The Price of Diversity: Rent Control and Desegregation of Urban Areas

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"An unsegregated America might see poverty, and all its effects, spread across the country with no particular bias toward skin color. Instead, the concentration of poverty has been paired with a concentration of melanin. The resulting conflagration has been devastating."[1]

I. INTRODUCTION

The shortage of affordable housing in American cities is a longstanding issue and has reached critical mass in many urban areas.[2] The National Low Income Housing Coalition starkly demonstrates this shortage in its annual Out of Reach report: In 2021, the average renter could afford a two-bedroom home in only one state—North Dakota—and the average minimum-wage worker in the United States needed to work nearly ninety-seven hours a week to affordably rent a two-bedroom home.[3] Some explanations for this nationwide crisis include a dearth of new low-income housing and rent increasing at rates substantially greater than

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1. Ta-Nehisi Coates, *The Case for Reparations*, ATLANTIC (June 2014), https://www.theatlantic.com/magazine/archive/2014/06/the-case-for-reparations/361631/ [https://perma.cc/5WR3-MRUF].

2. *See* Vincent J. Reina, *Affordable Housing, but for How Long? The Opportunity and Challenge of Mandating Permanently Affordable Housing*, 46 FORDHAM URB. L.J. 1267, 1269-70 (2019) (outlining extent of affordable housing crisis in United States); *see also* Andrew Woo, *How Have Rents Changed Since 1960?*, APARTMENT LIST (June 14, 2016), https://www.apartmentlist.com/research/rent-growth-since-1960 [https://perma.cc/V83W-D6K7] (summarizing rent increase versus income growth from 1960 to 2014).

3. *See* NAT'L LOW INCOME HOUS. COAL., OUT OF REACH: THE HIGH COST OF HOUSING 2-4 (2021), nlihc.org/sites/default/files/oor/2021/Out-of-Reach_2021.pdf [https://perma.cc/C3DV-DECD] (describing intensification of nationwide affordable housing crisis). In five states, including Massachusetts, the average renter would need their hourly wage to increase by double digits to affordably rent a two-bedroom home. *See id.* at 4 fig.2 (graphing states by disparity between average renter wage and wage required to rent two-bedroom house).

income growth.[4] Due to this confluence of factors, affordable housing is less available, and available housing is less affordable.[5]

The federal government has enacted laws and policies to address the shortage of affordable housing since the aftermath of World War I.[6] One such regionally implemented solution is the introduction of rent controls, which seek to prevent rental prices from becoming unaffordable by limiting rent increases in controlled units.[7] The federal government began providing housing assistance for the poorest of Americans in the midst of the Great Depression.[8] The controversial concept and application of governmental housing assistance has amplified racial disparity and segregation in American cities since its inception.[9]

Before the landmark Supreme Court decision in *Brown v. Board of Education*,[10] the federal government facilitated segregation as a matter of federal housing policy, with redlining serving as a well-documented example of the government's discriminatory practices.[11] Even after *Brown*, federal agencies such as

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4. *See* Reina, *supra* note 2, at 1269-70 (summarizing academic research into housing crisis); *see also* Andrea J. Boyack, *Responsible Devolution of Affordable Housing*, 46 FORDHAM URB. L.J. 1183, 1189 (2019) (exploring increased prevalence of unaffordable housing and defining term). The Department of Housing and Urban Development (HUD) considers a household cost burdened if housing costs exceed 30% of the household's income; HUD considers households severely cost burdened if housing costs exceed 50% of the household's income. *See CHAS: Background*, U.S. DEP'T. OF HOUS. & URB. DEV., https://www.huduser.gov/portal/datasets/cp/CHAS/bg_chas.html [https://perma.cc/UNG5-GRR3]; Boyack, *supra*, at 1189 n.16 (defining rent burden and severe rent burden). Around half of all renters in Boston are cost burdened, and nearly 25% are severely cost burdened. *See* Thomas Stackpole, *How Did Renting in Boston Become Such a Nightmare?*, BOS. MAG. (May 30, 2018, 5:45 AM), https://www.bostonmagazine.com/property/2018/05/30/boston-renting-crisis/ [https://perma.cc/MHJ8-T6MC] (describing percentage of Boston renters paying over 30% and 50% of income on rent); *see also Housing Needs by State: Massachusetts*, NAT'L LOW INCOME HOUS. COAL., https://nlihc.org/housing-needs-by-state/massachusetts [https://perma.cc/8RYF-SQX2] (breaking down cost-burdened households in Massachusetts by income level).

5. *See* Boyack, *supra* note 4, at 1189-90 (discussing trend of income stagnation and increasing housing costs); *see also* Reina, *supra* note 2, at 1271 (noting decrease in low-income housing stock).

6. *See* Food Control and District of Columbia Rents Act, ch. 80, 41 Stat. 297 (1919) (setting temporary rent freeze in District of Columbia); Block v. Hirsh, 256 U.S. 135, 158 (1921) (deeming temporary act of Congress regulating rents in District of Columbia constitutional); *see also* Bowles v. Willingham, 321 U.S. 503, 520-21 (1944). *Bowles* held a temporary rent control provision in twenty-eight disparate "defense-rental areas" constitutional. *See Bowles*, 321 U.S. at 512, 520-21.

7. *See* Vicki Been et al., *Laboratories of Regulation: Understanding the Diversity of Rent Regulation Laws*, 46 FORDHAM URB. L.J. 1041, 1043 (2019) (listing stated goals of different types of rent regulation).

8. *See* Cara Hendrickson, *Racial Desegregation and Income Deconcentration in Public Housing*, 9 GEO. J. ON POVERTY L. & POL'Y 35, 36-37 (2002) (noting early congressional attempts to provide federally funded public housing).

9. *See id.* at 36-39 (stating history of public housing and its continuing legacy of segregation); *see also* Joy Milligan, Plessy *Preserved: Agencies and the Effective Constitution*, 129 YALE L.J. 924, 933-34 (2020) (detailing institutionalization of urban and suburban segregation by federal agencies).

10. 347 U.S. 483 (1954).

11. *See id.* at 494-95 (holding segregation based solely on race unconstitutional and overruling "separate but equal" policy); *see also* Hendrickson, *supra* note 8, at 44 (noting use of racially restrictive zoning to maintain racial makeup of neighborhoods); Coates, *supra* note 1 (explaining process of redlining conducted by Federal Housing Administration). *See generally* This American Life, *House Rules*, CHI. PUB. RADIO (Nov. 22, 2013), https://www.thisamericanlife.org/512/house-rules [https://perma.cc/USU5-Q7P4] (outlining history and impact of redlining).

the Public Housing Administration (PHA) and the Federal Housing Administration continued a policy of de facto segregation in public housing.[12] Only after the passage of the Fair Housing Act of 1968 (FHA), which allowed private citizens to bring civil discrimination suits against the PHA, did the agencies stop affirmatively maintaining segregation as a matter of policy.[13] The ongoing segregation of the American urban landscape evidences federal and state government reluctance and refusal to prioritize housing desegregation.[14]

Both federal and state governments must act to address the intertwined societal issues of continued segregation and the prolific shortage of affordable housing.[15] This Note seeks to address those issues, first by examining the history of judicially and administratively sanctioned segregation in public housing.[16] This Note then looks at desegregation methods, theories, and the state of segregation in America since the FHA.[17] Next, this Note discusses the emergence of rent control as a proposed solution to the affordable housing shortage in urban areas, including the constitutionality of rent control ordinances and the breadth of their implementation.[18] Finally, this Note analyzes how rent control can bolster the effectiveness of desegregation policies, and argues that such a measure should be implemented in the Commonwealth of Massachusetts to combat longstanding segregation and the affordable housing shortage.[19]

II. History

A. Government-Sanctioned Segregation

The most infamous pronouncement of the "separate but equal" doctrine occurred in *Plessy v. Ferguson*,[20] the Supreme Court opinion that officially sanctioned the practice of segregation across the United States; the doctrine, however, first appeared almost five decades earlier in the 1849 Massachusetts Supreme

12. *See* Milligan, *supra* note 9, at 987 (explaining administrative resistance to desegregating public housing).

13. *See* Fair Housing Act of 1968, Pub. L. No. 90-284, 82 Stat. 73 (codified as amended at 42 U.S.C. §§ 3601–19); Milligan, *supra* note 9, at 1002-03 (criticizing PHA for allowing local construction of racially segregated public housing).

14. *See* Hendrickson, *supra* note 8, at 52-53 (noting overwhelming segregation in modern public housing); *see also* Milligan, *supra* note 9, at 1017 (commenting on omnipresent segregation in public housing).

15. *See* Reina, *supra* note 2, at 1275 (arguing affordable housing crisis requires multiple policies); *see also* Hendrickson, *supra* note 8, at 88 (urging federal government to not abandon commitment to desegregation).

16. *See infra* Sections II.A-C (discussing history of housing segregation and lasting impact).

17. *See infra* Section II.D (examining attempts and results of desegregation).

18. *See infra* Section II.E (reviewing history, implementation, drawbacks, and benefits of rent control in modern urban areas).

19. *See infra* Part III (arguing rent control in conjunction with existing government programs will promote desegregation and affordable housing).

20. 163 U.S. 537 (1896).

Judicial Court opinion *Roberts v. Boston*.[21] By interpreting the Fourteenth Amendment to allow for separate but equal public accommodations, the Supreme Court extended the framework for institutionalized segregation in society.[22] Indeed, after the Court decided *Plessy*, governments at all levels utilized the separate but equal doctrine to mandate housing segregation through three main tactics: racially restrictive ordinances and covenants, the practice of "redlining" to prevent government agencies from providing mortgages in nonwhite neighborhoods, and the construction of "equal" public housing in segregated neighborhoods.[23]

1. Racially Restrictive Covenants

In 1883, the Supreme Court declined to extend the Fourteenth Amendment's prohibition on racial discrimination to private action.[24] In accordance with this decision, private landowners—starting in Brookline, Massachusetts—prevented integration through racially restrictive covenants, which facilitated segregation through private agreements prohibiting property owners from selling or renting

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21. *See id.* at 548-49 (holding separate accommodations for white and "colored" passengers not violative of Fourteenth Amendment); Roberts v. City of Boston, 59 Mass. (5 Cush.) 198, 205 (1849) (holding provision of segregated schools "as well conducted in all respects" not legally impermissible); *see also* Brown v. Bd. of Educ., 347 U.S. 483, 491 n.6 (1954) (noting earliest appearance of separate but equal doctrine). The Massachusetts legislature responded six years after the *Roberts* opinion by eliminating the practice of segregating schools in the Commonwealth. *See* Act of Apr. 28, 1855, ch. 256, 1855 Mass. Acts 674 (prohibiting public schools from considering race before admitting children to attend); *see also Brown*, 347 U.S. at 491 n.6 (commenting on historical pervasiveness of segregation in public schools).

22. *See Plessy*, 163 U.S. at 545, 548 (holding state segregation laws constitutional unless applied to interstate commerce or interfering with political equality). The Court took great pains in *Plessy* to qualify school segregation laws and interracial marriage prohibitions as valid exercises of state police power, attempting to support their ultimate holding that government-enforced segregation did not violate the Fourteenth Amendment. *See id.* at 544-45, 548 (commenting on uniformity of court decisions upholding school segregation and prohibitions on miscegenation).

23. *See* Milligan, *supra* note 9, at 959-61 (detailing how PHA's separate but equal policy entrenched racial segregation of public housing). PHA's emphasis on equity stood in stark contrast to the Federal Housing Administration's reliance on racially restrictive covenants and refusal to insure or provide government-backed mortgages to integrated housing. *See id.* at 959 (contrasting approaches of PHA and Federal Housing Administration); *see also* Hendrickson, *supra* note 8, at 44 (critiquing Federal Housing Administration's use of redlining and racially restrictive covenants to segregate minorities).

24. *See* The Civil Rights Cases, 109 U.S. 3, 10-11 (1883) (interpreting Fourteenth Amendment to restrict only state action). The Court determined that Congress could not pass legislation that prevented individuals from discriminating based on a person's race, despite the final clause of the Fourteenth Amendment allowing Congress to pass any legislation necessary and proper to accomplish that goal. *See id.* at 17 (holding "wrongful acts of individuals" cannot impair civil rights granted by Constitution); *see also* U.S. CONST. amend. XIV, § 5 (granting Congress "power to enforce, by appropriate legislation, the provisions of this article"); Alisha Jarwala, Note, *The More Things Change:* Hundley v. Gorewitz *and "Change of Neighborhood" in the NAACP's Restrictive Covenant Cases*, 55 HARV. C.R.–C.L. L. REV. 707, 712-13 (2020) (commenting racially restrictive covenants grew in popularity because of their private-contract status); Leland B. Ware, *New Weapons for an Old Battle: The Enforcement Provisions of the 1988 Amendments to the Fair Housing Act*, 7 ADMIN. L.J. AM. U. 59, 65 (1993) (distinguishing racially restrictive private covenants from racially restrictive public ordinances, which implicated state action).

property in white neighborhoods to nonwhite people.[25] The private nature of racially restrictive covenants made them an ideal and popular substitute for racially restrictive local ordinances because courts were unwilling to hold discriminatory private action unconstitutional in the decades following the *Civil Rights Cases*.[26] Property owners' ability to maintain segregation increased as the Federal Housing Administration encouraged the adoption of racially restrictive covenants before providing government-backed mortgages.[27]

2. Redlining

Along with racially restrictive covenants, government agencies like the Federal Housing Administration used a practice called redlining to prevent integration and upward mobility for Black families, which isolated nonwhite people in impoverished urban enclaves.[28] Redlining is the discriminatory practice of rejecting mortgage credit "based on the characteristics of the neighborhood surrounding the would-be borrower's dwelling."[29] The term comes from the Federal Housing Administration's policy of drawing maps with red lines through neighborhoods it found risky or unfit for government-backed mortgages.[30] In addition to categorically rejecting mortgage applications for homes in Black neighborhoods, the Federal Housing Administration also regularly refused to insure the mortgages of Black applicants who wished to purchase homes in white

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25. *See* Jarwala, *supra* note 24, at 711 (detailing basic principles behind racially restrictive covenants); Catherine Elton, *How Has Boston Gotten Away with Being Segregated for so Long?*, BOS. MAG. (Dec. 8, 2020, 11:26 AM), https://www.bostonmagazine.com/news/2020/12/08/boston-segregation/ [https://perma.cc/RY8K-PH8L] (reporting location of first racially restrictive covenant). Though "historically aimed at keeping Black individuals out of white neighborhoods," racially restrictive covenants occasionally also targeted other minority groups, including Jewish and Asian people. *See* Jarwala, *supra* note 24, at 711.

26. *See* Jarwala, *supra* note 24, at 712-13 (noting courts enforced covenants "without confronting the problem of discriminatory state action"); *see also* Corrigan v. Buckley, 271 U.S. 323, 331 (1926) (holding racially restrictive covenant not violative of Fourteenth Amendment and dismissing for lack of jurisdiction); L.A. Inv. Co. v. Gary, 186 P. 596, 598 (Cal. 1919) (holding racially restrictive covenant valid in accordance with *Civil Rights Cases*' interpretation of Fourteenth Amendment); Burke v. Kleiman, 277 Ill. App. 519, 533-34 (1934) (commenting sua sponte about inherent constitutionality of racially restrictive covenants).

27. *See* Hendrickson, *supra* note 8, at 44 (arguing racially restrictive covenants restricted access to government programs to only white families); *see also* Milligan, *supra* note 9, at 959 (stating Federal Housing Administration "was known to embrace racially restrictive covenants").

28. *See* Hendrickson, *supra* note 8, at 44 (noting redlining and racially restrictive covenants concentrated nonwhite people in impoverished areas). The Federal Housing Administration felt that integration threatened the stability of neighborhoods, and stated, "it is necessary that properties shall continue to be occupied by the same social and racial classes." *See id.* (quoting U.S. FED. HOUS. ADMIN., UNDERWRITING MANUAL ¶ 937 (1938)).

29. *See* Town of Springfield v. McCarren, 549 F. Supp. 1134, 1142 (D. Vt. 1982) (defining redlining).

30. *See* Coates, *supra* note 1 (describing maps Federal Housing Administration drew and distributed). The Federal Housing Administration typically colored areas largely populated by Black people in red, and homes in those neighborhoods were rarely considered for government-backed mortgages. *See id.* (explaining meaning of colors on lending maps); *see also* Hendrickson, *supra* note 8, at 44 n.71 (detailing variety of restrictions Federal Housing Administration implemented to prevent insuring mortgages in Black neighborhoods); Elton, *supra* note 25 (showing redlined map of Boston and its surrounding inner suburbs).

neighborhoods.[31] Preventing those in redlined neighborhoods from obtaining government-backed mortgages left homeowners unable to sell or improve their properties, which greatly decreased property values within redlined areas.[32] The devastating hit to property values accelerated deterioration of neighborhoods and initiated systematic "slum clearing" that led to the destruction of thousands of Black-owned homes, only to be replaced with federally funded public housing.[33]

3. Segregation of Public Housing

In part due to strong support in large Northern cities and across the South, Congress created the PHA as part of the New Deal to administer public housing in the United States.[34] The concept of federally funded public housing, however, proved controversial, despite the control offered to local governments by allowing them to plan, oversee, and operate the developments without the corresponding responsibility to provide funding.[35] Congressional oversight by Southern Democrats led to the institutionalization of segregation in public housing, using the separate but equal doctrine for legal and political cover.[36] Indeed, Southern Democrats only allowed the public housing program to continue after World War II by demanding public housing remain segregated.[37]

The PHA entrenched segregation at the community level by allowing local governments to control both the construction and management of public housing developments that were built predominantly in recently cleared, Black-majority

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31. *See* Coates, *supra* note 1 (noting redlining systematically excluded Black people from obtaining legitimate mortgages); Milligan, *supra* note 9, at 961 (commenting Federal Housing Administration refused to guarantee mortgages for Black families outside of Black neighborhoods).

32. *See* Coates, *supra* note 1 (describing how redlining directly led to decay in urban Black neighborhoods); *see also* Hendrickson, *supra* note 8, at 44 n.71 (explaining effect of redlining on declining property value).

33. *See* Hendrickson, *supra* note 8, at 45 (outlining how discriminatory lending resulting from redlining created public support for destruction of private property); *see also* Milligan, *supra* note 9, at 960 (explaining federal agencies selected public housing locations by recreating racial dynamics of "slum sites"); David Blair-Loy, Comment, *A Time to Pull Down, and a Time to Build Up: The Constitutionality of Rebuilding Illegally Segregated Public Housing*, 88 NW. U. L. REV. 1537, 1557-58 (1994) (comparing how local politics affected slum clearance differently in white and Black neighborhoods).

34. *See* United States Housing Act of 1937, ch. 896, 50 Stat. 888 (codified as amended at 42 U.S.C. §§ 1437 to 1437bbb–9); Milligan, *supra* note 9, at 943-44 (stating centers of political support for public housing).

35. *See* Milligan, *supra* note 9, at 940, 942 (explaining Congress designed structure of public housing to provide ultimate control to local administrators). Congressional critics of public housing cited socialism and fear of weakening "the powerful private-housing industry" as reasons not to pass the legislation that created the PHA. *See id.* at 942-43 (listing contemporaneous arguments against establishing public housing).

36. *See id.* at 947, 951 (arguing PHA's survival depended on approval of Southerners in Congress); *see also* Hendrickson, *supra* note 8, at 46 (noting PHA thought segregation in public housing "beyond its jurisdiction").

37. *See* Milligan, *supra* note 9, at 967 (explaining political process leading to Housing Act of 1949's passage); 95 CONG. REC. 2670 (1949) (statement of Sen. Paul Douglas) (arguing in favor of segregation to preserve Southern support of legislation); Hendrickson, *supra* note 8, at 37 (noting Housing Act of 1949's weak implementation reflected congressional compromise). In order to preserve public housing as a measure of social reform, liberal senators "explicitly traded off civil rights." *See* Milligan, *supra* note 9, at 968 (critiquing choice to let public housing continue only if local authorities could keep it segregated).

neighborhoods.[38] Local authorities had the latitude to determine the "racial occupancy" of each development, provided that nonwhite people be given public housing in proportion with the eligible population.[39] This implementation of the separate but equal doctrine allowed, and often encouraged, local authorities to build and maintain segregated developments in their communities.[40] The PHA did not object to this practice, believing that the separate but equal doctrine protected it as long as local housing authorities did not use racially restrictive covenants.[41] Though perhaps equal in theory, local authorities placed developments allocated to nonwhite people in deeply impoverished areas and allowed them to fall into disrepair, while simultaneously placing developments allocated to white people in more affluent areas and maintaining the properties more regularly.[42]

B. Shift to Unconstitutionality of Government-Enforced Segregation

The presumptive legality of segregationist legislation and policies slowly eroded in the decades following *Plessy*.[43] Beginning in 1917, courts began to strike down racially restrictive ordinances and covenants, eventually culminating in the landmark decision in *Brown* that eliminated the legality of segregation.[44] Following that doctrinal shift, Congress passed the FHA, the federal government's most far-reaching and impactful attempt to end housing discrimination.[45]

1. Judicial Action to Strike Segregation

In 1917—twenty-one years after *Plessy*—the Supreme Court decided *Buchanan v. Warley*,[46] which struck down racially restrictive ordinances as

38. *See* Milligan, *supra* note 9, at 960 (characterizing early attempts to sidestep segregation question by maintaining status quo); *see also, e.g.*, Blair-Loy, *supra* note 33, at 1545 (stating selection of public housing sites in Chicago replicated existing racial segregation); Hendrickson, *supra* note 8, at 44 (outlining how local authorities' oversight of site selection contributed to segregation in public housing).

39. *See* Milligan, *supra* note 9, at 956-57 (describing origins of PHA's "racial-equity policy").

40. *See id.* at 985 (remarking PHA declared segregation "was the problem of the people in the locality"); *see also* Hendrickson, *supra* note 8, at 46 (asserting pattern of local authorities assigning applicants to separate developments based on race).

41. *See* Hendrickson, *supra* note 8, at 46 (noting federal government responded to discrimination complaints by claiming practice met statutory requirements); Milligan, *supra* note 9, at 962 (detailing how PHA lawyers believed *Plessy* controlled government housing law).

42. *See* Milligan, *supra* note 9, at 980 (acknowledging impossibility of obtaining equality through segregation); Hendrickson, *supra* note 8, at 46 (noting examples of quality discrepancies between projects available to white and nonwhite tenants).

43. *See infra* Section II.B (exploring progression of law towards illegality of government-sponsored and government-enforced segregation).

44. *See infra* Section II.B.1 (examining judicial decisions to end legalized segregation).

45. *See* Fair Housing Act of 1968, Pub. L. No. 90-284, 82 Stat. 73 (codified as amended at 42 U.S.C. §§ 3601–19); *infra* Section II.B.2 (discussing FHA, context behind its enactment, and judicial enforcement of its provisions).

46. 245 U.S. 60 (1917).

unconstitutional.[47] Despite the progressive result, the Court reaffirmed the legality of *Plessy* by distinguishing the issue at hand.[48] Rather than challenging the practice of segregation and analyzing the equal protection implications of racially restrictive ordinances, the Court emphasized the ordinance's limitation on the enjoyment, acquisition, and disposal of property as a violation of the Due Process Clause.[49] After *Buchanan*, those looking to maintain segregated neighborhoods turned to racially restrictive covenants within private leases, which were not affected by the Court's holding.[50]

The Court continued to uphold the legality of racially restrictive covenants while striking down similar discriminatory ordinances for decades after *Buchanan*.[51] In *Shelley v. Kraemer*, the Court's jurisprudence shifted; the Court held that government enforcement of racially restrictive covenants was unconstitutional.[52] After *Shelley*, the Federal Housing Administration reversed its earlier preference for racially restrictive covenants and refused to insure new mortgages on properties subject to such covenants.[53]

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47. *See id.* at 82 (holding Louisville, Kentucky's racially restrictive ordinance violated Fourteenth Amendment).

48. *See id.* at 79 (distinguishing *Buchanan* from *Plessy* and upholding statutory requirements to provide separate public accommodations). In addition to upholding *Plessy*, the Court also upheld the legality of school segregation by distinguishing that practice from the racially restrictive ordinance Buchanan challenged. *See id.* at 81 (remarking provision of separate accommodations constitutionally distinguishable from restriction on disposition and acquisition of property).

49. *See id.* at 82 (holding restricting alienability of property not legitimate exercise of police power). The Court's opinion clarifies that its ultimate issue with the ordinance was not the restriction on Black men buying property, but rather the prevention of property owners from selling property to whomever they selected. *See id.*; *see also* Jarwala, *supra* note 24, at 712 (commenting on Supreme Court's reticence to restrict alienation of property).

50. *See supra* note 26 and accompanying text (discussing logical progression from racially restrictive ordinances to racially restrictive covenants); Ware, *supra* note 24, at 65 (articulating ramifications of Court's holding in *Corrigan*).

51. *Compare* Harmon v. Tyler, 273 U.S. 668, 668 (1927) (per curiam) (mem.) (striking down New Orleans, Louisiana ordinance), *and* City of Richmond v. Deans, 281 U.S. 704, 704 (1930) (per curiam) (mem.) (striking down Richmond, Virginia ordinance), *with* Corrigan v. Buckley, 271 U.S. 323, 331 (1926) (holding Fourteenth Amendment did not invalidate contracts between private individuals). The *Harmon* and *Richmond* opinions are notable for their brevity, relying entirely on *Buchanan*. *See* Shelley v. Kraemer, 334 U.S. 1, 12 (1948) (discussing *Harmon* and *Richmond* opinions).

52. *See Shelley*, 334 U.S. at 20-21 (holding judicial enforcement of racially restrictive covenants violated Equal Protection Clause). The Court ruled that though the covenants themselves were private actions unreachable by the Constitution, judicial enforcement in state courts constituted discriminatory state action impermissible under the Fourteenth Amendment. *See id.* at 13-14 (relying on *Civil Rights Cases* and holding private action does not implicate Fourteenth Amendment); *see also* Ware, *supra* note 24, at 66 (discussing controversial holding in *Shelley*); Milligan, *supra* note 9, at 962-63 (arguing *Shelley* logical conclusion of *Buchanan* holding). At the same time the Court handed down *Shelley*, it also decided a companion case barring federal courts from enforcing racially restrictive covenants. *See* Hurd v. Hodge, 334 U.S. 24, 35-36 (1948) (holding federal enforcement of racially restrictive covenants violated public policy); *see also* Milligan, *supra* note 9, at 963-64 (noting roles of *Shelley* and *Hurd* in rendering racially restrictive covenants unenforceable).

53. *See* Ware, *supra* note 24, at 67 (stating federal agencies announced policy change against racially restrictive covenants); *cf.* Milligan, *supra* note 9, at 965 (commenting Federal Housing Administration policy shift did not apply to properties with existing covenants).

The de jure legality of the separate but equal doctrine reached its conclusion when the Supreme Court explicitly overruled *Plessy*.[54] In *Brown*, the Court acknowledged an education system developed on the principle of separate but equal had produced a reality where equality was unattainable.[55] One week after *Brown*, the Court signaled a similar inclination towards delegitimizing segregation in public housing when it denied certiorari to a California state court decision that disallowed such segregation, but the Court did not officially declare the practice of housing segregation unconstitutional.[56]

2. Enactment and Enforcement of the FHA

In 1962, President Kennedy attempted to clarify the federal government's position by issuing a somewhat ineffectual executive order banning racial discrimination in federally funded housing.[57] Congress strengthened the order through Title VI of the Civil Rights Act of 1964, but the most significant legislation Congress passed to combat housing discrimination and segregation was the FHA—the final piece of landmark civil rights legislation of the decade.[58] The FHA banned housing discrimination on the basis of five protected classes—including race—and prohibited discriminatory practices whether committed by

54. *See* Brown v. Bd. of Educ., 347 U.S. 483, 494-95 (1954) (holding "separate but equal has no place" in public education); *see also* Milligan, *supra* note 9, at 975 (noting *Brown* result of long legal battle fought by NAACP to overturn *Plessy*); Ware, *supra* note 24, at 61 (linking decision in *Shelley* to reversal of separate but equal doctrine in *Brown*).

55. *See Brown*, 347 U.S. at 495 (declaring inherent inequality in separate education systems); *see also* Milligan, *supra* note 9, at 975 (commenting practice of school segregation violated Fourteenth Amendment according to *Brown*). Chief Justice Warren's opinion recognized the intolerable psychological effects of segregation. *See Brown*, 347 U.S. at 494 (stating legalized segregation instills sense of inferiority, affects motivation to learn, and impedes educational development).

56. *See* Milligan, *supra* note 9, at 975 (interpreting significance of denying certiorari following decision in *Brown*); *see also* Banks v. Hous. Auth., 260 P.2d 668, 678 (Cal. Dist. Ct. App. 1953), (holding public housing authority violated Constitution by enforcing segregated housing) *cert. denied*, 347 U.S. 974 (1954). The court relied on *Buchanan* and *Shelley* to conclude that the housing authority had violated the Fourteenth Amendment. *See Banks*, 260 P.2d at 676-77 (citing line of Supreme Court cases).

57. *See* Exec. Order No. 11,063, 3 C.F.R. § 652 (1959–1963) (barring federal agencies from discriminating in newly constructed federal housing); *see also* Hendrickson, *supra* note 8, at 48 (critiquing executive order for not providing private cause of action and lacking retroactive application); Milligan, *supra* note 9, at 994-95 (explaining implications of excluding previously built or contracted housing from executive order).

58. *See* Fair Housing Act of 1968, Pub. L. No. 90-284, 82 Stat. 73 (codified as amended at 42 U.S.C. §§ 3601–19); Milligan, *supra* note 9, at 1001 (delineating Title VI's application to discrimination in federal housing); Brian Patrick Larkin, Note, *The Forty-Year "First Step": The Fair Housing Act as an Incomplete Tool for Suburban Integration*, 107 COLUM. L. REV. 1617, 1619 (2007) (noting timing of FHA in relation to other civil rights legislation); Hendrickson, *supra* note 8, at 48 (stating integration—not just prohibiting segregation—ultimate goal of FHA); *see also* Ware, *supra* note 24, at 73 (commenting on FHA's purpose through senators' remarks during congressional debate). It is contextually important to note that Congress passed the final version of the FHA less than one week after the assassination of Dr. Martin Luther King, Jr., which likely catalyzed Congress to enact the FHA as a measure to end the protests taking place in urban areas across the country. *See* Ware, *supra* note 24, at 74 (arguing Dr. King's assassination and ensuing civil unrest pushed Congress to pass FHA); *see also* Larkin, *supra*, at 1624 (giving context to events surrounding passage of FHA).

governmental actors or private citizens.[59] Despite providing multiple methods of enforcement, the FHA required plaintiffs to seek limited remedies through agency adjudications—mostly at the state and local level—before pursuing any other remedy.[60] Although the FHA also allowed individuals to sue in federal court if they believed they had experienced discrimination, the statutory cap on remedies available through litigation prevented this enforcement provision from widespread use.[61]

Just months after Congress passed the FHA, the Supreme Court held that a provision in the Civil Rights Act of 1866 barred private actors from discriminating on the basis of race in the sale or rental of property.[62] The Court clearly stated that their holding did not diminish the significance of the FHA, as the Civil Rights Act of 1866 was significantly more limited in its reach and enforcement provisions.[63] HUD's power to enforce was limited to situations when state or local laws lacked substantially similar remedies to those the FHA provided.[64]

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59. *See* Fair Housing Act of 1968 § 804, 42 U.S.C. § 3604 (amended 1988) (prohibiting housing discrimination on basis of race, color, sex, religion, or national origin); *see also* Ware, *supra* note 24, at 69 (listing discriminatory activities prohibited by FHA in connection with rental or sale of residential property); Blair-Loy, *supra* note 33, at 1545 n.56 (acknowledging prohibition of discriminatory action by public and private actors). The FHA does not bar housing discrimination in all cases, however, because it exempts single-family homes owned by private individuals who own fewer than four dwellings and multifamily dwellings consisting of less than four units, so long as the owner lives in one of the units. *See* Fair Housing Act of 1968 § 803(b) (stating FHA prohibitions do not apply to certain types of landlords). Nevertheless, the exemptions are not absolute, because they do not apply "to dwellings sold or rented by a broker or other person involved in the real estate business," or if the owner used discriminatory advertising in conducting the transaction. *See* Ware, *supra* note 24, at 69; *see also* john a. powell, *Reflections on the Past, Looking to the Future: The Fair Housing Act at 40*, 41 IND. L. REV. 605, 606 (2008) (detailing exemptions of FHA). As an aside, john a. powell intentionally spells his name in the lowercase. *See* powell, *supra*, at 605 n.*.

60. *See* Ware, *supra* note 24, at 75-77 (noting provisions for enforcement and highlighting role of state and local housing agencies). In addition to agency adjudication at the state and local level, the FHA allows aggrieved parties to seek remedies through private actions in federal court or HUD administrative proceedings; alternatively, the Attorney General of the United States may file civil actions. *See id.* at 77-78 (listing avenues of enforcement). State and local agencies enforced the FHA more frequently than HUD, largely because the "federal enforcement mechanism was not available . . . when state or local laws were deemed substantially equivalent" to the FHA. *See id.* at 75-76.

61. *See* powell, *supra* note 59, at 606 (criticizing and labeling enforcement provisions of FHA "anemic" and "individualistic"); Ware, *supra* note 24, at 76 (listing remedies available under FHA). Remedies available for a successful discrimination claim under the FHA included "injunctive relief, actual damages, and a maximum of $1,000 in punitive damages." *See* Ware, *supra* note 24, at 76; Fair Housing Act of 1968, Pub. L. No. 90-284, § 813, 82 Stat. 73, 88 (codified as amended at 42 U.S.C. § 3613) (stating remedies available to successful housing discrimination claimants in federal court).

62. *See* Jones v. Alfred H. Mayer Co., 392 U.S. 409, 438-39 (1968) (holding statute valid exercise of power under Thirteenth Amendment).

63. *See id.* at 413-15 (expounding on differences between FHA and Civil Rights Act of 1866).

64. *See* Ware, *supra* note 24, at 76-77 (explaining preemption concerns weakened HUD's enforcement power). Despite the deferral to state and local remedies, the FHA requires HUD—and the federal government at large—to affirmatively further fair housing and fight racial discrimination in housing. *See* Fair Housing Act of 1968 § 808(d) (imbuing HUD with mission to further purpose of fair housing); *see also* Julia Garrison, Note, *Because Separate Is Not Equal: The Duty to Affirmatively Further Fair Housing Can Help Revive School Integration*, 23 GEO. J. ON POVERTY L. & POL'Y 571, 574 (2016) (refining requirement to affirmatively further fair housing to include remedying housing segregation).

Due to these extensive limitations on administrative enforcement, the Court initially interpreted the standing requirement in FHA cases quite broadly.[65] In response to criticism of the weak enforcement provisions, Congress amended the FHA in 1988 to add new protected classes and enhance enforcement mechanisms.[66]

C. Segregation of Public Housing After Brown *and the FHA*

Even after the illegality of race-based discrimination within the education system became abundantly clear in *Brown*, the PHA continued to allow local housing agencies to build and maintain effectively segregated developments by distinguishing housing from education.[67] Additionally, the PHA cited congressional refusal to explicitly bar segregation in public housing in order to avoid agency reorganization and deflect enforcement of a clear judicial mandate of desegregation following *Brown*.[68] Furthermore, the PHA prioritized its contractual obligations with local housing authorities over judicial and legislative mandates.[69] President Kennedy's executive order also failed to prevent the PHA

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65. *See* Trafficante v. Metro. Life Ins. Co., 409 U.S. 205, 210-12 (1972) (construing standing broadly and citing HUD's weak enforcement power); *see also* Larkin, *supra* note 58, at 1628 (noting Congress intended FHA to apply broadly to eliminate housing discrimination); Ware, *supra* note 24, at 76-77 (detailing limitations to federal enforcement of original FHA). The *Trafficante* holding granted standing under the FHA to anyone who had been injured by racial discrimination, regardless of whether that individual had experienced racial discrimination. *See Trafficante*, 409 U.S. at 211-12 (stating discriminatory housing practices damaged entire community).

66. *See* Fair Housing Amendments Act of 1988, Pub. L. No. 100-430, 102 Stat. 1619 (codified as amended at 42 U.S.C. §§ 3602, 3604–3631) (prohibiting discrimination in housing based on disability and familial status); *see also* Ware, *supra* note 24, at 87-89 (noting amendments provided for swifter judicial remedies and allowed HUD to conduct investigations); powell, *supra* note 59, at 606 (stating enforcement provisions improved with 1988 Amendments). The 1988 Amendments to the FHA gave HUD more power and time to investigate allegations of discrimination, required that all adjudicative hearings brought under the FHA adhere to provisions of the Administrative Procedure Act, expanded the relief available to prevailing parties, and eliminated the previous requirement of exhausting administrative remedies prior to filing suit in district court. *See* §§ 812–814, 102 Stat. at 1629-35 (expanding remedies to victims of housing discrimination); Ware, *supra* note 24, at 87-96 (detailing changes 1988 Amendments made to FHA).

67. *See* Milligan, *supra* note 9, at 977 (pointing to internal memorandum denying application of *Brown* to public housing). The PHA further argued that the Supreme Court's denial of certiorari in *Banks* expressly limited its application to the state of California, and—under the guise of federalism—encouraged local housing authorities to follow state laws and guidance regarding segregation. *See id.* at 977-78 (noting PHA encouraged local authorities to maintain segregated housing in accordance with applicable state law); *see also* Hendrickson, *supra* note 8, at 46 (criticizing PHA for deferring authority regarding public housing segregation).

68. *See* Milligan, *supra* note 9, at 977-78 (displaying and critiquing PHA's decision to continue supporting segregation in public housing after *Brown*). The PHA argued that Congress's preference for local control of federally funded developments prevented the PHA from disallowing segregation nationwide, based on the interpretation that the *Banks* decision only applied to the state of California. *See id.* at 977 (criticizing PHA for using judicial and congressional silence to support segregated developments); *see also* Hendrickson, *supra* note 8, at 46 (noting disconnection between PHA's actions and public statements on housing segregation).

69. *See* Milligan, *supra* note 9, at 991 (explaining PHA used contractual obligations to ignore directives to desegregate). The PHA, based on an interpretation of its organizing statute, claimed that it did not have the power to revoke federal subsidies based on the civil rights violations of local authorities. *See id.* at 1000 (delineating PHA's interpretation of 1949 Housing Act). Even after Congress passed the Civil Rights Act of 1964,

from allowing segregation in public housing to continue, both because the order did not apply retroactively and federal agencies weakly enforced it.[70]

Once the FHA provided a private right of action to housing discrimination victims, courts severely scrutinized the PHA, HUD, and local housing authorities because the PHA ignored desegregation so prodigiously despite clear judicial, legislative, and executive directives.[71] For instance, in 1969 a district court found that the PHA had committed a constitutional violation when it allowed a local housing authority in Louisiana to build public housing in an all-Black area with the understanding that the development would only house Black applicants.[72] The Seventh Circuit likewise held in 1971 that the Chicago Housing Authority violated the Constitution by building segregated public housing with direct approval and funding from the PHA and HUD, completely bypassing anticipated opposition from the city council.[73] Similar actions were brought well into the 1980s, highlighting the ongoing impact of racial segregation in public housing due to the PHA enabling wanton discrimination at the local, state, and federal level.[74]

D. Approaches to Housing Desegregation and the State of Segregation in the United States

There are three main approaches to desegregating public housing in the United States: income-proxy programs focused on integration through income rather than race, voucher programs intended for use in the private market rather than

which banned racial discrimination in programs receiving federal funding, the PHA maintained its position that it could not revoke the subsidies given to local authorities for civil rights violations. *See id.* at 1001 (stating PHA refused to withhold subsidies for Civil Rights Act violations).

70. *See id.* at 994-95 (remarking limited scope of executive order allowed PHA to use contractual defense to avoid desegregation); *see also* Hendrickson, *supra* note 8, at 48 (noting federal agencies rarely enforced President Kennedy's order). The PHA interpreted the order even more narrowly than written, so local authorities could select public housing sites with the intent of preventing integration. *See* Milligan, *supra* note 9, at 996 (detailing how PHA approved segregated sites "so long as applicants were formally allowed 'free choice'").

71. *See* Milligan, *supra* note 9, at 1002 (listing instances of judicial castigation of housing agencies); *see also* Blair-Loy, *supra* note 33, at 1544-45 (explaining different government violations of Fifth Amendment through public housing discrimination).

72. *See* Hicks v. Weaver, 302 F. Supp. 619, 623 (E.D. La. 1969) (finding location of public housing in segregated neighborhood creates strong presumption of due process violation); *see also* Milligan, *supra* note 9, at 1002 (noting court found PHA actively participated in discrimination by failing to prevent it).

73. *See* Gautreaux v. Romney, 448 F.2d 731, 739-40 (7th Cir. 1971) (following *Hicks* rationale in holding HUD liable for public housing segregation); *see also* Blair-Loy, *supra* note 33, at 1545 (stating HUD "violated the Constitution by knowingly acquiescing in intentional discrimination").

74. *See* Clients' Council v. Pierce, 711 F.2d 1406, 1423 (8th Cir. 1983) (holding HUD continued to fund segregated housing in Texarkana, Arkansas until 1979); Young v. Pierce, 628 F. Supp. 1037, 1051 (E.D. Tex. 1985) (finding HUD still funded segregated public housing in 1982); *see also* Hendrickson, *supra* note 8, at 47 (discussing HUD's continued funding of segregated public housing after FHA's passage); Milligan, *supra* note 9, at 1002 (noting HUD and its predecessors played large role in creating and enforcing housing segregation).

public housing, and mobility programs aimed toward racially integrating both public and private housing.[75]

Income-proxy programs focus on moving low-income residents to moderate-income developments and vice versa, with more concern on decentralizing poverty than desegregation.[76] These programs do not effectively foster integration, largely because the primary intention is not to desegregate the population.[77] Certain structural barriers—such as the dearth of moderate-income residents in public housing and the deteriorating quality of many public housing developments—undermine the ability of income-proxy programs to fulfill even their primary purpose, while simultaneously failing to account for the historical placement of public housing in impoverished and segregated neighborhoods.[78]

Section 8 vouchers provide federal subsidies to tenants who rent living space through the private market rather than public housing developments.[79] Section 8 programs are intended to lessen pressure on public housing and facilitate desegregation, albeit indirectly.[80] Nevertheless, these programs have proven ineffective at reducing both residential segregation and poverty concentration in

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75. *See* Hendrickson, *supra* note 8, at 57, 70 (overviewing models of desegregation and differences between them).

76. *See id.* at 70 (discussing income-proxy programs and their effectiveness). Decentralization of poverty, or lessening the concentration of impoverished people in certain neighborhoods, is the primary goal of these programs; a baseline assumption underlying these programs is that integration by race and income will happen simultaneously. *See id.* at 70-71 (criticizing income-proxy programs for not affirmatively desegregating public developments). For example, Congress formed the HUD-run HOPE VI program to create mixed-income public housing developments to decentralize poverty in urban areas. *See* Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, Pub. L. No. 102-389, 106 Stat. 1571, 1579-81 (1992) (codified at 42 U.S.C. § 1437) (creating HOPE VI program to reduce poverty in urban public housing); *see also* Thomas C. Kost, Note, *Hope After HOPE VI? Reaffirming Racial Integration as a Primary Goal in Housing Policy Prescriptions*, 106 NW. U. L. REV. 1379, 1390-91 (2012) (detailing inception of HOPE VI and its stated goals); *see also* Hendrickson, *supra* note 8, at 73 (explaining part of HOPE VI involved demolishing older developments and replacing them with mixed-income developments).

77. *See* Hendrickson, *supra* note 8, at 82 (commenting on inadequacy of using income proxy for race to integrate housing). Even when these programs successfully create mixed-income developments, they are often still racially homogenous. *See id.* (noting specific development in Chicago retained racial makeup of surrounding neighborhood).

78. *See id.* at 72 (describing difficulties of attracting moderate and high-income residents to public housing); *see also* Kost, *supra* note 76, at 1408-09 (commenting reliance on marketing units to middle-class renters reinforces existing residential segregation). Structural barriers dampening the effectiveness of programs such as HOPE VI can result in funding reductions, further preventing successful racial desegregation and income deconcentration. *See* Kost, *supra* note 76, at 1389-90 (describing funding cuts to HOPE VI programs). A further weakness of income-proxy plans is practical; setting aside units for moderate-income residents results in fewer spaces for low-income residents in public developments. *See* Hendrickson, *supra* note 8, at 72 (criticizing ignorance of reality underlying HUD's goal of income deconcentration in public housing).

79. *See* Hendrickson, *supra* note 8, at 62 (explaining origins and intentions behind section 8 vouchers). President Nixon created the voucher program primarily to reduce the federal government's involvement in public housing. *See id.* (differentiating section 8 program from race-conscious mobility programs).

80. *See id.* at 57, 62-63 (detailing limitations of section 8 programs concerning alleviation of housing segregation). Less than 20% of local housing authorities tasked with implementing section 8 programs take affirmative steps such as landlord outreach and tenant counseling to encourage integration, which limits the effectiveness of the programs. *See id.* at 62 (listing structural and administrative barriers to section 8 programs).

urban neighborhoods, partially because voucher holders face considerable discrimination from landlords and real estate brokers—even patently unlawful discrimination—and because the discriminatory practices often go unnoticed or unpunished.[81]

Race-conscious mobility programs either transfer public housing tenants from a segregated development to one where their race is a minority, or they provide section 8 vouchers in conjunction with counseling and assistance allowing tenants to move to a more integrated neighborhood or suburb.[82] Chicago's Gautreaux program offered section 8 vouchers to participants on the condition that they relocate to neighborhoods with low Black, Indigenous, and People of Color (BIPOC) populations; the program exemplified this type of integrative action by actively seeking landlords willing to participate in the program, providing counseling and resources to tenants, and striking a participatory balance to prevent neighborhood pushback.[83] Despite the relative success in desegregating public housing, race-conscious mobility programs like those in Chicago face many challenges, including limited funding and a diminishing availability of alternative affordable housing.[84] Race-conscious mobility programs have also consistently withstood judicial scrutiny, with one federal judge sitting in Boston remarking, "there is no federally protected right to housing in a particular community

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81. *See id.* at 63-64 (reporting studies of section 8 program's effect on racial and income segregation); JAMIE LANGOWSKI ET AL., QUALIFIED RENTERS NEED NOT APPLY: RACE AND VOUCHER DISCRIMINATION IN THE METRO BOSTON RENTAL HOUSING MARKET 7 (Sally Kendall ed., 2020), https://www.suffolk.edu/-/media/suffolk/documents/news/2020/law-news/rental_housing_study_july2020.pdf?la=en&hash=B0FFF5916ECA23DFD054170DA223780EDA571241 [https://perma.cc/9F3E-LGWK] (finding qualified voucher holders excluded from apartments regardless of race); Paul Butler, *The System Is Working the Way It Is Supposed to: The Limits of Criminal Justice Reform*, 104 GEO. L.J. 1419, 1440 (2016) (noting housing discrimination continues in face of statutory prohibition).

82. *See* Hendrickson, *supra* note 8, at 57, 59 (explaining how race-conscious mobility programs operate). These programs are generally created by court order, but many municipalities continue the programs even after the court orders expire. *See id*. at 57 (describing origins of mobility programs); *see also* Hills v. Gautreaux, 425 U.S. 284, 305-06 (1976) (upholding court-ordered creation of mobility program in Chicago); NAACP, Bos. Chapter v. Kemp, 721 F. Supp. 361, 368 (D. Mass. 1989) (requiring similar program in Boston).

83. *See* Hendrickson, *supra* note 8, at 58-59 (differentiating Gautreaux from typical section 8 programs and emphasizing success of Gautreaux program); *see also* Blair-Loy, *supra* note 33, at 1577-78 (noting Gautreaux mobility program more successful at desegregating impoverished neighborhoods than other remedies and programs). The Gautreaux program started as a consent decree remedy stemming from widespread housing segregation and discrimination perpetrated by the Chicago Housing Authority, and though the program's judicial mandate ended in 1998, the Chicago Housing Authority voluntarily continued using section 8 vouchers to further desegregate public housing. *See* Gautreaux v. Chi. Hous. Auth., 265 F. Supp. 582, 583 (N.D. Ill. 1967) (denying motion to dismiss claim of purposeful housing discrimination and segregation); Hendrickson, *supra* note 8, at 58-59 (mentioning origin of Gautreaux program in Chicago and continuance after consent decree lifted).

84. *See* Hendrickson, *supra* note 8, at 61-62 (pointing out challenges and limitations of race-conscious mobility programs); *see also* Blair-Loy, *supra* note 33, at 1578 (emphasizing race-conscious mobility programs must work in conjunction with other desegregation measures). Importantly, Gautreaux participants—as with all race-conscious mobility program participants—self-selected to participate, which likely contributed to the success of the program; nevertheless, the program did not have the funding to accommodate all applicants. *See* Hendrickson, *supra* note 8, at 61-62 (acknowledging possible self-selection bias inherent in mobility programs).

. . . [n]or may [one] attempt to keep members of another racial group from entering the community."[85]

Residential segregation in the United States has undoubtedly fallen since Congress passed the FHA.[86] That trend, however, is not observed uniformly across the country, as indicated by meaningfully higher segregation rates in Northeastern and Midwestern metropolitan areas than those in the West and South.[87] Correspondingly, large numbers of Black people moving from the more segregated Midwest and Northeast towards the South and West has contributed towards desegregation in the latter areas.[88] Segregation also remains high when viewed at a municipal level, meaning that the rate of segregation "between center cities and their surrounding suburbs, and from one suburb to another, has stayed roughly constant."[89]

Segregation in the Boston metropolitan area is consistent with nationwide data; Boston remains among the most segregated of the larger urban areas in the country, along with other cities in the Northeast and Midwest.[90] Black–white segregation has fallen since the passage of the FHA, although that trend noticeably slowed between 1990 and 2000.[91] Conversely, Hispanic–white segregation

85. *See* Schmidt v. Bos. Hous. Auth., 505 F. Supp. 988, 995 (D. Mass. 1981) (rejecting contention race-conscious mobility program violated FHA). Moreover, the court found race-conscious mobility programs consistent with obligations the FHA placed on housing authorities. *See id.* at 996-97 (citing similar decisions in other circuits).

86. *See* Nicholas O. Stephanopoulos, *Civil Rights in a Desegregating America*, 83 U. CHI. L. REV. 1329, 1344 (2016) (noting segregation decreased over past half-century); EDWARD GLAESER & JACOB VIGDOR, CTR. FOR STATE & LOC. LEADERSHIP AT THE MANHATTAN INST., THE END OF THE SEGREGATED CENTURY: RACIAL SEPARATION IN AMERICA'S NEIGHBORHOODS, 1890–2010, at 2 (2012), https://media4.manhattan-institute.org/pdf/cr_66.pdf [https://perma.cc/YH6C-ATAZ] (reporting decrease in measured racial segregation observed after 1960s); powell, *supra* note 59, at 608 (stating desegregation after FHA subject to caveats).

87. *See* Stephanopoulos, *supra* note 86, at 1355-56 (listing regions where Black–white segregation remains quite high); *see also* powell, *supra* note 59, at 608-09 (noting residential segregation rates higher in regions with larger Black populations).

88. *See* Stephanopoulos, *supra* note 86, at 1346 (describing "reversal of the earlier Great Migration" and its effect on overall segregation); GLAESER & VIGDOR, *supra* note 86, at 4 (noting flight from Northeast and Midwest cities toward suburbs and Sun Belt).

89. *See* Stephanopoulos, *supra* note 86, at 1357 (explaining integration has occurred within municipalities but not across city limits); powell, *supra* note 59, at 609-10 (emphasizing shift from central city–suburb differentiation to suburb–suburb differentiation). Suburban areas reflect similar regional discrepancies and segregation when compared to metropolitan areas as a whole, with rates remaining higher in the Northeast and Midwest than the South and West. *See* powell, *supra* note 59, at 611 (detailing regional differences in suburban segregation patterns).

90. *See* John R. Logan, *Separate and Unequal: Residential Segregation*, FED. RSRV. BANK OF BOS.: CMTYS. & BANKING, Winter 2016, at 20-21, https://www.bostonfed.org/publications/communities-and-banking/2016/winter/separate-and-unequal-residential-segregation.aspx [https://perma.cc/VE46-EDBG] (commenting on segregation trends in Boston); GLAESER & VIGDOR, *supra* note 86, at 5 tbl.1 (showing Boston fifth most segregated of ten most populous metropolitan areas in United States); LANGOWSKI ET AL., *supra* note 81, at 9 (reporting Boston area among most segregated in United States).

91. *See* JOHN R. LOGAN & BRIAN J. STULTS, THE PERSISTENCE OF SEGREGATION IN THE METROPOLIS: NEW FINDINGS FROM THE 2010 CENSUS 6 tbl.1 (2011), https://s4.ad.brown.edu/Projects/Diversity/Data/Report/report2.pdf [https://perma.cc/AN6R-39LP] (showing segregation in Boston every ten years from 1980 to 2010). Among metropolitan areas with the largest Black populations, Boston ranked as the eleventh most Black–white

has stagnated in the Boston area as more Hispanic people have relocated to the Bay State.[92] Many suburbs of Boston remain over 90% white, and two-thirds of Black residents in the metropolitan area live in one of three historically Black neighborhoods in Boston proper.[93] To put the current state of Boston's integration simply, "Boston *is* diverse—it's just really segregated."[94]

E. Affordable Private Housing: History and Implementation of Rent Control

Rent control aims to prevent rents from rising to the extent that they become unaffordable to current occupants.[95] Proponents of rent control policies reference several benefits, such as protecting lower-income tenants from suffering income erosion due to increased housing costs, although critics of rent control note the policy places the burden of loss directly on the property owner.[96] Rent control measures are usually combined with special protections against eviction and harassment, resulting in rent-controlled tenants paying lower rents on average and remaining in the same unit longer than tenants in uncontrolled units.[97]

Rent control in the United States began when Congress implemented a temporary rent control measure in Washington D.C. during the aftermath of World War I.[98] The Supreme Court initially upheld the constitutionality of the measure,

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segregated in 2010; nine of the ten metropolitan areas more segregated than Boston sit in the Northeast or Midwest. *See id.* (ranking metropolitan areas by Black–white segregation from most to least segregated); *see also* Elton, *supra* note 25 (noting Boston suburbs with few Black residents; two-thirds of Black Bostonians live in three neighborhoods).

92. *See* LOGAN & STULTS, *supra* note 91, at 10, 12 tbl.4 (arguing segregation increases with larger BIPOC populations). Among metropolitan areas with the largest Hispanic populations, Boston ranked as the fourth most segregated area; among those with the largest Asian populations, Boston ranked as the fifth most segregated area. *See id.* at 12 tbl.4, 18 tbl.7 (ranking metropolitan areas by Hispanic–white and Asian–white segregation).

93. *See* Elton, *supra* note 25 (discussing racial distribution of households in Boston).

94. *See id.* (quoting Bostonian's recognition of racially disparate neighborhoods).

95. *See* Been et al., *supra* note 7, at 1043 (stating main objective of rent control ordinances). In New York City, the term "rent control" refers to a slightly different regulation; rent stabilization is analogous to the term "rent control" as used by the rest of the country. *See* Madeleine Parker & Karen Chapple, *Revisiting Rent Stabilization in the Neighborhood Context: The Potential Impact of Rent Regulation on Community Stability and Security in the New York Metropolitan Region*, 46 FORDHAM URB. L.J. 1137, 1154 (2019) (differentiating between rent control and rent stabilization in New York City).

96. *See* Been et al., *supra* note 7, at 1043 (noting language in many rent control ordinances states purpose of regulations); *cf.* Boyack, *supra* note 4, at 1211-12 (determining average cost of two-bedroom apartment twice what average low-income household could afford). Some jurisdictions even include extra protections for tenants of rent-controlled units. *See* Been et al., *supra* note 7, at 1071-72 (describing increased protections for tenants in rent-controlled units).

97. *See* Parker & Chapple, *supra* note 95, at 1148 (explaining long-term residents of rent-controlled units earned larger discounts than tenants in uncontrolled units); Been et al., *supra* note 7, at 1043 (stating regulations often have eviction and harassment protections). Vacancy bonus provisions that allow landlords to raise rents to market rates between tenancies, however, undercut eviction and harassment protections. *See* Been et al., *supra* note 7, at 1061 (explaining how vacancy bonuses incentivize landlords to find new tenants and charge higher rent).

98. *See* The Food Control and District of Columbia Rents Act, ch. 80, 41 Stat. 297 (1919) (setting temporary rent control ordinance in District of Columbia); Block v. Hirsh, 256 U.S. 135, 153-54 (1921) (summarizing effect of legislation to fix rents in District of Columbia).

only to strike it down in 1924 on the grounds that the emergency necessitating the regulation had ceased.[99] A few decades later, Congress passed the Emergency Price Control Act of 1942, similarly allowing the federal government to temporarily set prices for various commodities—including rents in "defense-rental areas"—which the Court held to be just as constitutional as any other price control.[100] Except for the Emergency Price Control Act, rent control has only been implemented on a state or local basis.[101] Permanent rent control has consistently been upheld on judicial review as a constitutional use of state police power, but rent control ordinances may not be enforced in a way that violates the FHA.[102]

Rent control policies alleviate affordable housing shortages by maintaining a stock of lower-cost rental units.[103] Although regulations do prompt some landlords to remove their units from the market, studies show that even uncontrolled units in localities that have adopted rent control show lower median rent increases, contrary to opponents' claims that regulations lower the availability of affordable housing.[104] Rent control encourages utilizing affordable housing while also preserving racial and economic diversity, but the patchwork

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99. *See Block*, 256 U.S. at 158 (holding temporary measure valid use of congressional power); Chastleton Corp. v. Sinclair, 264 U.S. 543, 548 (1924) (holding temporary measure expired when exigency no longer existed). Justice Holmes foretold the *Chastleton* reversal in *Block*. *See Block*, 256 U.S. at 157 (stating measure only justified temporarily given exigent circumstances).

100. *See* Emergency Price Control Act of 1942, Pub. L. No. 77-421, 56 Stat. 23 (implementing price controls during wartime); Bowles v. Willingham, 321 U.S. 503, 516 (1944) (upholding rent control section of Emergency Price Control Act). The Court's opinion in *Bowles* went significantly further than *Block* in that the constitutionality of the legislation did not depend on the existence of an exigency; the rent control provision satisfied constitutional requirements. *See Bowles*, 321 U.S. at 517-18 (expanding upon *Block* holding).

101. *See* Boyack, *supra* note 4, at 1211 (noting rent control not historically regulated by federal government); Emergency Price Control Act, 56 Stat. at 24 (authorizing federal government to stabilize rent).

102. *See* Kargman v. Sullivan, 582 F.2d 131, 134-35 (1st Cir. 1978) (holding Boston rent control ordinance did not violate Contracts Clause); Boyack, *supra* note 4, at 1212 (remarking Supreme Court has never held rent control unconstitutional); *see also* Pennell v. City of San Jose, 485 U.S. 1, 15 (1988) (holding rent control ordinance not in violation of Due Process or Equal Protection Clauses); United States v. City of Hayward, 36 F.3d 832, 835 (9th Cir. 1994) (holding rent control enforcement may not directly interfere with FHA).

103. *See* Been et al., *supra* note 7, at 1044 (describing San Francisco rent control ordinance's purpose to alleviate affordable housing crisis); Parker & Chapple, *supra* note 95, at 1148 (suggesting rent control increases availability of affordable units).

104. *See* Parker & Chapple, *supra* note 95, at 1148 (stating rent control ordinance decreased or had no effect on rents of uncontrolled units). *But see* Boyack, *supra* note 4, at 1215 (claiming rent control could raise housing prices and lower supply). Individual ordinances provide methods for owners to pull their rental unit from regulation, with the most common being conversion into a condominium, condemnation, demolition, and landlords moving into the property for personal use. *See* Been et al., *supra* note 7, at 1056 (describing common avenues of avoiding regulation); *see also* Parker & Chapple, *supra* note 95, at 1170 (detailing ways owners remove property from regulation); Boyack, *supra* note 4, at 1212-13 (linking rent control's effect on landlord profits to potentially driving down housing supply). Studies have rebutted the common claim that rent control prevents the construction of new buildings, and almost all rent control ordinances exempt new buildings from regulation. *See* Parker & Chapple, *supra* note 95, at 1174 (citing studies showing local economy affects housing supply more than rent control); *see also* Been et al., *supra* note 7, at 1050-51 (explaining most rent controls do not apply to newer buildings).

implementation of rent control throughout the United States undermines these goals through differing regulations in neighboring municipalities.[105]

Currently, rent control does not enjoy widespread implementation; the only jurisdictions with controls in effect are municipalities in California, Maryland, New Jersey, New York, as well as Washington D.C. and the entire state of Oregon, which passed an act to implement a variation of the policy statewide in 2019.[106] The Commonwealth of Massachusetts enacted a rent control statute in 1970 that allowed municipalities to opt in to regulation, which Boston, Brookline, and Cambridge utilized.[107] Analogous in content to rent control passed by Congress, the Massachusetts version survived judicial review as a legitimate use of state police power.[108] In 1994, however, Massachusetts passed the Rent Control Preemption Act after a ballot measure to eliminate rent control in the Commonwealth passed with a narrow 51% majority.[109] After the elimination of rent control in Boston and the inner suburbs, the cost of housing in the metropolitan area rose dramatically at first, and then increased steadily until the slight downturn caused by the COVID-19 outbreak.[110] As of 2021, Massachusetts rental

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105. *See* Been et al., *supra* note 7, at 1044-45 (naming jurisdictions striving to achieve fair housing, racial diversity, and economic diversity through rent control); Parker & Chapple, *supra* note 95, at 1139-40 (explaining how rent regulations in one community can affect neighboring communities).

106. *See* Been et al., *supra* note 7, at 1049 (listing jurisdictions with rent control ordinances in effect); *see also* Parker & Chapple, *supra* note 95, at 1179 (noting Oregon's statewide enactment of rent control). Oregon's legislation is a unique compromise; the legislature preserved the state's prohibition on municipalities enacting their own rent control, while simultaneously preventing landlords statewide from raising rent more than 7% over the rate of inflation per year. *See* OR. REV. STAT. § 90.324(1) (2021) (setting maximum annual rent increase allowable in Oregon); OR. REV. STAT. § 91.225(2) (2021) (prohibiting cities and counties from enacting rent control ordinances); *see also* Elliot Njus, *Oregon Gov. Kate Brown Signs Nation's First Statewide Rent Control Law*, OREGONIAN (Feb. 28, 2019), https://www.oregonlive.com/politics/2019/02/oregon-gov-kate-brown-signs-nations-first-statewide-rent-control-law.html [https://perma.cc/VGG8-Q7TD] (noting passage of state rent control does not upend ban on local rent control). Passed alongside additional tenant protections, the cap on rent increase does not apply to subsidized rentals, to residences constructed within the past fifteen years, or if the existing tenants choose to leave the unit. *See* OR. REV. STAT. § 90.323(7) (2021) (exempting certain rental units from cap on rent increase); Njus, *supra* (describing contemporaneous tenant protections passed alongside statewide rent control).

107. *See* 1970 Mass. Acts 732 (codified at MASS. GEN. LAWS ch. 40 app. §§ 1-1 to -14 (2020)), *repealed by* Massachusetts Rent Control Prohibition Act, 1994 Mass. Acts 1175 (codified at MASS. GEN. LAWS ch. 40P, §§ 1-5 (1994)); Been et al., *supra* note 7, at 1057 (listing Massachusetts municipalities with rent control).

108. *See* Huard v. Forest St. Hous., Inc., 316 N.E.2d 505, 507-08 (Mass. 1974) (holding rent control ordinance did not violate Contracts Clause); Marshal House, Inc. v. Rent Control Bd., 266 N.E.2d 876, 886, 889 (Mass. 1971) (holding Massachusetts rent control statute legitimate use of state police power).

109. *See* Massachusetts Rent Control Prohibition Act, 1994 Mass. Acts 1175 (codified at MASS. GEN. LAWS ch. 40P, §§ 1-5 (1994)) (prohibiting Massachusetts municipalities from enacting rent control ordinances); *see also Battle Goes on as Rent Control Is Defeated in Massachusetts*, N.Y. TIMES (Nov. 22, 1994), https://www.nytimes.com/1994/11/22/us/battle-goes-on-as-rent-control-is-defeated-in-massachusetts.html [https://perma.cc/P52L-VAF2] (noting slim margin of victory for ballot measure). Thirty-two states, including Massachusetts, have a wholesale ban on rent control. *See* Been et al., *supra* note 7, at 1049.

110. *See* David W. Chen, *When Rent Control Just Vanishes; Both Sides of Debate Cite Boston's Example*, N.Y. TIMES (June 15, 2003), https://www.nytimes.com/2003/06/15/nyregion/when-rent-control-just-vanishes-both-sides-of-debate-cite-boston-s-example.html [https://perma.cc/8XX4-ZE4F] (reporting median rent for two-bedroom apartment in Boston doubled following elimination of rent control); Demetrios Salpoglou, *The Boston*

prices ranked as the third most expensive in the country, behind only California and Hawaii; the Boston metropolitan area ranked as the sixth most expensive, and the most expensive large city outside of California.[111] In May of 2020, Massachusetts state lawmakers introduced a bill that would allow rent control in the Commonwealth once again.[112]

III. ANALYSIS

State and federal governments have a responsibility to affirmatively address the scourge of housing segregation and discrimination, in large part due to their complicity in allowing the problem to fester.[113] Though the FHA explicitly codified this responsibility, the government has significantly shifted the burden of reducing housing segregation to private citizens and entities.[114] By abdicating its responsibility under the FHA, the federal government has limited the Act's effectiveness, slowed the process of desegregation, and prevented nonwhite families from accruing generational wealth.[115] Rent control can address certain barriers to integrative policies, specifically by increasing the stock of affordable housing that can be used to move residents from segregated public housing into more integrated communities.[116]

Rental Market Going into 2021, BOS. PADS (Dec. 1, 2020), https://bostonpads.com/blog/boston-rental-market/the-boston-rental-market-going-into-2021/ [https://perma.cc/JY5H-LKSV] (noting average rental price dropped 4% due to COVID-19).

111. *See* NAT'L LOW INCOME HOUS. COAL., *supra* note 3, at 18-19 (ranking states and metropolitan areas by household income necessary to afford two-bedroom apartment).

112. *See* H. 3924, 191st Gen. Ct., Reg. Sess. (Mass. 2019); *see also* Tim Logan, *Bill to Allow Rent Control in Mass. Takes a Step Forward on Beacon Hill*, BOS. GLOBE (May 29, 2020, 8:46 PM), https://www.bostonglobe.com/2020/05/29/business/bill-allow-rent-control-mass-takes-step-forward-beacon-hill/ [https://perma.cc/FM27-2BYL] (discussing bill to allow rent control in Massachusetts).

113. *See* Hendrickson, *supra* note 8, at 86 (emphasizing government responsibility to remedy housing segregation); *see also* Kost, *supra* note 76, at 1380 (noting FHA passed in response to government-sanctioned discrimination); Milligan, *supra* note 9, at 933-34 (recognizing government culpability in creating and maintaining racially segregated cities).

114. *See* Hendrickson, *supra* note 8, at 48, 52, 62 (stating FHA encouraged integration through actively furthering antidiscrimination policies); *see also* Larkin, *supra* note 58, at 1631-32, 1640 (arguing private choice not to integrate and racial steering by private entities limit FHA's effectiveness); Butler, *supra* note 81, at 1440 (noting widespread evidence of continued housing discrimination). President Nixon, the creator of the section 8 voucher program that the government relies on to desegregate public housing, had little interest in affirmatively desegregating public housing; the intent behind section 8 vouchers was rather "to get the [f]ederal government out of the housing business." *See* Hendrickson, *supra* note 8, at 62 (criticizing motives behind section 8 voucher program); *see also* powell, *supra* note 59, at 607 (explaining how Nixon prevented HUD Secretary George Romney from fully implementing FHA to integrate housing).

115. *See* Larkin, *supra* note 58, at 1646 (acknowledging steering violates FHA, but explaining difficulties in successfully bringing suit); LANGOWSKI ET AL., *supra* note 81, at 25 (describing continued housing discrimination with little consequence to offenders despite antidiscrimination laws).

116. *See* Hendrickson, *supra* note 8, at 61 (recognizing lack of affordable housing barrier to success of race-conscious mobility programs); Blair-Loy, *supra* note 33, at 1577 n.241 (citing hindrances of mobility programs, including lack of affordable housing and landlord refusal to participate); *see also infra* notes 130, 132 and accompanying text (arguing rent control can address weaknesses of desegregation approaches).

The federal government's shortcomings in its effort to integrate housing have directly led to resegregation in many areas of American life—most principally, schools.[117] The failure to remedy past housing discrimination and its resulting halt in progress calls into question federal and state governments' commitment to the principles espoused in *Brown*.[118] Housing policy, like education policy, has traditionally—for better or worse—been a state issue, meaning that the Commonwealth of Massachusetts has the opportunity to act with purpose to desegregate housing in the absence of additional, adequate federal action.[119] Boston's consistently high segregation rates relative to other large American cities should further motivate the government to affirmatively address the problem.[120]

Simultaneously, Massachusetts must also address the growing rent burden its residents face; because the lack of affordable housing disproportionately affects BIPOC populations, policies designed to decrease rent burden and desegregation have positive impacts on the same populations.[121] The average rent in Boston has steadily increased faster than wages, as evidenced by the growing proportion of the renting population that qualifies as cost burdened.[122] Though average rental prices dropped slightly in 2020 due to the COVID-19 pandemic, it remains highly probable that prices will rebound upon a "return to normal."[123]

Currently, market competition is the only thing preventing a landlord from drastically raising the rent after an existing tenant's lease expires.[124] A reinstatement of rent control in Massachusetts would provide tenants with additional protection from landlords causing gratuitous rent increases to replace existing

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117. *See* Stephanopoulos, *supra* note 86, at 1335-36, 1400 (describing strong relationship between school segregation and housing segregation); *see also* Butler, *supra* note 81, at 1458 (describing school desegregation "as a massive failure").

118. *See* Milligan, *supra* note 9, at 1017 (commenting failure to desegregate housing affects integration of all public services); *see also* Brown v. Bd. of Educ., 347 U.S. 483, 494 (1954) (emphasizing segregation causes unacceptable, psychological damage).

119. *See* Boyack, *supra* note 4, at 1186-87 (explaining "quintessentially local" nature of housing policy and critiquing federal government's inequitable history on matter); *see also* powell, *supra* note 59, at 616 (arguing FHA needs reinvigoration to address modern challenges to integration).

120. *See supra* notes 90-94 and accompanying text (describing current levels of segregation in Boston metropolitan area).

121. *See* Stackpole, *supra* note 4 (noting half of renters in Boston cost burdened, and 25% severely cost burdened); NAT'L LOW INCOME HOUS. COAL., *supra* note 3, at 6-7 (stating 28% of white households rent, while majority of Black and Hispanic households rent housing); *see also* Woo, *supra* note 2 (tracking how proportion of cost-burdened renters changed over time).

122. *See* Woo, *supra* note 2 (demonstrating rent increases outstripping income growth). From 1980 to 2014—adjusting for inflation—the income of the median renter in Boston grew just over 20%; in the same timeframe, the median rent price grew nearly 60%. *See id.* (comparing increase of wage growth to rental price by metro area).

123. *See* Salpoglou, *supra* note 110 (predicting swift rebound in market after pandemic despite rental price dip).

124. *See* Stackpole, *supra* note 4 (noting elimination of rent control removed safeguard against capricious rent increase).

tenants with someone willing to pay more.[125] Rent control would also lower the price of nearby uncontrolled units, partially because landlords cannot rationally justify exorbitant rent increases when nearby, similar units cost significantly less.[126] Reinstating rent control would increase the available stock of lower-cost rental units in the Commonwealth and help decrease the proportion of renters in Massachusetts experiencing cost burden.[127] Rent control prevents rent from becoming an overbearing expense, and the additional, retained income for Massachusetts renters will be directly returned to the local economy through the purchase of other essentials like food, transportation, and utilities.[128]

A more subtle effect of rent control is its potential positive impact on the desegregation of neighborhoods in urban areas.[129] It cannot be ignored that decades of discriminatory, racist policies held and promulgated by the government caused a disproportionate amount of cost-burdened renters—and renters generally—to be nonwhite and live in deprived neighborhoods.[130] The effects of the subprime mortgage lending crisis of the mid- to late-2000s compounded this disparity by disproportionately stripping BIPOC homeowners of their property.[131] As a result, policies like rent control directly benefit racial minority populations in greater proportion for the simple reason that BIPOC populations in America are more likely to rent residential property than their white counterparts.[132]

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125. *See id.* (linking spurious increases by landlords, gentrification of communities of color, and elimination of rent control); *supra* note 97 and accompanying text (explaining how rent control protects tenants from getting pushed out by gratuitous rent increases).

126. *See* Parker & Chapple, *supra* note 95, at 1148 (remarking rent control's price-lowering effect on uncontrolled units in Massachusetts); *see also* Boyack, *supra* note 4, at 1198-99 (explaining traditional expectations of supply and demand do not apply to necessities like housing); Stackpole, *supra* note 4 (noting Boston's competitive housing market forces renters to settle for imperfect housing situations).

127. *See* Reina, *supra* note 2, at 1271, 1291 (arguing lack of supply greatest contributor to affordable housing crisis). Failure to increase the supply of affordable units on the housing market—in conjunction with an increased demand for such units—has resulted in an increased cost, even in the least suitable and habitable apartments. *See id.* at 1272-74 (identifying causes behind lack of affordable housing supply); *see also* Boyack, *supra* note 4, at 1205 (pointing out insufficient quality of many affordable housing units currently in use).

128. *See* NAT'L LOW INCOME HOUS. COAL., *supra* note 3, at 8 (noting severely cost-burdened families often forego necessities to pay rent); Parker & Chapple, *supra* note 95, at 1153 (reporting increases of 2.6% in controlled units and 10% in uncontrolled units); *see also* Boyack, *supra* note 4, at 1198-99 (explaining many low-income renters forced to forfeit essential needs to pay housing cost).

129. *See infra* notes 130-32 and accompanying text (analyzing how rent control can address weaknesses of desegregation approaches).

130. *See* Coates, *supra* note 1 (describing effects of redlining on generational wealth of Black families); *see also* Milligan, *supra* note 9, at 961 (explaining government agencies' discrimination against Black families eliminated opportunity for property ownership); Blair-Loy, *supra* note 33, at 1538 (commenting selection of sites for public housing deprived entire neighborhoods of meaningful opportunity); NAT'L LOW INCOME HOUS. COAL., *supra* note 3, at 6-7 (noting nonwhite households more likely cost burdened and less likely to own homes).

131. *See* Coates, *supra* note 1 (linking historical segregation of major cities to massive foreclosure rates in minority neighborhoods); Stephanopoulos, *supra* note 86, at 1356 (noting higher foreclosure rates in racially mixed neighborhoods).

132. *See* NAT'L LOW INCOME HOUS. COAL., *supra* note 3, at 7 (commenting nonwhite households more likely renters than white households).

Rent control also helps to prevent the related "pushing out" of long-term residents that typically accompanies the gentrification of historically BIPOC neighborhoods.[133] A requirement for race-conscious application of rent control in Massachusetts could be written into rent control legislation, although that carries some risk of subjecting the policy to strict scrutiny instead of the rational basis review generally applied to rent control.[134] Though correlation does not necessarily imply causation, desegregation in Boston noticeably slowed during the decades in which Massachusetts eliminated rent control.[135] While rent control may not eliminate housing segregation on its own, it can promote implementation and management of programs that affirmatively work to dismantle housing segregation and discrimination.[136]

Creating statewide rent control rather than simply implementing it at the municipal level provides several advantages to reducing both rent burden and housing segregation.[137] Oregon's recent enactment of a statewide cap on rent increase represents a manageable starting point for Massachusetts to consider, especially because Oregon balanced the interests of landlords and tenants.[138] Oregon allowed all parties to set reasonable expectations by instituting the rent increase cap, accounting for inflation, creating exceptions that do not prevent landlords from profiting off their property, and restricting municipalities from deviating from the maximum rate.[139] A justifiable criticism levied against rent control is that relevant regulations lose their effectiveness if not uniformly enacted across metropolitan areas, but this issue would diminish if Massachusetts, like Oregon, adopted a statewide rent control scheme.[140] A striking aspect of the current state

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133. *See* Parker & Chapple, *supra* note 95, at 1175 (arguing rent control can slow gentrification by protecting stability of existing tenants); *see also* Stackpole, *supra* note 4 (commenting rent increases used "to empty neighborhoods of their longtime residents, mostly communities of color").

134. *See* Been et al., *supra* note 7, at 1044-45 (emphasizing jurisdictions enacting rent control to "maintain economic and ethnic diversity"); *see also supra* note 102 and accompanying text (noting history of judicial challenges to rent control ordinances). To survive strict scrutiny, discrimination based on a suspect class must be necessary and narrowly tailored to accomplish a compelling governmental purpose; the Supreme Court has increasingly struck down racial distinctions intended to relieve the effects of past discrimination, although the government's duty under the FHA to affirmatively further fair housing theoretically lessens the risk that race-conscious rent control would be struck down. *See* Fair Housing Act of 1968 § 808, 42 U.S.C. § 3608 (requiring federal government to affirmatively further goal of fair housing); Garrison, *supra* note 64, at 584, 587-88 (arguing race-conscious housing desegregation policies generally not subject to strict scrutiny).

135. *See* Logan, *supra* note 90, at 21 (tracking racial segregation rates in Boston from 1980 to 2010).

136. *See supra* note 133 and accompanying text (arguing stated goals of rent control can eliminate barriers to desegregation); Blair-Loy, *supra* note 33, at 1577-78 (observing mobility programs more successful at integration than constructing new public housing).

137. *See infra* notes 140-42 and accompanying text (discussing why statewide implementation more effective than allowing municipalities to select and enact separate regulations).

138. *See* Njus, *supra* note 106 (noting landlords preferred statewide rent control to allowing local governments to pass individual policies).

139. *See supra* note 106 (discussing Oregon legislation in greater detail).

140. *See* Parker & Chapple, *supra* note 95, at 1139-40 (noting rent increases in municipalities without regulation compared to neighboring municipalities with regulation). In metropolitan areas, economic and racial

of housing segregation is the marked difference displayed in neighboring municipalities, whether compared at the city–suburb or suburb–suburb level.[141] Enacting rent control on a statewide basis would ensure that the secondary benefits, such as increasing the stock of available affordable housing and reducing the gentrification of BIPOC communities, apply to Massachusetts as a whole instead of just Boston and the inner suburbs.[142]

IV. Conclusion

Massachusetts needs to affirmatively address the myriad difficulties systemic housing segregation places on its BIPOC population while also reducing the rent burdens that disproportionately affect these populations. Though housing policy remains a sensitive and complicated subject, by failing to address both key issues discussed in this Note, the Commonwealth traps many of its residents in cyclical poverty divided by race and ethnicity. *Brown* cautioned society of the psychological dangers of the fallacious "separate but equal" doctrine, yet American society has once again returned to an apathetic acknowledgement—if not outright acceptance—of unequal separation.

Rent control facially addresses the crippling cost burdens that Massachusetts residents have increasingly felt since the Commonwealth revoked the policy. It would also potentially bolster existing desegregation measures by increasing the stock of affordable housing and restricting an individual landlord's ability to push out an existing tenant by capriciously raising the rent. In protecting existing tenants' access to affordable housing, Massachusetts would allow renters to potentially build up enough capital to transform the dream of homeownership from a Sisyphean task to a realistic endeavor toward the construction of true generational wealth. Massachusetts, and the United States as a whole, owes all people that long promised but rarely delivered equal opportunity.

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segregation are often more distinct between neighboring cities rather than neighborhoods within a city. *See id.* at 1142-44 (explaining concentric zone model of metropolitan area residential sorting).

141. *See* Stephanopoulos, *supra* note 86, at 1357 (describing unsatisfactory improvement in desegregation between municipalities); *see also* powell, *supra* note 59, at 611 (noting segregation between city lines more common in Northeast United States); Elton, *supra* note 25 (linking current suburb–city segregation to past redlining and racially restrictive covenants).

142. *See* Chen, *supra* note 110 (discussing how expiration of rent control pushed Black families out of Boston); *see also* Elton, *supra* note 25 (mentioning Black families leaving Boston en masse for Fall River, New Bedford, Randolph, and Brockton); Stackpole, *supra* note 4 (arguing capricious rent increases contribute to gentrification of BIPOC communities).