

FAIR HOUSING FOR ALL!

2009 FAIR HOUSING MONTH EDITION

“BUILDING THE AMERICAN DREAM FOR ALL”

Fair Housing Clinical Law Program Awarded HUD Grant To Fight Discrimination

The U.S. Department of Housing and Urban Development awarded \$21.8 million to Fair Housing, and other non-profits agencies in 37 states and the District of Columbia to assist people who believe they have been victims of housing discrimination.

"These Fair Housing Initiatives Program grants will help us continue our efforts to educate the public, the housing industry, real estate professionals and finan-



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Fair Housing Clinic Events

- April 4th, Neighborhood Housing Day, 9am-3pm, All Souls Church, 1500 Harvard St., NW
- April 7th, First Time Home Buyers Seminar, 5:30pm-7pm, Law School, Holy Cross Foyer
- April 11th, Guest Hosts on Internet Blog Talk Radio Show, The Remix, 12pm-2pm.



2008 Fall Semester Accomplishments

The Fair Housing Clinic accepted 22 intakes last term. Of those intakes, there were four fair housing (discrimination cases). Two of those had merit. One intake filed a complaint with HUD and we are still in contact with that person. The other FH intake was resolved amicably.

The other housing cases consisted of housing association disputes, housing code problems, rent disputes, foreclosure allegations, and allegations of fraud in the process of refinancing a home.

We also were engaged in policy work and the clinic submitted testimony to the National Commission on Fair Housing and Equal Opportunity (NCRC).

The clinic held three programs last semester on fair housing. The programs were participation as a vendor and attendee at the First Annual Washington D.C. Tenant Summit, People's Law Day, an all day symposium in the current fiscal crisis and how it is related to housing, and a Housing Career Panel that featured lawyers who work in the housing sector.

HUD Grant Awarded (continued)

cial institutions about their rights and responsibilities under the Fair Housing Act," said Kim Kendrick, HUD's former Assistant Secretary for Fair Housing and Equal Opportunity under the Bush administration. "Our local partners are critical not only in enforcing the law but in reinforcing the message -- housing discrimination is illegal and HUD will take action to eliminate it."

Howard Law's Fair Housing Clinical Law Program was awarded \$300,000 through the Education and Outreach Initiative (EOI), Clinical Law School Component, to organize and operate a fair housing legal-clinic education

program.

HUD awarded \$20 million through the Private Enforcement Initiative grants (PEI) to help groups investigate alleged housing discrimination, and enforce the Fair Housing Act and state and local laws that are substantially equivalent to the Act and awarded \$1.3 million through the Education and Outreach Initiative grants (EOI) to groups that educate the public and housing providers about their rights and obligations under federal, state, and local fair housing laws.

Fair Housing Clinical Law Program Student Attorneys Spring Semester 2009

Advanced Students

Nyshel Burke
Monique Chenault
Alyssa Fobi
Christopher Gurley
Lois Hanshaw
Ashley James

New Students

Sheila Augustine
Megan Boler
Jason Butler
Brooke Harrel
Jaylen Johnson
Stacy Keenan
Alexis Logan
Stephanie Maddin
Charles McLaurin
Michelle Rose
Nikkia Wharton



HUSL Fair Housing Clinic Fair Housing Month Activities

April 3-4 – Professor Brian Gilmore, Panelist, at **Suffolk University Law School, Association of Law and Humanities Conference**.

<http://www.law.syr.edu/academics/centers/lch/conference.html>

April 4 – Fair Housing Clinic presents **“Neighborhood Housing Day”** at All Souls Church, 1500 Harvard Street, NW, 9 - 3 pm. Featuring housing organizations in and around the metropolitan area.

April 7 – Sam Hutchinson, Senior Counsel, Office of General Counsel, HUD – Lectures in Fair Housing Clinic ,4 - 5 pm

April 7 - Fair Housing Clinic presents **“First Time Homebuyer” seminar** at the law school, Holy Cross Foyer, 5:30-7:00 pm. Featuring home buying specialists and important topics including: racial steering; picking an agent; affordability; predatory lending; credit scores; down payments; closing costs; inspections; and effect of federal economic stimulus plans on buyers. Dinner will be served.

April 11 - Fair Housing student attorneys appear on Blog Radio show, **“The Remix”** with host, Ms. Blue. The student attorneys will discuss national issues surround housing and the 2009 Alternative Spring Break efforts in New Orleans. 12-2:00 pm. <http://www.blogtalkradio.com/theremix>. If you miss the live broadcast, the show is downloadable at the same before listed link.

April 13 – Professor Brian Gilmore, Guest Discussion Leader, Arlington Reads discussion: **Topic: Jeffrey Toobin’s book on the Supreme Court, “The Nine.”** <http://arlingtonreads.wordpress.com/about/>

April 22 - Professor Brian Gilmore, Presenter, **Howard University, School of Social Work**, Fair Housing month presentation.

April 24 – Professor Brian Gilmore, Panelist, **National Organization of African-Americans in Housing Conference**, 9 - 4 pm

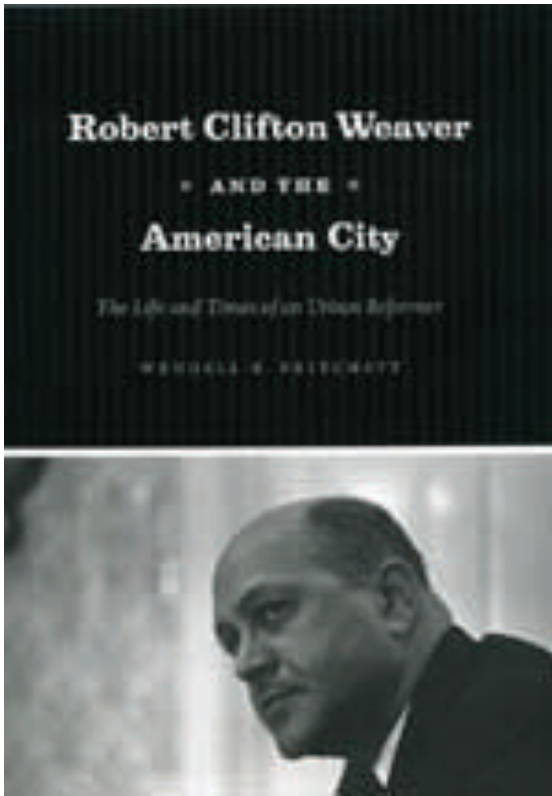


FAIR HOUSING MONTH

In recognition of Fair Housing Month, the U.S. Department of Housing and Urban Development today announced its annual celebration of "Fair Housing Education Week" on April 20-24, 2009. Intended for 5th through 8th grade students, this national education project will give teachers, parents and their children a basic understanding of the Fair Housing Act.

HUD's Office of Fair Housing and Equal Opportunity (FHEO) and its fair housing partners will visit schools across the country to instruct students about their fair housing rights. Using a lesson plan that HUD developed, instructors will guide students through the principles of equal opportunity in housing.

THE FAIR HOUSING & URBAN DEVELOPMENT BOOK SHELF



Robert Clifton Weaver and the American City: The Life and Times of an Urban Reformer. (Hardback October '08)

Wendell E. Pritchett

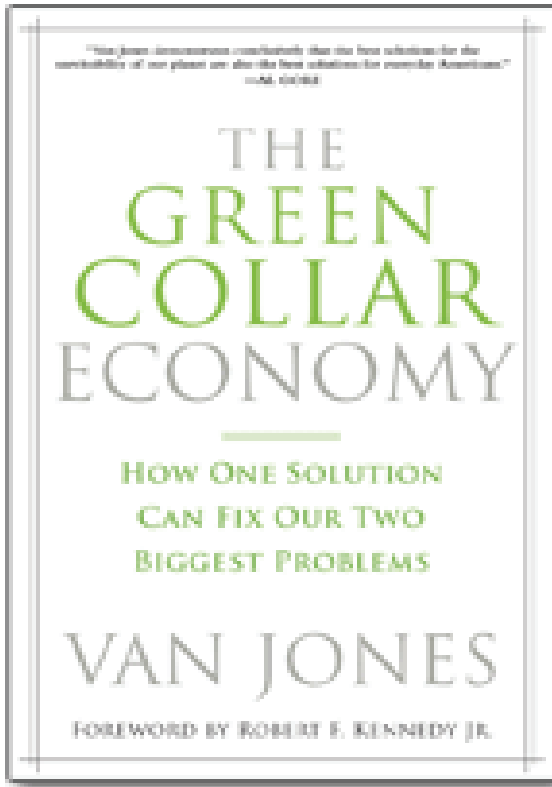
From his role as FDR's "negro advisor" to his appointment, under Lyndon Johnson, as the first secretary of Housing and Urban Development, Robert Clifton Weaver was one of the most influential domestic policy makers and civil rights advocates of the twentieth century. This volume, the first biography of the first African American to hold a cabinet position in the federal government, rescues from obscurity the story of a man whose legacy continues to impact American race relations and the cities in which they largely play out.

Tracing Weaver's career through the creation, expansion, and contraction of the New Deal liberalism, Wendell Pritchett illuminates his instrumental role in the birth of almost every urban initiative of the period, from public housing and urban renewal to affirmative action and rent control. Beyond these policy achievements, Weaver also founded racial liberalism, a new approach to race relations that propelled him through a series of high-level positions in public and private agencies working to promote racial cooperation in American cities. But Pritchett shows that despite Weaver's efforts to make race irrelevant, white and black Americans continued to call on him to mediate between the races—a position that grew increasingly untenable as Weaver remained caught between the white power structure to which he pledged his allegiance and the African Americans whose lives he devoted his career to improving.

A crucial and largely unknown chapter in the history of American liberalism, this long-overdue biography adds a new dimension to our understanding of racial and urban struggles, as well as the complex role of the black elite in modern U.S. history.

Wendell Pritchett is a professor of law at the University of Pennsylvania. He has served as Deputy Chief of Staff and Director of Policy for Philadelphia Mayor Michael Nutter and as senior adviser on urban affairs to the presidential campaign of Barack Obama.

BOOK SHELF (continued)



The Green Collar Economy: How One Solution Can Fix Our Two Biggest Problems . (Hardback October '08)

Van Jones

In *The Green Collar Economy*, acclaimed activist and political advisor Van Jones delivers a real solution that both rescues our economy and saves the environment. The economy is built on and powered almost exclusively by oil, natural gas, and coal, all fast-diminishing nonrenewable resources. As supplies disappear, the price of energy climbs and nearly everything becomes more expensive. With costs and unemployment soaring, the economy stalls. Not only that, when we burn these fuels, the greenhouse gases they create overheat the atmosphere. As the headlines

make clear, total climate chaos looms over us. The bottom line: we cannot continue with business as usual. We cannot drill and burn our way out of these dual dilemmas.

Instead, Van Jones illustrates how we can invent and invest our way out of the pollution-based grey economy and into the healthy new green economy. Built by a broad coalition deeply rooted in the lives and struggles of ordinary people, this path has the practical benefit of both cutting energy prices and generating enough work to pull the U.S. economy out of its present death spiral.

Rachel Carson's 1963 landmark book *Silent Spring* was the pivotal ecological examination of the last century. Now, rising above the impenetrable debate over the environment and the economy, Van Jones's *The Green Collar Economy* delivers a timely and essential call to action for this new century.

Van Jones is founding president of **Green For All** and a senior fellow with the Center for American Progress. He is also a TIME Magazine 2008 Environmental Hero, one of Fast Company's 12 Most Creative Minds of 2008, and the the New York Times Bestselling author of *The Green Collar Economy* (Harper One 2008), which is endorsed by Nancy Pelosi, Tom Daschle and Al Gore.

THE RIGHT TO HOUSING:

THE UNITED STATES SHOULD RECOGNIZE A RIGHT TO HOUSING AND PROVIDE EVERY CITIZEN WITH A PLACE TO LIVE IN SECURITY, PEACE, AND DIGNITY

KAPIL V. PANDIT, Class of 2011, HUSL



I. INTRODUCTION

The United States has a serious and widespread housing problem. Specifically, as scholar Maria Foscarinis noted in a 2006 law review article, “[a]t least 840,000 people are homeless on any given day within the United States.”¹ In addition, “it is estimated that twelve million people . . . will experience homelessness at some point in their lives.”² This housing problem is not focused on one class of individuals; it is widespread and even affects those that are employed and trying to stay in their homes. Specifically, “[a] federal government survey found that 44% of homeless people report that they work full-or part-time, yet cannot afford housing.”³ Furthermore, the housing problem is so severe that Foscarinis noted that “in no part of the country can a worker paid the minimum wage in her community afford a one-bedroom apartment in that community.”⁴

This paper generally addresses the housing problem in the United States and specifically argues that the United States should recognize a right to housing. Part II of this paper contends that there should be a right to housing based on the language in various international treaties and agreements that the United States has participated in, the goals incorporated in the United States Housing Acts,⁵ and the policies implicitly adopted by some government agencies. Additionally, part III of this paper asserts that the United States can achieve the goal of recognizing a right to housing by fully funding existing housing programs and improving the regulation of the development, management, and financing of the housing industry.

¹Maria Foscarinis, *Realizing domestic social justice through international human rights: Part II: Advocating for the human right to housing: Notes from the United States*, 30 *N.Y.U. Rev. L. & Soc. Change* 447, 454-55 (2006).

²*Id.*

³*Id.*

⁴*Id.*

⁵*See generally* 42 U.S.C. § 1437; 42 U.S.C § 1441; 42 U.S.C. § 3601; 42 U.S.C. 5309; 12 U.S.C. § 4113.

II. THE UNITED STATES SHOULD RECOGNIZE A RIGHT TO HOUSING.

Housing is a basic need that accounts for the majority of household expenses.⁶ It is essential “to protect ourselves from the elements, to provide personal safety and security[;]...[to] determine[] access to community resources . . . and employment opportunities; . . . [to] define[] one’s place in society; . . . [and to prevent] health and safety problems.”⁷ As Chester Hartman⁸ noted in a 1998 article on the right to housing, “[t]he arguments for a Right to Housing are straightforward: Housing is where people spend the most time, where family life is nurtured, so it should be safe, comfortable, [and] supportive.”⁹ The United States should acknowledge that housing is a basic necessity and recognize that every citizen has a right to housing. The United States should adopt a policy of recognizing this right because of: (a) its participation in United Nations treaties and agreements that recognize housing as a basic human right; (b) the United States Housing Acts’ goals regarding providing housing;¹⁰ and (c) the policies implicitly adopted by some federal agencies.

a. The United States should recognize a right to housing based on its participation in various international treaties and agreements on human rights.

For the past sixty years, the United States has been a party to various treaties and agreements that recognize the right to housing. Housing has been recognized internationally as a

⁶Chester Hartman, *The Case for a Right to Housing*, Shelterforce. (National Housing Institute, November 2006), http://www.knowledgeplex.org/kp/text_document_summary/scholarly_article/relfiles/hpd_0902_hartman.pdf (noting that “Housing costs are, for most households, the largest expenditure and so should not be so high as to prevent meeting other basic needs -food, clothing, medical care, transportation, etc.”).

⁷Chester Hartman, *The Hurricane and the Right to Housing*, <http://www.prrac.org/pdf/hurricane-housing.pdf>.

⁸Chester Hartman was the Executive Director of the Poverty and Race Research Action Council in Washington,

D.C.

⁹Hartman, *The Case for a Right to Housing*, *supra* note 6. ¹⁰See U.S. Housing Acts, *supra* note 5.

“basic and fundamental human right in many sources of human rights law.”¹¹ Specifically, “[t]he right to housing was initially recognized as part of the right to an adequate standard of living, as enunciated in the Universal Declaration of Human Rights, adopted by the United Nations in 1948.”¹² The United States should recognize the right to housing as part of its obligations as a United Nations member country since this declaration was adopted. As the scholar Rene Heybach noted, the United States is “bound [as a United Nations member country] to respect and observe the rights contained in the Universal Declaration[.]”¹³

The right to housing has been recognized on numerous other occasions in the international community. Specifically, the International Covenant on Economic, Social and Cultural Rights (ICESCR) recognized the right to adequate housing and to continuous improvement of living conditions.¹⁴ Heybach further noted in her article that Article 17 of the International Covenant on Civil and Political Rights and Article 5(e)(iii) of the International Convention on the Elimination of All Forms of Racial Discrimination also protects housing rights.¹⁵ The United States is party to these declarations and as a leader in the international community should recognize the right to housing. The United States’ policy should also include taking steps to ensure that every citizen in the United States is guaranteed this right, not just acknowledging the right.

¹¹ Rene Heybach, *Is Housing a Human Right?* (Homeward Bound, Fall 2003), http://cch.issuelab.org/research/listing/is_housing_a_human_right.

¹² Heybach, *supra* note 11.

¹³

Id.

¹⁴ *Id.* (citing ICESCR, “which recognizes: ‘[T]he right of everyone to an adequate standard of living for himself [or herself] and his [or her] family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.’”).

¹⁵ *Id.* (noting that the International Covenant on Civil and Political Rights protects against arbitrary or unlawful interference with a person’s home, and that the International Convention on the Elimination of All Form of Racial Discrimination prohibits discrimination in the right to housing.).

Additional international agreements further define and explain the right to housing. Specifically, the United Nations' Committee on Economic, Social and Cultural Rights defined a right to housing when it "unanimously adopted General Comment No. 4 on the Right to Adequate Housing in 1991."¹⁶ Housing scholar Maria Foscarinis explained that "[t]he Committee [on Economic, Social and Cultural Rights] has specifically stated that the right [to housing] should not be interpreted narrowly: it is more than shelter or a 'roof over one's head'; rather, it encompasses 'the right to live somewhere in security, peace and dignity.'"¹⁷ As a United Nations member country and participant in this declaration, the United States should take affirmative steps toward recognizing and protecting the right to housing, and fully funding programs to provide a place to live in security, peace, and dignity.

The Committee on Economic, Social and Cultural Rights further explained the right to housing by identifying seven elements of adequate housing. The elements include: (i) legal security of tenure; (ii) availability of services, materials, facilities and infrastructure; (iii) affordability; (iv) habitability; (v) accessibility; (vi) location; and (vii) cultural adequacy.¹⁸ A number of these elements are already protected in the United States through, for example, due process rights during eviction and foreclosure proceedings, local housing codes, and rent control regulations.¹⁹ However, the United States should join the international community and explicitly recognize the right to housing and provide additional aid to programs that provide every citizen with a place to live in security, peace and dignity.

¹⁶Heybach, *supra* note 11.

¹⁷Foscarinis, *supra* note 1; *see also Human Right to Housing*, National Economic & Social Rights Initiative, http://www.nesri.org/fact_sheets_pubs/Right_to_Housing_1.pdf. ¹⁸Heybach, *supra* note 11.

¹⁹Hartman, *The Case for a Right to Housing*, *supra* note 6.

As reported by UN-Habitat, other countries have already recognized the right to housing. Specifically, “UN-Habitat reports that 75% of the world’s countries have constitutions or national laws that promote the full and progressive realization of the right to adequate housing.”²⁰ The United States should join these countries and take steps to ensure housing programs in the United States are on the leading edge of protecting the right to housing. This policy is appropriate and necessary because of “housing’s links to problems in the areas of health, education, income support, food, crime, employment, immigration, economic and community development.”²¹ In order to address these other problem areas, the United States should adopt a policy of recognizing the right to housing. Doing so will likely also result in improvements in the other linked areas.

b. The United States should recognize a right to housing based on the stated goals included in the United States Housing Acts.

The United States Housing Acts have included a goal of providing a home for every American family since 1949. Specifically, “[a] national housing goal was incorporated into the preamble of the National Housing Act of 1949: ‘the implementation as soon as feasible of a decent home and suitable living environment for every American family.’”²² Furthermore, the 1968, 1974, and 1990 Housing Acts followed the 1949 Act and included similar goals of providing a home for every American family.²³ Although “a decent home and suitable living environment for every American family” is only a goal and is not as explicit a declaration of the right to housing as included

²⁰ *The Right to Housing*, Human Rights Education Associates, http://www.hrea.org/index.php?base_id=149&&wy_print=1.

²¹ Hartman, *The Case for a Right to Housing*, *supra* note 6.

²² Gina Miserendino, *The Right to Housing*, The Delaware Housing Coalition, <http://www.housingforall.org/rop0304%20right%20to%20housing.pdf>.

²³ *Id.* (noting that these acts reiterated the 1949 goal and included slightly different version of the goal in 1974 and 1990).

included in the international declarations on human rights, it nevertheless provides support for recognizing a right to housing in the United States. The various versions of the goal that have been included in the Housing Acts suggest that “housing should be viewed as a fundamental resource indispensable to ensuring human development and civic participation.”²⁴

c. The United States should recognize a right to housing based on the implicit policies behind other federal agency programs.

The right to housing is implicitly recognized in other domestic policies and by some federal government agencies. For example, the Federal Emergency Management Agency’s (FEMA) policy toward natural disaster victims implicitly recognizes a right to housing.²⁵ FEMA generally provides housing assistance to residents of areas that are deemed federal disaster areas. FEMA’s programs generally provide temporary shelter, housing assistance, and loans to rebuild and secure housing after a declared disaster. This assistance is a result of the importance of housing and implicitly recognizes that all citizens have a right to housing.

The implicit policy behind FEMA’s assistance programs should be expanded and not limited to disaster areas. As Eric Tars noted in an article after Hurricane Katrina, “[t]he key is to expand this view of housing as a right from just victims of natural disasters to all who are experiencing housing problems, regardless of cause.”²⁶ If the federal government has recognized the importance of housing and the right to housing for disaster victims, it can be inferred that the right to housing should have been recognized before the disaster. Accordingly, the United States should recognize a right to housing and provide every citizen with a place to live in security, peace, and dignity.

²⁴*Human Right to Housing, supra* note 17.

²⁵Eric Tars, *Affordable Housing: A Legal Right, Not Charity*, http://www.ushrnetwork.org/files/ushrn/images/linkfiles/Affordable_Housing.pdf.

²⁶*Id.*

III. THE UNITED STATES SHOULD RECOGNIZE THE RIGHT TO HOUSING AND CAN ACHIEVE THE GOAL OF PROVIDING A PLACE TO LIVE IN SECURITY, PEACE, AND DIGNITY BY FULLY FUNDING EXISTING HOUSING PROGRAMS AND IMPROVING THE REGULATION OF THE HOUSING INDUSTRY.

As noted previously, the United States should recognize the right to housing and strive to provide every citizen with a place to live in security, peace, and dignity. Achieving this goal will likely require a significant amount of funding, but will cost the United States a fraction of the amount it spends on other domestic and foreign programs. Specifically, as Chester Hartman noted, “most estimates put [the cost of guaranteeing decent, affordable housing to all Americans] at somewhere in the \$100 billion/year range -far less than the Iraq War, [and] about the same amount the homeowner deduction costs us. It’s hardly a question of ability to pay, it’s how we choose to spend our tax money.”²⁷ Furthermore, recognizing the right to housing and fully funding housing programs may help reduce the amount of funding needed for other government programs since housing is linked to other areas such as health, education, crime, and employment.²⁸ The general theory behind this argument is that providing a safe and affordable place to live will likely help curb the spread of diseases and illnesses, and allow families to spend on other basic necessities such as food and preventative care, and also focus on gaining an education and permanent employment.

a. Recognizing a right to housing does not require the United States government to become a property manager or to build a home for every citizen.

Recognizing a right to housing and spending government money on housing programs does not mean that the United States must become a home builder and property manager. As

²⁷ Hartman, *The Hurricane and the Right to Housing*, *supra* note 7.

²⁸ Hartman, *The Case for a Right to Housing*, *supra* note 6.

scholar Rene Heybach noted, “these rights do not generally oblige governments immediately to build housing for everyone but rather imply an obligation to move expeditiously toward that objective.”²⁹ Rather than build and manage public housing, the government can continue to fund housing programs that have succeeded and implement regulations for the development, management, and financing of affordable housing.

Eric Tars, another housing scholar, noted that “[h]aving the right to housing does not mean that the government must build a house for every person in America and give it to them free of charge. It does put ultimate responsibility on the government for ensuring all people have access to adequate housing.”³⁰ Maria Foscarinis echoed this position when she noted that “[a] common argument against the right is based on the false assumption that it simply and unequivocally requires government to provide a free house to everyone.”³¹ By recognizing the right to housing now, the government can take steps to reverse “[the Bush Administration’s] policy decisions [that] are inconsistent with the obligation to take measures ‘sufficient to realize the right for every individual in the shortest possible time in accordance with the maximum of available resources.’”³² Furthermore, recognizing the right to housing and implementing programs that make housing affordable will allow families to spend on other necessities, and will be significant policy changes that may help the United States emerge from the current economic recession.

²⁹ Heybach, *supra* note 11.

³⁰ Tars, *supra* note 25.

³¹ Foscarinis, *supra* note 1.

³²
Id.

b. A right to housing can be achieved by fully funding existing housing programs and improving the regulation of housing production, management, and financing.

Although it is recognized that “[m]erely throwing more money at the problem under the existing system . . . can have only limited results[.]”³³ the right to housing can be achieved by fully funding those programs that have been successful, such as voucher programs, and creating new regulations for the development, management, and financing of housing. While arguing for a right to housing, Chester Hartman seems to believe the solution is large scale public developments. Specifically, he commented that “[w]e must ask honestly whether the for-profit system of production, management and finance that overwhelmingly dominates the way housing is provided in the United States is consistent with a right to decent, affordable housing, or whether, alternatively, this goal can be reached only through conscious and large-scale development of public and other nonprofit . . . permanently affordable units.”³⁴ The large-scale development of public and other nonprofit permanently affordable units, however, may not be the best path forward for implementing the right to housing. Other housing assistance, such as tenant voucher programs, may be better suited to allow citizens to obtain desirable housing as part of their right to housing

Rather than abandon the current system of production, management, and finance, the housing industry needs to be better regulated and funded. Improved regulation of housing production, management, and finance can likely correct the housing issues that developed over the past five years under lax regulation. In addition, fully funding programs that are working, rather than cutting federal housing program budgets, can help increase access to new housing developments. By appropriately funding housing programs and making housing in desirable neighborhoods affordable and

³³ Hartman, *The Case for a Right to Housing*. *supra* note 6.

³⁴
Id.

accessible, the government will not only be able to achieve the goal of recognizing a right to housing, but it may help rebuild the housing market and spur economic development.

c. Critics of a right to housing fail to recognize the important societal benefits of a right to housing and the urgency of improving housing assistance.

Peter Salins,³⁵ a critic of recognizing a right to housing, argued that “[t]he most undesirable aspect of tenant subsidies . . . is that they misallocate housing.”³⁶ He continued that, “to the extent that housing subsidizes [the objective of moving poor households into good neighborhoods], they undermine the central role the housing market has traditionally played in rewarding upward social and economic mobility.”³⁷ Furthermore, he suggested that “subsidies allow less industrious or less responsible households . . . to get better housing than [hardworking, responsible households] and . . . to destabilize neighborhoods.”³⁸ However, this argument is flawed because it fails to appropriately recognize the societal impact of housing. Salins’ argument is focused on the upward social and economic mobility that housing provides and fails to recognize that housing also impacts family development, education, and employment.

Salins criticized the right to housing because he believes it is difficult to show a community benefit.³⁹ Specifically, he noted that “[u]sing public funds to confer ostensibly superior housing on selected members of the community . . . serves no equivalent compelling community-wide interest. And the negative . . . community impacts of inferior housing . . . can be”³⁵ Peter Salins was Provost and Vice Chancellor for Academic Affairs of the State University of New York and responded to Chester Hartman’s article on *The Case for a Right to Housing*.

³⁶Peter Salins, *Comment on Chester Hartman’s “The Case for a Right to Housing”: Housing is a Right? Wrong!*, (Housing Policy Debate, Vol. 9, Iss. 2), http://www.fanniemaefoundation.org/programs/hpd/pdf/hpd_0902_salins.pdf.

³⁷*Id.*

³⁸*Id.*

³⁹*Id.*

more effectively controlled by regulation than subsidies.⁴⁰ This argument is correct in its assertion about regulation. Improved regulation is essential to recognizing a right to housing and improving inferior housing; however, the argument fails to recognize the community-wide interests of improving overall health care, reducing expenditures on emergency services and fostering community and family values. The United States can achieve the goal of providing a place to live in security, peace, and dignity by recognizing a right to housing, fully funding successful housing programs, and significantly improving the regulation of housing development, management and finance.

Another argument against a right to housing in response to Chester Hartman's 1998 article was offered by James Carr.⁴¹ As an alternative to recognizing a right to housing, Carr suggested that there should be aggressive enforcement of anti-discrimination laws and that privately developed and owned housing should be made "truly affordable".⁴² Carr argued that the enforcement of anti-discrimination laws is a better alternative because recognizing a right to housing "would not address the underlying problems that cause concentrations of poverty in certain populations."⁴³

However, addressing the underlying problems can be furthered by first recognizing the right to housing, and including aggressive enforcement of existing laws as part of a comprehensive implementation plan. It is possible Carr would support such a comprehensive plan, since he recognizes that "[s]o long as artificial impediments continue to prevent people from achieving their full potential . . . some social program support [(such as housing subsidies)]

⁴⁰Salins, *supra* note 36.

⁴¹James Carr was a Senior Vice President for Policy, Research, and Evaluation at the Fannie Mae Foundation.

⁴²James Carr, *Comment on Chester Hartman's "The Case for a Right to Housing": The Right to "Poverty with a Roof" -A Response to Hartman*, (Housing Policy Debate, Vol. 9, Iss. 2), http://www.fanniemaefoundation.org/programs/hpd/pdf/hpd_0902_carr.pdf.

⁴³

Id.

will be needed.”⁴⁴ Accordingly, the United States should recognize a right to housing and adopt a comprehensive implementation to ensure every citizen is has a place to live in security, peace, and dignity.

IV. CONCLUSION

Accordingly, the United States should recognize a right to housing and provide every citizen with a place to live in security, peace, and dignity. To achieve this goal the United States government should fully fund existing housing programs, and improve regulations for the development, management, and financing of housing. By recognizing this right and making strides toward providing every citizen with a place to live in security, peace, and dignity, the United States will fulfill its obligations from international declarations on human rights and from the United States housing laws.

⁴⁴Carr, *supra* note 42.

BUSINESS IMPROVEMENT DISTRICTS, AFFORDABLE HOUSING, AND THE CALL FOR MIXED-INCOME MANDATES

A Critical Reflection on the Center City District of Philadelphia

By Saryiah S. Buchanan, Class of 2009, HUSL



BUSINESS IMPROVEMENT DISTRICTS, AFFORDABLE HOUSING, AND THE CALL FOR MIXED-INCOME MANDATES

A Critical Reflection on the Center City District of Philadelphia

By Saryiah S. Buchanan

Earlier this summer, I attended an event where the president of the Center City District gave an enlightening presentation on the tremendous improvements the CCD had achieved in downtown Philadelphia including the development of upscale condos, high-rent apartments, renovated brownstones, new restaurants, and an ever-burgeoning theater and entertainment district. At the end of the presentation, I asked him how the CCD managed to incorporate the housing needs of the many low and moderate income residents living in and around the downtown area. “The short answer,” he replied, was “it hadn’t.”

Introduction – Philadelphia in Context

Founded in 1682, Philadelphia, Pennsylvania is one of the most important cities in the history of the United States.¹ It is the place where the Founding Fathers drafted the Declaration of Independence and the United States Constitution, and it also served as the nation’s capital from 1790 to 1800.² Throughout the nineteenth century, Philadelphia established itself as a powerhouse of industrialization, becoming one of the busiest U.S. port cities and one of the largest manufacturing hubs fueling the nation’s economy.³

As the sixth most populous city in the country,⁴ Philadelphia remains one of America’s most important cities. However, like many other U.S. cities whose economies were built on manufacturing, Philadelphia has struggled over the past few decades to evolve and remain competitive in the changing global economy.⁵ The city’s commercial decline resulted in serious consequences.

¹For a brief overview of the history of Philadelphia, see Official Visitor’s Site for Greater Philadelphia, History: America’s Birthplace, http://www.gophila.com/C/X/385_/Things_to_Do/211/History/209.html (last visited Apr. 17, 2008).

²*Id.*

³See generally Georgette C. Poindexter, *Addressing Morality In Urban Brownfield Redevelopment: Using Stakeholder Theory To Craft Legal Process*, 15 VA. ENVTL. L.J. 37, 37-41 (1995).

⁴Ramona Smith, *The Unthinkable - Phoenix Rising Past Philly in Population*, PHILADELPHIA DAILY NEWS, July 9, 2003, at 6.

⁵See Poindexter, *supra* note 3, at 40 (“[T]he impact of deindustrialization was felt disproportionately in urban areas (formerly the centers of the bulk of U.S. industrial activity). . . . [T]he economic shift from low-skilled factory jobs left an employment void for uneducated workers. . . . [C]ities experiencing the greatest

Factory closures led to job losses, which in some instances depressed neighborhood economies.⁶ The most economically deprived areas suffered from structural decay and became havens for underground criminal activity.⁷ As neighborhoods declined, so did land values, forcing the city to grapple with trying to maintain its tax base and fund vital municipal services.⁸ These cascading effects complicated the city's ability to attract desirable employers.⁹

In the 1990s, to rejuvenate the local economy and improve the overall quality of life, city leaders began a serious campaign to reform Philadelphia's image and attract new employers and residents.¹⁰ In some areas, remnants of the past and financial limitations made the full realization of many of these improvements difficult to achieve.¹¹ Partly in response to this dilemma, Philadelphia, like other urban centers throughout the country, has increasingly turned to partnering with private parties (developers, businesses, and residents) to assist with, and in many cases, drive urban

job decline in industries employing unskilled workers had a significant increase in residents without the education for employment in any remaining growth industry.”); Elaine L. Chao, U.S. Secretary of Labor, Opening Plenary at Workforce Innovations 2005 (July 11, 2005), available at http://www.dol.gov/_sec/media/speeches/20050711_Workforce.htm (“Today, we are living in a knowledge-based economy that requires a highly skilled, educated, flexible workforce [that can] adapt and evolve with changing industries.”); *Philly's New Mayor Has 'Had Enough' - Nutter Pledges To Reduce City's Crime Rate, Raise Education Levels*, THE TIMES (TRENTON, NJ), Jan. 8, 2008, at A06 (“[Philadelphia] has a 45 percent [high school] dropout rate and only 18 percent of residents have bachelor's degrees.”). See also Barry E. Hill & Nicholas Targ, *Redeveloping Brownfields: Environmental Justice in Action*, 16 NO. 6 PRAC. REAL. EST. L. 7 (2000).

⁶See Poindexter, *supra* note 3, at 40.

⁷*Id.*

⁸See generally DISPOSAL OF HAZARDOUS WASTE – THE SUPERFUND LAW, BROWNFIELD PROGRAMS: ENCOURAGING THE REUSE AND REDEVELOPMENT OF CONTAMINATED SITES, 3-4A TREATISE ON ENVIRONMENTAL LAW §4A.02 (Matthew Bender Co. 2007).

⁹*Id.*

¹⁰Philadelphia was not the only American city looking towards renovating its urban center. See JULIAN GROSS ET. AL., COMMUNITY BENEFITS AGREEMENTS: MAKING DEVELOPMENT PROJECTS ACCOUNTABLE, 3-4 (Good Jobs First & The California Partnership for Working Families 2005), <http://www.goodjobsfirst.org/pdf/cba2005final.pdf>.

Over the past decade, a growing number of cities across the country have pinned their hopes for renewal on ambitious and expensive economic development programs accomplished through public/private partnerships.

By the late '90's, states, counties, and cities were spending close to \$50 billion per year on these programs...to fuel economic growth.

¹¹See generally Poindexter, *supra* note 3.

renewal efforts.¹² Unfortunately, the resulting privately-driven revitalization projects are not without consequence. Prominent among them is the risk of gentrification, which increases the cost of living, pushes current residents out of the revitalized area, and forecloses their ability to benefit from renewal projects.¹³ Of the most negative effects related to gentrification is the shrinking availability of affordable housing and the potential for discriminatory displacement of existing communities.

II. Demography and Access to Housing in Philadelphia, PA

The potential for displacement along race and class lines is especially acute in Philadelphia because of the city's unique demographic makeup. In stark contrast with the rest of the state, Philadelphia has the largest concentration of minorities in Pennsylvania and one of the largest concentrations of minority residents in the country.¹⁴ Nearly fifty percent of the city's overall population is African-American and nearly one-fourth of the city's population lives below the poverty level.¹⁵

The need for affordable housing in Philadelphia is "immense...[as] Philadelphia suffers from abandoned housing, a declining population, ... disinvested neighborhoods, [and an] ... aging

¹²In addition to the desire to clean up the city's image, many efforts to redevelop are in response to the "back to the city" phenomenon. *See generally*, GROSS ET. AL., *supra* note 10, at 4 ("For the first time in decades, many large U.S. cities are experiencing population increases, with growing populations of both middle-class 'urban-pioneers' and Latin American and Asian immigrants taking up residence in urban neighborhoods.").

¹³*See generally* GROSS ET. AL., *supra* note 10, at 4.

¹⁴*See* Robert D. Bullard et. al., *Dismantling Transportation Apartheid in the United States Before and After Disasters Strike*, 34-SUM HUM. RTS. 2, 5 (2007) (identifying cities with the largest black populations including New York, Chicago, Detroit, Philadelphia, Houston, Baltimore, Los Angeles, Memphis, Washington, DC, and New Orleans (pre-Katrina)).

¹⁵*See* Community Description section of EPA's Brownfields 2006 Grant Fact Sheet for Philadelphia, PA, <http://www.epa.gov/brownfields/06arc/philly.htm>.

housing stock.”¹⁶ In addition to the dwindling supply of decent housing for less affluent families, housing is also becoming less accessible as the costs of housing in many urban areas increasingly represents a higher percentage of household income. In fact,

[a]ccording to a [1999] study, almost 130,000 households in Philadelphia, or one out of every five households in the city, have an annual income below \$20,000 and pay more than they can afford on housing.¹⁷ More than 31,000 households live in overcrowded conditions and nearly 60,000 more affordable units of rental housing are needed in Philadelphia to meet this housing crisis. Furthermore, 17 percent of Philadelphians pay more than half of their income on housing.

The city’s socio-economic makeup and need for housing create a perfect opportunity to study the discriminatory effects of privately run initiatives and the role the government must play to ensure such initiatives do not shut out the working class.

III. Importance of Affordable Housing

According to psychologist Abraham Maslow’s philosophy on the hierarchy of human needs, the most basic human needs include food, water, air, sleep and warmth. The sleep and warmth¹⁸ needs have often been referred to together to express the need for shelter or housing. Because housing is at the foundation of the hierarchy, the housing need must be met for a person to survive, let alone achieve his or her full potential.¹⁹ Beyond the importance of shelter for individual survival, numerous studies suggest that “access to decent, affordable housing can enhance outcomes across a range of social and economic policy challenges, including education, public health, social

¹⁶PHILADELPHIA ASSOCIATION OF COMMUNITY DEVELOPMENT CORPORATIONS, WHY PHILADELPHIA NEEDS A HOUSING TRUST FUND, <http://www.pacdc.org/TrustFund/about/challenges.pdf> [hereinafter PACDC].

¹⁷PACDC, *supra* note 16.

¹⁸See JANET A. SIMONS, ET. AL., PSYCHOLOGY - THE SEARCH FOR UNDERSTANDING (West Publishing Co. 1987).

¹⁹*Id.*

services, criminal justice, and welfare reform.”²⁰

Given the critical importance of housing on individual survival and the health of the entire community, some suggest that access to housing is a fundamental right that should be protected by the government. International law endorses the “right to housing” through article 11 of the International Covenant on Economic, Social and Cultural Rights²¹ which upholds “the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.”²² The Covenant goes on to explicitly highlight the importance of affordability in housing by declaring that “[p]ersonal or household financial costs associated with housing should be at such a level that the attainment and satisfaction of other basic needs are not threatened or compromised.”²³

While the federal government has not gone so far as the United Nations position, there are indications that the United States has also recognized the importance of access to housing toward promoting the general public welfare. For example, the government formally recognized the im-

²⁰MacArthur Foundation Program on Human and Community Development website, available at <http://www.macfound.org> (last visited December 7, 2008). *See also* TOM CARTER & CHESYA POLEVYCHOK, HOUSING IS GOOD SOCIAL POLICY, at v (2004), available at http://www.cprn.org/documents/33525_en.pdf

Housing also has many attributes that are influential in people’s lives: physical, financial, locational, spatial, psychological and environmental. Although none of these attributes in themselves are automatic justification for government assistance and intervention in housing they do illustrate that there are many aspects of housing that can be instrumental in the health and well-being of individuals and communities, in the successful operation of the economy and in many aspects of the social and cultural attributes of society.

²¹International Covenant on Economic, Social and Cultural Rights is a multilateral treaty adopted by the United Nations General Assembly on December 16, 1966. It is part of the International Bill of Human Rights, along with the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. *See generally* International Covenant on Economic, Social and Cultural Rights, art. 11, Dec. 16, 1966, 993 U.N.T.S. 3 [hereinafter ICESCR].

²²ICESCR, *supra* note 21, art. 11(1).

²³ICESCR, *supra* note 21, art. 11(8)(c).

portance of access to housing for every citizen with the passage of the Fair Housing Act (“FHA”).²⁴

The FHA prohibits discrimination in the sale and rental of housing and in the provision of housing services and facilities on the basis of race, color, religion, national origin, sex, handicap, or familial status.²⁵ Claims brought under the FHA reveal that “a plaintiff’s showing of discriminatory effect in the absence of proof of an invidious purpose is sufficient for a finding of a FHA violation” in some cases.²⁶ Thus, “[i]t is [arguably] possible to establish a prima facie case under...the Fair Housing Act challenging a condemnation that disproportionately displaces minority residents.”²⁷ This is particularly true in a city like Philadelphia where the intersection between class and race is so pervasive that the private conversions of land uses into high end residential units often has the effect of displacing large numbers of black and Hispanic residents.

IV. BID Expansion - Center City District of Philadelphia

One key contributor driving revitalization efforts in downtown Philadelphia is the Center City District. The Center City District describes itself as a “business-led organization that work[s] ...to enhance the competitiveness and attractiveness of Philadelphia’s downtown.”²⁸ The Center City District is an example of an emerging quasi-governmental entity known as the business improvement district (“BID”). BIDs are nonprofit entities that are authorized by state law and are created by property owners in a designated area who voluntarily agree to pay special assessments to

²⁴See generally 42 U.S.C. §§ 3601 et. seq.

²⁵Edward Imperatore, Note, *Discriminatory Condemnations and the Fair Housing Act*, 96 Geo. L.J. 1027, 1040 (2008).

²⁶Imperatore, *supra* note 25, at 1042-43.

²⁷*Id.*

²⁸Center City District/Central Philadelphia Development Corporation of Philadelphia website available at <http://www.centercityphila.org/> (last visited October 31, 2008). “The Center City District (CCD) and Central Philadelphia Development Corporation (CPDC) share a common mission: to enhance the vitality of Center City Philadelphia as a thriving 24-hour downtown and a great place to live, work or have fun. The Central Philadelphia Transportation Management Association (CPTMA) works to make travel within Center City efficient, reliable, pleasant and safe. The organizations are governed by separate boards of directors (CCD, CPDC), but share a common staff and offices.” *Id.*

the BID “over and above their ordinary municipal taxes.”²⁹ The special assessment funds are used to provide “supplemental services” within the BID area that would typically be provided by local governments such as capital improvements, “security, sanitation, and street maintenance.”³⁰ BIDs are generally created when property owners and businesses in an area believe the municipality is unable to meet their basic municipal needs.³¹

Proponents tout BIDs for their overall efficiency and ability to maintain a clean and safe public appearance that attracts residents and visitors.³² Despite these benefits, however, BIDS are not without criticism.

First, the political influence in a [BID] is usually directly proportional to the value of one's property, thereby violating the democratic principle of one-person, one-vote. Second, BIDs increase the impact of the already powerful business community on local government. Finally, BIDs, as private, nonprofit organizations, may be able to circumvent the constitutional provisions that require local governments to protect the civil liberties of their citizens.³³

Because of their very structure, as “special purpose” governments, BIDs have been used to evade “state constitutional limits on local governments' discretion to issue bonds or raise taxes.”³⁴ Furthermore, “[t]hese entities, which often take part in the public-private partnership for development, ...make significant portions of public decision making private, [thereby immunizing them from]

²⁹Kessler v. Grand Central District Management Association, Inc., 158 F.3d 92 (2d Cir. 1998) (finding Business Improvement Districts to be special limited purpose governmental entities). See Mark S. Davies, *Business Improvement Districts*, 52 WASH. U.J. URB. & CONTEMP. L. 187, 225 n.2 (1997) (for a list of different state statutes that authorize BID creation). “The International Downtown Association estimates that more than 1,000 BIDs currently operate throughout the United States.” BID Description and Benefits, reStore DC website, available at <http://www.restoredc.dc.gov> (last visited December 16, 2008).

³⁰RICHARD BRIFFAULT & LAURIE REYNOLDS, CASES AND MATERIALS ON STATE AND LOCAL GOVERNMENT LAW 145 (6th ed. 2004).

³¹David J. Kennedy, Note *Restraining the Power of Business Improvement Districts: The Case of the Grand Central Partnership*, 15 YALE L. & POL'Y REV. 283, 287 (1996).

³²See Amnon Lehavi, *Mixing Property*, 38 SETON HALL L. REV. 137, 188 (2008).

³³MARGARET KOHN, BRAVE NEW NEIGHBORHOODS: THE PRIVATIZATION OF PUBLIC SPACE 85 (2004).

³⁴Audrey G. McFarlane, *Putting the “Public” Back Into Public-Private Partnerships for Economic Development*, 30 W. NEW ENG. L. REV. 39, 43 (2007) [hereinafter *Putting the Public Back*].

public accountability.”³⁵

V. The Impact of BIDs and Gentrification on the Availability of Affordable Housing

One of the potential negative effects of BIDs, and privately driven urban renewal efforts generally, is their effect on the availability of affordable housing and resident displacement.³⁶ For one, the voting structure in BIDs, which effectively excludes non-property owners, makes it difficult for renters to participate and voice their concerns over decisions that directly impact them.³⁷ For example, they are unable to participate in decisions concerning the costs of supplemental services and their willingness or ability to pay for those costs.³⁸ Another problem is that property owners typically pass on the extra BID assessments to their tenants, which results in upward pressure on rents.³⁹

Along the same lines, BIDs generally focus their marketing and promotion efforts on attracting affluent residents and visitors to the BID area.⁴⁰

What ...cities have found is that the only economically-viable strategy is to turn themselves into destinations. Cities throughout the United States and the world place

³⁵Putting the Public Back, *supra* note 34.

³⁶“Urban renewal refers to the process by which municipalities, in conjunction with developers, target sections of a city regarded as low-income, barren, and/or blighted and redevelop those areas in order to--among many reasons--increase property values and attract higher-income individuals to the city.” Michèle Alexandre, “Love Don't Live Here Any-more”: *Economic Incentives For A More Equitable Model Of Urban Redevelopment*, 35 B.C. ENVTL. AFF. L. REV. 1, 3 (2008). James Geoffrey Durham & Dean E. Sheldon III, *Mitigating the Effects of Private Revitalization on Housing for the Poor*, 70 MARQ. L. REV. 1, 13-14 (1986) (The “incidence of displacement on a national level is so significant” that “[t]here are 1.7 million people displaced every year.”).

³⁷Alexandre, *supra* note 36, at 3.

³⁸*See* Kennedy, *supra* note 31, at 292 (“[I]t is worth asking whether improved sanitation, better security, increased property values, and a more auspicious climate for business must be gained at the price of democracy and accountability.”).

³⁹I find this point particularly problematic since regular municipal taxes are supposed to be used to pay for the same types of services that the BIDs provide. In effect, one could argue that BIDs have the effect of not only “exempting” municipal governments from meeting their responsibilities to their citizens to provide municipal services, but they also have the indirect effect of “paying” the municipality for this abrogation. The municipality could use the money that it would have allocated to providing the “supplemental” services in the BID district for other purposes.

⁴⁰Putting the Public Back, *supra* note 34, at 50.

a heavy emphasis on entertainment amenities or facilities so that they may become a destination for tourists or local residents with money. The current local economic development model is an attraction strategy: To attract large business corporations... as well as certain types of people - preferably professional, upper middle class residents and tourists... The market supports, if not demands, a... shopping and entertainment experience...that is privatized and segregated by affluence, and requires the exclusion of those [who are] not.”⁴¹

Thus, despite claims to the contrary, BID supplemental services are not designed to benefit the public good or even the entire residential population within its boundaries. Rather, they are targeted to benefit certain classes of citizens. “Hence BIDs may contribute more to separatism and the privatization of government than to the common good.”⁴² And this separatism has deep roots in “structural biases based on race and class.”⁴³

VI. Inclusionary Zoning Laws – Countering the Gentrification Impact of BIDs

In a city like Philadelphia, a disproportionate number of minority residents risk displacement because of their sheer volume among the working class. Yet, the disparate impact is generally explained away with “economics.” Landlords argue that they take advantage of the hot market and rent to the highest bidder regardless of race, thus there is no intent to discriminate. That the majority of tenants end up being white, is merely a coincidence, not a plan. Furthermore, BIDs claim their activities are not to blame for private property owner transactions. BIDs also claim their “special purpose” status gives them very limited power to contract for services that are not true “government” functions. Instead, they call detractors’ attention to the “real” municipality to resolves issues like creating and maintaining affordable housing and countering discriminatory displacement.

⁴¹Audrey McFarlane, *Fighting for the High Ground: Race, Class, Markets and Development Done Right in Post*

⁴²*Katrina Recovery*, 14 WASH. & LEE J. CIVIL RTS. & SOC. JUST. 77, 90-91 (2007).

⁴³Kennedy, *supra* note 31 at 293.

Putting the Public Back, *supra* note 34, at 50.

There is truth in both the property owner and the BID arguments; however, the critique must not end with that admission for the disproportionate displacement of working class and largely minority residents should not be so casually dismissed. Though privately run, BIDs are an indirect function of municipal design in that they can only exist with state statutory approval. Furthermore, despite their limited functions, BIDs are still recognized as forms of contact governments at the sub-local level. The “real” government should in fact step in, but in doing so, it should have a more prominent role in regulating those decisions made in the BID district that have a significant and fundamental impact on all residents. By definition, the availability of affordable housing is a fundamental and significant issue so related to the general public welfare that it warrants special governmental protection.

One way to protect housing for low and moderate income residents is municipalities to enact inclusionary zoning laws which require commercial residential BID members to incorporate mixed-income units in their developments.⁴⁴ Ensuring a dedicated number of low or moderate income units would be a “more equitable solution for renters... who [most likely] stand to be displaced.”⁴⁵ Similarly, a part of the special assessment funds collected by BIDs should be earmarked for “regional affordable housing funds.”⁴⁶ This strategy would prevent BID members from shutting out less affluent residents without in some way contributing towards their replacement housing.

⁴⁴Inclusionary zoning, also known as inclusionary housing, refers to municipal and county planning ordinances that require that a given share of new construction be affordable to people with low to moderate incomes.

⁴⁵Alexandre, *supra* note 36, at 38.

⁴⁶Nancy D. Perkins, *Livability, Regional Equity, and Capability: Closing in on Sustainable Land Use*, 37 U. BALT. L. REV. 157, 184-85 (2008).

Some municipalities take this notion of inclusionary zoning a step further and have passed anti-displacement laws. Under these laws, government officials are required to “assist residents in finding alternative housing and call for the replacement of any housing which is no longer available due to redevelopment. A comprehensive assistance plan of this type would alleviate many of the immediate problems faced by these displaced residents and help prevent a future shortage of affordable housing.”⁴⁷ For example, under California law

[b]efore displacing residents, a redevelopment commission must adopt a relocation plan and ensure that comparable housing is available. Whenever housing units are destroyed or converted, redevelopment agencies are required to renovate, construct, or assist in the renovation or construction of an equal number of affordable housing units.⁴⁸

In addition to the legislative branch, courts have also recognized inclusionary zoning and mixed-income development as a solution for the indirect discriminatory impact of revitalization. For example, in *South Burlington County NAACP v. Township of Mount Laurel*,⁴⁹ the New Jersey Supreme Court equated affordable housing with integration and required mixed-income zoning in part to cure segregated housing patterns. In its conclusion, the court insightfully noted that “[a]lmost every [municipality] acts solely in its own selfish and parochial interest and in effect builds a wall around itself to keep out those people or entities not adding favorably to the tax base, despite the location of the municipality or the demand for varied kinds of housing.”⁵⁰ *South Burlington* is distinguishable from BID initiatives and private development because it centered on the invalidity of the municipality’s ordinance permitting only single-family dwellings which made it physically

⁴⁷Catherine Michel, Note, *Brother, Can You Spare a Dime: Tax Increment Financing in Indiana*, 71 IND. L.J. 457, 476 (1996).

⁴⁸Michel, *supra* note 47, at 477.

⁴⁹336 A.2d 713, 749 (N.J. 1975).

⁵⁰*Id.* at 723.

and economically impossible to provide low and moderate income housing in the town.⁵¹ Despite this distinction with respect to the *source* of the foreclosed opportunity, the rationale for and importance of ensuring the availability of mixed income housing applies by logical extension to BID area private development where the outcome is often the same.

VII. Conclusion

Though private initiatives such as BIDs play an increasingly integral role in urban revitalization, the government cannot abrogate its affirmative responsibility to meet the needs of the least among us.⁵² At a minimum, the government has a duty to act in a way that promotes the “public health, safety, morals or the general welfare” of all residents regardless of income.⁵³ Access to affordable housing is essential to the general welfare. By incorporating aspects of inclusionary zoning laws in BID governance, municipalities can ensure that the benefits of BIDs are not lavished only on the wealthy, that working class minority residents are not pushed out of their communities, and that working class residents are able to live in an affordable home.

⁵¹*Id.* at 716.

⁵²*Id.* at 734.

⁵³*Id.* at 725.

DONOVAN APPOINTED U.S. HUD SECRETARY



HUD Secretary Sean Donovan

On January 26, 2009, Shaun Donovan was sworn in as the 15th United States Secretary for Housing and Urban Development. He has devoted his career to ensuring access to safe, decent, and affordable housing nationwide, and will carry on that effort in the Obama Administration. Secretary Donovan believes that America's homes are the foundation for family, safe neighborhoods, good schools, and solid businesses, and that housing represents and confers stability - a base from which to raise America's children. He joins HUD with the commitment to make quality housing possible for every American.

Secretary Donovan previously served as Commissioner of the New York City Department of Housing Preservation and Development (HPD). When he became Commissioner of HPD in early 2004, Shaun Donovan engaged the agency in a top-to-bottom strategic planning process.

This resulted in new and innovative policy and programmatic solutions, and better measurement of results. During his service, HPD's New Housing Marketplace Plan to build and preserve 165,000 units of affordable housing was the largest housing plan in the nation.

Before his service as HPD Commissioner, Secretary Donovan worked in the private sector on affordable housing portfolios, and was a visiting scholar at New York University, where he researched and wrote about the preservation of federally-assisted housing. He was also a consultant to the Millennial Housing Commission on strategies for increasing the production of multifamily housing. The Commission was created by the United States Congress to recommend ways to expand housing opportunities across the nation.

Secretary Donovan rejoins HUD after his previous service as Deputy Assistant Secretary for Multifamily Housing, where he was the primary federal official responsible for privately-owned multifamily housing. At that time, he ran housing programs that helped 1.7 million families access affordable housing. He also served as acting FHA Commissioner during the presidential transition.

Prior to his first service at HUD, he worked at the Community Preservation Corporation (CPC) in New York City, a non-profit lender and developer of affordable housing. He also researched and wrote about housing policy at the Joint Center for Housing Studies at Harvard University and worked as an architect. Secretary Donovan holds Masters degrees in Public Administration and Architecture from Harvard University.

Fair Housing and Equal Opportunity (FHEO): Recent Enforcement Activity

HUD v. Robert W. Hill, Roger Thuot and the Fitchburg Housing Authority

HUD has charged Robert W. Hill, Roger Thuot and the Fitchburg Housing Authority, Massachusetts, with violation of the Fair Housing Act. The Complainant is a person with disability who has multiple sclerosis and a depression/anxiety disorder. After numerous complaints to the Fitchburg Housing Authority regarding the excessive noise from and the hostile behavior of her neighbor, the Complainant requested a transfer to another apartment. The transfer request was denied.

HUD v. Warren Properties, Inc., Laurie Weaver and Evelyn Graves

HUD has charged Warren Properties, Inc., Laurie Weaver and Evelyn Graves, Mobile, Alabama, with refusing to grant a reasonable accommodation to a person with a disability. Complainant requested a transfer from a second floor unit to a first floor unit due to her mobility impairment.

Robert N. Leather v. Florence Tollgate Condominium Associates

HUD has charged the Florence Tollgate Condominium Association (FTCA), in Florence, New Jersey, with violation of the Fair Housing Act based on familial status. FTCA's occupancy policies limited the number of persons who may live in one and two-bedroom units; therefore, these policies limited or excluded families with children from residing in the Florence Tollgate Condominium.

Sec. V. Williams

HUD has settled a case charging two Tallassee, Alabama, landlords with violating the Fair Housing Act for making discriminatory statements and forcing white tenants to move out of their rental property after the landlords had noticed the couple talking with African-American neighbors in the property's front yard. Then landlords will pay \$63,000 to settle the case.

HUD investigates complaints of housing discrimination based on race, color, religion, national origin, sex, disability, or familial status. At no cost to you HUD will investigate the complaint and try to conciliate the matter with both parties. To find out more about the process and to read about additional enforcement activity charges, please go to:

<http://www.hud.gov/offices/fheo/enforcement/2008hudcharges.cfm>

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