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THE NEED TO PRIORITIZE THE AFFIRMATIVE FURTHERING OF FAIR HOUSING: A CASE STATEMENT

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I. INTRODUCTION

The affirmative furthering of fair housing involves racially and economically pro-integrative policies and programs to produce structural changes that expand housing choices and improve individual opportunities.

Housing segregation has been a foundational force perpetuating inequality in American metropolitan communities. The geography of racial segregation has enabled, exacerbated, or reinforced nearly every urban dilemma. The spatial structure of racial housing patterns correlates closely with patterns of school quality, employment opportunities, infrastructure investment, and health quality among other opportunity and quality-of-life factors.

In 1968, Congress passed the Fair Housing Act (the “Act”) in large part to address the inequality and injustices that resulted from our segregated cities and suburbs. The Act’s principal authors, Senators Mondale and Brooke, both explicitly

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3 Id.


stated that integration was a goal of the Act. Passage of the Act was hastened by the reports of extreme inequality reported by the Kerner Commission and the riots following the assassination of Rev. Dr. Martin Luther King, Jr.

Over the forty years since the passage of the Act, the fair housing movement has certainly made important progress toward ensuring the rights of individuals in their search for housing. Most significantly, systemic victories against lending and insurance redlining have improved the access to these services for people of color and other protected persons. In addition, random and systemic audits of real estate companies have provided gradual improvement in the expansion of homeownership locations available to protected persons.

Unfortunately, these gains over the first forty years of fair housing advocacy have had limited impact on improving the integration of metropolitan communities. Differing segregation measurements show that communities throughout the United States continue to suffer from high segregation. In many regions, while change occurs it often creates short-term integration that is replaced in short order by re-segregation. Common examples include gentrifying neighborhoods in central cities and suburban municipalities that experience increases in minority population. In the vast majority of these cases, increased diversity is followed by re-segregation that is due to displacement or flight.

This continual changing structure of segregation is due in part to the fact that in 1968, when the Act passed, American cities were segregated in a way that privileged whites over people of color in nearly every quality of life measurement. Moreover, the most significant systemic victories (or their remedies) did not begin to manifest until the 1980s. The utility of these victories had a limited scope as well. They

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6The Act passed one week following Dr. King’s assassination.
10For instance, U.S. Census Historical Income Table H-5 shows median household income for whites was $8,062 and only $4,754 for blacks. High school graduation rates were 84.6% for whites and 64.3% for blacks. James J. Heckman & Paul A. LaFontaine, The American High School Graduation Rate: Trends and Levels Discussion Paper No. 3216, Institute for the Study of Labor (Dec. 2007). The homeownership gap between blacks and whites was 23.44% in 1970. William J. Collins & Robert A Margo, Race and Home Ownership: A Century-Long View, Working Paper No. 00-W12, Department of Economics, Vanderbilt University (May 2000).
11For instance, the remedies from Hills v. Gautreaux, 425 U.S. 284 (1976), began their implementation in the 1980s. The major systemic lending and insurance cases were decided in the 1980s and 1990s.
provided significant change in industries that were relatively centralized (insurance, mortgage lending, and public housing). The majority of the housing market, including the rental and sales industries, involves a tremendous number of decentralized actors including tens of thousands of property owners, property management companies, and real estate agents. The systemic investigation and litigation remedies that affected positive change in lending, insurance, and public housing will not work in the more fundamental sectors of the housing industry involving renting or buying a home. Indeed, regarding rentals, the Housing Discrimination Surveys undertaken by HUD in the 1970s, 80s and 90s showed no reduction in the rate of discrimination against African Americans and Latinos.

Inconsistent enforcement and diminutive resources also reduce the probability of systemic improvement in the rental and sales arenas. In fields with large numbers of individual actors, a more consistent and rigorous enforcement model is necessary. Given that HUD’s Office of Fair Housing and Equal Opportunity is chronically understaffed, under-funded, and marginalized within the HUD structure, federal enforcement has been inconsistent and soft. Reluctance on the part of the Department of Justice to file fair housing cases exacerbates this problem.

Meanwhile, funding for private non-profit fair housing agencies is so small that fewer than half of all organizations working on fair housing can hope to receive funding in any particular year. This has resulted in the closure of a number of important and effective organizations, including some that have resulted in entire states and metropolitan regions forgoing private fair housing enforcement.

Another hope lost was that an increase in the African American middle class would produce greater integration and reduced discrimination. Studies consistently show that wealthy African Americans are more isolated than poor whites. (It should be noted that personal decisions to abandon the goals of integration and instead move to predominantly minority enclaves has also slightly deterred integration efforts.) Furthermore, while Asians and Latinos have experienced greater success than African Americans regarding integration with whites, housing


13Schwemm, supra note 12, at 456-57.


professionals continue to steer Asians and Latinos to ethnic enclaves. Additionally, for those persons with limited English proficiency, in many suburbs this serves as an impediment to fair housing choice.

II. AFFIRMATIVE FURTHERING IS NECESSARY FOR METROPOLITAN STRUCTURAL CHANGE

In their HUD-funded landmark study of neighborhood diversity, Philip Nyden, John Lukehart, Michael Maly, and William Peterman found that the most stable diverse communities have “developed the institutional structures, social arrangements, and political-social environment to sustain their diversity.” Included among the activities are efforts to promote positive perceptions of diverse communities, affirmative marketing programs that seek to encourage inclusiveness, and active promotion of the goals of fair housing. They conclude that stable diverse neighborhoods will not develop on their own; they require active intervention to counter misconceptions about diversity and a lack of institutional support for diversity.

HUD and the fair housing community have largely failed to embrace the need to support community organizations that will affirmatively further fair housing in ways that foster and improve integration. Instead, fair housing programming has focused almost entirely on enforcement strategies. This is reflected in the language of the most stable federal funding for fair housing activities, the Fair Housing Initiatives Program (FHIP), which makes no mention of affirmative furthering or integration efforts in its fundable activities. It focuses solely on enforcement efforts through either investigation or education and outreach. This failure makes it nearly impossible for organizations focusing on pro-integration strategies to receive funding via FHIP.

At the same time, HUD does little to enforce its most important public sector tool to encourage integration—the mandate via the Fair Housing Act’s affirmative furthering clause for Community Development Block Grant entitlement jurisdictions and their sub-grantees (EJs) to affirmatively further fair housing. In many cases, the only activities EJs engage in are poster contests for children or leaving fliers at


18Id.


20Id. at 18.

21Id. at 13.


23Id.

libraries and municipal offices—activities that are not affirmative. Under current
law and regulation, this failure to affirmatively further fair housing and overcome
impediments to fair housing choice is illegal and should disqualify the EJ from
receiving funds. Yet, HUD has never denied funding to an EJ because of such a
failure. Indeed, it has rarely required an EJ to begin actively pursuing integration
efforts rather than passively and quietly undertaking ineffective activities.
Incidence of affirmative activities such as promoting a community to underserved
populations, establishing an active fair housing commission or sub-commission,
gathering a substantive diversity task force, or encouraging pro-integrative policies
in their planning and development processes are extremely rare.

This is all the more tragic given that the academic literature on the subject of
improving regional integration overwhelmingly supports the effectiveness of
intentional programs. Cleveland State University professor Dennis Keating provides
the most direct statement regarding neighborhood and community integration. In his
study of racial change in Cleveland’s suburbs (including Shaker Heights), Keating
explicitly frames his argument around the statement that, “[t]o achieve the goal of
community integration, affirmative housing policies are required.” Others concur
and/or provide evidence that integration cannot be achieved solely through
enforcement activity.

Keating and others come to this conclusion because they are aware of the
limitations of fair housing enforcement techniques. The reactive nature of fair
housing enforcement provides a number of restrictions to effective engagement in
integrated communities. This begins with the fact that national estimates figure that
less than one percent of discrimination complaints are reported. Further frustration
occurs when complaints are reported and referred to HUD or local agencies. It takes
an inordinately long time to remedy complaints, deterring many victims of
discrimination from completing the process. The process results in few remedies in
a fragmented fashion that have little effect on the structure of inequality. Thus,
enforcement has proven a poor tool to affect structural change. Most importantly,
complaint-based fair housing efforts have absolutely no effect on the most persistent
obstacle to the affirmative furthering of fair housing and integrated communities—
whites’ avoidance of communities of color.

Because enforcement is based on providing remedies to the denial of rights, the
bulk of fair housing enforcement addressing racial and ethnic integration hardly ever
involves whites. This results in a perception of fair housing policy as an adversarial

venture. In particular, housing industry professionals view fair housing advocates skeptically, reducing the possibility for frank discussion and collaborative strategies. This situation limits collaborative and cooperative partnerships that have the potential to expand housing options available to people of color and other protected persons.

On the contrary, affirmative furthering is aspirational and inclusive. In communities with goals of promoting and sustaining diversity and integration, housing advocates and housing professionals often work in tandem to encourage a housing market that is open to all. Furthermore, residents of these communities view diversity and integration of their neighborhoods, schools, and governments as positive developments.

III. RACIAL ATTITUDES TOWARD INTEGRATION

This change in approach is not only a means in and of itself but is also important in the effort to change racial attitudes toward integration. The reluctance of whites to live in communities of color is in continuous opposition to integration through at least three distinct processes. The best known of these three is white flight, in which white residents leave communities when minority populations increase in their neighborhood or community. A second, more benign process is white avoidance, where whites refuse to consider moves to predominantly minority communities. A third process is gentrification, where communities seem integrated for a short period as whites begin to move into communities that become newly desirable. In time, the gentrification pressures displace minority residents partly due to economic circumstances in which the average wealth in white households is approximately ten times the average wealth of minority households.

In all these cases, attitudes toward racial integration play a primary role. University of Pennsylvania professor Camille Zubrinsky Charles has conducted extensive research into racial housing preferences. In a multi-city survey, Charles found that only 45% of whites are willing to move into a neighborhood that is one-third black and fewer than 30% of whites would consider moving into a neighborhood that is majority black. Latinos and Asians have similar attitudes toward black neighborhoods, always finding them to be the least desirable of any racial makeup.

Likewise, professor Lincoln Quillian of Northwestern University analyzed data from the Panel Study of Income Dynamics (matched data from multiple censuses) and found that whites are very reluctant to move into a census tract where the percentage of African Americans is higher. Over a period of decades, Quillian shows that whites continuously chose moves to neighborhoods with smaller percentages of African Americans.


Id. at 241-47.


Id. at 211-20.
These negative attitudes are not necessarily based on explicit racial prejudice. In many cases, they are indicative of knowledge gaps that perpetuate misperceptions and misconceptions about minority neighborhoods. In 2004, UIC professors Maria Krysan and Tyrone Forman found that people of all races are poorly informed of neighborhoods and communities where they are not in the majority. Particularly, whites were the most likely to not know about communities where they were not in the majority.33

As Nyden, Lukehart, Maly, and Peterman state, concerted efforts to promote integration and overcome negative attitudes toward perceived minority neighborhoods are necessary even in communities where diversity is a community value.34 In 2002, professors Evan McKenzie and Jay Ruby wrote an article chronicling their revisiting of integration strategies in Oak Park, Illinois.35 Oak Park is a model for promoting meaningful and lasting community integration.36 The authors concluded that, even in a community where diversity and integration are values, the programs should continue.37 In particular, the section regarding the primary community organization implementing the affirmative policies, the Oak Park Regional Housing Center, concludes that:

[T]he reason for its creation has not changed. White people are reluctant to rent in neighborhoods where there are a significant number of black tenants . . . . If Oak Park is to continue to realize its goal of dispersed integration then the Center will have to continue to induce white demand in East Oak Park.38

The research for McKenzie and Ruby’s article included Ruby volunteering to spend time as the receptionist for the Oak Park Regional Housing Center, when he discovered that “white clients who knew almost nothing about Oak Park arrived at the Center convinced they knew where the ‘bad’ places to live are located.”39

Regardless of how these attitudes are shaped, it is important to note that the work of integration cannot be solely the responsibility of people of color and others protected by the Act. Moreover, accomplishing integration requires more than enforcing the limited number of complaints filed. True affirmative furthering of fair housing necessitates the promotion of diversity as a value and the participation of whites in integration efforts.

33 Tyrone Forman & Maria Krysan, Racial Segregation in Metropolitan Chicago Housing, 20 INST. OF GOV’T AND PUB. AFF. 1, 3 (2008).
34 Nyden et al. supra note 24, at 9.
36 Id. at 2.
37 Id. at 30.
38 Id.
39 Id.
IV. AFFIRMATIVE FURTHERING, INTEGRATION, AND STRUCTURAL CHANGE

America’s metropolitan regions are defined by housing patterns of racial, ethnic, and economic segregation that are harmful to everyone. Promoting integrated communities would stimulate positive changes to improve affordable housing dispersion, balanced economic development, equitable school improvement, and sustainable growth patterns. The geographies of housing segregation and regional inequality correlate nearly one-to-one. This pattern was first confirmed by the Leadership Council for Metropolitan Open Communities in its 2005 report *The Segregation of Opportunities* and has been repeatedly confirmed in other metropolitan regions across the nation. The prioritization of affirmative furthering policies and programs will also ameliorate additional structural forces of inequality. Housing is the foundational structure of metropolitan regions. Integrating the housing market will inevitably change other institutional configurations.

Not only do municipalities mostly fail to engage in affirmative activities, there is also a lack of regional or inter-municipal programs to address segregation that also hampers pro-integration advocacy and policy. In particular, the decision in *Milliken v. Bradley* (and the recent decisions from the Roberts Court) is significant. Despite its content relating to school desegregation, the Supreme Court’s decision to limit the ability to address inter-municipal remedies to school segregation played an important role in perpetuating the geography of inequality that exists in every American metropolis today. The Supreme Court’s denial of nearly all remedies for educational integration should urge integration advocates to focus on housing—integrated housing patterns will result in integrated schools. And, the Supreme Court upheld the need for regional efforts to improve housing integration in *Hills v.*


41 See generally id. at 497-500 (discussing effects on schools, job availability, earnings, access to services, and limits on social mobility).

42 John Lukeheart, Tom Luce & Jason Reece, *The Segregation of Opportunities, A Report of the Leadership Council for Metropolitan Open Communities* (2005), http://www.luc.edu/curl/lcmoc/documents/segregation.pdf. These studies are catalogued at Ohio State University’s Kirwan Institute on Race and Ethnicity and include analyses from Baltimore and Austin.


46 See id. at 745.
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Gautreaux (argued subsequent to Milliken). Recent lower court decisions in Walker and Wallace confirm the need for regional integration efforts in housing.

V. PROACTIVE MODELS OF INTENTIONAL INTEGRATION AND AFFIRMATIVE FURTHERING

Clearly, the federal government and the fair housing community have had limited success in promoting integration because of a reactive strategy that fails to provide models of inclusion or leadership on affirmative measures. This is partly due to HUD, Congress, and the Executive forsaking the clearly worded, concisely stated, and broadly applicable language of the Fair Housing Act and the lack of affirmative furthering language in the Community Development Act language that is supported by the record of statements made by the Act's primary authors, Senators Brooke and Mondale. However, it is also significantly the result of a lack of imagination and innovation in fair housing advocacy (an understandable situation given the diminutive and precarious funding and support for fair housing activities).

In cases where integration, opportunity, and inclusion come together, an intentional effort to be proactive has occurred and in some cases continues to occur. The best known of these programs are located in the Chicago region—the voucher-oriented Gautreaux program and the market-oriented Oak Park Regional Housing Center. Chicago continues to provide further innovation on this subject including a new start-up organization called MoveSmart.org, a regional non-profit that aims to expand housing choices by reducing knowledge gaps that perpetuate segregation.

However, similar programs exist in other communities, such as the Inclusive Communities Project in the Dallas/Fort Worth region, the Heights Community Congress in Cleveland's southeast suburbs, and the Maplewood/South Orange Community Coalition in New Jersey. Organizations have also urged for affirmative programs nationally including the Fund for an OPEN Society and the Poverty and Race Research Action Council, as have esteemed academic institutes such as the University of Minnesota's Institute on Race and Poverty, Ohio State's Kirwan Institute on Race and Ethnicity, and the Civil Rights Project housed at UCLA.

These affirmative programs promote positive structural change by:

- **Increasing opportunity and reducing inequality**—integrating the housing market affects every local and regional institution. Integrated housing markets create integrated school systems, workforces, and civic institutions.
- **Involving participants of all races and incomes**—integration includes people of all races considering moves to communities where they are underrepresented based on rational decisions that benefit them.

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49 42 U.S.C. 3616a (West 2009).

50 114 Cong. Rec. 3422 (1968).
Engaging the housing industry – affirmative programs seek cooperation with the housing industry to promote common benefits of an open housing market and strong demand.

Promoting and sustaining the value of diversity – people living in integrated neighborhoods place a greater value on diversity. This results in multiplier effects as they value diversity in government, work, and recreation.

Fostering diverse leadership – diverse communities generate diverse leaders who learn to interact with a variety of different people. These leaders also learn to deal with new challenges by listening to multiple viewpoints.

Cultivating a sense of common purpose – as diverse communities develop, residents feel a sense of common purpose that often supersedes racial and class tensions. Residents learn about one another and gain pride in their success at providing an inclusive community.

Reducing incidences of discrimination – affirmative programs expand housing choices and increase diversity. Housing seekers are informed of their rights prior to their search. Community organizations and residents self-monitor their neighborhoods for steering and discrimination.

Preparing children for adulthood – children growing up in diverse communities are better prepared for the diverse society they will encounter as adults. As our children enter diverse universities and workforces, they will be better prepared to interact and form lasting relationships with their classmates and coworkers.

To realize these benefits, the Integration Agenda Coalition provides the following policy recommendations:

1. Increase Fair Market Rent (FMR) values to levels that truly allow for mobility and choice in the Housing Choice Voucher Program. Currently, FMRs do not provide enough income for Voucher holders to make affirmative moves to high-opportunity communities. This limitation perpetuates concentrations of poverty by limiting Voucher holders options to low and moderate-income neighborhoods and communities.

2. Improve site selection criteria to encourage affirmative furthering in public and subsidized housing programs. The Treasury Department should revise its regulatory requirements to promote affirmative efforts to utilize Low Income Housing Tax Credits for units in higher-income communities. HUD should reinstate site selection criteria for HOPE VI developments to encourage sites in higher-opportunity neighborhoods. HUD should also revisit its Deconcentration Rule to link racial desegregation and income deconcentration.

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51 This set of initiatives is from my original work as founder of the Integration Agenda Coalition.
allowing for inter-jurisdictional approaches and solutions. These steps will ensure that the federal government abides by its duty to affirmatively further fair housing in all of its programs and encourage racial and economic integration in the housing market.

3. Aggressively enforce the obligation of Community Development Block Grant (CDBG) recipients and sub-recipients to affirmatively further fair housing through substantive efforts that show measurable results. HUD could have a tremendous positive impact on improving integration by sanctioning CDBG recipients that fail to affirmatively further fair housing at the local level. Requiring active (rather than approving passive) activities will result in improved progress toward integration.

4. Amend the Fair Housing Act to include source of income as a protected class. Source of income, like familial status before it, serves as a proxy for race and national origin discrimination. This fact in combination with the greater subtlety and sophistication of discrimination provides a loophole that enables racial and ethnic discrimination. Moreover, source of income discrimination encourages concentrations of poverty as Voucher holders and others find their choices limited through outright refusals to provide housing based on income sources.

5. Triple the funding for the Fair Housing Initiatives Program (FHIP) and include affirmative activities as a dedicated funding category. FHIP has been woefully underfunded for over a decade, creating a lottery-type atmosphere that has caused the closure of dozens of valuable fair housing organizations that rely on FHIP funding. In addition, the guidelines regarding FHIP-eligible activities are limited and out of date, making it difficult for organizations operating affirmative programming to qualify for FHIP funding.

6. Revise regulations of the Community Reinvestment Act (CRA) to credit institutions that provide products, services, grants, and investments that enable moves by low and moderate-income persons to high-opportunity communities. CRA would be more effective if it worked to both attract capital into low and moderate-income communities and facilitate low and moderate-income moves to higher-opportunity communities. Specifically, the lending test could provide credit for mortgage products that help low and moderate-income borrowers make upwardly mobile moves to opportunity areas.

7. Revise the Home Mortgage Disclosure Act (HMDA) to provide data regarding the origin and destination of all mortgages.
HMDA should report data of where borrowers originated in addition to where they purchase a home. This would help track the ability of low and moderate-income households to make affirmative moves through the home purchase process.

Prioritizing affirmative—pro-integrative—measures will add a sorely missing component to fulfilling the rights of all persons guaranteed under the Fair Housing Act as well as promote a structure of equal opportunity in our metropolitan regions that will assist in ameliorating nearly all other metropolitan problems. Forty years after the Fair Housing Act, it is time we embraced the full spirit and intent of the law.