804(a), 805(a); 42 U.S.C. §§ 3604(a), 3605(a) (2018).

<sup>261</sup> See 24 C.F.R. § 100.500 (2013) (prohibiting discriminatory effect); Implementation of the Fair Housing Act's Discriminatory Effects Standard, 78 Fed. Reg. 11460 (Feb. 15, 2013).

<sup>262</sup> Civil Rights Act of 1968 § 804; 42 U.S.C. § 3604(a) (2018).

<sup>263</sup> Civil Rights Act of 1968 § 804(a), 42 U.S.C. § 3604(a) (2018) (emphasis added).

<sup>264</sup> Civil Rights Act of 1968 § 805(a), 42 U.S.C. § 3605(a) (2018).

<sup>265</sup> 24 C.F.R. § 100.500(c).

<sup>266</sup> *Inclusive Cmty. Project*, 135 S. Ct. at 2524. With respect to disparate-impact suits against private persons or entities, the Court warns that the evidentiary "standards" and proce-

make clear that a plaintiff may establish liability under the FHA even if the challenged practice of the defendant “was not motivated by a discriminatory intent.”<sup>267</sup> Conversely, a defendant may escape liability if the practice in controversy is “supported by a legally sufficient justification . . . .”<sup>268</sup>

By design, the FHA’s regulatory framework places the initial “burden of proving that a challenged practice caused or predictably will cause a discriminatory effect[ ]” on the plaintiff.<sup>269</sup> To discharge this burden, *Inclusive Communities* instructs, a “plaintiff first must make a prima facie showing of disparate impact.”<sup>270</sup> That prima facie showing requires evidence of “robust causality.”<sup>271</sup> The requirement of robust causality, the Court explained, “ensures that ‘[r]acial imbalance . . . does not, without more, establish a prima facie case of disparate impact’ and thus protects defendants from being held liable for racial disparities they did not create.”<sup>272</sup> On this reasoning, the standard of robust causality serves as an evidentiary acid test in determining the causal connection between a challenged policy or practice and a disparate impact and, by extension, any disadvantage harmful to racial minorities.<sup>273</sup> Upon this logic, causality necessitates more than statistical disparity. Hence, the Court cautioned that “a disparate-impact claim that relies on a statistical disparity must fail if the plaintiff cannot point to a defendant’s policy or policies causing that disparity.”<sup>274</sup>

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dural “safeguards” limiting disparate-impact liability are “necessary to protect potential defendants against abusive disparate-impact claims.” *Id.* (“If the specter of disparate-impact litigation causes private developers to no longer construct or renovate housing units for low-income individuals, then the FHA would have undermined its own purpose as well as the free-market system.”).

<sup>267</sup> 24 C.F.R. § 100.500.

<sup>268</sup> *Id.*

<sup>269</sup> *Inclusive Cmty. Project*, 135 S. Ct. at 2514 (“If a statistical discrepancy is caused by factors other than the defendant’s policy, a plaintiff cannot establish a prima facie case, and there is no liability.”) (citing 24 CFR § 100.500(c)(1) (2014)); 24 C.F.R. § 100.500(c)(1) (“The charging party, with respect to a claim brought under 42 U.S.C. 3612, or the plaintiff, with respect to a claim brought under 42 U.S.C. 3613 or 3614, has the burden of proving that a challenged practice caused or predictably will cause a discriminatory effect.”). HUD defines the discriminatory effect of a practice “where it actually or predictably results in a disparate impact on a group of persons or creates, increases, reinforces,” or, in the alternative, “perpetuates segregated housing patterns because of race, color, religion, sex, handicap, familial status, or national origin.” 24 C.F.R. § 100.500(a).

<sup>270</sup> *Inclusive Cmty. Project*, 135 S. Ct. at 2514.

<sup>271</sup> *Id.* at 2523.

<sup>272</sup> *Id.* (citing *Wards Cove Packing Co. v. Atonio*, 490 U.S. 642, 653 (1989)). The Court added: “Without adequate safeguards at the prima facie stage, disparate-impact liability might cause race to be used and considered in a pervasive way and ‘would almost inexorably lead’ governmental or private entities to use ‘numerical quotas,’ and serious constitutional questions then could arise.” *Id.* (citation omitted).

<sup>273</sup> *Id.* (“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.”).

<sup>274</sup> *Id.* at 2523; see also *Bank of Am. Corp. v. City of Miami, Fla.*, 137 S. Ct. at 1306 (holding that “proximate cause under the FHA requires ‘some direct relation between the injury asserted and the injurious conduct alleged’”) (quoting *Holmes v. Sec. Inv’r Prot. Corp.*, 503 U.S. 258, 268 (1992)).

Evidence of a statistical disparity<sup>275</sup> requires “a comparison of how a challenged policy affects different groups,”<sup>276</sup> for example, white and black tenants in the West Grove or in the City of Miami. With respect to this differential appraisal, Professor Robert Schwemm and Calvin Bradford stress that a “plaintiff’s statistics must focus on ‘the subset of the population affected by the challenged policy.’”<sup>277</sup> For a plaintiff, Schwemm and Bradford underline, “[i]t is not enough to show a policy’s negative impact on a protected class.”<sup>278</sup> To show *disparate* impact, and not solely impact, a “plaintiff must also show that others were less harmed by the policy.”<sup>279</sup>

Factually, this comparison entails a statistical showing of impact disparity buttressed by a showing of causal conduct by an individual or a private or public entity instrumental in the creation of racial disadvantage. Evidence of causal conduct involves a multi-step process. As a threshold matter, a plaintiff must identify a particular policy or practice, for example the Grove Village MUSP Development Order and the practice of municipal upzoning, that appears to limit fair housing opportunities, in this instance through the eviction of racial minorities living in, and the demolition of, multifamily properties. Next, a plaintiff must verify a disparate, discriminatory effect, in this case the apparent disproportionate percentage of eviction- and demolition-impacted racial minorities historically occupying multifamily properties in the West Grove. If verified, that disparate effect appears to discriminate against a protected class of disadvantaged persons, here black tenants, in comparison to an unprotected class of less disadvantaged persons, here white tenants. Finally, a plaintiff must confirm that the challenged policy or practice created or produced the disparate impact, namely the disproportionate involuntary removal of racial minorities living in multifamily properties and the razing of minority-occupied multifamily properties throughout the West Grove, as a traceable causal consequence.<sup>280</sup>

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<sup>275</sup> Schwemm and Bradford comment that “if the defendant’s policy is being challenged for demolishing or causing evictions in a particular housing complex, only those persons residing therein would be affected.” Schwemm & Bradford, *supra* note 247, at 698 (footnote omitted). Moreover, they note “[e]ven in a single case, the affected group may vary depending on whether the challenged policy has both a future impact (e.g., who will live in this project in the future) and a backward-looking impact (e.g., who was injured in the past as a result of this policy).” *Id.* (footnote omitted). Schwemm and Bradford further remark that “within the affected population, the plaintiff’s statistics must focus on ‘appropriate comparison groups’ for the purpose of showing how the challenged policy hurts a protected class more than others.” *Id.* (footnote omitted).

<sup>276</sup> Schwemm, *supra* note 248, at 713–14.

<sup>277</sup> Schwemm & Bradford, *supra* note 247, at 698 (footnote omitted).

<sup>278</sup> *Id.* at 698.

<sup>279</sup> *Id.* at 698–99.

<sup>280</sup> The Supreme Court revisited the concepts of foreseeability and proximate cause under the FHA in *Bank of America Corp. v. City of Miami, Fla.*, addressing municipal injuries arising out of racial discrimination in real estate transactions attributable to predatory lending practices. The Court observed: “In the context of the FHA, foreseeability alone does not ensure the close connection that proximate cause requires. The housing market is interconnected with economic and social life. A violation of the FHA may, therefore, ‘be expected to cause ripples of harm to flow’ far beyond the defendant’s misconduct. Nothing in the statute suggests

In the West Grove, the seeming disparate rate or disproportionate percentage of comparative black and white tenant eviction, displacement, and resegregation appears directly traceable to the City of Miami's policies and practices of upzoning and demolition exemplified by the Grove Village MUSP Development Order. To be sure, West Grove landlords are free to evict tenants living in multifamily properties under Florida law for reasons of noncompliance, foreclosure, or termination of the tenancy.<sup>281</sup> Similarly, West Grove developers are free to build on multifamily properties in accordance with current Miami 21 zoning regulations applicable to the West Grove-designated Village West Island District,<sup>282</sup> including the Urban Center Transect Zone containing Grand Avenue.<sup>283</sup> Notwithstanding this freedom of property and its entwined rights of eviction and development, absent the municipal upzoning and demolition policies approved by the Grove Village MUSP Development Order and the upzoning and demolition practices of "high-density, high-intensity development"<sup>284</sup> ratified by the City of Miami in 2010<sup>285</sup> and aggressively implemented by the City of Miami's Planning Department, its Planning, Zoning and Appeals Board, and its elected Commission, racial minorities living in multifamily properties likely would not have suffered the scale of eviction or the degree of displacement evinced in the West Grove. Together, the mass scale of eviction and the cognizable harm of displacement and resegregation in the West Grove may prove sufficient to establish a prima facie showing of disparate impact.

Under *Inclusive Communities*, once a plaintiff establishes a "prima facie showing of disparate impact," the burden then "shifts to the defendant to 'prov[e] that the challenged practice is necessary to achieve one or more substantial, legitimate, nondiscriminatory interests.'"<sup>286</sup> Proof that the challenged practice "[i]s necessary to achieve one or more substantial, legitimate, nondiscriminatory interests" of the defendant and, further, that "[t]hose interests could not be served by another practice that has a less discriminatory effect[.]" constitutes a "[l]egally sufficient justification"

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that Congress intended to provide a remedy wherever those ripples travel. And entertaining suits to recover damages for any foreseeable result of an FHA violation would risk 'massive and complex damages litigation.'" 137 S. Ct. at 1306 (quoting *Associated Gen. Contractors of Cal., Inc. v. Carpenters*, 459 U.S. 519, 534, 545 (1983)) (internal quotation omitted).

<sup>281</sup> FLA. STAT. §§ 83.56, 83.561, 83.57, 83.575 (2018).

<sup>282</sup> Miami 21, App. A: Neighborhood Conservation Districts, A.6–A.15. (Village West Island District and Charles Avenue) (May 2015).

<sup>283</sup> Miami 21, art. 5, V.23 (Jan. 2018).

<sup>284</sup> Zach Patton, *The Miami Method for Zoning: Consistency Over Chaos*, GOVERNING (May 2016), <http://www.governing.com/topics/urban/gov-miami-zoning-laws.html>, archived at <https://perma.cc/FXN6-2GZ3> (quoting Ines Marrero-Priegues, a Miami land use attorney).

<sup>285</sup> In 2010, the City of Miami adopted a form-based zoning code called Miami 21 in place of a prior Euclidean zoning code enacted in 1936. See <http://www.miami21.org>, archived at <https://perma.cc/CP56-K6R9>. For background on the City of Miami's zoning codes, see Patton, *supra* note 284; see also Daniela A. Tagtachian, Natalie N. Barefoot, & Adrienne L. Harreveld, *Building by Right: Social Equity Implications of Transitioning to Form-Based Code*, 28 J. AFFORDABLE HOUSING & COMMUNITY. DEV. L. 71, 83–89 (2019).

<sup>286</sup> *Inclusive Cmty.s. Project*, 135 S. Ct. at 2514–15 (citing 24 C.F.R. § 100.500(c)(2)).

under HUD regulations.<sup>287</sup> For each of these two elements of defendant-marshaled proof, HUD regulations underscore that “[a] legally sufficient justification must be supported by evidence and may not be hypothetical or speculative.”<sup>288</sup> This dual showing of interest-compelled necessity and least possible discriminatory effect “requires a case-specific, fact-based inquiry.”<sup>289</sup> Commonplace, proffered examples of a municipality’s substantial, legitimate, nondiscriminatory interests include blight removal and slum clearance.<sup>290</sup>

Florida statutes, for example the Community Redevelopment Act<sup>291</sup> and the Florida Small Cities Community Development Block Grant Program Act,<sup>292</sup> authorize blight removal and slum clearance in both counties and municipalities. The Community Redevelopment Act (“CRA”) confers the local power to expend public money in the public interest to prevent and eliminate slums and blighted areas through the acquisition, clearance, and disposition of property in such areas.<sup>293</sup> The CRA statute defines a “slum area” as “an area having physical or economic conditions conducive to disease, infant mortality, juvenile delinquency, poverty, or crime . . . .”<sup>294</sup> The statute defines a “blighted area” as “an area in which there are a substantial number of deteriorated or deteriorating structures; in which conditions . . . endanger life or property or are leading to economic distress . . . .”<sup>295</sup> Broad in ambit, the CRA statute defines “community redevelopment” and “redevelopment” to include “undertakings, activities, or projects . . . for the elimination and prevention of the development or spread of slums and blight, or for the reduction or prevention of crime, or for the provision of affordable housing, whether for rent or for sale, to residents of low or moderate income . . . .”<sup>296</sup>

Similarly, the Florida Small Cities Community Development Block Grant Program Act enables local municipalities to undertake community and

<sup>287</sup> 24 C.F.R. § 100.500(b)(1)(i)–(ii).

<sup>288</sup> 24 C.F.R. § 100.500(b)(2); *see also* 24 C.F.R. § 100.500(d) (noting that “[a] demonstration that a practice is supported by a legally sufficient justification . . . may not be used as a defense against a claim of intentional discrimination.”).

<sup>289</sup> Schwemm & Bradford, *supra* note 247, at 696 (citing Implementation of the Fair Housing Act’s Discriminatory Effects Standard, 78 Fed. Reg. 11,460, 11,470–71 (Feb. 15, 2013)).

<sup>290</sup> *See* A. Mechele Dickerson, *Revitalizing Urban Cities: Linking the Past to the Present*, 46 U. MEM. L. REV. 973, 996 (2016); Colin Gordon, *Blighting the Way: Urban Renewal, Economic Development, and the Elusive Definition of Blight*, 31 FORDHAM URB. L.J. 305, 305 (2004); Patricia Hureston Lee, *Shattering ‘Blight’ and the Hidden Narratives That Condemn*, 42 SETON HALL LEGIS. J. 29, 35–36 (2017).

<sup>291</sup> FLA. STAT. § 163.330 (2018).

<sup>292</sup> FLA. STAT. § 290.0411 (2018) (declaring that the development, redevelopment, preservation, and revitalization of communities “are public purposes for which public money may be borrowed, expended, loaned, pledged to guarantee loans, and granted”).

<sup>293</sup> *Id.* § 163.335 (2018).

<sup>294</sup> *Id.* § 163.340(7) (2018).

<sup>295</sup> *Id.* § 163.340(8) (2018).

<sup>296</sup> *Id.* § 163.340(9) (2018).

economic development programs “to develop, preserve, redevelop, and revitalize Florida communities exhibiting signs of decline, distress, or economic need . . . .”<sup>297</sup> The express legislative objective of the statute “is to create viable communities by eliminating slum and blight, fortifying communities in urgent need, providing decent housing and suitable living environments, and expanding economic opportunities, principally for persons of low or moderate income.”<sup>298</sup>

Both the Florida Community Redevelopment Act and the Florida Small Cities Community Development Block Grant Program Act may be of sufficient breadth to permit the City of Miami and other Miami-Dade County municipalities to defend their challenged zoning and demolition practices as necessary to address one or more substantial, legitimate, nondiscriminatory interests — economic distress, poverty, or crime — compatible with the public welfare goals of blight removal and slum clearance. Standing alone, however, the *substantiality* and *legitimacy* of municipal or county nondiscriminatory governmental interests in blight removal and slum clearance do not establish the *necessity* of discriminatory governmental practices of zoning and demolition. Without a specific, fact-based evidentiary showing of municipal necessity *and* a showing that municipal interests could not be served by another less discriminatory practice, there would seem to be no legally sufficient justification for the zoning and demolition practices inflicted on the West Grove or other historically black neighborhoods elsewhere in the City of Miami.

Putting aside the seeming insufficiency of the City of Miami’s legal justification, insofar as a municipal defendant satisfies its burden of proof at step two of the *Inclusive Communities* standard, a plaintiff may still “prevail upon proving that the substantial, legitimate, nondiscriminatory interests supporting the challenged practice could be served by another practice that has a less discriminatory effect.”<sup>299</sup> Examples of alternative upzoning and demolition practices that could have a less discriminatory effect in the West Grove include practices that mandate landlord-developer and municipal consideration, assessment, and mitigation of the predicted disparate impact of a proposed upzoning-related construction or demolition project, such as the Grove Village MUSP Development Order, on foreseeably affected black tenants and homeowners. Mitigation duties could dictate a range of mandatory, affirmative actions by landlords and developers encompassing inclusionary zoning accommodations targeting low-income, very low-income, and extremely low-income households, financial contributions to an affordable<sup>300</sup> or a workforce<sup>301</sup> housing fund, binding commitments to a com-

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<sup>297</sup> FLA. STAT. § 290.0411 (2018).

<sup>298</sup> *Id.*

<sup>299</sup> *Inclusive Cmty. Project*, 135 S. Ct. at 2515 (citing 20 C.F.R. § 100.500(c)(3)).

<sup>300</sup> Miami 21 defines affordable housing to mean “a Dwelling Unit, owner-occupied and/or rental housing with a purchase cost, value, or monthly rental, as applicable, equal to or less than the amounts established by the applicable standards for those individuals whose income is

munity benefits agreement, penalties for noncompliance, compensation for displaced tenants and homeowners, and a right-to-return neighborhood preference for displaced residents. Adoption of these mitigation measures could serve the City of Miami's substantial and legitimate governmental interests in regulating zoning and demolition and, at the same time, could have a less discriminatory effect on West Grove black tenants and homeowners and, thereby, help maintain racial integration, preserve neighborhood stability, and protect existing at-risk residents.

For this reason, in January 2019, the Task Force put forward a full array of such mitigation measures in a displacement moratorium letter ("Moratorium Letter") addressed to the City of Miami Commission, the Mayor, the City Manager, and the City Attorney. Lacking a meaningful reply, in March 2019 the Task Force began convening public meetings with individual commissioners and other municipal officials.<sup>302</sup> During this period, the Task Force also revived earlier, inchoate investigations of the City of Miami's policies and practices of upzoning, demolition, and housing code enforcement in the West Grove undertaken by the Center for Ethics and Public Service and its Historic Black Church Program community partners. In addition, the Task Force rekindled efforts to verify individual tenant and homeowner incidents of eviction, harassment, building demolition, neighborhood displacement, and inner-city or suburban resegregation. Most important, the Task Force devised and pursued a battery of legal-political tactics to halt the City of Miami's adverse and outwardly discriminatory zoning and demolition practices, including circulating moratorium petitions, staffing telephone banks, preparing administrative complaints, organizing direct action protests, arranging press briefings and disseminating information via social media, corresponding and meeting with federal, state, and local government officials, collaborating with like-minded tenant and homeowner groups across Miami, conferring with legal services and public interest law organizations, consulting with fair housing experts, and retaining pro bono law firm counsel to coordinate a full-fledged fact investigation. Throughout that months-long process, landlords and developers in the West Grove, Little Haiti, and elsewhere continued to evict low-income black tenants and demolish

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at or below 60 percent of Area Median Income as published by the United States Department of Housing and Urban Development and certified by the Department of Community and Economic Development." Miami 21, Art. 1, I.12 (Jan. 2018).

<sup>301</sup> Miami 21 defines workforce housing to mean "a Dwelling Unit, owner-occupied and/or rental housing with a purchase cost, value, or monthly rental, as applicable, equal to or less than the amounts established by the applicable standards for those individuals whose income is between 60 percent to 140 percent of Area Median Income as published by the United States Department of Housing and Urban Development and certified by the Department of Community and Economic Development." Miami 21, Art. 1, I.36 (Jan. 2018).

<sup>302</sup> See Moratorium Letter from Clarice Cooper, President, Coconut Grove Village West Homeowners and Tenants Association, Apostle Dr. John H. Chambers, III, President, Coconut Grove Ministerial Alliance, and Anthony V. Alfieri, Board of Directors, Coconut Grove Ministerial Alliance, to Commissioner Ken Russell, Chair, City of Miami Commission and City of Miami Commission (Jan. 24, 2019) (on file with the author).

their apartment buildings.<sup>303</sup> Turn next to an analysis of segregative-effect theory.

### B. *Segregative Effect*

Segregative-effect claims under the FHA challenge government policies and practices that perpetuate segregation in a local neighborhood or a wider metropolitan area.<sup>304</sup> HUD regulations govern the interpretation of the discriminatory, segregative effect of a challenged policy or practice where it “creates, increases, reinforces, or perpetuates segregated housing patterns because of race, color, religion, sex, handicap, familial status, or national origin.”<sup>305</sup> As in disparate-impact cases, a plaintiff in a segregative-effect suit bears the fact-specific “burden of proving that a challenged practice caused or predictably will cause a discriminatory effect.”<sup>306</sup>

Consonant with the burden-shifting framework regulating disparate-impact cases, once a plaintiff satisfies the burden of proof in a segregative-effect case, the burden again shifts to the defendant to “prov[e] that the challenged practice is necessary to achieve one or more substantial, legitimate, nondiscriminatory interests . . . .”<sup>307</sup> Proof in the form of “a legally sufficient justification”<sup>308</sup> succeeds under HUD regulations where, as in disparate-impact cases, the challenged practice is shown to be “necessary to achieve one or more substantial, legitimate, nondiscriminatory interests” and where again such “interests could not be served by another practice that has a less discriminatory effect.”<sup>309</sup> If a defendant municipality like the City of Miami establishes each of these two elements in support of a proffered justification,<sup>310</sup> and, therefore, satisfies its burden of proof, then once again a plaintiff “may still prevail upon proving that the substantial, legitimate, non-

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<sup>303</sup> See Joey Flechas, *Proposal to Curb Grove Development Stalls*, MIAMI HERALD, Mar. 3, 2019, at 23A; Andres Viglucci & Joey Flechas, *Public Hearing on Little Haiti Redevelopment Ends in Chaos*, MIAMI HERALD, Mar. 2, 2019, at 1A, 4A.

<sup>304</sup> On the potential liability of a private person or entity, see Implementation of the Fair Housing Act’s Discriminatory Effects Standard, 78 Fed. Reg. 11,460, 11,474 (Feb. 15, 2013) (“Liability for a practice that has an unjustified discriminatory effect may attach to either public or private parties according to the standards in § 100.500, because there is nothing in the text of the Act or its legislative history to indicate that Congress intended to distinguish the manner in which the Act applies to public versus private entities.”) (citing 42 U.S.C. 3602(f) and Nat’l Fair Hous. Alliance, Inc. v. Prudential Ins. Co. of Am., 208 F. Supp. 2d 46, 59–60 & n.7 (D.D.C. 2002)).

<sup>305</sup> 24 C.F.R. § 100.500(a) (emphasis added).

<sup>306</sup> *Id.* § 100.500(c)(1); Implementation of the Fair Housing Act’s Discriminatory Effects Standard, 78 Fed. Reg. 11,460, 11,468 (Feb. 15, 2013).

<sup>307</sup> 24 C.F.R. § 100.500(c)(2).

<sup>308</sup> *Id.* § 100.500(b).

<sup>309</sup> *Id.* § 100.500(b)(1)(i)–(ii).

<sup>310</sup> 24 C.F.R. § 100.500(b)(2) (“A legally sufficient justification must be supported by evidence and may not be hypothetical or speculative.”).

discriminatory interests supporting the challenged practice could be served by another practice that has a less discriminatory effect.”<sup>311</sup>

Courts have adopted a community-centered analysis of segregative-effect claims derived from the legislative history and amendment of the FHA. In *Inclusive Communities*, the Supreme Court tracks the history of the FHA’s enactment and its later amendment against the federal and state backdrop of “de jure residential segregation by race.”<sup>312</sup> Pointing to the “vestiges” of residential segregation still “intertwined with the country’s economic and social life,” and the segregated urban and suburban housing patterns of white flight and black inner-city concentrated poverty, the Court acknowledges that various private and public, government-supported practices historically operated “to encourage and maintain the separation of the races . . . .”<sup>313</sup> Those “policies, practices, and prejudices,” the Court remarks, “created many predominantly black inner cities surrounded by mostly white suburbs.”<sup>314</sup>

Reasoning from the deep-rooted predicate of residential segregation, the *Inclusive Communities* Court discerns the purpose of the FHA in the congressional mandate “to eradicate discriminatory practices” within the nationwide, real-estate-related sector of the economy consistent with the “valid governmental policies” and “priorities” of housing authorities.<sup>315</sup> In contrast to its construction of other anti-discrimination statutes, such as Title VII of the Civil Rights Act of 1964<sup>316</sup> and the Age Discrimination in Employment Act of 1967,<sup>317</sup> the Court interprets the FHA’s mandate in a fashion that “aims to ensure that those priorities can be achieved without arbitrarily creating discriminatory effects or *perpetuating segregation*.”<sup>318</sup> The Court’s explicit recognition of a cognizable FHA claim rooted in “perpetuating segregation,” and its noteworthy endorsement of several lower court decisions addressing segregative effect,<sup>319</sup> confirm the statutory and doctrinal plausibility of a segregative-effect theory for purposes of pleading, discovery, trial, and ultimate liability.

Like disparate-impact suits condemning artificial private or public barriers to integrated housing, segregative-effect suits challenging municipal land-use policies and practices chiefly attack exclusionary zoning restric-

<sup>311</sup> 24 C.F.R. § 100.500(c)(3); Schwemm & Bradford, *supra* note 247, at 712–13 (footnotes omitted).

<sup>312</sup> *Inclusive Cmty. Project*, 135 S. Ct. at 2515.

<sup>313</sup> *Id.* (discussing racially restrictive covenants, steering by real-estate agents, and discriminatory lending practices, including redlining) (citations omitted).

<sup>314</sup> *Id.*

<sup>315</sup> *Id.* at 2511, 2521–22.

<sup>316</sup> *See supra* note 256.

<sup>317</sup> *See supra* note 257.

<sup>318</sup> *Inclusive Cmty. Project*, 135 S. Ct. at 2522 (emphasis added).

<sup>319</sup> *See* *Huntington Branch, NAACP v. Town of Huntington*, 844 F.2d 926, 938 (2d Cir. 1988), *aff’d*, 488 U.S. 15, 17 (1988); *Metro. Hous. Dev. Corp. v. Village of Arlington Heights*, 558 F.2d 1283, 1288 (7th Cir. 1977); *United States v. City of Black Jack*, 508 F.2d 1179, 1186 (8th Cir. 1974).

tions enacted to frustrate the development of affordable housing projects designed to integrate predominantly white neighborhoods.<sup>320</sup> In his comprehensive survey of fair housing law and litigation, Schwemm points out that land use and zoning restrictions may arise from the “one-time decisions” and the “general policies” of local government entities.<sup>321</sup> The inner-city, racial geography of the West Grove and Miami appears to reflect the segregative effect of both “one-time decisions,” such as the Grove Village MUSP Development Order, and “general policies,” such as the upzoning and demolition practices implemented by the City of Miami in the last decade or more. Schwemm notes that segregative-effect claims attacking such decisions and policies hinge in part on statistical evidence that the decision or policy under scrutiny “affects residential segregation” in the geographic area at issue.<sup>322</sup>

In the West Grove, the Grove Village MUSP Development Order is not restrictive in a traditional *exclusionary* sense. It does not directly exclude black tenants and homeowners from the West Grove. Likewise, it does not directly block the construction of affordable housing for black tenants and homeowners residing in, or seeking to return to, the West Grove. Moreover, it does not directly enmesh the City of Miami in expropriating or taking black residential rental properties in the West Grove. By upzoning a six block expanse of the historic Coconut Grove Central Commercial District, however, the City of Miami seems directly to make the Grove Village project and its district-wide residential and commercial progeny *economically viable* for developers, investors, and lenders. In this way, upzoning seems directly to incentivize developers’ opportunistic, rent-seeking behavior in distressed inner-city neighborhoods. Without this municipal economic intervention, risk-averse or risk-neutral developers already in possession of minority-occupied inner-city residential rental properties might very well opt to continue extracting profits as slumlords or, contingent on market conditions, sell off properties to maximize profits and reinvest elsewhere.

In rendering the Grove Village project economically viable under the aegis of a MUSP at the site of the Coconut Grove Central Commercial District, the City of Miami excludes the consideration, assessment, and mitigation of the possible segregative effect of a developer-proposed 17-acre construction and demolition project in the West Grove. Similarly, the City of Miami’s general zoning and demolition policies exclude the consideration, assessment, and mitigation of the possible segregative effect of landlord- and developer-proposed construction and demolition projects in the city at large. That regulatory omission is doubly vexing because it deprives displaced

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<sup>320</sup> Schwemm notes that “[t]he factual setting in most segregative-effect cases has basically been the same: A zoning decision or other governmental action is challenged for preventing the development of a housing project that would help integrate a predominantly white area.” Schwemm, *supra* note 248, at 715.

<sup>321</sup> *Id.* at 772.

<sup>322</sup> *Id.* at 713–14 (footnotes omitted).

West Grove black tenants and homeowners of the opportunity to live in a now integrating Jim Crow neighborhood and resegregates the same displaced black tenants and homeowners in already segregated or hypersegregated neighborhoods elsewhere in the City of Miami or in the suburbs of Miami-Dade County. This dual segregative effect increases, reinforces, and perpetuates city-wide segregated housing patterns, isolating black tenants and homeowners and preventing interracial association in their own racially-bounded urban and suburban neighborhoods.

Both *Inclusive Communities* and lower courts recognize the “harsh consequences” of isolating racial groups and thwarting “interracial association” in residential neighborhoods.<sup>323</sup> Recognition of the harm of racial isolation and interracial nonassociation provides the normative foundation for segregative-effect analysis.<sup>324</sup> The starting point of that analysis is the factual identification of segregated housing patterns, from their creation to their increase, reinforcement, and perpetuation. That requisite analysis, the Court makes clear, derives from the “Nation’s continuing struggle against racial isolation[ ]” and its “‘historic commitment to creating an integrated society[.]’”<sup>325</sup> The twin commitments to overcome racial isolation and foster integration, the Court adds, showcase the FHA’s “important part in avoiding the Kerner Commission’s grim prophecy that ‘[o]ur Nation is moving toward two societies, one black, one white—separate and unequal.’”<sup>326</sup> Those commitments anchor the statutory obligation of local housing authorities in Miami and Miami-Dade County “to foster diversity and combat racial isolation.”<sup>327</sup>

The core normative and policy objectives of the FHA—diversity, racial inclusion, and integration—undergird HUD’s 2013 final rule implementing the segregative-effect theory of liability and the discriminatory-effect prohibitions of the statute.<sup>328</sup> Both the regulatory history of the HUD rule<sup>329</sup>

<sup>323</sup> *Inclusive Cmty. Project*, 135 S. Ct. at 2525; *Village of Arlington Heights*, 558 F.2d at 1290 (citation omitted).

<sup>324</sup> *Inclusive Cmty. Project*, 135 S. Ct. at 2525.

<sup>325</sup> *Id.* (citation omitted).

<sup>326</sup> *Id.* (citing Kerner Commission Report 1).

<sup>327</sup> *See id.*

<sup>328</sup> Legislative history links FHA norms of diversity, racial inclusion, and integration to policies enacted to prevent “economic hardship, loss of job opportunities, humiliation, and alienation.” H.R. REP. NO. 96-865, at 9 (1980); *see also Fair Housing Amendments Act of 1987: Hearings on S. 558 Before the Subcomm. on the Constitution of the S. Comm. on the Judiciary*, 100th Cong. 529, 531 (1987) (testimony of Professor Robert Schwemm) (defining the “goal of the 1968 Fair Housing Act” in terms of “open, integrated, and long-term stable communities”).

<sup>329</sup> *See Implementation of the Fair Housing Act’s Discriminatory Effects Standard*, 78 Fed. Reg. 11459, 11463 (Feb. 15, 2013) (codified at 24 C.F.R. pt. 100). HUD’s summary of changes made at the final rule stage in response to public comment “confirm[s] that an ordinance is one type of land-use decision that is covered by the [Fair Housing] Act, under a theory of intentional discrimination or discriminatory effect, and that land-use decisions may discriminate from the moment of enactment.” *Id.* at 11464. The final rule summary “give[s] the following as an illustration of a prohibited practice: ‘Enacting or implementing land-use rules, ordinances, policies, or procedures that restrict or deny housing opportunities or otherwise

and decisional law<sup>330</sup> once more suggest that segregative-effect theory applies to what Schwemm classifies as “single-decision situations,” that is situations like the Grove Village MUSP Development Order where a “single act” or a single policy decision generates a segregative effect in an entire area.<sup>331</sup> In comparison to a disparate-impact claim, Schwemm observes, the “geographic focus” of a segregative-effect claim may be confined to “a smaller area” consisting of “specific towns” or “specific neighborhoods.”<sup>332</sup> Schwemm’s geographic refinement of the HUD final rule, and his deft distillation of federal appellate court decisions construing segregative-effect claims prior to the promulgation<sup>333</sup> and subsequent to the implementation<sup>334</sup> of the final rule, allows local fair housing campaign coalitions like the West Grove Task Force a degree of strategic flexibility in calibrating its legal-political focus. Guided by Schwemm’s doctrinal and regulatory analysis, the Task Force may limit its focus to the West Grove or alternately expand its focus to unite with other inner-city neighborhoods, such as Little Haiti, in-

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make unavailable or deny dwellings to persons because of race, color, religion, sex, handicap, familial status, or national origin.” *Id.* In further response to public comments, HUD adds: “[T]he elimination of segregation is central to why the Fair Housing Act was enacted. HUD therefore declines to remove from the rule’s definition of ‘discriminatory effects’ ‘creating, perpetuating, or increasing segregated housing patterns.’ The Fair Housing Act was enacted to replace segregated neighborhoods with ‘truly integrated and balanced living patterns.’ It was structured to address discriminatory housing practices that affect ‘the whole community’ as well as particular segments of the community, with the goal of advancing equal opportunity in housing and also to ‘achieve racial integration for the benefit of all people in the United States.’” *Id.* at 11469 (footnotes omitted).

<sup>330</sup> See *Shannon v. U.S. Dep’t of Hous. & Urban Dev.*, 436 F.2d 809, 817–18 (3d Cir. 1970) (holding that plaintiffs have standing to challenge the segregative effect of a single housing project); see also *Gladstone Realtors v. Village of Bellwood*, 441 U.S. 91, 114 n.28 (1979) (citing *Shannon* for the proposition that neighborhood residents have standing to challenge a specific urban renewal project); *Trafficante v. Metro. Life Ins. Co.*, 409 U.S. 205, 208 (1972) (holding that the definition of a “person aggrieved” is broad).

<sup>331</sup> Schwemm, *supra* note 248, at 736–38 (footnotes omitted); *Fair Housing Amendments Act of 1987: Hearings on S. 558 Before the Subcomm. on the Constitution of the S. Comm. on the Judiciary*, 100th Cong. 529, 531 (1987) (testimony of Professor Robert Schwemm) (citing discriminatory effect cases under Title VIII “involve[ing] exclusionary zoning or some other community-wide practice that is challenged on the ground that it perpetuates housing segregation in an entire area”); *Fair Housing Amendments Act of 1979: Hearings on H.R. 2540 Before the Subcomm. on Civil and Constitutional Rights of the H. Comm. on the Judiciary*, 96th Cong. 3, 9 (1979) (statement of Drew S. Days III, Assistant Attorney General) (urging Congress to “identify other practices of local governmental units which have a racially segregative effect, or which impede the construction of governmentally assisted housing, and include a section in this bill which would prohibit them when there is a less segregative alternative to achieve the community purpose which such practices are claimed to serve”).

<sup>332</sup> Schwemm, *supra* note 248, at 738 (footnote omitted).

<sup>333</sup> See, e.g., *Bonasera v. City of Norcross*, 342 F. App’x 581, 585–86 (11th Cir. 2009); *Graoch Assocs. #33, L.P. v. Louisville/Jefferson Cty. Metro Human Relations Comm’n*, 508 F.3d 366, 378 (6th Cir. 2007); *Hallmark Developers, Inc. v. Fulton County*, 466 F.3d 1276, 1286 (11th Cir. 2006); *Edwards v. Johnston Cty. Health Dep’t*, 885 F.2d 1215, 1223–24 (4th Cir. 1989).

<sup>334</sup> See *Mhany Mgmt., Inc. v. County of Nassau*, 819 F.3d 581, 621–22 (2d Cir. 2016); *Ave. 6E Invs., L.L.C. v. City of Yuma*, 818 F.3d 493, 497 (9th Cir. 2016); *Boykin v. Fenty*, 650 F. App’x 42, 44–45 (D.C. Cir. 2016); *Anderson Grp., L.L.C. v. City of Saratoga Springs*, 805 F.3d 34, 49–50 (2d Cir. 2015).

curing the same community-wide injuries of displacement and resegregation.

The adaptable, targeted “geographic focus” of segregative-effect cases introduces the crucial notion of a community-wide, discrimination-based injury. Although HUD’s 2013 regulation declines to describe exactly “how data and statistics may be used in the application of the [discriminatory effect] standard,”<sup>335</sup> commentators propound that a community-wide injury may be proven by statistical evidence, such as reasonable data culled from the U.S. Census Bureau.<sup>336</sup> Amplifying the perpetuation of segregation theory of liability, HUD noted, in response to comments on its proposed regulation: “[T]he elimination of segregation is central to why the Fair Housing Act was enacted.”<sup>337</sup> Moreover, HUD clarified that “[t]he Fair Housing Act was enacted to replace segregated neighborhoods with ‘truly integrated and balanced living patterns.’”<sup>338</sup> In that way, the FHA occupies a legislative stance “structured to address discriminatory housing practices that affect the whole community as well as particular segments of the community, with the goal of advancing equal opportunity in housing and also to achieve racial integration for the benefit of all people in the United States.”<sup>339</sup> On this well-founded statutory basis, HUD states, the FHA “prohibits two kinds of unjustified discriminatory effects: (1) harm to a particular group of persons by a disparate impact; and (2) *harm to the community generally by creating, increasing, reinforcing, or perpetuating segregated housing patterns.*”<sup>340</sup>

From this statutory bulwark, the Task Force potentially may construe two discrete discriminatory effects: first, the particularized harm to evicted and displaced West Grove black tenants apparently caused by the disparate impact of municipal upzoning and demolition practices; and second, the generalized harm to the West Grove community evidently caused by municipal upzoning and demolition practices creating, increasing, reinforcing, and perpetuating segregated housing patterns both inside and outside the City of Miami. In their limited oral and written communications with the Task Force, City of Miami officials seem to dismiss out of hand FHA theories of particularized group harm and generalized community harm and to deny that municipal zoning and demolition practices caused or could have caused particularized group or generalized community harm in the West Grove.<sup>341</sup>

<sup>335</sup> See Implementation of the Fair Housing Act’s Discriminatory Effects Standard, 78 Fed. Reg. 11,460, 11,468 (Feb. 15, 2013).

<sup>336</sup> Schwemm, *supra* note 248, at 738–39 (footnotes omitted).

<sup>337</sup> See Implementation of the Fair Housing Act’s Discriminatory Effects Standard, 78 Fed. Reg. 11,460, 11,468 (Feb. 15, 2013).

<sup>338</sup> *Id.* (citing *Trafficante v. Metro. Life Ins. Co.*, 409 U.S. 205, 211 (1972)).

<sup>339</sup> *Id.* (internal quotations omitted).

<sup>340</sup> *Id.* (footnote omitted) (emphasis added).

<sup>341</sup> To date, none of the eight City of Miami officials — Commissioners Joe Carollo, Wifredo Gort, Keon Hardemon, Manolo Reyes, and Ken Russell, Mayor Francis Suarez, City Manager Emilio Gonzalez, and City Attorney Victoria Mendez — addressed by the Task Force in its initial Moratorium Letter, dated January 24, 2019, has provided a substantive response in writing or otherwise. But for an e-mail, dated February 25, 2019, sent by the Deputy Director

Paradoxically in 2013, in *City of Miami v. Bank of America Corp.*,<sup>342</sup> and *City of Miami v. Wells Fargo & Co.*,<sup>343</sup> the City of Miami filed lawsuits in federal court complaining of discriminatory, predatory loan practices by two banks, Bank of America and Wells Fargo, and others in violation of the FHA, and seeking damages for economic and non-economic injuries.<sup>344</sup> The district court dismissed both the original<sup>345</sup> and the first amended complaints<sup>346</sup> in the two cases. On appeal, the Eleventh Circuit Court of Appeals reversed and remanded the cases, ordering the district court to accept the complaints as amended.<sup>347</sup> The Supreme Court granted the banks' petitions for certiorari,<sup>348</sup> ordered the cases consolidated,<sup>349</sup> and concluded that the City's "claims of financial injury in their amended complaints—specifically, lost tax revenue and extra municipal expenses—satisfy the 'cause-of-action' (or 'prudential standing') requirement."<sup>350</sup> From this conclusion, the Supreme Court held that the City's "claimed injuries fall within the zone of interests that the FHA arguably protects[,] specifically finding the City to be "an 'aggrieved person' able to bring suit under the statute."<sup>351</sup> The Court also concluded that the Eleventh Circuit erred in determining "that foreseeability is sufficient to establish proximate cause under the FHA,]"<sup>352</sup> holding that "to establish proximate cause under the FHA, a plaintiff must do more than show that its injuries foreseeably flowed from the alleged statutory violation."<sup>353</sup> Accordingly, the Supreme Court vacated the judgments of the Eleventh Circuit and remanded for further lower court proceedings to "define, in the first instance, the contours of proximate cause under the FHA

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of the City of Miami Planning Department declaring community demands for a moratorium and a discriminatory-effect assessment outside "the purview of the zoning code," City of Miami officials have offered no substantive written response to the Task Force. Similarly, remarks delivered orally by Commissioner Russell and his staff, as well as by the staff of Mayor Francis Suarez, at a Task Force public meeting in the West Grove on March 13, 2019 also offered little or nothing in the way of substance. See E-mail from Jeremy Calleros Gauger, Deputy Director, City of Miami Planning Department, to Carolyn Donaldson, Co-Chair, Coconut Grove Village West Housing and Community Development Task Force (Feb. 25, 2019, 18:37 EST) (on file with the author).

<sup>342</sup> See *City of Miami v. Bank of Am. Corp.*, No. 13-24506 (S.D. Fla. filed Dec. 13, 2013).

<sup>343</sup> See *City of Miami v. Wells Fargo & Co.*, No. 13-24508 (S.D. Fla. filed Dec. 13, 2013).

<sup>344</sup> *Bank of Am. Corp. v. City of Miami*, 137 S. Ct. 1296, 1301 (2017).

<sup>345</sup> See *City of Miami v. Bank of Am. Corp.*, No. 13-24506, 2014 WL 3362348, at \*7 (S.D. Fla. July 9, 2014); *City of Miami v. Wells Fargo & Co.*, No. 13-24508, 2014 WL 11380948, at \*1 (S.D. Fla. filed Sept. 16, 2014).

<sup>346</sup> See *City of Miami v. Bank of Am. Corp.*, 171 F.Supp.3d 1314, 1321 (S.D. Fla. 2016); *City of Miami v. Wells Fargo & Co.*, No. 13-24508, 2016 WL 1156882, at \*5 (S.D. Fla. Mar. 17, 2016).

<sup>347</sup> See *City of Miami v. Bank of Am. Corp.*, 800 F.3d 1262, 1289 (11th Cir. 2015); *City of Miami v. Wells Fargo & Co.*, 801 F.3d 1258, 1268 (11th Cir. 2015).

<sup>348</sup> *Bank of Am. Corp. v. City of Miami*, 136 S. Ct. 2544 (2016) (Mem.).

<sup>349</sup> *Id.*

<sup>350</sup> *Bank of Am. Corp. v. City of Miami*, 137 S. Ct. 1296, 1303 (2017).

<sup>351</sup> *Id.* at 1301.

<sup>352</sup> *Id.* at 1306.

<sup>353</sup> *Id.* at 1301.

and decide how that standard applies to the City's claims for lost property-tax revenue and increased municipal expenses."<sup>354</sup>

On remand in the spring of 2019, the Eleventh Circuit concluded that the City of Miami "adequately pled proximate cause in relation to some of its economic injuries when the pleadings are measured against the standard required by the Fair Housing Act."<sup>355</sup> Having found that the City "said enough to make out a plausible case" and to "set out a plausible claim" in its pleadings (i.e., the first amended complaints),<sup>356</sup> the Eleventh Circuit held "that there is 'some direct relation' between the City's tax-revenue injuries and the Bank's alleged violations of the FHA."<sup>357</sup> Hence, the Eleventh Circuit reasoned, "the district court improvidently dismissed the FHA claims in their entirety and ought to have granted the City leave to amend its complaints, since amendment would not have been futile."<sup>358</sup> For purposes of further proceedings on lower court remand, the Eleventh Circuit granted leave to the district court to determine which of the City's complaints should be operative, or alternatively, "whether to grant the City leave to file new ones."<sup>359</sup>

Filed on July 21, 2014, the City's first amended complaints in *City of Miami v. Bank of America Corp.*<sup>360</sup> and in *City of Miami v. Wells Fargo & Co.*<sup>361</sup> rest squarely on FHA claims of intentional and disparate-impact discrimination based on an allegedly continuous pattern of bank mortgage redlining and reverse redlining.<sup>362</sup> Both complaints charge that the defendant

<sup>354</sup> *Id.* at 1306.

<sup>355</sup> *City of Miami v. Wells Fargo & Co.*, No. 14-14544, No. 14-14543, 2019 WL 1966943, at \*1 (11th Cir. May 3, 2019).

<sup>356</sup> *Id.* at \*1–2, 27 ("The plaintiff has said enough to get into the courthouse and be heard."). Because "nothing had been appealed since the Second and Third Amended Complaints were filed" and because the Supreme Court had been "explicit" in "looking to the First Amended Complaints," the Court of Appeals relied on the First Amended Complaints on remand. *Id.* at 27 (footnote omitted).

<sup>357</sup> *Id.* at \*25–26 ("We simply find that the operative complaints explain in a plausible fashion how the claimed tax-revenue injuries bear 'some direct relation' to the misconduct that the City is challenging. This harm to Miami, as pled, is not just foreseeable but, when measured in the aggregate, is directly related to the pattern of unlawful behavior the City has alleged.").

<sup>358</sup> *Id.* at \*27 (footnote omitted).

<sup>359</sup> *Id.* at \*27 n.12.

<sup>360</sup> *See City of Miami v. Bank of America Corp.*, No. 13-24506 (S.D. Fla. filed July 21, 2014).

<sup>361</sup> *See City of Miami v. Wells Fargo & Co.*, No. 13-24508 (S.D. Fla. filed July 21, 2014).

<sup>362</sup> First Amended Complaint at 5–12, 19–34, *Bank of Am. Corp. v. City of Miami*, 137 S. Ct. 1296 (2017) (Nos. 15-1111, 15-1112), 2016 WL 4502302, at \*185–96, 209–32 (Joint App.) (The City's Proposed First Amended Complaint for Violations of the Federal Fair Housing Act (attached as Exhibit A to the City's Motion for Reconsideration and Leave To File First Amended Complaint) in its case against Bank of America (July 21, 2014)); First Amended Complaint at 6–13, 18–48, *Bank of Am. Corp. v. City of Miami*, 137 S. Ct. 1296 (2017) (Nos. 15-1111, 15-1112), 2016 WL 4502302, at \*350–62, 369–415 (Joint App.) (The City's Proposed First Amended Complaint for Violations of the Federal Fair Housing Act (attached as Exhibit A to the City's Motion for Reconsideration and Leave To File First Amended Complaint) in its case against Wells Fargo (July 21, 2014)).

banks endeavored to maximize their profits “without regard to the borrower’s best interest, the borrower’s ability to repay, or the financial health of underserved minority neighborhoods.”<sup>363</sup> Moreover, both complaints charge that the defendant banks engaged in a deliberate effort to “target and exploit” underserved minority communities and “caused an excessive and disproportionately high number of foreclosures” in the minority neighborhoods of Miami.<sup>364</sup> Further, both complaints charge that the resulting foreclosures in the City’s minority neighborhoods “undermin[ed] the City’s interests in integrated housing” and “impaired the City’s strong, longstanding and active commitment to open, integrated residential housing patterns and its attendant benefits of creating a stable community that increases professional opportunities and the quality of life in the City.”<sup>365</sup> Additionally, both complaints charge that the conduct of the defendant banks “adversely impacted the racial composition of the City and impaired the City’s goals to assure racial integration and desegregation and the social and professional benefits of living in an integrated society.”<sup>366</sup> Amplifying this last contention, the City’s *third* amended complaints also charge that the discriminatory conduct of the defendant banks “adversely impacted the ability of minority residents to remain in their chosen neighborhood of the City and impaired the City’s goals to assure that racial factors do not adversely affect the ability of any person to choose where to live in the City or to detract from the social and professional benefits of living in an integrated society.”<sup>367</sup>

The City of Miami’s reliance on FHA claims of intentional discrimination and disparate-impact discrimination, its condemnation of private profit-maximization inimical to the best interest and health of underserved minority neighborhoods, its knowledge that slumlords and developers targeted and exploited underserved minority communities like the West Grove and produced an excessive and disproportionately high number of black tenant evictions and minority-occupied multifamily building demolitions, its expressed

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<sup>363</sup> First Amended Complaint at 7, *Bank of America Corp. v. City of Miami*, Florida, 137 S. Ct. 1296 (2017) (Nos. 15-1111, 15-1112), 2016 WL 4502302, at \*190; First Amended Complaint at 8, *Bank of America Corp. v. City of Miami*, Florida, 137 S. Ct. 1296 (2017) (Nos. 15-1111, 15-1112), 2016 WL 4502302, at \*354–55.

<sup>364</sup> First Amended Complaint at 7-8, *Bank of America Corp. v. City of Miami*, Florida, 137 S. Ct. 1296 (2017) (Nos. 15-1111, 15-1112), 2016 WL 4502302, at \*190–91; First Amended Complaint at 8-9, *Bank of America Corp. v. City of Miami*, Florida, 137 S. Ct. 1296 (2017) (Nos. 15-1111, 15-1112), 2016 WL 4502302, at \*355–56.

<sup>365</sup> First Amended Complaint at 11, 5, *Bank of America Corp. v. City of Miami*, Florida, 137 S. Ct. 1296 (2017) (Nos. 15-1111, 15-1112), 2016 WL 4502302, at \*195, 186; First Amended Complaint at 6, 12, *Bank of America Corp. v. City of Miami*, Florida, 137 S. Ct. 1296 (2017) (Nos. 15-1111, 15-1112), 2016 WL 4502302, at \*360, 351.

<sup>366</sup> First Amended Complaint at 35, *Bank of America Corp. v. City of Miami*, Florida, 137 S. Ct. 1296 (2017) (Nos. 15-1111, 15-1112), 2016 WL 4502302, at \*232; First Amended Complaint at 49, *Bank of America Corp. v. City of Miami*, Florida, 137 S. Ct. 1296 (2017) (Nos. 15-1111, 15-1112), 2016 WL 4502302, at \*416.

<sup>367</sup> Third Amended Complaint at 29, *City of Miami v. Bank of Am. Corp.*, No. 13-24506 (S.D. Fla. filed Apr. 29, 2016); Third Amended Complaint at 26, *City of Miami v. Wells Fargo & Co.*, No. 13-24508 (S.D. Fla. filed Apr. 29, 2016).

municipal interest in integrated housing, its avowed commitment to open, integrated residential housing patterns, its acknowledgement of the benefits of creating a stable community that increases professional opportunities and the quality of life in the City, its awareness of the racial composition of the City, its proclaimed aim to assure racial integration and desegregation and the social and professional benefits of living in an integrated society, its professed defense of the ability of minority residents to remain in their chosen neighborhood of the City, and its espoused goal to assure that racial factors do not adversely affect the ability of any person to choose where to live in the City *all* contrast sharply with its own day-to-day land use — zoning and demolition — policies and practices in the West Grove and its dealings with vulnerable, at-risk tenants and homeowners. In spite of its expansive, FHA-based pleadings and granular, data-based fact investigation in *City of Miami v. Bank of America Corp.*<sup>368</sup> and *City of Miami v. Wells Fargo & Co.*,<sup>369</sup> in the West Grove and elsewhere the City of Miami apparently fails to consider, assess, mitigate, or even monitor the possible disparate impact and segregative effect of its zoning and demolition policies and practices on predominantly black neighborhoods undergoing mass eviction and displacement. Yet, on November 8, 2016 at oral argument before the Supreme Court in the instant consolidated cases, counsel for the City of Miami repeatedly extolled the civic virtues of an “integrated community”<sup>370</sup> and “fair housing.”<sup>371</sup> Counsel declared: “Here I say that the City has a special interest in fair housing and an integrated community that the FHA is designed to vindicate.”<sup>372</sup> “[T]he fact is,” counsel added, “that the cities have an affirmative obligation that require them to look out for fair housing.”<sup>373</sup>

When it looks out at the West Grove and other predominantly black inner-city neighborhoods, by now the City of Miami knows or reasonably should know that its past and present zoning and demolition policies and practices may have caused and may continue to cause a discriminatory, disproportionate impact and segregative effect on a broad, protected class of black tenants. Facially neutral or not, the City’s policies and practices may have created and may continue to create artificial, arbitrary, and unnecessary barriers to fair housing opportunities for such black tenants. Because the City’s apparently discriminatory zoning and demolition policies and practices have been and predictably will continue to be more heavily concentrated in minority neighborhoods, they may have contributed significantly to the disproportionately high rates of eviction and displacement in the West Grove and other predominantly black neighborhoods, and likewise contrib-

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<sup>368</sup> See *supra* note 342.

<sup>369</sup> See *supra* note 343.

<sup>370</sup> Transcript of Oral Argument at 29, 32, 42, *Bank of Am. Corp. v. City of Miami*, 137 S. Ct. 1296 (2017) (Nos. 15-1111, 15-1112).

<sup>371</sup> *Id.* at 33, 41.

<sup>372</sup> *Id.* at 41.

<sup>373</sup> *Id.* at 33.

uted significantly to the disproportionately high rates of black neighborhood segregation inside and outside its municipal borders. For these reasons, the City of Miami seems to have adversely impacted the ability of black residents to remain in their chosen neighborhood, such as the West Grove, and also impaired its own stated municipal goals to assure that racial factors do not adversely affect the ability of any person to choose where to live in the City or to enjoy the social and professional benefits of living in an integrated society.

Instead of defending its suspect conduct under the FHA or deploying blight removal and slum clearance rationales for its conduct under the Florida Community Redevelopment Act, City of Miami officials publicly and privately justify and, thereby, excuse the mass eviction and displacement of black tenants and the perpetuation of Jim Crow segregated neighborhoods on vague economic and property law grounds. At a City of Miami Commission meeting on February 28, 2019, for example, where Task Force members protested that West Grove “Bahamian and African Americans will be wiped out” by unfettered development and mass displacement, Commissioner Keon Hardemon remarked: “Part of me feels like people’s [i.e., developers’] property rights are being taken.”<sup>374</sup> The same City of Miami officials also deny that municipal zoning and demolition policies and practices unlawfully discriminate against black tenants and homeowners or cause the displacement and resegregation of predominantly black neighborhoods.<sup>375</sup> Yet, it is the public pronouncements and private recitations of the primacy of economic development and property rights echoed by municipal officials and a chorus of landlords and developers that lie at the core of the City of Miami’s apparent legal defense. That defense rests on superficial claims of untrammelled property rights, land use efficiency, neighborhood freedom of association and voluntary self-segregation, real-estate market rationality, urban revitalization economics, and race neutrality.<sup>376</sup> The next Part examines the

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<sup>374</sup> Rivas, *supra* note 183; see also Aaron Leibowitz, *Board’s Historic Designation Battle an Inside Job*, MIAMI HERALD, Aug. 12, 2018, at 1A, 2A (“People have a right to their properties . . .”) (quoting Commissioner Joe Carollo).

<sup>375</sup> In its coverage of the City of Miami Commission meeting on February 28, 2019, the Miami Herald reported: “Inside City Hall, the fair housing issue did not appear to move any commissioners.” See Flechas, *supra* note 303.

<sup>376</sup> For critiques of race neutrality, see EDUARDO BONILLA-SILVA, RACISM WITHOUT RACISTS: COLOR-BLIND RACISM AND THE PERSISTENCE OF RACIAL INEQUALITY IN AMERICA 2 (4th ed. 2014) (explicating color-blind racism as a white means of “rationaliz[ing] minorities’ contemporary status as the product of market dynamics, naturally occurring phenomena, and blacks’ imputed cultural limitations”); Jeannine Bell, *There Are No Racists Here: The Rise of Racial Extremism, When No One Is Racist*, 20 MICH. J. RACE & L. 349, 351 (2015) (exploring the presence of racial extremism in the context of the social disavowal of expressions of racism); Lawrence Bobo, James R. Kleugel, & Ryan A. Smith, *Laissez Faire Racism: The Crystallization of a Kinder, Gentler, Antiblack Ideology*, in RACIAL ATTITUDES IN THE 1990S: CONTINUITY AND CHANGE 15–44 (Jack Martin & Steven A. Tuch eds., 1997); William M. Carter, Jr., *The Thirteenth Amendment and Pro-Equality Speech*, 112 COLUM. L. REV. 1855, 1857–58 (2012) (citing “the ‘new racism’ of systemic inequality, unconscious bias, and more subtle forms of racial exclusion”); see also Kaitlyn Murphy, Book Note, *The Price of Progress-*

promise of fair housing law reform campaigns in rebutting these commonly heard claims through the prism of the West Grove Task Force and in accordance with an integrated a vision of neighborhood inclusion, interracial association, and environmental health and justice.

#### IV. THE WEST GROVE TASK FORCE CAMPAIGN

*“We have created a caste system in this country, with African Americans kept exploited and geographically separate by racially explicit government policies. Although most of these policies are now off the books, they have never been remedied and their effects endure.”*<sup>377</sup>

The West Grove Task Force draws on the grassroots politics of the civil rights<sup>378</sup> and poor people’s movements<sup>379</sup> to mold an activist vision of community economic justice and winnows from the fields of political science<sup>380</sup> and sociology<sup>381</sup> to organize and mobilize a community-based fair housing campaign imbedded in the built environment. The mission of the Task Force, a mission supported by the solicited intervention of the Center for Ethics and Public Service,<sup>382</sup> is to discover and to rectify patterns of municipal inequity

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*sive Politics: The Welfare Rights Movement in an Era of Color Blind Racism*, 27 BERKELEY J. GENDER L. & JUST. 350, 350–51 (2012) (reviewing ROSE ERNST, *THE PRICE OF PROGRESSIVE POLITICS: THE WELFARE RIGHTS MOVEMENT IN AN ERA OF COLOR BLIND RACISM* (2010)). Notably, claims of race neutrality often overlook the sway of implicit bias. See R. Richard Banks, Jennifer L. Eberhardt, & Lee Ross, *Discrimination and Implicit Bias in a Racially Unequal Society*, 94 CALIF. L. REV. 1169, 1169–70 (2006); Kristin A. Lane et al., *Implicit Social Cognition and Law*, 3 ANN. REV. L. SOC. SCI. 427, 427 (2007); Cynthia Lee, *Making Race Salient: Trayvon Martin and Implicit Bias in a Not Yet Post-Racial Society*, 91 N.C. L. REV. 1555, 1610–11 (2013).

<sup>377</sup> ROTHSTEIN, *supra* note 227, at xvii.

<sup>378</sup> See TAYLOR BRANCH, *AT CANAAN’S EDGE: AMERICA IN THE KING YEARS, 1965-1968* 501–22, 683–722 (2006) (discussing Chicago and Memphis rights campaigns); TAYLOR BRANCH, *PARTING THE WATERS: AMERICA IN THE KING YEARS, 1954–63* 143–205, 450–91 (1988) (examining the Montgomery Bus Boycott and Freedom Rides); TAYLOR BRANCH, *PILLAR OF FIRE: AMERICA IN THE KING YEARS, 1963–65*, 343–509 (1998) (recounting sit-ins, electoral politics, and Freedom Schools); DAVID J. GARROW, *BEARING THE CROSS: MARTIN LUTHER KING, JR., AND THE SOUTHERN CHRISTIAN LEADERSHIP CONFERENCE* 575–624 (1986) (chronicling the Poor People’s Campaign).

<sup>379</sup> See MARTHA F. DAVIS, *BRUTAL NEED: LAWYERS AND THE WELFARE RIGHTS MOVEMENT, 1960–1973* 40–55 (1993) (discussing National Welfare Rights Organization); FRANCES FOX PIVEN & RICHARD A. CLOWARD, *POOR PEOPLE’S MOVEMENTS: WHY THEY SUCCEED, HOW THEY FAIL* 264–361 (1977) (same).

<sup>380</sup> See TRACI BURCH, *TRADING DEMOCRACY FOR JUSTICE: CRIMINAL CONVICTIONS AND THE DECLINE OF NEIGHBORHOOD POLITICAL PARTICIPATION* 13–69 (2013) (evaluating community mobilization).

<sup>381</sup> See ROBERT SAMPSON, *GREAT AMERICAN CITY: CHICAGO AND THE ENDURING NEIGHBORHOOD EFFECT* 149–209 (2012) (assessing collective efficacy and community organization strategies).

<sup>382</sup> On interventionist ethics, see Anthony V. Alfieri, *Things Fall Apart: Hard Choices in Public Interest Law*, 31 GEO. J. LEGAL ETHICS 335, 341–44 (2018); Susan D. Carle & Scott L. Cummings, *A Reflection on the Ethics of Movement Lawyering*, 31 GEO. J. LEGAL ETHICS 447, 472–74 (2018).

adversely affecting a wide range of conditions crucial to the overall health (human and environmental) of the West Grove and other distressed urban<sup>383</sup> and suburban<sup>384</sup> areas of Miami-Dade County. In the deteriorating context of the inner-city built environment, fair housing campaigns must go beyond the customary concerns of litigation<sup>385</sup> and social mobility strategies,<sup>386</sup> inclusionary zoning<sup>387</sup> and desegregation remedies,<sup>388</sup> and community economic development models<sup>389</sup> and community benefits agreements<sup>390</sup> in an effort to

<sup>383</sup> Megan Haberle, Director of Housing Policy at the Poverty & Race Research Action Council in Washington, D.C., points to “the role of place in shaping health” and the “growing urgency to respond to inequities related to housing, residential segregation, and neighborhood conditions.” Megan Haberle, *Views from the Field: Health, Housing, and Civil Rights Strategies*, GRANTMAKERS IN HEALTH (Sept. 2017), <http://www.gih.org/Publications/ViewsDetail.cfm?ItemNumber=9024>, archived at <https://perma.cc/SKP7-YSES>. Vulnerable racially segregated neighborhoods already burdened by “long histories of being underresourced and undercapitalized” and “weighted with cumulative health impacts,” Haberle adds, are “most at risk.” *Id.* In these local circumstances, she emphasizes, civil rights “laws potentially offer vital protections against, for example, discrimination in municipal services, affordable housing siting, location of environmental health burdens, and other activities that affect families’ health and will intersect directly with climate change and its impacts.” *Id.*; see also Megan Haberle, *Fair Housing and Environmental Justice: New Strategies and Challenges*, 26 J. AFFORDABLE HOUSING & COMMUNITY. DEV. L. 271, 271–73 (2017).

<sup>384</sup> See Brian Patrick Larkin, *The Forty-Year “First Step”: The Fair Housing Act As an Incomplete Tool for Suburban Integration*, 107 COLUM. L. REV. 1617, 1619–23 (2007); Sandra M. Moore, *Ferguson: Undoing the Damage of the Past — Creating Community Wealth*, 25 J. AFFORDABLE HOUSING & COMMUNITY. DEV. L. 297, 297–300 (2017); Florence Wagman Roisman, *Sustainable Development in Suburbs and Their Cities: The Environmental and Financial Imperatives of Racial, Ethnic, and Economic Inclusion*, 3 WIDENER L. SYMP. J. 87, 88–91 (1998).

<sup>385</sup> See Florence Wagman Roisman, *How Litigation Can Lead To Substantial Relief for Clients and Significant Social Change*, 38 CLEARINGHOUSE REV. 759, 767 (2005) (reviewing BETH HARRIS, *DEFENDING THE RIGHT TO A HOME: THE POWER OF ANTI-POVERTY LAWYERS* (2004)); Florence Wagman Roisman, *Housing, Poverty and Racial Justice: How Civil Rights Laws Can Redress the Housing Problems of Poor People*, 36 CLEARINGHOUSE REV. 21, 21–24 (2002).

<sup>386</sup> See John Powell & Stephen Menendian, *Opportunity Communities: Overcoming the Debate Over Mobility Versus Place-Based Strategies*, in *THE FIGHT FOR FAIR HOUSING: CAUSES, CONSEQUENCES, AND FUTURE IMPLICATIONS OF THE 1968 FEDERAL FAIR HOUSING ACT 207–27* (Gregory D. Squires ed., 2018); Sara Pratt, *Civil Rights Strategies To Increase Mobility*, 127 YALE L.J. F. 498 (2017), <http://www.yalelawjournal.org/forum/civil-rights-strategies-to-increase-mobility>, archived at <https://perma.cc/C6ND-T9NV>; Florence Wagman Roisman & Hilary Botein, *Housing Mobility and Life Opportunities*, 27 CLEARINGHOUSE REV. 335, 335–37 (1993).

<sup>387</sup> See Laura M. Padilla, *Reflections on Inclusionary Housing and a Renewed Look at Its Viability*, 23 HOFSTRA L. REV. 539, 564–70 (1995); Lisa C. Young, *Breaking the Color Line: Zoning and Opportunity in America’s Metropolitan Areas*, 8 J. GENDER RACE & JUST. 667, 699 (2005).

<sup>388</sup> See S. Lamar Gardner, *#blacklivesmatter, Disparate-Impact, and the Property Agenda*, 43 S.U. L. REV. 321, 323 (2016) (discussing the #BlackLivesMatter movement and the need for a property/housing law agenda addressing segregation and housing discrimination); see also Florence Wagman Roisman, *Living Together: Ending Racial Discrimination and Segregation in Housing*, 41 IND. L. REV. 507, 508 (2008).

<sup>389</sup> See Scott L. Cummings, *Clinical Legal Education and Community Development*, 13 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 208, 208–12 (2005); Scott L. Cummings & Gregory Volz, *Community Economic Development as Progressive Politics: Toward a Grassroots Movement for Economic Justice*, 54 STAN. L. REV. 399, 399–409 (2001); Scott L. Cummings, *Toward a New Theory of Community Economic Development*, 37 CLEARINGHOUSE REV.

merge the neighborhood empowerment and vulnerability concerns of environmental health and justice central to places like the West Grove, including climate change adaptation.<sup>391</sup> To elucidate that wider mission, this Part links the norms, strategies, and tactics of the Task Force to larger visions of social movement advocacy, histories of racial animus, and theories of disparate-impact and segregative-effect law reform.

### A. *Social Movement Visions*

Social movement visions furnish a guide for action and intervention in impoverished local contexts like the West Grove. Desmond counsels the adoption of a multidimensional approach to combating deprivation while conceding the limits and risks of channeling scarce resources into locally “bounded neighborhoods”<sup>392</sup> such as the West Grove. Professor Anna Akbar forges a pathway from culturally, socioeconomically, and geographically bounded neighborhoods to more far-reaching regions by reframing local law reform campaigns into a broader social movement vision. Current research on law and social movements extends this pathway by linking legal and political advocacy into an integrated, problem-solving strategy relocating the role of lawyers and the lawyering function within social change campaigns.<sup>393</sup>

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158, 158–59 (2003). *But see* Elizabeth K. Julian, *Fair Housing and Community Development: Time to Come Together*, 41 IND. L. REV. 555, 559–60 (2008).

<sup>390</sup> See Edward W. De Barbieri, *Do Community Benefits Agreements Benefit Communities?*, 37 CARDOZO L. REV. 1773, 1776–79 (2016); Vicki Been, *Community Benefits Agreements: A New Local Government Tool or Another Variation on the Exactions Theme?*, 77 U. CHI. L. REV. 5, 5–9 (2010); Scott L. Cummings & Benjamin S. Beach, *Community Benefits Agreements*, in COMMUNITY ECONOMIC DEVELOPMENT LAW: A TEXT FOR ENGAGED LEARNING 322–33 (Susan Bennet, Brenda Bratton Blom, Louise Howells & Deborah Kenn eds., 2012); Patricia E. Salkin & Amy Lavine, *Understanding Community Benefits Agreements: Equitable Development, Social Justice and Other Considerations for Developers, Municipalities and Community Organizations*, 26 UCLA J. ENVTL. L. & POL’Y 291, 292–94 (2008).

<sup>391</sup> See Christopher D. Ahlers, *Race, Ethnicity, and Air Pollution: New Directions in Environmental Justice*, 46 ENVTL. L. 713, 714–16 (2016); Luke W. Cole, *Empowerment as the Key to Environmental Protection: The Need for Environmental Poverty Law*, 19 ECOLOGY L.Q. 619, 631–34 (1992); Note, *RCRA As A Tool for Environmental Justice Communities and Others to Compel Climate Change Adaptation*, 131 HARV. L. REV. 2409, 2411–16 (2018); Tseming Yang, *Melding Civil Rights and Environmentalism: Finding Environmental Justice’s Place in Environmental Regulation*, 26 HARV. ENVTL. L. REV. 1, 4–8 (2002). *See generally* SHEILA R. FOSTER & LUKE W. COLE, FROM THE GROUND UP: ENVIRONMENTAL RACISM AND THE RISE OF THE ENVIRONMENTAL JUSTICE MOVEMENT 10–18 (2001); Sheila R. Foster, *Vulnerability, Equality and Environmental Justice: The Potential and Limits of Law*, in THE ROUTLEDGE HANDBOOK OF ENVIRONMENTAL JUSTICE 136–48 (Ryan Holifield, Jayajit Chakraborty & Gordon Walker eds., 2018).

<sup>392</sup> Desmond, *Severe Deprivation in America*, *supra* note 40, at 8.

<sup>393</sup> For a thorough synthesis of the field of movement lawyering, see Scott L. Cummings, *Law and Social Movements: Reimagining the Progressive Canon*, 2018 WIS. L. REV. 441; Scott L. Cummings, *Rethinking the Foundational Critiques of Lawyers in Social Movements*, 85 FORDHAM L. REV. 1987 (2017); Scott L. Cummings, *The Puzzle of Social Movements in American Legal Theory*, 64 UCLA L. REV. 1552 (2017); Scott L. Cummings, *The Social Movement Turn in Law*, 43 LAW & SOC. INQUIRY 360 (2018); *see also* Scott L. Cummings,

As a springboard to this integrated approach, Akbar points to “the importance of studying social movement visions,” particularly how a vision of social change “productively complicates” our study of the law and the state.<sup>394</sup> Akbar explains that “social movement visions paint a picture in tension with prevailing stories about law and the state—what it means and does, how it operates, who it benefits—in opposition to how legal institutions commonly tell that story.”<sup>395</sup> At Task Force meetings, City of Miami officials in concert with slumlords and developers and their attendant architects, lawyers, and lobbyists tell a race neutral story of Miami as a Magic City<sup>396</sup> where property rights remain inviolable, land use efficiency, freedom of association, and voluntary self-segregation shape the contours of race relations and residential segregation, and real-estate market rationality and urban revitalization economics decree neighborhood socioeconomic status. This colorblind story of Magic City speaks only of the privileges of property and the economics of profit, not the alternative normative meanings of racial integration, interracial association, and neighborhood inclusion.

Social movements, Akbar asserts, “develop new and challenging constitutional meanings” and “contest the shape of power, law, and society.”<sup>397</sup> Moreover, she remarks, social movements help imagine and mold “alternative frameworks for the way forward.”<sup>398</sup> Those alternative frameworks of analysis swing the focus of law reform campaigns like the West Grove Task Force “from the courts, legislatures, and executives to those subject to the law’s violence and inequities.”<sup>399</sup> That shift, Akbar adds, engrafts “a more contradictory, nuanced, and real view onto law by exposing its relationship to power,”<sup>400</sup> in the case of the West Grove the relationship between municipal zoning and demolition practices and the slumlords and developers who profit from their public and private enforcement, and the relationship between slumlords and developers and low-income black tenants who suffer exploitation, displacement, and resegregation at their hands. That shift, Akbar also mentions, “creates disruptions and contradictions,”<sup>401</sup> opening room for reform campaigns like the West Grove Task Force to maneuver across the spheres of law and politics.

For advocates and activists staffing law reform campaigns, and for academics charting their movement trajectory, the disruptions and contradictions of legal-political advocacy are by turns surprising and propitious, and

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*Empirical Studies of Law and Social Change: What Is the Field? What Are the Questions?*, 2013 WIS. L. REV. 171.

<sup>394</sup> Amna A. Akbar, *Toward A Radical Imagination of Law*, 93 N.Y.U. L. REV. 405, 473 (2018).

<sup>395</sup> *Id.* at 478.

<sup>396</sup> See Scott L. Cummings, *Movement Lawyering*, 2017 U. ILL. L. REV. 1645, 1652–53, 1695–1716 (2017).

<sup>397</sup> Akbar, *supra* note 394, at 475.

<sup>398</sup> *Id.* at 476 (footnotes omitted).

<sup>399</sup> *Id.* at 477.

<sup>400</sup> *Id.*

<sup>401</sup> *Id.* at 479.

expected and costly. The pursuit of competing strategies and tactics by differentially situated tenants and homeowners, and by distinctively positioned clergy and congregations, may heighten disruption and magnify contradiction to the detriment of the campaign. To strengthen neighborhood preservation and residential stability, for example, homeowners may raise legislative policy objections to municipal property tax foreclosure<sup>402</sup> and tax lien sale<sup>403</sup> systems, though the decentralization of municipal governance<sup>404</sup> and the influence of mobile capital (private developers, investors, and lenders) on municipal decision-making<sup>405</sup> and development procedures<sup>406</sup> may hamper such remedial challenges. By contrast, to enlarge inclusionary zoning opportunities<sup>407</sup> and to expand access to relocation assistance funds,<sup>408</sup> tenants may hew more closely to FHA disparate-impact and segregative-effect theories of municipal liability in administrative and judicial forums. Whether molded by tenants or homeowners, Task Force strategies for seeking redress of particularized group and community-wide injuries must be tightly fastened to the histories of racial animus embedded in federal, state, and local government policies of racial segregation and subordination.

### B. Racial Animus Histories

Framing the Task Force fair housing campaign in light of the invidious history of racial animus pervading municipal practices and imbuing federal,

<sup>402</sup> For a discussion of the property tax foreclosure crisis in Wayne County, Michigan, see Bernadette Atuahene, *“Our Taxes Are Too Damn High”: Institutional Racism, Property Tax Assessments, and the Fair Housing Act*, 112 NW. U. L. REV. 1501, 1515–43 (2018).

<sup>403</sup> For criticism of the local government practice of selling tax liens on properties with delinquent property taxes as a means to collect homeowner debt in Washington, D.C., and Cuyahoga County, Ohio, see *Economic Justice: Case: Tax Lien Sales*, NAACP LDF (Feb. 16, 2018), <http://www.naacpldf.org/case-issue/tax-lien-sales>, archived at <https://perma.cc/9Y5F-KVUN>.

<sup>404</sup> See Richard C. Schragger, *Decentralization and Development*, 96 VA. L. REV. 1837, 1838–43 (2010).

<sup>405</sup> See Richard C. Schragger, *Mobile Capital, Local Economic Regulation, and the Democratic City*, 123 HARV. L. REV. 482, 526–27 (2009).

<sup>406</sup> See Alana Semuels, *Suburbs and the New American Poverty*, THE ATLANTIC (Jan. 7, 2015), <https://www.theatlantic.com/business/archive/2015/01/suburbs-and-the-new-america-poverty/384259/>, archived at <https://perma.cc/C5U5-ZG8P>.

<sup>407</sup> See KEVIN T. GREINER ET AL., SOUTH FLORIDA HOUSING STUDIES CONSORTIUM, THE DYNAMICS OF HOUSING AFFORDABILITY IN MIAMI-DADE COUNTY: ASSESSING THE IMPLEMENTATION AND IMPACTS OF INCLUSIONARY ZONING 31–32 (Apr. 2017); Andres Viglucci, *Miami Will Start Making Developers Provide Affordable Housing in Some New Towers*, MIAMI HERALD (Nov. 27, 2018), <https://www.miamiherald.com/news/local/community/miami-dade/down-town-miami/article221767810.html>, archived at <https://perma.cc/XC9V-C3L6>.

<sup>408</sup> See Alison L. Schmidt, *Relocation Benefits for the Economically Displaced*, 22 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 323, 328–29 (2014); Smiley, *Evictions, Profits and Slum*, *supra* note 11 (discussing the City of Miami Commission’s allocation of \$306,000 for “housing relocation” services for displaced West Grove tenants in 2016); see also Jimmie Davis Jr., *Relocation of Evicted West Grove Residents Slow*, MIAMI TIMES (Dec. 7, 2016), [https://www.miamitimesonline.com/news/relocation-of-evicted-west-grove-residents-slow/article\\_8b18c360-bc98-11e6-9a02-1fece75b849f.html](https://www.miamitimesonline.com/news/relocation-of-evicted-west-grove-residents-slow/article_8b18c360-bc98-11e6-9a02-1fece75b849f.html), archived at <https://perma.cc/uQ53-GXZG>.

state, and local government policies in Miami links the crisis of inner-city and suburban poverty to the damage of *de jure* segregation. In his historical account of how government policies and practices have contributed to racialized impoverishment and racial segregation in the United States, Rothstein shows that inner-city and outer-ring suburban segregation is the direct result of deliberate, decades-long federal, state, and local government policies of discriminatory zoning, redlining, subsidy, and taxation.<sup>409</sup> This showing deconstructs the myth that the nation's cities and towns are "'*de facto* segregated,' that they result from private practices, not from law or government or policy."<sup>410</sup> Documenting overt government policies of *de jure* segregation, Rothstein demonstrates that public officials at all levels tolerated, promoted, and enforced discriminatory practices of racial exclusion in residential neighborhoods. In doing so, he overturns claims that the exogenous "same race" activities, customs, and practices of private actors, such as landlords, real estate agents and developers, mortgage lenders, and homeowners, purportedly outside the public reach of government regulation produced the structural conditions of *de facto* segregation common to inner cities like Baltimore, Chicago, and Miami, and outer-ring suburbs like Richmond Heights in Miami-Dade County and Ferguson, Missouri.<sup>411</sup>

At bottom, Rothstein brackets the poverty, crime, and violence of segregated neighborhoods to the law and related government policy of *de jure* segregation. For Rothstein, securing this linkage neither discounts the import of private prejudice nor diminishes the impact of *de facto* segregation embodied in the long-standing practices of bank redlining, mortgage lending discrimination, real estate steering, self-segregation, and white flight. Unremarkably, in Miami and other metropolitan areas, private prejudice remains steadfast and *de facto* segregation persists spatially.<sup>412</sup> More than the private prejudice animating *de facto* segregation, Rothstein maintains, it was the public, "racially explicit policies of federal, state, and local governments" that dictated "where whites and African Americans should live."<sup>413</sup> By tying residential segregation to intentional, systematic government pol-

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<sup>409</sup> ROTHSTEIN, *supra* note 227, at vii-xvii.

<sup>410</sup> *Id.* at vii; see also Richard Rothstein, *From Ferguson to Baltimore: The Fruits of Government-Sponsored Segregation*, 24 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 205, 205 (2015) (describing "a century of federal, state, and local policies to quarantine Baltimore's black population in isolated slums—policies that continue to the present day, as federal housing subsidy policies still disproportionately direct low-income black families to segregated neighborhoods and away from middle class suburbs."). On class, race, and school segregation, see generally RICHARD ROTHSTEIN, *CLASS AND SCHOOLS: USING SOCIAL, ECONOMIC AND EDUCATIONAL REFORM TO CLOSE THE BLACK-WHITE ACHIEVEMENT GAP* 13–60 (2004).

<sup>411</sup> See Rigel C. Oliveri, *Setting the Stage for Ferguson: Housing Discrimination and Segregation in St. Louis*, 80 MO. L. REV. 1053, 1054 (2015); RICHARD ROTHSTEIN, ECONOMIC POLICY INSTITUTE, *THE MAKING OF FERGUSON: PUBLIC POLICIES AT THE ROOT OF ITS TROUBLES* 5–6 (2014), <http://www.epi.org/files/2014/making-of-ferguson-final.pdf>, archived at <https://perma.cc/M9CG-PFKA>.

<sup>412</sup> See generally KIRWAN INSTITUTE, *supra* note 77, at 17, 19.

<sup>413</sup> ROTHSTEIN, *supra* note 227, at vii.

icy, rather than to the local accumulation of individual choices, the legislative and judicial misconstruction of laws, or the administrative misapplication of regulations, Rothstein reveals the “unhidden public policy that explicitly segregated every metropolitan area in the United States.”<sup>414</sup> The attribution of residential racial segregation during the twentieth century to purposeful state action exerted by the federal government through the promulgation and enforcement of racially explicit policies and practices helps explicate the rise of a “nationwide system of urban ghettos, surrounded by white suburbs.”<sup>415</sup>

Rothstein excavates evidence of purposeful, discriminatory state action in the segregation-enforcing home loan and insurance underwriting policies of the Federal Housing Administration,<sup>416</sup> the color-coded redlining mortgage insurance policies of the Home Owners Loan Corporation and the Veterans Administration,<sup>417</sup> the whites-only public housing policies and matching suburbanization policies of the federal government,<sup>418</sup> and the federally-sponsored conversion of central city housing projects into subsidized vertical slums.<sup>419</sup> In Miami and cities elsewhere, the same deep-seated racial animus permeated municipal government and stirred a range of local segregationist tactics<sup>420</sup> for more than a century. By 1896, for example, Miami municipal laws barred Blacks from “own[ing] prime real estate along Biscayne Bay or the Miami River where the tourist trade flourished.”<sup>421</sup> By 1910, locally-enacted racial zoning<sup>422</sup> ordinances “arbitrarily set apart certain districts for each race.”<sup>423</sup> Moreover, during the 1930s, the federal Home Owners Loan Corporation implemented housing appraisal policies at the local level in Miami “to maintain racially segregated housing and neighbor-

<sup>414</sup> *Id.*

<sup>415</sup> *Id.* at viii–xii.

<sup>416</sup> *Id.* at 13; see also Robert G. Schwemm, *The Limits of Litigation in Fulfilling the Fair Housing Act's Promise of Non-Discriminatory Home Loans*, in FROM FORECLOSURE TO FAIR LENDING: ADVOCACY, ORGANIZING, OCCUPY, AND THE PURSUIT OF EQUITABLE CREDIT 229, 232–36 (Chester Hartman & Gregory D. Squires eds., 2013).

<sup>417</sup> ROTHSTEIN, *supra* note 227, at 9; see also Robert G. Schwemm & Jeffrey L. Taren, *Discretionary Pricing, Mortgage Discrimination, and the Fair Housing Act*, 45 HARV. C.R.-C.L. L. REV. 375, 388 (2010); Robert G. Schwemm, *Introduction to Mortgage Lending Discrimination Law*, 28 J. MARSHALL L. REV. 317, 328–30 (1995).

<sup>418</sup> ROTHSTEIN, *supra* note 227, at 17–37, 77–91.

<sup>419</sup> Interview by Terry Gross with Richard Rothstein on Fresh Air/National Public Radio (May 3, 2017) (A Forgotten History Of How The U.S. Government Segregated America).

<sup>420</sup> ROTHSTEIN, *supra* note 227, at 115–37.

<sup>421</sup> Eaton, *supra* note 82, at 50–51 (footnote omitted).

<sup>422</sup> Raymond A. Mohl, *Whitening Miami: Race, Housing, and Government Policy in Twentieth-Century Dade County*, 79 FLA. HIST. Q. 319, 319–20 (2001); Christopher Silver, *The Racial Origins of Zoning in American Cities*, in URBAN PLANNING AND THE AFRICAN AMERICAN COMMUNITY 23–39 (Manning Thomas et al. eds., 1997).

<sup>423</sup> Eaton, *supra* note 82, at 50–51 (footnotes omitted); ROTHSTEIN, *supra* note 227, at 21 (“The federal government took a similar approach in Miami, where it agreed to segregate housing for African Americans in areas that the city’s planners had designated exclusively for black residents. A Miami civic leader explained to federal administrators that the sites were chosen to ‘remove the entire colored population’ from places that had been reserved for white occupancy.”) (citation omitted).

hoods.”<sup>424</sup> In the post-World War II era too, the policies of “the minority housing programs of the Housing and Home Finance Agency, the urban redevelopment and urban renewal programs of the federal housing acts of 1949 and 1954, and the vast interstate highway program[ ]” jointly “perpetuated the racial segregation of Dade County neighborhoods and public housing projects.”<sup>425</sup> By at least 1960, “Miami’s black community was largely spatially segregated northwest of downtown Miami in Overtown (once called Colored Town), Lemon City (now Edison), and in the southern quadrants of the city, especially Coconut Grove.”<sup>426</sup> Later, in the early 1960s, the local construction of two interstate highways displaced more than 30,000 black families from Overtown, previously the Central Negro District, which “was reduced to an impoverished enclave of tenements near downtown Miami.”<sup>427</sup> More recently, in the 1980s, the construction of the local monorail mass transit system downtown “displaced two hundred African-American families in Overtown.”<sup>428</sup> The continuous, inextricably linked discriminatory form and segregationist substance of government policies enacted and enforced by federal, state, and local housing authorities in Miami provide the evidentiary backstop of racial animus from which to push forward the Task Force’s fair housing law reform campaign. Two theories of liability undergird this campaign: disparate impact and segregative effect. Both theories present opportunities for legal-political advocacy and community mobilization in the West Grove.

### C. *Disparate Impact Revisited*

Revisiting disparate-impact theory to target the zoning and demolition practices of the City of Miami steers the Task Force outside “the heartland of disparate-impact liability” recognized by the *Inclusive Communities* Court.<sup>429</sup> The heartland of disparate-impact liability lies in the suburban domain of race-motivated exclusionary zoning practices ratified by white ac-

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<sup>424</sup> Mohl, *supra* note 422, at 319–20.

<sup>425</sup> *Id.* at 319–20; ROTHSTEIN, *supra* note 227, at 36 (“In Miami, for example, African Americans eligible for public housing were assigned to distinct projects while eligible whites were given vouchers for rentals of private apartments to subsidize their dispersal throughout the community. It was not until 1998 that civil rights groups won a requirement that vouchers be offered to African Americans as well—too late to reverse the city’s segregation.”).

<sup>426</sup> KIRWAN INSTITUTE, *supra* note 77, at 14 (figure omitted).

<sup>427</sup> Eaton, *supra* note 82, at 55–56 (“A single interchange on the Interstate 95 (I-95) expressway displaced twenty-five hundred Overtown families.”) (footnotes omitted); ROTHSTEIN, *supra* note 227, at 129 (“In 1956, the Florida State Road Department routed I-95 to do what Miami’s unconstitutional zoning ordinance had intended but failed to accomplish two decades earlier: clear African Americans from an area adjacent to downtown. An alternative route utilizing an abandoned railway right of way was rejected, although it would have resulted in little population removal. When the highway was eventually completed in the mid-1960s, it had reduced a community of 40,000 African Americans to 8,000.”).

<sup>428</sup> Eaton, *supra* note 82, at 59 (footnote omitted).

<sup>429</sup> *Inclusive Cmty. Project*, 135 S. Ct. at 2522.

tors to keep out black tenants and homeowners.<sup>430</sup> In the West Grove, disparate-impact liability lies in the urban domain of allegedly race-neutral municipal zoning and demolition practices that seem to have caused and to be causing the disproportionate eviction and displacement of black tenants.

Both urban and suburban discriminatory practices erect barriers to housing integration, interracial association, and neighborhood inclusion. Such barriers may arise from unconscious prejudices, disguised animus, and covert and illicit stereotyping rather than from intentional disparate treatment. Displacement practices cloaked in unconscious prejudice and disguised animus and deployed in the private housing arena by slumlords and developers, and in the public governmental arena by planning and zoning officials, remove the very tenants and very often the built structures that foster housing integration, interracial association, and neighborhood inclusion. Evidence of prejudice, animus, and stereotyping is the through-line connecting exclusionary and displacement practices and their discriminatory effects.

Adducing historical evidence of prejudice, animus, and stereotyping in a disparate-impact campaign is critical to uncovering discriminatory intent embedded in municipal zoning and demolition practices. *Inclusive Communities* bolsters the theory of disparate-impact liability under the FHA by affirming its “important role in uncovering discriminatory intent[.]”<sup>431</sup> That statutory role, the Court emphasizes, “permits plaintiffs to counteract unconscious prejudices and disguised animus that escape easy classification as disparate treatment” and works to “prevent segregated housing patterns that might otherwise result from covert and illicit stereotyping.”<sup>432</sup> The failure to counteract prejudice and animus and to prevent segregated housing patterns woven by stereotyping, Connolly points out, carries “profound social and political consequences.”<sup>433</sup> Those consequences overtake considerations of disparate-impact liability and statistical disparity evidence<sup>434</sup> to implicate the

<sup>430</sup> See Zasloff, *supra* note 29, at 99 (“The most prominent Title VIII disparate-impact cases concern exclusionary zoning, where municipal regulations make it difficult or expensive to build multifamily and/or affordable units.”) (footnotes omitted). See generally ROTHSTEIN, *supra* note 227, at 59–75.

<sup>431</sup> *Inclusive Cmty Project*, 135 S. Ct. at 2511.

<sup>432</sup> *Id.* at 2512, 2522.

<sup>433</sup> CONNOLLY, *supra* note 7, at 7.

<sup>434</sup> In discussing methods of demonstrating statistical disparity, Schwemm and Bradford assert that “the statistical comparison should generally show the relative percentages of protected versus non-protected class members affected by the policy, as opposed to the absolute numbers of the groups affected.” Schwemm & Bradford, *supra* note 247, at 699 (footnote omitted). To meet the standard of a “significant” discriminatory effect, they add that “the disparity in the relative impact on the two groups must be sizeable.” *Id.* (footnote omitted). When, as here, the disparity affects a local area, especially a narrowly defined area like Coconut Grove and its four geographic quadrants, Schwemm and Bradford find statistical evidence of impact “more persuasive when it relates to the particular apartment complex, agency, or municipality whose action is being challenged, or at least the metropolitan area where the defendant operates.” *Id.* at 700–01 (footnotes omitted) (mentioning that “[d]efining the proper local housing market has proved surprisingly difficult in FHA-impact cases”).

“negative associations between black people and poverty, black people and crime, and black people and sexual immorality.”<sup>435</sup>

To Connolly, such “perceived associations” generate a “[r]acial logic” that operates “through real estate.”<sup>436</sup> Engrafted on the West Grove and other predominantly black inner-city neighborhoods like Little Haiti, that racial logic explicates the creation of “niche markets by way of segregation” and, Connolly adds, “offer[s] a handy explanation—supposed black inferiority—for why capitalism never quite worked the same way for everybody.”<sup>437</sup> The racial logic of black inferiority saturates the Magic City of Miami and its gentrifying inner-city neighborhoods, privileging norms of inviolate property, associational freedom, and voluntary self-segregation, and validating claims of land use efficiency, real-estate market rationality, and urban revitalization economics.

The West Grove Task Force contests norms of racial inferiority and challenges claims of “free market” displacement and segregation. Although still in the early stages of its fair housing investigation, the Task Force continues to gather evidence suggesting that black tenants have suffered disproportionately high rates of involuntary displacement through upzoning-sparked evictions and unchecked multifamily building demolitions while comparative white tenants have obtained or retained possession of their rental apartments free of eviction and demolition.<sup>438</sup> When verified, this initial displacement data may credibly show a statistically significant disparate impact disadvantaging black tenants,<sup>439</sup> a discriminatory effect reasonably

<sup>435</sup> CONNOLLY, *supra* note 7, at 7 (footnote omitted).

<sup>436</sup> *Id.*

<sup>437</sup> *Id.* (footnote omitted).

<sup>438</sup> To advance its fact investigation, in May 2019 the Task Force developed a tenant and homeowner vulnerability assessment survey tool. *See* Tenant and Homeowner Vulnerability Assessment Questionnaire (May 2019) (on file with the author).

<sup>439</sup> Schwemm and Bradford review several methodologies “in comparing how a challenged policy affects protected versus non-protected classes.” Schwemm & Bradford, *supra* note 247, at 703. One such methodology applies only to “the group of persons disqualified by the challenged policy,” for example tenants, in an attempt to “show that this group includes a greater percentage of protected versus non-protected class members.” *Id.* In the West Grove, this methodology may show that the challenged municipal policies and practices resulted in a higher percentage of displacement for black tenants than for white tenants. Another methodology, measuring how the challenged policy contributes to the under-representation of the protected class living in a particular area, operates “to show that the proportion of the protected class adversely affected by the challenged policy is higher than their portion of the overall population.” *Id.* at 703–04 (footnotes omitted). In the West Grove, this methodology may show that the challenged municipal policies and practices resulted in a far higher proportion of black tenant displacement relative to their representation in the local population of Coconut Grove than the proportion of white tenant displacement relative to their representation in the local population of Coconut Grove. An additional methodology, applicable in the event of a change in relevant policies or practices, “focuses on the proportions of the protected class affected before and after . . . implementation of the change. . . .” *Id.* at 705. In the West Grove, this methodology may show that the challenged municipal policies and practices resulted in the displacement of a greater percentage of black tenants after the change in comparison to white tenants affected by the change. A last methodology works “to show that the proportion of protected-class members adversely affected by the challenged practice is higher than the

attributable to the policies and practices of the City of Miami's Planning Department, Planning, Zoning, and Appeals Board, and the City of Miami Commission itself, including the Grove Village MUSP Development Order.

At Task Force meetings and forums, City of Miami officials defend municipal zoning and land use laws and practices as facially neutral, governmental policies of community revitalization and health and safety code compliance, and, moreover, deny that such zoning and land use practices erect artificial, arbitrary, or unnecessary barriers to fair housing opportunities for black tenants in the West Grove or in other predominantly black inner-city neighborhoods. Additionally, they point to the property rights of landlords and developers, the natural efficiency of real-estate markets, the inexorability of self-segregation, and the economics of urban revitalization, citing the multiple factors, such as construction cost, lender financing, market demand, and public infrastructure, that enter into a private developer's investment decisions about where to construct or renovate housing units. In sum, City of Miami officials reject the FHA as a statutory instrument to force local municipal authorities to reorder their urban revitalization priorities, even when those priorities can be achieved without arbitrarily creating discriminatory effects or perpetuating segregation. From their government standpoint, a West Grove disparate-impact suit will necessarily introduce racial considerations into every zoning and land use decision throughout Coconut Grove and the wider municipality, imposing onerous costs on private actors (landlords, developers, and lenders) financially invested in the revitalization of dilapidated housing, and discouraging future efforts to improve housing in poor neighborhoods.

Rothstein's rejoinder to such revitalization claims is noteworthy for the Task Force. Cognizant of Desmond's multidimensional understanding of poverty and neighborhood disadvantage, Rothstein asserts that "housing proposals for segregated neighborhoods that purport to contribute to 'revitalization' must be part of a concerted plan of revitalization that includes providing access to good jobs, improved transportation infrastructure, development of well-maintained parks and other community facilities, adequate funding of schools, and making the neighborhood attractive to middle-class families, while preserving affordability for those with moderate and lower incomes."<sup>440</sup> By contesting and redefining the meaning of revitalization, Rothstein illustrates how the Task Force may effectively interject countervailing FHA policy norms of neighborhood racial inclusion, integration, and preservation into a public discourse regime dominated by economic de-

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proportion of all persons in the general population adversely affected . . . ." *Id.* at 705–06 (footnote omitted). In the West Grove, this methodology may show that the challenged municipal policies and practices resulted in the eviction, displacement, and resegregation of a higher proportion of black tenants than the proportion of all persons in the Coconut Grove population similarly adversely affected.

<sup>440</sup> See Richard Rothstein, *The Supreme Court's Challenge to Housing Segregation*, AM. PROSPECT (July 5, 2015), <https://prospect.org/article/supreme-courts-challenge-housing-segregation>, archived at <https://perma.cc/6E9F-5ZVG>.

velopment and property right norms. Those same norms suffuse segregative-effect theory.

#### D. *Segregative Effect Revisited*

Revisiting segregative-effect theory to protect displaced and at-risk black tenants in the West Grove enables the Task Force to build on the shared experience of community harm seemingly caused by municipal policies and practices creating, increasing, reinforcing, and perpetuating segregated housing patterns. Race-based patterns of residential segregation and isolation prevent the community bonds of interracial association, tilting Coconut Grove and Miami toward two societies, one black, one white—fundamentally separate and unequal.<sup>441</sup> Factually, the patterns of segregated housing and racial group isolation pervading Coconut Grove and the City of Miami are susceptible to statistical, census data-backed proof. Early survey data and archival document collection, including oral histories, garnered by the Task Force show that over the last decade or more, hundreds of black tenants suffered zoning-induced involuntary displacement *out* of Coconut Grove and resegregation *into* either predominantly black, segregated neighborhoods within the City of Miami or predominantly black, segregated inner- and outer-ring suburbs within Miami-Dade County. In April 2018, the Miami Herald reported: “In the *West Grove*, rows of apartment buildings that provided inexpensive if substandard housing have been demolished, leaving vacant lots behind and pushing out hundreds of residents.”<sup>442</sup> A City of Miami Commissioner added: “people are being displaced and dispersed throughout the county, tearing apart deep-rooted families and the cultural fabric of the area.”<sup>443</sup> Significantly, local officials anticipated this result. At a January 30, 2008 meeting of the Coconut Grove Village West Homeowners and Tenants Association, Will Johnson, an aide to former Miami-Dade County Commissioner Carlos Gimenez, predicted that the Grove Village project “[wi]ll effectively take those people who live in those apartments on

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<sup>441</sup> In *Inclusive Communities*, the Supreme Court references the Kerner Commission Report, mentioning that “the Commission identified residential segregation and unequal housing and economic conditions in the inner cities as significant, underlying causes of the social unrest.” 135 S. Ct. at 2516 (citing REPORT OF THE NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS 91 (1968)). The Court reiterated the Commission’s finding “that both open and covert racial discrimination prevented black families from obtaining better housing and moving to integrated communities.” *Id.* (quoting REPORT OF THE NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS 13 (1968)). The Court also cited the Commission’s conclusion that “[o]ur Nation is moving toward two societies, one black, one white—separate and unequal[.]” and the Commission’s “recommended enactment of ‘a comprehensive and enforceable open-occupancy law making it an offense to discriminate in the sale or rental of any housing . . . on the basis of race, creed, color, or national origin.’” *Id.* (quoting REPORT OF THE NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS 1, 263 (1968)).

<sup>442</sup> Andres Viglucci, *Historic Preservation: Plan to Designate Wood-frame Homes as Historic Landmarks Splits West Grove*, MIAMI HERALD, Apr. 17, 2018, at 1A.

<sup>443</sup> Ken Russell, *Support the Last Best Chance to Preserve the Historic West Grove*, MIAMI HERALD, Jan. 4, 2018, at 13A.

Grand Avenue and displace them[.] Ninety-nine percent of the people who live there now won't be able to come back."<sup>444</sup> This mass removal and out-migration seem reasonably traceable to municipal land use and zoning policies and practices that permitted the widespread eviction of tenants and demolition of multifamily apartment buildings in the West Grove, for example the Grove Village MUSP Development Order. Even today, those policies and practices seem to create, increase, reinforce, and perpetuate segregated housing patterns in the City of Miami and Miami-Dade County.

The mass, involuntary removal of black tenants from the West Grove and their forced out-migration to segregated inner-city and outer-ring neighborhoods across the city of Miami and Miami-Dade County confirm the importance of a community-centered analysis in segregative-effect law reform campaigns. Deduced from the legislative history of the FHA and its regulatory implementation by HUD, a community-centered analysis of generalized harm strongly animates segregative-effect claims. Like other Jim Crow neighborhoods throughout Florida and the South, the West Grove carries the vestiges of *de jure* residential racial segregation entangled with Miami's socioeconomic history and the segregated urban and suburban housing patterns of white flight and black inner-city concentrated poverty encouraged and maintained by federal, state, and local government practices.

At Task Force assemblies addressing segregative-effect theory and the ongoing resegregation of metropolitan Miami and Miami-Dade County, City of Miami officials give an account of segregation as a *de facto* expression of free market real estate economics and neighborhood associational freedom, implying the tendency toward voluntary self-segregation among minority neighborhoods. City of Miami officials also suggest that the eviction, condemnation, and demolition of dilapidated housing disproportionately occupied by black tenants in urban improvement districts like the West Grove actually reduces segregation by dispersing black tenants throughout the city, though often back into segregated enclaves.<sup>445</sup> More basically, City officials seem to believe that the FHA does not prohibit a municipality from approving an aggressive course of privately-financed, low-income housing acquisition and demolition in predominantly black neighborhoods, does not decree an integrated vision of urban development, and does not mandate that af-

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<sup>444</sup> Olmo & Pagliery, *supra* note 157, at 3GR (quoting Will Johnson, aide to former Miami-Dade County Commissioner Carlos Gimenez).

<sup>445</sup> Compare *City of Joliet v. New West, L.P.*, 825 F.3d 827, 830 (7th Cir. 2016), *cert. denied sub nom.* *Mid-City National Bank of Chicago v. City of Joliet*, 137 S. Ct. 518 (2016) (finding that residents of dilapidated and crime-ridden housing "will be better off" in newly constructed units or units available with housing vouchers), *with* *Hispanics United of DuPage Cty. v. Village of Addison*, 958 F. Supp. 1320, 1328–29 (N.D. Ill. 1997) (finding a triable issue under the Fair Housing Act as to whether local tax increment financing district plans constitute "an imminent threat to the ethnic integration" of a village community), *and* *Hispanics United of DuPage Cty. v. Village of Addison*, 988 F. Supp. 1130, 1154, 1155 n.16 (N.D. Ill. 1997) (finding evidence of adverse discriminatory effect, and secondary consequence of increasing segregation, due to disproportionate inclusion of Hispanics in local tax increment financing district plans).

fordable housing be located in neighborhoods with any particular characteristic — Afro-Caribbean, African American, or otherwise.<sup>446</sup> This colorblind vision of the FHA and Magic City real estate development ignores Connolly’s ground-breaking study of the “inherent racial politics — a white supremacist politics — that made white Americans, immigrants, Native Americans, and even black Americans themselves understand black people — and, again, the black poor, especially — as potential threats to property values.”<sup>447</sup>

#### CONCLUSION

*“Undoing the effects of de jure segregation will be incomparably difficult.”*<sup>448</sup>

For the West Grove Task Force, neither the disparate-impact and segregative-effect theories revisited here, nor the less discriminatory alternative municipal practice proposals for upzoning and demolition determinations outlined here, will enable fair housing advocates and activists to fathom the complexities of economic hardship experienced by low-income tenants and homeowners. Neither will fair housing campaigns and alternative municipal practices enable advocates and activists to appreciate the varied depth and breadth of material privation infecting the political, economic, socio-cultural, and familial spheres of residential segregation in the West Grove and across the City of Miami and Miami-Dade County. The multidimensional quality of poverty implicates too much culture, psychology, and inequality and too many past hardships, traumas, and compounding disadvantages to inscribe its full scope into the tenant and homeowner narratives sounded by the Task Force in its fair housing campaign.

Yet law reform campaigns may supply constructive vehicles, and local municipalities and federal courts may provide useful forums, to integrate the research methodologies borrowed from ethnography and the analytic concepts of multiple disadvantage and severe deprivation gleaned from the sociology of poverty into a community-based vision of multidimensional fair housing and environmental health advocacy. In this sense, the Task Force’s fair housing campaign may serve as a reconstructive project to reconfigure poverty, socioeconomic inequality, and the built environment as a daily relation to private and public forms of power that may be openly contested by even vulnerable tenants and homeowners. On this view, fair housing campaigns may give academics, advocates, and activists Desmond’s hoped for

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<sup>446</sup> See City of Miami Comm’n Hr’g (Dec. 15, 2011, 7:52:48) (testimony of Commissioner Mark Sarnoff) (“This community is not ultimately concerned with putting African Americans in affordable housing.”).

<sup>447</sup> CONNOLLY, *supra* note 7, at 7 (footnote omitted).

<sup>448</sup> ROTHSTEIN, *supra* note 227, at 217.

opportunity to reach collectively toward a new research and advocacy paradigm applicable to the defense of impoverished communities. In this moment of civil rights law's long inner-city crisis, hope must carry us at least until all the tenants are gone.