Washington and Lee Journal of Civil Rights and Social Justice

Volume 30 | Issue 2 Article 9

Spring 2024

More Harm than Good: How State-Sponsored Gentrification Is Driving the Affordable Housing Crisis, and a Call for Accountability and Source-of-Income Protections

Tolly Maloney
Washington and Lee University School of Law, maloney.t24@law.wlu.edu

More Harm than Good: How State-Sponsored Gentrification is Driving the Affordable Housing Crisis, and a Call for Accountability and Source-of-Income Protections

Tolly Maloney*

Abstract

The affordable housing crisis in the United States stands at the center of conversations surrounding economic, social, and political reform. The inability of millions of Americans to afford a safe place to live is the result of decades of legislation aimed at fiscally benefitting the individuals developing and managing properties labeled "affordable" as opposed to placing low-income Americans in suitable, long-term housing. This Note argues that state-sponsored gentrification, paired with ineffective housing assistance programs and discrimination, is driving the affordable housing crisis in the Commonwealth of Virginia. This Note studies several policy examples of state-sponsored gentrification in Northern Virginia, Richmond, and Hampton Roads before analyzing the assistance programs that are unable to function alongside the rapid rise in the cost of living. These policies and programs, in turn, result in source of income discrimination for program participants. This Note concludes by calling for a restructuring of affordable housing at a high policy level in addition to the passage of the Fair Housing Improvement Act.

* Candidate for J.D., May 2024, Washington and Lee University School of Law. I would like to thank my friends and family encouraging me these past several months. I extend my deepest gratitude towards my Faculty Note Advisor, Professor Kish Parella, for her thoughtful feedback and aid in both research and writing. Finally, I would like to thank my Note Editor, Kaitlyn Barciszewski, for her detailed edits and kind words of encouragement.

Table of Contents

I. *Introduction*

On any given night in 2022, approximately 582,000 Americans did not have a place to call home.[1] Only 60% of those Americans had access to a shelter,[2] and 28% of those Americans did so as a part of a family with at least one minor child.[3] Homelessness has plagued the United States for decades, and the reasons for each individual's homelessness varies significantly. Despite the operation of dozens of assistance programs sponsored by state and federal government to assist the housing insecure, little improvement has been made.[4] Closing this gap is not just a matter of offering more money or adding beds to shelters; it is a matter of addressing the systematic displacement of low-income Americans into a discriminatory housing market veiled as economic redevelopment. This gap is more than an issue — it is a crisis.

Lisa Beaty and Kim Hilton exemplify this crisis. Within one year, the couple was forced to make the impossible decision to leave their three-bedroom rental home in Columbia Falls, Montana after an investment company purchased the property and increased the rent from $1,000 to $1,800, excluding utilities.[5] Lisa, aged sixty-four, and Kim, aged sixty-eight, had been partners for seven years and were both financially reliant upon disability benefits and Medicare, with a combined monthly income of only $1,500.[6] With a rent of $1,800, an income of $1,500, and the inability to re-enter

---

1. *See* TANYA DE SOUSA ET AL., THE 2022 ANNUAL HOMELESSNESS ASSESSMENT REPORT (AHAR) TO CONGRESS 2 (2022) (demonstrating a slight increase between 2020 and 2022 in the overall number of people experiencing homelessness) [perma.cc/2WZ9-B2J6].

2. *Id.* at 11.

3. *Id.*

4. *See id.* at 12 (reporting only a 10% decrease in the number of people experiencing homelessness on any given night in 2022 compared to in 2007).

5. *See* Aaron Bolton, *More Older Americans Become Homeless as Inflation Rises and Housing Costs Spike*, NAT'L PUB. RADIO (Nov. 10, 2022, 7:01 AM) (chronicling a couple's displacement as the result of gentrification and the affordable housing crisis in the United States from the perspective of Americans over the age of sixty) [perma.cc/U5PF-Q8VJ].

6. *Id.*

the workforce, the couple was forced out of their home.[7] Not only did they lose their home, but they also lost one another; Lisa relocated to her daughter's home and Kim was faced with only one option: living in his truck as a Type 2 diabetic until one of the very few assisted living facilities nearby had a vacancy.[8]

No job was lost, no savings blown, and no life-altering missteps led to the displacement of this couple. They are the product of a nationwide affordable housing crisis that is the result of, among other things, the rapid increase in the cost of living in areas once affordable to lower income individuals. Lisa and Kim are representative of the millions of Americans who are severely cost-burdened by their housing and forced to make challenging decisions while navigating the complex network of federal, state, and local assistance programs. The ability of an investor to purchase a property in a low-income area and increase the rent by eighty percent within one year[9] does not signal a greedy landlord — It signals deep seeded legislative failure.

This Note argues that state-sponsored gentrification, that is, state and federal tax incentives that cause the displacement of low-income individuals, is one of the causes of Virginia's affordable housing crisis and advocates for a shift in policymaking strategy and source-of-income protections as a solution to the problem. Part II begins by introducing the three-prong problem that this Note seeks to address: gentrification, the affordable housing crisis in Virginia, and the use of place-based polices. The analysis of the affordable housing crisis in Virginia focuses on what is known as the Urban Crescent: Northern Virginia, Richmond, and Hampton Roads, to highlight what the problem looks like in different areas of the state. Following the analysis of the crisis in Virginia, this Part will then look at three place-based policy examples to demonstrate how the policies, when combined with gentrification, create an affordability crisis that in turn displaces low-income Virginians. Part III of this Note first offers necessary background

---

7. *Id.*

8. *See id.* ("The stress of the ordeal caused them to end their relationship. Beaty planned to move into her daughter's one-bedroom apartment. Despite his poor health and fragile bones . . . Hilton planned to live out of his truck while waiting for an opening at one of the few assisted living facilities . . . .").

9. *See id.* (noting that the Beaty and Hilton's rent jumped from $1,000 to $1,800 when investors bought the home they were renting).

information on government housing support at a federal and state level to introduce how Americans experiencing housing insecurity may receive assistance, specifically Housing Choice Vouchers. Equipped with an understanding of the three-prong problem and available resources, Part IV turns to how displaced Americans, seeking to use Housing Choice Vouchers, are discriminated against, followed by a survey of how those Americans may seek relief through the law, including an analysis of the 2020 Amendment to the Virginia Fair Housing Law. Part V presents the demonstrated benefits of source-of-income protections in states in which the protection is longer-standing than in Virginia. Part VI of this Note proposes a solution: a reframing of the relationship between place versus people-based policies with three human-centered changes and the passage of the Fair Housing Improvement Act. Finally, this Note concludes in Part VII by connecting the economic, social, and legislative responsibility needed to solve the affordable housing crisis in this country.

II. The Problem: Gentrification, The Affordable Housing Crisis, and Place-Based Policies

To answer why it is that so many Americans are either without a home or are on the brink of experiencing homelessness, connections must be drawn between three prongs of a greater problem. Gentrification, the affordable housing crisis, and place-based policies affect one another to create the problem that this Note seeks to confront. All three prongs, independently and studied together, share one result: the displacement of low-income Americans. Viewed together, it is evident that Americans fighting for affordable housing need and deserve help, and that the solution is bigger than any singular action.

A. *Gentrification*

Imagine that your family has lived in the same rental home for several years. Your neighborhood is predominately low-income, and most of the properties are rentals. You begin to notice that several of the homes in your neighborhood are being purchased by real estate companies or individual property "flippers"[10] and all at very low prices. As these properties shift to new ownership, you see rapid development of higher end businesses like boutique coffee shops, new restaurants, and luxury apartment complexes. Your landlord informs you that rent, again, is going up. You notice that many of your neighbors are moving out, or worse, being evicted. Your landlord cites rising property taxes, and for the first time, you are unsure about whether you can make rent. After several more investors enter your neighborhood, you are faced with a challenging choice of remaining in the home you can no longer afford or leaving. This phenomenon is what millions of Americans refer to as gentrification.[11]

Gentrification is the process in which the cost of living in a neighborhood or area drastically increases through investments into low-cost properties to turn a significant profit.[12] Gentrification often displaces the original residents through increasing the cost of living, forcing residents to make the difficult decision of finding a new place to live or risking eviction.[13] Unsurprisingly, studies show that displacement because of gentrification impacts renters more substantially than homeowners.[14] While homeowners in gentrifying neighborhoods face rising property taxes,[15] renters are

---

10. *See* James Chen, *What is Flipping? Definition, How It Works, Types, and Example*, INVESTOPEDIA (May 12, 2022) ("Flipping refers to purchasing an asset with a short holding period with the intent of selling it for a quick profit rather than holding on for long-term appreciation.") [**perma.cc/6DKH-QBV2**].

11. *See* Justin Graham, Comment, *Playing "Fair" With Urban Development: A Defense of Gentrification Under the Fair Housing Act's Disparate Impact Test*, ARIZ. ST. L. J., 1720, 1729–31 (2013) (explaining the concept of gentrification as well as its connection to fair housing and the role of legal protections in gentrified spaces).

12. *Id.*

13. *Id.*

14. *See* Isaac William Martin & Kevin Beck, *Gentrification, Property Tax Limitation, and Displacement*, 54 URB. AFFS. REV. 33, 47 (2018) (studying the impact of gentrification on homeowners and finding that in areas experiencing the effects of gentrification, renters relocate due to rising costs at a higher rate than homeowners).

15. *See Property Taxes on Single-Family Homes Rise Across U.S. in 2021, to $328 Billion*, ATTOM (Apr. 14, 2022) (summarizing data from a study conducted by real estate data curator ATTOM, finding that despite a smaller increase in property taxes nationwide in 2021, property taxes increased faster than the national average in 74% of markets) [**perma.cc/DBH8-C9Y4].**

more likely to be susceptible to sharp increases in rental prices with less financial stability or power to remain in their homes.[16] In an attempt to quantify this phenomenon to produce data on the subject, researchers have measured gentrification by combining an analysis of age, education level, and household income with rent or housing prices.[17] Gentrification gained popularity as a term in mainstream conversations surrounding wealth disparity and equity within the last decade,[18] despite being coined in the 1960s.[19]

Gentrification poses a challenge for both law makers and developers because while investing in less prosperous neighborhoods often improves the physical area and perhaps increases the likelihood of residents having better quality housing, that improvement brings with it unaffordable costs borne by low-

---

16. Martin & Beck, *supra* note 14, at 54.

> A renter in a gentrifying neighborhood is more likely than any other renter to move in any given biennial period, and to report that the move was involuntary, by 2.6 percentage points; this is greater than the difference between residents of subsidized and unsubsidized units, and similar to the difference between a married renter and one who is divorced.

17. *See* Haydar Kurban et al., *Gentrification and Opportunity Zones: A Study of 100 Most Populous Cities with D.C. as a Case Study*, 24 CITYSCAPE: J. POL'Y DEV. & RSCH., 149, 155–56 (2022).

> [G]entrification is measured by the change from time t to t+1 in the number of individuals age 25 or over with a bachelor's degree or higher living in census tract j in city c, divided by the total population aged 25 or older with a bachelor's degree or higher living in census tract j in city c in year t . . . .

18. *See* Jerusalem Demasas, *What We Talk About When We Talk About Gentrification*, VOX (Sept. 5, 2021, 8:00 AM) (arguing that gentrification veils deeper conversations regarding racial segregation and a deeper history of displacement) [perma.cc/N86S-22J4]; Abdallah Fayyad, *The Criminalization of Gentrifying Neighborhoods*, ATLANTIC (Dec. 20, 2017) (studying the trend of increased use of 311 and 911 calling in gentrified or gentrifying neighborhoods, reflecting the change in social dynamics in these areas) [perma.cc/VRJ7-WT7M]; Kelefa Sanneh, *Is Gentrification Really a Problem?* NEW YORKER (July 4, 2016) (revisiting past publishments about gentrification and asks the question of if scholars and those participating in these conversations are too focused on saving the place rather than saving the people in the place) [perma.cc/YW52-MJ8G].

19. *See* Jason Richardson et al., *Shifting Neighborhoods*, NAT'L COMTY. REINVESTMENT COAL. (Mar. 19, 2019) (summarizing the results of a study evaluating the impacts of gentrification in the United States from 2000–2013) [perma.cc/5S76-AYBG].

income residents.[20] Gentrification has not risen to the level at which it exists today all on its own: the federal and state governments incentivize rapid redevelopment of low-income urban areas through economic and tax programs.[21] Although it plays a significant role in the current state of housing, the effects of gentrification alone are not the sole cause of the affordable housing crisis in Virginia. An introduction to and analysis of the affordability problem in the Commonwealth of Virginia, specifically the Urban Crescent, offers insight into the greater problem: the displacement of, and lack of resources available to, low-income Americans.

B. The Affordable Housing Crisis in the Commonwealth of Virginia

Recent studies show that Virginia has an affordable housing shortage of over 200,000 units.[22] In the context of housing, the word affordable is a category of housing in which the rent does exceed more than thirty percent of the occupant's gross income.[23] An inadequate supply of affordable housing at this magnitude increases the number of low-income Virginians that are placed on waitlists for affordable housing assistance programs,[24] often rendering them homeless in the meantime. Virginia saw a 10.2% rise in population size from 2008-2022, primarily in the Urban Crescent, placing even more pressure on the available housing

---

20. *See* Katherine M. O'Regan, *Commentary: A Federal Perspective on Gentrification*, CITYSCAPE: J. POL'Y DEV. & RSCH., 151, 153–54 (2016) (showing that the burden of rising housing costs is most impactful on the low-income).

21. *See* 26 U.S.C. § 1400Z-2 (2017) (codifying the Opportunity Zone program within the Internal Revenue Code); *see also* Pub. L. No. 106-554, 114 Stat. 2763 (codifying New Market Tax Credits within the Internal Revenue Code).

22. *See KENNETH L. PLUM, ET AL., JOINT LEGIS. AUDIT COMM., AFFORDABLE HOUSING IN VIRGINIA* 19 2021) [hereinafter STATEWIDE HOUSING STUDY] (surveying data about the entirety of the Virginia housing market and population with suggestions as to how to curb the affordability issue).

23. *Glossary of Terms to Affordable Housing*, U.S. DEP'T HOUS, & URB. DEV. [perma.cc/LH2Z-6YGP]; VA. CODE ANN. § 15.2-2305.1(H) (mirroring the HUD guideline in Virginia statutory language).

24. *See Housing Choice Voucher Program*, VA. HOUS. (offering an overview of the opportunities for housing assistance and a connection to the waitlist portal for the voucher program) [perma.cc/2Q3H-AZ8B].

supply.[25] By 2021, the price of the average single-family home in Virginia rose over thirty percent over the course of only five years, averaging $355,000.[26]

Virginia does not face this issue alone and historically fares better than many other states. Nationally, the country is losing approximately 400,000 affordable housing units each year, primarily because of the significant backlog in unmet capital.[27] There is simply not enough funding allocated towards preserving and expanding public housing.[28] In addition to inadequate funding, many state programs offering incentives to landlords for managing or owning affordable housing properties only require affordability status to exist for a specific period of time.[29] Under Virginia's Low-Income Housing Tax Credit program, for example, a property that has been classified as affordable may increase the rent to market rate once thirty years has passed.[30] When affordability status relies upon private parties taking advantage of government incentives, the individuals at risk of displacement are removed from consideration.

On top of making rent or a mortgage payment each month, since 2000, fuel and utilities have risen in price by more than 50 percent across the country.[31] Approximately one in five renting families nationwide miss payments and end up receiving

---

25. *See* STATEWIDE HOUSING STUDY, *supra* note 22, at 117 (showing that the population growth is not equally distributed, but heavily concentrated in the urban crescent).

26. *See id.* at 5 (reflecting the rapid increase in the average cost of a single-family home in Virginia).

27. *See* Katherine M. O'Regan, *Commentary: A Federal Perspective on Gentrification*, CITYSCAPE: J. POL'Y DEV. & RSCH., 151, 157 (2016) (citing a $26 billion backlog in unmet capital needs as the primary reason for the depletion of available public housing).

28. *See id.* ("The current structure and level for funding public housing—that is, through annual appropriations—is inadequate to address these needs.").

29. *See 2022 Preservation Rates*, NAT'L HOUS. PRES. DATABASE (compiling data showing that over 300,000 affordable housing units are up for expiration in the next five years across the country) [perma.cc/4WZM-MTNZ].

30. *See* STATEWIDE HOUSING STUDY, *supra* note 22, at 212–13 (offering data reflecting the problem of affordable housing depletion).

31. *See* MATTHEW DESMOND, EVICTED: POVERTY AND THE PROFIT IN THE AMERICAN CITY 15 (2016) (citing the ways in which affording housing has become more challenging in recent years in cities across the United States).

disconnection notices from their utility provider in a given year.[32] This stark increase in cost most heavily burdens renters,[33] and even more so those qualifying as low income.[34] The National Low Income Housing Coalition found that in 2020, a household needed, on average, an income of at least $51,690 to afford a 2-bedroom rental home based on HUD (Department of Housing and Development) Fair Market Rent.[35] The maximum income, however, for a 4-person household that is considered extremely low-income, is $27,880.[36] That organization also found that in order to afford a modest 1 bedroom rental home in Virginia, a single person earning a minimum wage of $11/hour would have to work 78 hours a week.[37]

Sharp rises in housing costs forces thousands of Virginians to fall behind on rent payments and risk eviction.[38] Viewing the affordable housing crisis in Virginia in connection to state-sponsored gentrification[39] illustrates the causal relationship between profit-centered redevelopment and displacement. Offering financial incentives to developers in low-income areas

---

32. *Id.*

33. *See Housing Needs by State: Virginia*, NAT'L LOW INCOME HOUS. COAL. (2020) (showing statistical data from the National Low Income Housing Coalition's 2020 research on the affordable housing crisis in the state of Virginia. In 2020, there was a shortage of 153,415 rental homes that were both affordable and available for low-income renters) [perma.cc/Z63P-HUYN]; *see also* STATEWIDE HOUSING STUDY, *supra* note 22, at 102–03 (2022) ("Virginia[, as of March 2021,] has a deficit of 40,718 units and 32,498 rental assistance vouchers across 32 localities.").

34. *See Housing Needs by State: Virginia*, *supra* note 34 (finding that households that qualify as extremely low income, very low income, and low income are largely either cost burdened or severely cost burdened by housing).

35. *Id.*

36. *Id.*

37. *See Out of Reach Virginia*, NAT'L LOW INCOME HOUS. COAL. (providing demographic, economic, and housing market data for the State of Virginia as of 2022) [perma.cc/YQ32-2Z7G].

38. *See Trends in Eviction Filings*, LEGAL SERVS. CORP. (finding that 148,500 evictions have been filed between March 16, 2020 and October 16, 2022) [perma.cc/5YTX-3Z4M].

39. *See* Lowell & Smith *infra* note 89, at 1629–32, 1646–52 (documenting the impacts of HUD's Rental Assistance Demonstration and it's contributions to gentrification); *Opportunity Zones Frequently Asked Questions*, *infra* note 103 (describing tax incentives attached to Qualified Opportunity Zones); Groves, *infra* note 113, at 217–19 (explaining the goals of New Market Tax Credits).

creates an affordability crisis for the residents of that area. In turn, this cycle creates opportunities in which the displaced residents' ability to find safe and adequate housing is challenged by subsequent discrimination against those using government housing assistance.

The Urban Crescent is where Virginia is experiencing the most growth combined with the sharpest increases in housing costs, warranting an inquiry into how these areas have created and responded to the affordable housing crisis. The affordable housing markets in each of the following three regions has been affected by one of the place-based policies that this Note analyzes in the context of gentrification and displacement in later Parts.[40]

1. *Northern Virginia*

In the last decade, the suburbs of Northern Virginia have experienced the most significant population growth compared to any other part of the Commonwealth.[41] Northern Virginia is used as a broad term referring to the suburbs of Washington D.C., but formally refers to the counties of Arlington, Fairfax, Loudon, Prince William, and the cities of Alexandria, Falls Church, and Manassas.[42] The area lost on average 12,600 rental units every year from 2000-2010, and lost 10,500 per year between 2010-2017.[43] Meanwhile, in 2017 approximately 20% of households reported that they were unable to pay for food and housing in the past year, and most of the population earning $54,000 or less annually were spending 30% or more of that income on rent or a mortgage.[44] Because of its proximity to the District of Columbia,

40. *Infra Part II.0.*

41. *See* STATEWIDE HOUSING STUDY, *supra* note 22, at 116 (showing population growth and decline in Virginia from 2010–2020).

42. *See Community Profile*, N. VA. REG'L COMM'N (providing an overview of the Northern Virginia population, housing, and transportation with illustrative maps of the region) [perma.cc/WG96-4Y5H].

43. *See* STATEWIDE HOUSING STUDY. *supra* note 22, at 117 (showing data regarding the changes that have occurred in the housing market in Northern Virginia between 2000–2017).

44. *Id.*; *Housing Needs by State: Virginia*, *supra* note 33 (stating that households spending 30% or more of their income on rent or a mortgage are considered cost burdened).

Northern Virginia real estate has historically seen higher prices compared to other parts of the Commonwealth.[45] The affordable housing crisis in Northern Virginia is reflective of the connection between place-based policies and the displacement of low-income Virginians.

A 2019 study by the Fairfax County Redevelopment and Housing Authority estimated that Fairfax County needs approximately 15,000 additional affordable housing units over the next 15 years for families earning less than 60% of the Area Median Income of $70,300.[46] Fairfax County has 9 Qualified Opportunity Zones, which are designated low-income census tracts in which investors are incentivized to develop.[47] The County also offers demographic data as of 2018 for potential investors on its website.[48] In the County's 2022 Needs Assessment report, the shortcomings of the Opportunity Zone program are evident.[49] The report highlights the census tracts in which renters are still severely cost-burdened, and several of these tracks are Opportunity Zones.[50] This indicates that investment into low-income areas did not assist the population as legislators may have

---

45. *See* Heather Munro, *Over 40 Years, Northern Virginia Real Estate Prices Continue to Rise*, CHAMPION TITLE & SETTLEMENTS, INC. ("Northern Virginia has seen a nearly tenfold increase in the average home price from 1975 to the present. The average price in 175 in this area was nearly $60,000. In 2014, that figure had increased to $551,220, and average home prices for 2017 are expected to go even higher.") [perma.cc/NAA4-D9XU].

46. *See* FAIRFAX CNTY. REDEVELOPMENT & HOUS. AUTH., FY 2019 ANNUAL REPORT 13 (2019) (providing updates for the Authority on ongoing projects and future plans, as well as recommendations based on research regarding the affordable housing shortage in Fairfax County).

47. *List of Fairfax County, Virginia Opportunity Zones & OZ Funds*, OPPORTUNITYDB [perma.cc/ 8W9N-M3KG].

48. *See* EMBARK HOUS. ADVISORY GRP., OPPORTUNITY ZONES: A NEW FEDERAL ECONOMIC AND REVITALIZATION TOOL 7 (Nov. 29, 2018) (providing information such as median household income, total number of households, median home value, and percentage of renter-occupied housing units).

49. *See* Dep't of Mgmt. & Budget, *Needs Assessment 2022*, FAIRFAX CNTY. (Sept. 12, 2022) (showing data indicating that multiple census tracts that are Qualified Opportunity Zones remain amongst the most severely cost burdened in terms of housing, with the household median income in one of these areas only reaching $49,333 in 2022, decreasing from the 2018 median of $54,072) [perma.cc/RZH2-FVKT].

50. *See id.* (displaying census tracts where residents face the highest housing cost burdens).

intended, and in fact may have done more harm than good by fueling the affordable housing crisis. The fact that many of these areas remain severely cost burdened after investment into these areas through the Opportunity Zone program illustrates the problem: investing in a piece of land does not equate to investing in the people on that land.

2. Richmond

As the capital of the Commonwealth and former capital of the Confederacy, Richmond's history is one of wealth inequality that still impacts the city today. The city is currently home to approximately 226,000 individuals,[51] and is expected to grow drastically; with one study predicting a 19.7% population increase by 2050.[52] Housing costs are lower in Richmond compared to Northern Virginia,[53] but Richmond is far from shielded from the affordable housing crisis. In July 2022, Richmond had the eighth highest average rental price increase year-over-year in the entire country[54] and by September 2022, Richmond was ranked fifth.[55]

Richmond received a HOPE VI grant[56] from HUD in 1997 to demolish and rebuild over 400 public housing units in the city's Blackwell neighborhood, a historically Black and extremely low-

---

51. *See Quick Facts, Richmond City, Virginia*, U.S. CENSUS (July 1, 2021) (displaying data about Richmond, Virginia based on the 2020 U.S. Census) [perma.cc/LX3L-SA7T].

52. *See Virginia Population Projections*, UNIV. VA. WELDON COOPER CNTR. FOR PUB. SERV. (2022) (predicting that the City of Richmond's population will be 270,425 in 2050) [perma.cc/XSP5-HZEN].

53. *See Richmond, VA vs Fairfax, VA*, BEST PLACES (reporting that the median home price in Fairfax for 2023 is $652,700, compared to the median home price in Richmond at $282,200) [perma.cc/3E42-EUVC].

54. *See Rent Report July 2022*, RENT. (July 15, 2022) (noting that the average rent for a one-bedroom apartment in Richmond increased by 35.69% between July 2022 and July 2023) [perma.cc/MK9S-HDHJ].

55. *See Rent Report September 2022*, RENT. (Sept. 15, 2022) (documenting Richomond's 30.5% increase in rent between September 2022 and September 2023) [perma.cc/UV7D-9BZJ].

56. *See infra* subpart II.C. (explaining the policy and mechanics of a HOPE IV grant).

income community.[57] The tenants of the units in question were given 120 days' notice and between $700-$1,000 to relocate.[58] Despite enacting a Community Self-Sufficiency Program aimed at homeownership, job training and placement, and education, the average income of the relocated residents was only $14,288, nowhere near enough to purchase a home or make rental payments without public assistance.[59] The grant was issued based on a proposal by the Housing Authority to create 801 housing units, but that number was quickly cut down to only 480, and then cut to even fewer units due to a series of changes in the administration of the project.[60]

The displaced Blackwell residents who relocated to other public housing were more likely to end up in impoverished neighborhoods with less public transportation, higher crime rates, and that were further from banks and supermarkets—an indication that shuffling families from one public housing unit to the next does not solve the problem.[61] The promised housing units in the Blackwell neighborhood did not come into fruition until nearly twenty years later, with the Richmond Redevelopment and Housing Authority ("RRHA") announcing in 2018 an intention to contract with private and non-profit entities to build only ninety-six housing units where 440 units were demolished at the start of the project in 1997.[62] Of the ninety-six planned units, only fifty-six

57. *See* Lallen Tyrone Johnson-Hart, Residential Outcomes of HOPE VI Relocatees in Richmond, VA 1, 33–34 (May, 2007) (Master of Urban and Regional Planning Thesis, Virginia Commonwealth University) (on file with VCU Scholars Compass) (studying the Blackwell neighborhood redevelopment project as a case study to analyze the impacts of the HOPE VI program).

58. *Id.* at 35 (describing the process of moving residents out of the existing housing with financial supplementation).

59. *Id.; see also* U.S. DEP'T OF HOUS. & URB. DEV., OFF. OF POL'Y DEV. & RSCH., U.S. HOUS. MKT. CONDITIONS (1999) (reporting that by the fourth quarter of 1999 the average price of an existing home in the United States was $169,100, and the average price of a new home was $184,700).

60. *See* Johnson-Hart, *supra* note 57, at 45 ("[S]everal key turnovers in key government positions led to a loss in productivity as each new official had to educate his- or herself about the HOPE VI process.").

61. *See id.* (summarizing data showing that the relocated Blackwell residents ended up in equally or less prosperous environments after displacement).

62. *See* Jeremy M. Lazarus, *Blackwell Development to Continue with 96 Lots*, RICHMOND FREE PRESS (Nov. 15, 2018, 6:00 AM) (reporting that after twenty

are located in the HOPE VI area.[63] The shortcomings of the RRHA Blackwell HOPE VI project demonstrate the lack of accountability and lack of oversight in place-based policy. The twenty-year period in which it took RRHA to even contract out new housing development in a low-income area illustrates the fatal flaw in place-based policy. Place-based policies such as the HOPE VI program, without responsibility, force low-income Americans out of their homes and into an environment lacking adequate protection.

3. Hampton Roads

Hampton Roads is the coastal region of the southern part of Virginia that includes the cities of Virginia Beach, Norfolk, Hampton, Williamsburg, Newport News, Smithfield, Yorktown, and Portsmouth, in addition to several smaller towns and counties.[64] Virginia's three most populated cities are in the Hampton Roads region, with the highest being Virginia Beach at approximately 450,000 in 2021.[65] Hampton Roads housing costs rose similar to the country as a whole, with a rent increase of approximately 20% since 2020 alone.[66] In 2019, 43% of Virginia Beach residents who rented their homes were considered cost-

---

years, the RRHA was seeking to rebuild a fraction of the number of units that it demolished in the late nineties as a part of a HOPE VI grant award of $26.94 million) [perma.cc/E8RW-3TTN].

63. *Id.*

64. *See Hampton Roads*, VIRGINIA IS FOR LOVERS (showing a map of the state with the Hampton Roads region highlighted, followed by a listing of the jurisdictions included in the region) [perma.cc/PTC9-LKQX].

65. *See Virginia Cities by Population*, VA. DEMOGRAPHICS BY CUBIT (2021) (ranking Virginia cities from most populated to least based on U.S. Census estimates for 2021) [perma.cc/7H8Q-JZVU].

66. James Thomas Jr., *Affordable Housing is Getting Harder to Find in Hampton Roads, but There are Solutions, Experts Say*, VIRGINIAN-PILOT (Nov. 17, 2022) (discussing the rising cost of housing in Hampton Roads and advocating for a better regional assessment of housing needs and public conversations about the crisis) [perma.cc/D3C8-UNGM].

burdened,[67] a number that has likely risen due to the area rent increase and COVID-19 pandemic.

The Hampton Roads region was impacted by the enactment of the Opportunity Zones program[68] because the City of Norfolk was awarded more Opportunity Zones than any other city in the state and was one of only three cities to receive an additional grant to accelerate redevelopment.[69] The Norfolk Redevelopment and Housing Authority selected the St. Paul's area for a complete redevelopment. St. Paul's has the highest concentration of public housing in the Hampton Roads region[70] and the public housing units showed significant signs of decay.[71] The leaders of the project promised a "larger wealth of opportunity"[72] including proposed architectural renderings of diverse multifamily housing above storefronts, along streets lined with trees.[73] The project called for the demolition of 618 homes in the Tidewater Gardens complex

67. MEL JONES ET AL., VA. CTR. FOR HOUS. RSCH. VA. TECH, VIRGINIA BEACH HOUSING NEEDS ASSESSMENT, MARKET ANALYSIS, AND RE-INVESTMENT STUDY 28 (2016).

68. *See infra* subpart II.0. (explaining Opportunity Zones).

69. *See* Caleb Melby, *A Virginia City's Playbook for Urban Renewal: Move Out the Poor*, BLOOMBERG BUSINESSWEEK (Sept. 22, 2020, 4:00 AM) (arguing that the use of Opportunity Zones in Norfolk is displacing low-income, black residents, and leaving the residents with very few housing options by demolishing affordable housing) [perma.cc/HSS5-A65X]; *see also* Josh Reyes & Ryan Murphy, *Newport News, Norfolk to Each Receive $30 Million to Transform Distressed Neighborhoods*, DAILY PRESS (May 13, 2019 3:00 PM) (reporting the news that Newport News and Norfolk would both receive $30 million after a visit from HUD Secretary Ben Carson) [perma.cc/2UMS-FXC7].

70. *See* Margaret Kavanagh, *St. Paul's Redevelopment Project is Underway, but No Plans for Calvert Square, Young Terrace*, NEWS 3 WTKR (last updated May 16, 2022, 6:47 PM) (reporting on the status of the St. Paul's redevelopment project, including a statement from the project manager of an estimated expenditure of $300 million) [perma.cc/U3X9-VFFW]; *Frequently Asked Questions,* ST. PAUL'S TRANSFORMATION PROJECT [hereinafter *St. Paul's FAQs*] (answering questions such as why St. Paul's, the goals of the project, and where funding is coming from) [perma.cc/CA4E-NZN6].

71. *See* Kavanaugh, *supra* note 70 (explaining why the St. Paul's neighborhood was selected for redevelopment).

72. *See* Melby, *supra* note 69 (marketing the redevelopment project as an opportunity for residents and developers alike).

73. *See* Brett Hall, *New Renderings Revealed in Norfolk's St. Paul Redevelopment*, 10 WAVY (Aug. 23, 2018, 12:47 AM) (announcing the plans to replace the historically low-income neighborhood with mixed-income communities) [perma.cc/6B3F-KK85].

with plans to designate 220 of the future units, and eighty-three units in additional locations.[74] In the meantime however, the individuals living in Tidewater Gardens were responsible for finding voucher friendly housing[75] with the option to return to Tidewater Gardens once construction is completed.[76] As later discussed in this Note, finding housing for which a landlord accepts government assistance in the form of a voucher has proven to be very challenging.

Despite pleas from city council member Paul Riddick that the St. Paul's redevelopment project was displacing the African American community again and was "nothing but gentrification,"[77] development efforts moved forward with demolition expected to be completed by 2023, and construction completed by 2025.[78] The project's website designates an entire page towards "housing stability" and the freedom that St. Paul's community members have regarding where they live, now that their homes have been razed without their consent.[79] Because the St. Paul's redevelopment project has several years before completion, data surrounding where the pre-existing tenants ended up will not be available for several years. The St. Paul's project serves as an example of the route that so many Housing Authorities and city leaders take when undergoing redevelopment projects. Though the intention may be safer, newer housing, the burden placed on tenants shows ignorance at best. As this Note will discuss in the coming Parts, offering an individual or family a Housing Choice Voucher and promising a new home in five to ten years in exchange for demolishing their home is not a service, but abandonment.

---

74. *See* Reyes & Murphy, *supra* note 69 (detailing the changes in housing in the St. Paul's redevelopment project).

75. *Id.*

76. *See St. Paul's FAQs*, *supra* note 70 ("Each resident can decide whether to move outside the area, relocate to a different public housing community or return to the redevelopment.").

77. *See* Melby, *supra* note 69 (calling out the dangers of the proposed redevelopment).

78. See *Project Updates*, ST. PAUL'S TRANSFORMATION PROJECT (showing a general timeline of the project) [perma.cc/743N-RLK3].

79. *See Housing Stability*, ST. PAUL'S TRANSFORMATION PROJECT (listing the three options given to tenants and how individuals may contact the project managers for assistance) [perma.cc/LRH6-PUV2].

C. Place-Based Policies Driving the Affordable Housing Crisis

Place-based policies are policies that seek to advance the economic performance of a specific area rather than a specific population.[80] A place-based policy, for example, may offer financial incentives to purchase and maintain a tract of land that is considered low-income, rather than offering financial incentives for assisting, hiring, or otherwise investing in people-centered initiatives.[81] The opposite of a place-based policy is a people-based policy, the most common examples being welfare and working tax credits.[82] A people-based policy does not consider where the individual lives, whereas the place-based policy is centered around just that.[83]

For example, assume you are a single individual who classifies as low-income and works a minimum-wage job. You rent an apartment in an extremely low-income neighborhood. A people-based policy that you may participate in would be food stamps, whereas a place-based policy that you may participate in, without even realizing, is the Opportunity Zone program,[84] because your state has identified your area as severely cost-burdened. Because of this label, investors are financially incentivized to invest in your area, with legislative hopes of creating a safer, more prosperous neighborhood.

Advocates for place-based policies cite the trend toward devolution of power away from national governments and a need for state and local governments to create and facilitate economic

---

80. *See* David Neumark & Helen Simpson, *Place-Based Policies* 1 (Nat'l Bureau of Econ. Rsch., Working Paper No. 20049, 2014) ("[P]lace-based policies refer to government efforts to enhance the economic performance of an area within its jurisdiction, typically in the form of more job opportunities and higher wages.").

81. *See id.* (describing direct forms of place-based policies, including enterprise zones, which "create incentives create incentives for hiring, or economic activity more generally, in or near areas where disadvantaged people live").

82. *See id.* (listing welfare and working tax credits as "people-based" policies which target specific populations).

83. *See id.* ("These are policies that are geographically targeted, but with the intent and
structure of helping disadvantaged residents in them . . . .").

84. *See* 26 U.S.C. § 1400Z-1 (codifying and explaining Opportunity Zones).

development in their jurisdictions.[85] Those advocates also argue that these policies are applicable to "all types, sizes, and levels of socioeconomic development" and that they "can be implemented in territories of various levels of ex-ante favorability and with different economic structures and specializations, resource endowments, and capabilities."[86] That sentiment favors place-based policies rather than people-based because in order to succeed long-term, a policy aimed towards helping a group of people must be tailored towards the peoples' genuine needs and values.

Place-based policies provide an avenue for gentrification to flourish because the programs focus on the land, not the people, unlike people-centered economic programs. Placing money into the hands of investors via tax credits and financial savings means that no guarantee is ever made that the individuals who call the place home will end up as beneficiaries of the developments that result. Understanding the role of place-based policy programs like Opportunity Zones[87] and New Market Tax Credits[88] is crucial to consider what these programs mean for the affordable housing crisis and how Americans in low-income neighborhoods are fighting for housing assistance.

1. *The HOPE VI Program*

The Housing Opportunities for People Everywhere (HOPE VI) program was an attempt by the Federal government to revamp public housing by replacing units in poor or distressed conditions with new public housing at a 1-1 rate.[89] The program was

---

85. *See* Andrés Rodríguez-Pose & Callum Wilkie, *Revamping Local and Regional Development Through Place-Based Strategies*, 19 CITYSCAPE: J. POL'Y DEV. & RSCH, 151, 153–54 (2017) (discussing the rise in place-based policies and the successes and failures of such policies after implementation).

86. *See id.* (arguing that place-based policies are somewhat of a one-size-fits-all economic program).

87. *See* 26 U.S.C. § 1400Z-1 (codifying and explaining Opportunity Zones).

88. *See* Groves, *infra* note 113, at 217–21 (explaining the structure and policy of New Market Tax Credits).

89. *See* Warren Lowell & Imari Smith, *Wealthier Neighbors and Higher Rents: The Rental Assistance Demonstration and Gentrification*, 59 URB. AFFS. REV. 1626, 1628–35 (2022) (studying the impact of programs such as HOPE VI on the gentrification of public housing in urban areas).

authorized by Section 24 of the Housing Act of 1937 and was initiated in the FY 1993 VA-HUD Appropriations Act[90] after the production of a report stating that 6% of public housing units were severely distressed.[91] HUD operated the program by issuing grant money to Public Housing Authorities (PHA) to demolish distressed units and replace them with new ones.[92] While attractive in theory, the HOPE VI program over-demolished and under-replaced distressed housing units, ultimately only replacing 57% of the units that it demolished leading to a 43,000 unit shortage.[93] Displaced tenants under HOPE VI projects were either placed in different public housing units, given vouchers, or provided an opportunity to buy a different home at that moment,[94] all potentially overwhelming and challenging choices for cost-burdened families. These options emulate gentrification because tenants were displaced at the hands of advantageous investors backed by PHAs and HUD.

Due in part to the shortcomings in implementation similar to the Blackwell redevelopment project in Richmond,[95] the HOPE VI program was eventually left unfunded and replaced with programs like the Choice Neighborhoods Initiative in 2010, which operated with a broader scope and enabled entities like non-profits and local

---

90. HOPE VI Appropriations, Pub. L. No. 102-389 H.R. 5679, 106 Stat. 1571.

91. *See* NAT. COMM. ON SEVERELY DISTRESSED PUB. HOUS., THE FINAL REPORT OF THE NATIONAL COMMISSION ON SEVERELY DISTRESSED PUBLIC HOUSING 18 (1992) (reporting statistical data on the quality of public housing in an effort to advocate for assistance programs in FY 1993).

92. *See* TARYN GRESS ET AL., DEP'T HOUS. & URB. DEV. OFF. POL'Y DEV. & RSCH., HOPE VI DATA COMPILATION AND ANALYSIS 15 (Mar. 20, 2017) (stating that the three types of grants were planning, implementation, and demolition).

93. *See id.* at 11.

> Of the 97,389 total mixed-income units, most (55,318 units, or 57%) were replacement public housing units, and affordable and market-rate units made up 30 percent and 13 percent of the remaining units, respectively. Although 43,274 units have been lost from the public housing stock, 85% of the original public housing units were replaced with units intended to be affordable to low- and moderate-income residents.

94. *See* MAGGIE MCCARTY, CONG. RSCH. SERV., RL32236, HOPE VI: PUBLIC HOUSING REVITALIZATION PROGRAM: BACKGROUND, FUNDING, AND ISSUES 15 (2012) (listing the options for those living in housing selected to undergo redevelopment).

95. *See* Hart-Johnson, *supra* note 57, at 88–92, 95–98 (discussing how the HOPE VI program in Richmond produced "more of a poverty shift rather than a deconcentration").

governments to act as grantees in addition to PHAs.[96] In 2011, Congress authorized the Rental Assistance Demonstration (RAD) aimed at addressing the public housing shortage while eliminating the negative aspects and results of the HOPE VI program.[97] RAD has a 1-1 replacement mandate, requires more assistance for relocating tenants, and gives those tenants a right to return to the same unit once it has been repaired, or receive a housing voucher to find a new voucher friendly home through the Housing Choice Voucher program.[98]

The most significant difference between HOPE VI and RAD is that the PHAs managing the process have greater control over how they renovate and convert their properties[99] and how they fund these changes, because HUD does not appropriate additional funding.[100] Funding was a significant reason why the HOPE VI program struggled to fulfill promises of housing development, creating a need for tighter structure in terms of the renovation and conversion process.[101] A 2022 study focused on the effects of the RAD program found that despite the improvements in the quality of the housing itself, in neighborhoods with RAD properties, the median rental costs rose.[102] Finding a way to improve the number and quality of public housing units without simultaneously displacing residents in the likeness of gentrification is essential to solving the affordable housing crisis.

---

96. MCCARTY, *supra* note 94, at 20–21.

97. *See* Lowell & Smith, *supra* note 89, at 4 ("[I]n contrast to the demolition encouraged by HOPE, RAD prioritizes the repair and rehabilitation of public housing units.").

98. *See id.* at 5 (describing how tenants find new housing under RAD compared to HOPE VI).

99. *See id.* ("Some authorities might choose to develop brand new properties, while others might convert properties to mixed-income housing or combine multiple projects into a single RAD project.").

100. *Id.*

101. *See id.* at 8 (citing underfunding as a chronic in public housing redevelopment efforts and a motivation in restructuring the process under RAD).

102. *See id.* at 16, 22, 28 (showing data indicating the correlation between median rent increase and RAD classification).

2. Opportunity Zones

Perhaps the most significant place-based policy in recent years, the 2017 Tax Cuts and Jobs Act introduced a federal tax benefit program called Opportunity Zones.[103] With the goal of stimulating investment into low-income urban, suburban, and rural areas, the governor of each state nominated certain low-income census tracts that were then designated as Opportunity Zones.[104] Investors in Opportunity Zones who elect to defer on capital gains tax may receive tax benefits if they invest their gains in a timely manner into a Qualified Opportunity Fund (QOF).[105] The longer the investor holds their investment in the QOF, the more tax benefits they receive.[106] In a case study of the relationship between Opportunity Zones and gentrification at a national level found, unsurprisingly, that Opportunity Zones were gentrifying more than non-Opportunity Zones. This phenomenon was mirrored in a subsequent case study of Washington D.C., with higher rates of low-income residents moving away from their original neighborhoods.[107]

Virginia nominated 212 Opportunity Zones in 2017, spread across the entirety of the state.[108] To bolster support, in 2019 the state launched an online marketplace for investors and interested

---

103. 26 U.S.C. § 1400Z; *see Opportunity Zones Frequently Asked Questions*, INTERNAL REVENUE SERV. (last updated Sept. 29, 2022) (providing information about the program and definitions for relevant terminology crucial to understanding the program) [perma.cc/6UHL-RJPR].

104. *See* ECON. INNOVATION GRP., OPPORTUNITY ZONES: A NEW ECONOMIC DEVELOPMENT TOOL FOR LOW-INCOME COMMUNITIES 1 (Feb. 2018) ("Governors may nominate up to 25 percent of a state's Low-Income Community census tracts for Opportunity Zone designation.").

105. *See Opportunity Zones Frequently Asked Questions*, *supra* note 103 (explaining that a Qualified Opportunity Fund must hold at least 90% of its assets in a QOF or pay a compliance penalty).

106. *See id.* (explaining the increased exclusion of the deferred gain if the QOF investment is held for five, seven, or ten years).

107. *See* Kurban *supra* note 17, at 160–62 (giving the 100 most populous U.S. cities a gentrification score based on education, household income, age, and studying the change in these characteristics over time, focusing on Washington D.C.).

108. *See OZ Interactive Map*, VA. DEP'T HOUS. & CMTY DEV. (displaying a map of Opportunity Zones across which includes nearly every county) [perma.cc/H5BH-TSHV].

parties to learn about the benefits of the program and connect.[109] Professor Cary Martin Shelby addresses the relationship between place-based policies and displacement in her writing on social impact investing, and argues that elite investors and managers are far less likely to foresee the negative externalities that come with private investments into low income communities.[110] Professor Shelby notes that the 2017 Tax Cuts and Jobs Act lacked accountability for investors, meaning the investors at no point must demonstrate that their investment has benefitted community members through improved housing, education, or jobs.[111] This gap in the legislation is an example of the kind of quick, state-sponsored, place-based investing that creates an affordability crisis for residents. If a developer has the choice to invest in an area with lower prices and receive tax benefits by holding onto that property and investing in the area with a new business or entity, why would they bother investing a few miles away, where the property costs twice as much without tax benefits?

3. New Market Tax Credits

The New Market Tax Credit program was introduced in 2000 in the Community Renewal Tax Relief Act[112] and has been amended and renewed since, most recently in 2019.[113] New Market Tax Credits provide credits against federal income tax for

109. *See* Press Release, Governor Ralph S. Northam, Governor Northam Announces Initiative to Encourage Econ. Growth in Va.'s Opportunity Zones (Apr. 11, 2019) (introducing Virginia's online marketplace to better utilize the Opportunity Zone program and encourage investors and developers to learn more about the program) [perma.cc/48G5-XJ75].

110. *See* Cary Martin Shelby, *Profiting from Our Pain: Privileged Access to Social Impact Investing*, 109 CALIF. L. REV. 1261, 1286 (2021) (analyzing the unintended harms of social impact investing, ranging from environmental damage to socioeconomic stagnation or regression as opposed to the intention of development and growth).

111. *See id.* at 1295 (pointing out the dangers of the absence of accountability in the Opportunity Zone program).

112. Pub. L. No. 106-554, 114 Stat. 2763.

113. *See* Roger M. Groves, *The De-Gentrification of New Markets Tax Credits,* 8 FLA. L. J. 214, 217 (2008) (analyzing the New Market Tax Credits program's impact on gentrification).

Americans who invest in designated Qualified Equity Investments (QEIs) in designated Community Development Entities (CDEs).[114] This funding is then used to create Qualified Low-Income Community Investments in low-income communities.[115] The tax credit is taken over the course of 7 years and equates to 39% of the original amount invested in the CDE.[116] The program characterizes low-income communities based on the area's poverty rate and median family income.[117] New Market Tax Credits are almost entirely used to develop affordable housing and the program has strict rules regarding the percentage of revenues that can come from renters and the percentage of tenants that must have certain lower-income status.[118] The absence of accountability measures seen in all three of the place-based policies above helps uncover the reason why so many low-income individuals are displaced at the hands of programs that intend, in theory, to offer better living environments.

III. Federal and State Resources for the Housing Insecure

The federal and state governments work in conjunction to offer resources and programs for Americans facing housing insecurity.[119] Over 9 million Americans receive housing support,

114. *Id.* at 218.

115. *See id.* ("The CDE must then take the investor's QEI and invest those sums into a low-income community project, either directly, or through a qualified community-based organization . . . or other approved entities that serve the low-income area.").

116. *Id.* at 217–18.

117. *See* CMTY. DEV. FIN. INSTITUTION FUND, INTRODUCTION TO THE NEW MARKET TAX CREDIT PROGRAM 13 (Sept. 15, 2020) [perma.cc/L7EP-EJHD].

> [Low income communities] are census tracts: [1) w]here the poverty rate is at least 20%, or [2) w]here the median family income does not exceed 80% of the area median family income, or [3) w]here the median family income does not exceed 85% of the area median family income provided the census tract is located in a high migration rural county . . .

118. *See Place-Based Tax Incentives for Community Development*, EVIDENCE MATTERS (describing the New Market Tax Credit program and how it addresses the affordable housing issue) [perma.cc/2DJS-UWS5].

119. *See Rental Assistance*, U.S. DEP'T HOUS. & URB. DEV. (displaying a web page with links to various rental assistance programs that Americans unable to afford housing may be eligible to apply for) [perma.cc/8VGP-HCR5]; *see also PHA*

managed federally by HUD and statewide by each states' own Department of Housing.[120] HUD's authority stems from the Department of Housing and Urban Development Act, giving the federal agency power to make rules and regulations that are necessary to carry out housing-related functions, powers, and duties that impact the housing market and public programs.[121]

A. Government Housing Assistance at the Federal Level

Nationally, HUD manages and funds several programs, the most popular being Public Housing,[122] which are housing developments wholly owned by the state or federal government. The Housing Choice Voucher Program (HCV) is equally important, as a program where qualifying Americans choose their own housing, and the federal government subsidizes their rent payments based on a set payment standard.[123] Section 8 Project Housing refers to entire developments or buildings in which Housing Choice Vouchers may be used.[124] As of May 2022, over 2 million American households lived in Section 8 project-based housing or Public Housing, and over 2.2 million American households were participating in the Housing Choice Voucher Program.[125] All of the HUD programs provide invaluable aid to

---

Contact Information, U.S. DEP'T HOUS. & URB. DEV. (offering a search engine for individuals to locate their state or city Public Housing Agency for housing assistance) [perma.cc/R6G4-U2Y8].

120. *See Federal Rental Assistance Fact Sheets*, CTR. ON BUDGET & POL'Y PRIORITIES (Jan. 19, 2022) (reporting that as of January 2022, 10.2 million Americans used federal rental assistance) [perma.cc/R4L6-TBHR].

121. *See* 42 U.S.C. § 3535 (codifying HUD's right to create rules and regulations pertaining to housing and urban development).

122. *See HUD's Public Housing Program*, U.S. DEP'T HOUS. & URB. DEV. ("The U.S. Department of Housing and Urban Development (HUD) administers federal aid to local housing agencies (HAs) to manage the housing for low-income residents at rents they can afford.") [perma.cc/EAV5-VA7F].

123. *See Housing Choice Vouchers Fact Sheet*, U.S. DEP'T HOUS. & URB. DEV (offering an overview of the Housing Choice Voucher Program) [perma.cc/2B74-YU4M].

124. *See Public Housing*, U.S. DEP'T HOUS. & URB. DEV. ("Public housing comes in all sizes and types, from scattered single-family houses to high rise apartments for elderly families.") [perma.cc/XRN4-QDVK].

125. *Federal Rental Assistance Fact Sheets*, *supra* note 120.

Americans in need, but for the purpose of this Note it will be focusing on the Housing Choice Voucher Program.

B. Government Housing Assistance in the Commonwealth of Virginia

HUD provides funding to state and local governments so that those governments can operate and oversee state and local housing programs.[126] Thirty housing agencies in the Commonwealth of Virginia work to oversee the HCV program.[127] These agencies work under HUD to implement the federal programs.[128] Virginia Housing manages these 30 agencies and for those participating the HCV program, Virginia Housing makes rental payments on behalf of the tenant so that the tenant then must only pay Virginia Housing up to 40% of the income, depending on the payment standard set by HUD.[129] Payment standards are set for every participant or participating household based on the county or city, the number of bedrooms in the unit, and Fair Market Rent, which

126. *See Questions and Answers About HUD*, U.S. DEP'T HOUS. & URB. DEV (noting the relationship between HUD and state and local governments so that Americans seeking assistance may seek help from their local or state government) [perma.cc/U7AS-VF6U].

127. *See Housing Choice Voucher Administrators in Virginia*, VA. HOUS. (identifying the 30 different agencies across Virginia that maintain and operate the HCV program) [perma.cc/3QCF-QBHY].

128. *See Questions and Answers About HUD*, *supra* note 126 (describing the relationship between the federal agency and local offices).

129. *See Housing Choice Voucher Program*, VA. HOUS. ("Once you are admitted to the Housing Choice Voucher Program and lease a unit, Virginia Housing makes a monthly payment to your landlord on your behalf based on a percentage of your income.") [perma.cc/UJB3-FJWV]; *The FY 2024 Virginia FMR Summary*, FY 2024 FAIR MARKET RENT DOCUMENTATION SYSTEM (listing the fair market percentile rate at 40 for all localities in Virginia) [perma.cc/ 3DPH-FW4L].

is determined by HUD.[130] Virginia Housing Agencies maintain local public housing that is viewable on their websites.[131]

There are traditionally waitlists for Housing Choice Voucher spaces, but due to the affordable housing crisis, every single waitlist is closed as of late 2022.[132] When Richmond City closed its waitlists in April of 2022, over 16,000 Virginians were on the waitlist for only 55 vacant public housing units.[133] This means that receiving a voucher in no way ensures housing.[134] A particularly shocking example may be seen in Fairfax County, which opened its HCV Program waitlist for one week in 2019 –the county's first time doing so in over 10 years.[135] As of 2020, 221,000 Virginians used federal rent assistance, 68% of them being seniors, children, or people with disabilities.[136] However, 4 in 10 low-income Virginians are either homeless or pay over 50% of their income to rent.[137] As of January 2022, 48,100 households were participating in the HCV program, 29,200 were living in Section 8 Project-Based Housing,

130. *See Payment Standards for Virginia Housing,* VA. HOUS. (July 1, 2022) (listing the current payment standards based on county or city and number of bedrooms in the unit, while also noting the current temporary increase in voucher payment standards to 120% of fair market rent as of July 1, 2022) [perma.cc/ZSX4-3VYL].

131. *See, e.g. Communities*, RICHMOND REDEVELOPMENT & HOUS. AUTH. (providing listings for available public housing in the area) [perma.cc/T7AS-5A2J].

132. *See Housing Choice Voucher Waiting List Portal*, VA. HOUS. (2022) (informing portal users that zero waiting lists are currently open for those seeking to participate in the program) [perma.cc/4Z5Z-ETCQ]; *see also RRHA Closing Housing Waitlists on April 13, 2022*, RICHMOND REDEVELOPMENT & HOUS. AUTH. (Apr. 6, 2022) ("Like other public housing authorities, RRHA is grappling with the lack of availability of affordable housing, the continued fallout from the COVID 19 pandemic and the effects of the federally mandated lease enforcement moratorium, combined with its own self-imposed moratorium.") [perma.cc/6TH8-3NU3].

133. *RRHA Closing Housing Waitlists on April 13, 2022*, *supra* note 132.

134. *See Public Housing Program*, RICHMOND REDEVELOPMENT & HOUS. AUTH. (outlining the process for applying for public housing, including entrance onto the waitlist) [perma.cc/Y9VN-MC6M].

135. *See* FAIRFAX CNTY. REDEVELOPMENT & HOUS. AUTH., *supra* note 46, at 19 ("From January 29 through February 4, 2019, the FCRHA opened its Housing Choice Voucher (HCV) Wait List for the first time in more than a decade.").

136. *See* CTR. ON BUDGET & POL'Y PRIORITIES, VIRGINIA FEDERAL RENTAL ASSISTANCE FACT SHEET 1 (Jan. 18, 2022) (surveying the number and types of Virginians that use federal (HUD sponsored) rental assistance).

137. *Id* at 2.

and 13,600 were living in Public Housing.[138] The programs through which an individual may seek housing assistance *should* work. In practice, however, millions of those individuals are discriminated against when looking for affordable housing.[139] This, coupled with the effects of place-based policies and gentrification, leave many individuals without a home.

IV. Fair Housing Protections Under the Law

The United States has never existed independent of discrimination.[140] The ways in which the United States was established, grew, and survived is rooted in inequality based on race, gender, sexuality, and numerous other identities.[141] Where Americans lived in the past and where Americans live today is a result of more than one factor, but discrimination is indisputably a major driving force in where Americans call home.[142] How the laws of the United States protect individuals seeking housing using vouchers is representative of how the law, and its makers, view the housing insecure as a vulnerable portion of the population.[143] The following analysis of source-of-income discrimination illustrates how desperately Americans need legal protections in the wake of the affordable housing crisis.

---

138. *Id.*

139. *See* A PILOT STUDY OF LANDLORD ACCEPTANCE OF HOUSING CHOICE VOUCHERS, *infra* note 144, at 12 (explaining reasons why landlords may refuse to accept housing vouchers, including administrative burden and negative stereotypes of voucher-holders).

140. *See* Danyelle Solomon et al., *Systematic Inequality and American Democracy*, CTR. FOR AM. PROGRESS (Aug. 7, 2019) (providing a historical overview of discrimination's origins in the United States) [perma.cc/CN59-54YT].

141. *See Historical Foundations of Race*, NAT. MUSEUM FOR AFR. AM. HIST. & CULTURE (detailing the history of racism and the role of racism in the development and growth of the United States) [perma.cc/QEZ2-68SN]; *see also Bonnie J. Morris, A Brief History of Lesbian, Gay, Bisexual and Transgender Social Movements*, AM. PSYCH. ASSOC. (last updated Mar. 16, 2023) (offering a history of the LGBT community and journey towards equality in the United States) [perma.cc/95HS-E58L].

142. *See* Emily Peiffer, *The Ghosts of Housing Discrimination Reach Beyond Redlining*, URB. INST. (Mar. 15, 2023) (illustrating the impact of discrimination on the present housing climate in the United States through a multi-city comparison) [perma.cc/XV64-KUB5].

143. *Id.*

A. *Discrimination Against Voucher Program Participants*

Discrimination against Housing Choice Voucher Program participants (hereinafter, voucher participants) occurs across the United States at an under-estimated rate often due to the difficulty in proving discrimination.[144] A 2018 study prepared for HUD conducted research on landlord acceptance of Housing Choice Vouchers in five major U.S. cities from 2016–2017 and had testers contact landlords advertising voucher-friendly rental units, with some portraying voucher participants and others portraying tenants fully responsible for payments.[145] The study found that in the five cities where the study was conducted, only one in thirty-nine rental advertisements was voucher-friendly.[146] Overall, the study found discrimination in all five cities, with the highest rate of 78% in Fort Worth, Texas, and second highest rate of 76% in Los Angeles.[147] The most significant finding from the study was that landlords were significantly more likely to deny voucher participants rental units in low-poverty areas compared to high-poverty areas.[148] If voucher participants are only able to find housing in low-income neighborhoods, the HCV program's freedom and flexibility elements, ideally enabling voucher participants to live in mixed income communities, is hindered. This illustrates a barrier to the success of government housing assistance in

144. *See* A PILOT STUDY OF LANDLORD ACCEPTANCE OF HOUSING CHOICE VOUCHERS, U.S. DEP'T HOUS. & URB. DEV. OFF. POL'Y DEV. RSCH. 15–22 (2018) (providing a comprehensive report summarizing results of a study on housing choice voucher discrimination in five major U.S. cities: Fort Worth, Texas; Los Angeles, California; Newark, New Jersey; Philadelphia, Pennsylvania; and Washington, D.C.).

145. *See id.* at 17–18 ("Each tester contacted the landlord independently, with one tester portraying a voucher holder who mentioned having a voucher at the start of the call and one tester portraying a prospective renter who did not have a voucher.").

146. *Id.* at 24.

147. *Id.* at 30.

148. *See id.* at 32 (reporting that the rate of denial in low-poverty area was four to twenty-seven times higher); *see also* ALISON BELL ET AL., CTR. ON BUDGET & POL'Y PRIORITIES, PROHIBITING DISCRIMINATION AGAINST RENTERS USING HOUSING VOUCHERS IMPROVES RESULTS 2 (Dec. 20, 2018) ("[O]nly 14 percent of families with children in the HCV program live in low-poverty neighborhoods (where fewer than 10 percent of residents have incomes below the poverty line).").

eliminating housing segregation and demonstrates the need for stricter protections for those using vouchers.

There are many reasons why landlords deny leases to those who seek to use vouchers. Landlords who accept housing choice vouchers must meet several requirements, including unit inspections that can take weeks to schedule, maintaining specific habitability standards, and following rules and regulations that landlords would otherwise not consider.[149] Source-of-income protection is an effective way to prevent voucher denial. For example, under Virginia's 2020 Amendment,[150] any landlord renting four or more units is prohibited from rejecting a tenant based on their use of a voucher.[151] While prejudicial stereotypes do not disappear overnight, using the law to hold landlords accountable is a feasible step towards controlling the affordable housing crisis by helping tenants acquire affordable housing.

B. The Need for Fair Housing Law

In the aftermath of the Civil War and Reconstruction Era and shortly thereafter the influx of Jim Crow laws, marginalized groups were restricted in which neighborhoods they could buy or rent a home in.[152] The 1924 National Association of Real Estate Brokers Code of Ethics even went so far as to say, "a Realtor should never be instrumental in introducing into a neighborhood . . . members of any race or nationality . . . whose presence will

---

149. *See HCV Landlord Resources*, U.S. DEP'T HOUS. & URB. DEV. (publishing resources for landlords, including general facts, how to participate, and obligations such as inspections, forms, and procedural requirements) [perma.cc/WT7U-9KZE]; *see also* Alyssa Adams, *Everything Landlords Need to Know About Section 8 in Virginia*, BAY PROP. MGMT. GRP. (Oct. 28, 2022) (providing a guide for landlords in Virginia seeking to learn and comply with the 2020 Amendment to the Virginia Fair Housing Act) [perma.cc/BDW7-URSK].

150. VA. CODE ANN. § 36-96.1 (2020).

151. *See* Adams, *supra* note 149 ("According to legislation passed in 2020, landlords in Virginia with more than four rental units cannot refuse to rent to a tenant solely based on a housing voucher.").

152. See MATTHEW D. LASSITER & SUSAN CIANCI SALVATORE, U.S. DEP'T INTERIOR, CIVIL RIGHTS IN AMERICA: RACIAL DISCRIMINATION IN HOUSING 6–13 (describing the impact of racial zoning and restrictive racial covenants on minority racial groups ability to buy or rent property).

clearly be detrimental to property values in that neighborhood"[153] referring to non-white, non-straight individuals or families. The reasons why so many of the Americans in need of affordable housing are also members of a marginalized community[154] is worthy of a note in and of itself, but for the purposes of this Note, it is important to address the significance of the passing of the Fair Housing Act before analyzing the ways in which discrimination persists despite the law.

1. *The Fair Housing Act*

In 1968, President Lyndon Johnson signed the Fair Housing Act into law,[155] making it illegal to refuse to sell or rent to someone on the basis of race, color, religion, sex, familial status, or national origin.[156] This Act came alongside the Civil Rights movement of the 1960s,[157] and is Title VII of the Civil Rights Act of 1964.[158] The Fair Housing Act did not pass with ease, its passage was the result of hard fought battles by Civil Rights leaders, Democrats, and

153. Douglas S. Massey, *The Legacy of the 1968 Fair Housing Act*, 30 SOCIO. FORUM 571, 573 (2015).

154. *See Racial Disparities Among Extremely Low-Income Renters,* NAT'L LOW INCOME HOUS. COAL. (Apr. 15, 2019) (finding that 20 percent of Black households, 18 percent of American Indian or Alaska Native households, and 15 percent of Hispanic households are extremely low-income renters, while only six percent of white non-Hispanic households are extremely low-income renters) [perma.cc/RU8V-X739].

155. *See* John Yinger, *Sustaining the Fair Housing Act*, 4 CITYSCAPE, J. POL'Y DEV. & RSCH., 93, 94 (1999) (analyzing the Fair Housing Act and how the law has been enforced and upheld since its establishment in 1968).

156. *See* 42 U.S.C. § 3604(a) (1968) (codifying the rights of all Americans to buy or rent property equally).

157. *See* Clayborne Carson*, American Civil Rights Movement,* ENCYCL. BRITANNICA (last updated Aug 26, 2022) (summarizing the Civil Rights Movement, beginning with the Jim Crow era and concluding in present day) [perma.cc/3HCK-NNGF].

158. *See* 42 U.S.C. §§ 1981 – 1996b ("All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizen . . .").

ultimately, a fear held by Congress as riots broke out in response to the assassination of Dr. Martin Luther King Jr.[159]

The passage of the Fair Housing Act of 1968 was a monumental success for equality in this country. But the newly passed Act brought with it challenges. Under the Act,[160] HUD was responsible for investigating claims of discrimination and had only thirty days to decide whether to pursue or dismiss the claim, and if HUD did find a violation of the law, it was not empowered to penalize the discriminator in any way.[161] A "pattern or practice" was required for the Attorney-General to then act, furthering the message that under this law, individuals needed to file civil suits on their own.[162] Lawmakers soon realized that the Act lacked the teeth that it needed to be taken seriously.[163]

The 1988 Fair Housing Amendments Act[164] added the enforcement strength where the original Act came up short. The 1988 Amendment allowed a complainant to, if HUD determined that reasonable cause of discrimination existed, choose to either file a claim with one of HUD's administrative judges and then have a later option to remove to federal district court, or file directly in federal district court.[165] The Amendment also brought with it significant remedial benefits. Where the 1968 Act only allowed a claimant to receive $1,000 in damages,[166] the 1988 Amendment gave HUD administrative judges the power, among others, to

159. *See* Massey, *supra* note 153, at 574–78 (2015) (recounting the culmination of events that led to the ultimate switch of 21 House Republicans to support the passing of the Bill, most notably the assassination of Dr. Martin Luther King Jr. in Memphis, Tennessee on April 4, 1968).

160. 42 U.S.C. §§ 3601–19.

161. *See* Massey, *supra* note 153, at 576 ("[T]he agency had no way to force compliance, grant a remedy, assess damages, prohibit discriminatory practices from continuing, or penalize the law-breaker in any way.").

162. *Id.*

163. *See id.* at 578 ("Although the Fair Housing Act is often heralded as a key piece of civil rights legislation, in reality it was only the first of several steps Congress undertook to promote residential segregation.").

164. Fair Housing Amendments Act of 1988, Pub. L. No. 100-430, 102 Stat. 1619 (1988).

165. *See* Michael H. Schill & Samantha Friedman, *The Fair Housing Amendments Act of 1988: The First Decade*, 4 CITYSCAPE: J. POL'Y DEV. & RSCH., 57, 58–60 (1999) (reflecting on the ten years since the major Amendment to the Fair Housing Act of 1968).

166. *Id.* at 58.

award up to $50,000 in compensatory damages, injunctive relief, and civil penalties for cases in which a party committed three offenses within seven years.[167] In addition to the procedural and remedial improvements to the Act, the 1988 Amendment showed the first added protected classes: families with children, and persons with physical or mental disabilities.[168]

When the Fair Housing Act passed, 22 states already had fair housing laws of their own,[169] and once the federal law passed, it did not supersede these states laws[170] but in fact required HUD to turn over claims to any state agency that had a fair housing law.[171] Today, every state has its own fair housing law, but states differ as to which classes are protected.[172] In Virginia, the right to equal treatment under the housing law was not codified until after the federal law, but more recently, the Virginia Fair Housing Act has expanded to protect even more Americans facing discrimination.[173]

2. The Virginia Fair Housing Law

The Virginia Fair Housing Law was passed in 1972, four years after the federal Act took effect.[174] The Virginia Law is very similar to the federal law and is enforced through the Virginia Real Estate Board and the Virginia Fair Housing Board, both of which

167. *See id.* at 59 (citing the significant increase in awarding power given to those adjudicating claims under the Fair Housing Act).

168. 102 Stat. at § 6(b).

169. *See* William J. Collins, *The Political Economy of State Fair Housing Laws before 1968*, 30 SOC. SCI. HIST. 15, 16 (2006) (analyzing fair housing legislation and the role that state legislation played in the passing of the Fair Housing Act of 1968).

170. *Id.*

171. *See id.* (explaining that if a state had a fair housing law in place, and that state or local agency was certified to handle claims, HUD had to turn over the claim to that agency).

172. *See State Fair Housing Protections*, POL'Y SURVEILLANCE PROGRAM (last updated Aug. 1, 2019) (depicting a map representing that all states have fair housing laws, and showing which classes are protected under different state's laws) [perma.cc/BE8M-UASA].

173. *See* VA. CODE ANN. § 36-96.1 (2021) (codifying the right to equal treatment in the buying, selling, or renting of housing in the Commonwealth of Virginia).

174. *Id.*

investigate claims and have the power to refer claims to the Attorney General.[175] The Virginia Fair Housing Law also includes a private right of action in the appropriate United States district court or state court if commenced within 180 days of the conclusion of the respective administrative process or within two years of the alleged discrimination.[176] The Virginia Fair Housing Law significantly impacted and continues to protect the rights of Virginians to buy, sell, and rent housing. Nevertheless, a pattern arose that illuminated a serious gap in the Law: HCV Program participants were being discriminated against in their pursuit of housing.

C. The 2020 Amendment to Virginia's Fair Housing Act

The Commonwealth of Virginia amended its own version of the Fair Housing Act to better protect Virginians from discrimination in housing. Section 36-96.3 includes all of the characteristics that the Fair Housing Act (FHA) safeguards, but adds the protected classes of elderliness, source of funds, gender identity, and military status.[177] Shortly after the Amendment went into effect, the Virginia Real Estate Board published a Guidance Document summarizing the Amendment and offering examples of actions that violate the Amendment and examples of actions that are permitted.[178] The Guidance Document stresses that the 2020 Amendment[179] does not prevent non-discriminatory consideration of financing during housing transactions, and that landlords should only consider whether the tenant is able to afford their share of the rent that they have agreed to pay by participating in

---

175. *See Virginia Fair Housing Office*, DEP'T PRO. & OCCUPATIONAL REGUL. ("The Fair Housing Board administers and enforces the Fair Housing Law, although the Real Estate Board is responsible for fair housing cases involving real estate licensees or their employees.") [perma.cc/FCB6-CHMV].

176. *See* § 36-96.18 (1994) (stating within the 2020 Amendment that the statutes of limitations period being 2 years from the date of the alleged discriminatory conduct).

177. § 36-96.3 (2020).

178. *See* VA. REAL ESTATE BD., HOUSING DISCRIMINATION ON THE BASIS OF SOURCE OF FUNDS 4–5, 7–8 (Apr. 16, 2021) (offering guidance in the wake of a significant addition to the Virginia Fair Housing Law).

179. VA. CODE ANN. § 36-96.3 (2020).

the voucher program, not the tenant's ability to pay the full rental price as advertised.[180]

The Guidance Document importantly notes that administrative burden is not a defense.[181] The rejection of administrative burden as a defense is crucial in supporting those participating in government housing assistance programs because when dealing with such complex federal programs such as the Housing Choice Voucher Program, administration is necessary and unavoidable. Details like this make a world of difference in supporting the fair treatment of voucher participants.

In October of 2022, Washington D.C. Attorney General Karl Racine won a lawsuit filed in 2020 against three District real estate firms that were systematically rejecting rental applications from Section 8 voucher holders.[182] Washington D.C. added "source-of-income" as a protected class to its Human Rights Act in 2005[183] and the $10 million settlement is the largest to ever come from a voucher discrimination action.[184] In addition to the settlement, the three firms will no longer be able to manage any property in Washington D.C, and one executive even lost her real estate license.[185]

The Washington D.C. action's influence quickly spread, and in October of 2021, the Virginia Attorney General Mark Herring made use of the new protected class by filing through the Office of

---

180. *See* VA. REAL ESTATE BD., *supra* note 178, at 4 (explaining how to consider whether a tenant can afford the rent).

181. *See id.* at 5–6 ("Housing providers that allow objections about administrative requirements,

HCV regulations, or specific housing authorities to form the basis for a refusal to rent . . . risk liability for source-of-funds discrimination against HCV holders.").

182. *See District of Columbia Wins Largest Voucher Discrimination Lawsuit in U.S. History*, NAT'L LOW INCOME HOUS. COAL. (Oct. 24, 2022) [hereinafter *D.C. Voucher Discrimination Lawsuit*] ("In a landmark resolution, Washington, D.C., Attorney General Karl Racine announced on October 20 that three D.C. real estate firms will pay $10 million for discriminating against renters who use Section 8 vouchers . . .") [perma.cc/85N5-FVBM].

183. D.C. CODE § 2-1402.21 (2006).

184. *See D.C. Voucher Discrimination Lawsuit*, *supra* note 182 (describing the $10 million penalty as "the largest civil penalty in a housing discrimination case in U.S. history").

185. *See id.* (The firms and several of their executives are now permanently barred from managing property in the city, with one executive required to forfeit her real estate licenses for 15 years.").

Civil Rights thirteen lawsuits against twenty-nine different real estate companies alleging source of funds discrimination.[186] The suit alleged that real estate companies spread across Richmond City, Chesterfield County, and Henrico County, Virginia were categorically denying tenants after identifying the tenants as voucher holders.[187] These actions were the first to be filed under the 2020 Amendment,[188] and represent intentions of the Commonwealth to make use of the new protection.

The wide scale lawsuits in both Washington D.C. and Richmond point to the probable existence of more significant discrimination occurring against voucher holders and the importance of amending Fair Housing Laws across the country and at a federal level to better protect the voucher program, and those displaced by place-based policies.

V. The Demonstrated Power of Source-of-Income Protections

Source of income protections do more than offer a way into court: they recognize that Americans reliant on Housing Choice Vouchers are being denied their right to a safe home. As of September 2022, twenty-one states and over fifty cities and counties have active protections against source-of-income discrimination.[189] In the last several years, the number of source of income claims are rising at a faster rate than any other protected class not recognized nationally.[190] The jurisdictions that have

186. *See Virginia Attorney General Sues 29 Real Estate Companies for Source-of-Income Discrimination*, NAT'L LOW INCOME HOUS. COAL. (Oct. 25, 2021) (announcing 13 separate suits filed by the Virginia Office of Civil Rights regarding discrimination against voucher holders) [perma.cc/Q6DW-7PK8].

187. *See Suits Allege 29 Companies Discriminated Against Virginia Renters*, ABC13 NEWS (Oct. 20, 2021) (reporting the recent filings) [perma.cc/A7EH-GCME].

188. VA. CODE ANN. § 36-96.3 (2020).

189. *See Advancing Tenant Protections: Source-of-Income Protections*, NAT'L LOW INCOME HOUS. COAL. (Feb. 7, 2023) ("[T]here are 17 states, 21 counties, and 85 cities that ban source-of-income discrimination as of September 2022.") [perma.cc/JN4U-QQ8G].

190. *See* LINDSAY AUGUSTINE ET AL., NAT'L FAIR HOUS. ALL., 2021 FAIR HOUSING TRENDS REPORT 9 (2021) (showing that in 2021, 1,363 source of income complaints were filed, with the second highest non-nationally protected class, sexual orientation, only recording 207 complaints); *see also* LINDSAY AUGUSTINE ET AL., NAT'L FAIR HOUS. ALL., 2022 FAIR HOUSING TRENDS REPORT 11 (2022)

enacted source-of-income protections show a steady rise in source-of-income cases, with 711 complaints filed in 2015 compared to 1,713 filed in 2021.[191] The rising number of complaints reflects the increasing number of jurisdictions recognizing voucher discrimination as a threat to fair housing rights,[192] and the number of Americans who, if given the protection, would exercise their right to a discrimination-free housing process. It is beneficial to highlight a few of the thousands of source-of-income discrimination cases in other states to better understand how, when given the protection, source-of-income discrimination is decided.

A. *Connecticut's Source-of-Income Protections*

Connecticut added source-of-income as a protected class through a general statute in 1989,[193] and the Connecticut Supreme Court has upheld the law both times it has been challenged in court. In *Lopez v. William Rayeis Real Estate*,[194] the Connecticut Supreme Court agreed with the Second Circuit holding that if a statement is facially discriminatory, no inquiry into surrounding context is necessary, but if it is not facially discriminatory, the court may consider both context and intent using an ordinary

(reflecting an updated data report including 2021 data, with a record 1,713 source of income complaints filed).

191. *See* 2021 FAIR HOUSING TRENDS REPORT, *supra* note 190, at 10 (identifying the trend of source-of-income protection enactments); *see also* 2022 FAIR HOUSING TRENDS REPORT, *supra* note 190, at 11–12 (showing a rise in source-of-income cases in 2021).

192. *See* 2022 FAIR HOUSING TRENDS REPORT, *supra* note 190, at 12 ("Source of Income (SOI) complaints have steadily increased since NFHA started documenting these complaints in 2017. Additionally, more states and local jurisdictions, such as California, New York City and Virginia, have added protections for SOI, including Housing Choice Voucher recipients, to fair housing laws.").

193. CONN. GEN. STAT. § 46a-64c(a)(3) (2022).

194. *See* Lopez v. William Rayeis Real Estate Inc., 272 A.3d 150, 161–62 (Conn. 2022) (adjudicating a claim in which a real estate broker, after confirming a rental applicant's application and using language such as "all set" four different occasions regarding the process of approval, quickly changed positions and denied the applicant once discovering the applicant's intent to use a section 8 voucher).

listener standard.[195] The *Lopez* decision represents the Court's position that not only is it impermissible to refuse to rent to someone because of their participation in a governmental assistance program, but the practice of landlords or real estate companies in delaying, putting off, and avoiding communicating with tenants once discovering their intent to use such assistance.[196] Because voucher participants typically have only sixty days to find housing once granted a voucher unless awarded an extension,[197] discriminatory delay on the part of a landlord or real estate company may be detrimental to an applicant who is likely already quite vulnerable.

B. New York's Source of Income Protections

The state of New York, and more specifically New York City, has a great deal of case law[198] enforcing its state and local source of income protections.[199] In *People v. Ivybrooke Equity Enters., LLC*,[200] the former Attorney General of New York filed a source-of-income discrimination action against a West Seneca Falls landlord who was systematically denying section 8 vouchers as a form of payment.[201] The Appellate Division of the Supreme Court of New

195. *See id.* at 162 (citing the Second Circuit test and applying it in the case of source of income, of whether a hypothetical ordinary listener would find that a defendant's ad expressed impermissible racial preference).

196. *See id.* at 163–64 (referring to a common issue applicants face, when potential landlords avoid communication with the applicant upon discovering their intent to use a voucher).

197. *See Policy Basics: The Housing Choice Voucher Program*, CTR. ON BUDGET & POL'Y PRIORITIES (last updated Apr. 12, 2021) (explaining the timeline that voucher recipients must follow) [perma.cc/7CA2-AZMX].

198. *See, e.g.,* People v. Ivybrooke Equity Enters. LLC, 107 N.Y.S.3d 248 (N.Y. App. Div. 2019) (concluding that Section 8 vouchers constitute a "source of income" and interpreting the local code to prohibit the refusal of the vouchers as a source of income); Estates NY Real Estate Servs. LLC v. City of New York, 125 N.Y.S.3d 79 (N.Y. App. Div. 2019) (finding that security deposit vouchers are income for the purposes of source of income protection).

199. N.Y. COMP. CODES R. & REGS. tit. 9, § 466.14 (2021); N.Y.C. ADMIN. CODE § 8-107(5)(a)(1) (2006).

200. 107 N.Y.S.3d 248 (N.Y. App. Div. 2019).

201. *See id.* ("[P]etitioner alleged that respondent was engaging in impermissible 'source of income' discrimination by refusing to accept as rent

York held that mere consideration of vouchers is not sufficient adherence to the West Seneca Fair Housing Code,[202] and affirmed a liberal application of the law.[203] The *Ivybrooke* court defended the rights of over two dozen applicants,[204] and established protection for countless others had the action not been filed.

In *Estates NY Real Estate v. City of New York*,[205] the appellate division of the Supreme Court[206] protected tenants using Human Resources Administration (HRA) security vouchers, which, like housing choice or Section 8 vouchers, are a means of government assistance for those unable to cover the cost a security deposit for a rental unit.[207] After facing rejection from a leasing agent who informed her that only cash security deposits were acceptable in two different attempts, LaTonya Walker turned to the City Commission on Human Rights,[208] which in turn filed a complaint against Estates on Walker's behalf under its authority. Estates argued that a security voucher was not a "source of income" because the term implies a method of paying rent, and that the drafters of the language of the law itself intended to only mean a

---

payment subsidies, i.e. vouchers, that were received pursuant to section 8 of the United States Housing Act of 1937.").

202. W. SENECA FAIR HOUS. CODE § 71-3(A).

203. *See* Ivybrooke Equity Enters., LLC, 107 N.Y.S.3d at 248 ("Remedial legislation such as WSFHC § 71-3(A) should be liberally construed to carry out the reforms intended and to promote justice") (internal quotations omitted).

204. *See* Al Vaughters, *Attorney General Accuses Apartment Complex of Discrimination*, WIVB4 (Sept. 17, 2015, 11:24 PM) (describing Ivybrooke's practice of rejecting vouchers from applicants in its apartment complex) [perma.cc/7HBE-8WAK].

205. Estates NY Real Estate Servs. LLC v. City of New York, 125 N.Y.S.3d 79 (N.Y. App. Div. 2019).

206. In New York, the Supreme Court is the trial court of unlimited personal jurisdiction. *Supreme Court, Civil & Criminal Terms*, N.Y. STATE UNIFIED CT. SYS. [perma.cc/3Q5P-G7FW].

207. *See Special Grant Document Guide*, N.Y.C. HUM. RES. ADMIN. DEP'T SOC. SERVS. (listing and briefly explaining all of the ways in which the administration is able to financially assist those unable to cover the costs of housing, utilities, or moving) [perma.cc/AJL7-VDPZ].

208. *See Inside the Commission on Human Rights*, N.Y.C. HUM. RTS. ("The New York City Commission on Human Rights is charged with the enforcement of the Human Rights Law, Title 8 of the Administrative Code of the City of New York, and with educating the public and encouraging positive community relations.") [perma.cc/HZ3V-DBF3].

way of paying rent.[209] The Court held that an HRA security voucher constitutes a lawful source of income, and therefore the Court indicated an intended protection of not only those paying rent with a voucher, but those engaging in any form of governmental housing assistance.[210]

At an even larger scale in New York, in 2021 the watchdog group Housing Rights Initiative ("HRI") filed suit against eighty-eight landlords and real estate brokers in New York City for source of income discrimination.[211] According to the complaint, HRI began receiving complaints of voucher rejections beginning in 2017, prompting HRI to investigate with testers, who are people that pose as applicants using vouchers to test if the landlords will reject them.[212] Once equipped with evidence of source of income discrimination from all eighty-eight defendants, HRI initiated its civil action.[213] Twenty-three of those eighty-eight have agreed to settle so far,[214] a settlement which includes an agreement to make substantial changes to better comply with the law and advance the goals of the voucher program by setting aside units for voucher users.[215] This lawsuit is a strong indicator of the value of source of

209. *See* Estates NY Real Estate Servs., LLC, 125 N.Y.S.3d 79 (offering legislative intent as a defense to the rejection of security vouchers as falling under the umbrella of source of income).

210. *See id.* at 61 (construing the City's human rights law liberally).

211. *See* Complaint at 2, Housing Rights Initiative v. Compass, Inc. (No. 21 Civ. 2221) (S.D.N.Y. 2021) ("Defendants' refusal to accept Housing Choice Vouchers, and Defendants' statements in connection with such refusals, constitute unlawful race and disability discrimination . . . and unlawful source of income discrimination under the New York City Human Rights Law . . . New York City Administrative Code . . . and the New York State Human Rights Law . . .").

212. *See id.* at 22 ("HRI investigates housing discrimination through a variety of means, including civil rights testing. Civil rights testers are persons who query housing providers to test the housing providers' compliance with applicable fair housing laws.").

213. *See id.* at 22–49 (alleging a myriad of instances of the defendants' refusal to accept vouchers).

214. *See* Jonathan O'Connell, Apartment Firms Agree to Housing Voucher Policies to Settle Bias Suit, WASH. POST (Apr. 5, 2022, 3:02 PM) (reporting the settlement between several of the defendants involved in the HRI discrimination suit) [perma.cc/VKR8-AL3F].

215. *See id.*

Compass will begin paying agents a higher commission for renting apartments to voucher holders, conduct regular training for agents on voucher programs, and income protections, and begs the question of how many other Americans have a claim but lack an advocate or law to protect them. If state-sponsored gentrification is to proceed at the rate at which is seen today, protecting displaced people's right to voucher use is not merely a legislative goal but a necessity.

VI. Proposed Solution: Restructuring Affordable Housing Policymaking and the Fair Housing Improvement Act

The problem presented and the analysis that followed emphasize the need for action. A problem as significant as the one presented requires time and energy at every level of the process. Taking steps to restructure the way in which affordable housing policy is created is a method that over time has the potential to evoke positive and lasting change. In the period during which that change manifests, a federal law must be adopted.

A. *Restructuring Affordable Housing Policymaking*

Solving the affordable housing crisis in the United States is a multifaceted challenge that requires a seat at the table not only for lawmakers, housing development experts, and investors, but neutral third-party regulators and actual leaders from the communities that are the most impacted.[216] The demonstrated interest amongst lawmakers and investors in place-based policies can be used to better both places and people in the ways in which lawmakers intended, beginning with three modifications.

First, accountability on the part of investors and developers must be at the root of place-based policy programs like Opportunity Zones. Accountability may include scheduled reporting on the status of the area residents in terms of education,

---

recommit to banning income requirements for voucher holders. The deal compels the 22 other companies to make similar changes, such as setting aside units for voucher holders and maintaining records of inquiries from voucher holders.

216. *See* NLIHC Collective Member Testifies about Human Rights in Housing at Senate Subcommittee Field Hearing, NAT. LOW INCOME HOUS. COALITION (Mar. 11, 2024) (reporting on the testimony given by tenant leaders of the National Low Income Housing Coalition's Collective before the Senate Committee on the Judiciary's Subcommittee on Human Rights and the Law about lived experiences in substandard public housing) [perma.cc/98BA-LG5E].

employment, and housing, or timeline requirements and set deadlines to produce promised affordable housing. While the place-based policies analyzed in Part II each gained popularity somewhat due to the freedom under which investors could act, hundreds of residents of those areas were displaced and forgotten.[217] Second, neutral parties with an acute understanding of the affordable housing crisis and poverty must play a larger role in the proposing and enactment of place-based policies. [218]The reality of legislating includes paid lobbyists advocating to lawmakers on behalf of a client, creating a gap in both knowledge and forethought.

The argument that federal agencies such as HUD serve to offer this kind of insight is fair, but, at this juncture, clearly failing.[219] The inclusion of truly neutral experts would shift the ways in which place-based policies are created while increasing consideration of the affected populations and cultures. Lastly, the inclusion of community leaders from the areas affected by place-based policies is crucial in bettering these types of programs to address gentrification. By listening to and incorporating input from actual community members, the specific needs and aspects of the affected communities can be addressed before the project begins. Additionally, the inclusion of historically marginalized voices may lead to increased considerations in other areas of policymaking.

B. Support for The Fair Housing Improvement Act

As of 2018, only one in three voucher-holding households were protected against source-of-funds discrimination, despite eleven states, Washington D.C., and over fifty cities and counties having

---

217. *See supra* Part II. (explaining the shortcomings of place-based programming in various localities in Virginia).

218. *See generally* HOUSING THE NATION (Alexander Gorlin and Victoria Newhouse eds., 2024) (presenting essays by a variety of experts in affordable housing, each offering analyses and solutions to resolve the affordable housing crisis).

219. *See supra* Part 0 0 (providing an overview of the inadequate and failing government programs aimed at providing housing support for low-income individuals).

protected against source-of-income discrimination at the time.[220] As of December 2023, only 57% of all voucher holders were protected by Fair Housing Laws.[221] At a federal level, attempts to add source-of-income as a protected class to the Fair Housing Act have thus far failed.[222] The Fair Housing Improvement Act is spearheaded by Virginia Senator Tim Kaine and California Representative Scott Peters and was first introduced in 2018.[223] The law adds "source of income" as a protected class, protects existing programs dedicated to serving low-income households and veterans, and gives landlords forty months to enter into compliance.[224]

Research into the effectiveness of source-of-funds protections indicates that in areas with protections, vouchers are more likely to be used and designated funds are more likely to be effectively spent.[225] The 2018 study conducted for HUD on voucher discrimination[226] presented evidence that the denial rate in low-poverty neighborhoods was significantly lower in jurisdictions where source-of-funds were a protected class.[227] This finding is significant because historically, vouchers were more likely to be accepted in areas with higher poverty rates, propelling long-standing issues of segregation, and hindering the ability of voucher

---

220. *See* BELL, *supra* note 148, at 1 (analyzing states in which source-of-funds is a protected class under Fair Housing laws compared to states in which voucher holders are not protected).

221. POVERTY & RACE RSCH. ACTION COUNCIL, APPENDIX B: STATE, LOCAL, AND FEDERAL LAWS BARRING SOURCE-OF-INCOME DISCRIMINATION 1 n.1 (Dec. 2023).

222. Fair Housing Improvement Act of 2018, S. 3612, 115th Cong. (2018); Fair Housing Improvement Act of 2019, H.R. 3516, 116th Cong. (2019).

223. *See* NAT'L LOW INCOME HOUS. COAL., FAIR HOUSING IMPROVEMENT ACT 1 (Apr. 2023) ("The Fair Housing Improvement Act . . ., introduced by Senator Tim Kaine (D-VA) and Representative Scott Peters (D-CA) expands the Fair Housing Act to prohibit housing discrimination based on 'source of income' and military and veteran status.").

224. *Id.*

225. *See* BELL, *supra* note 148, at 7 (measuring the voucher program effectiveness by analyzing utilization rate and success rate).

226. *See id.* at 8 (noting the 2018 HUD study's evidence that voucher denial rates were lower in areas with source-of-funds protections).

227. *See id.* (noting that in Washington D.C., which protects source-of-funds from discrimination, the low-poverty denial rate was 16.2%, compared to Fort Worth, Texas, an unprotected city, which showed an 85% denial rate).

participants to move into the areas they may desire and have a legal right to live in.

VII. Conclusion

The three-prong problem of gentrification, unaffordable housing, and place-based policy is not to be solved with a singular law, assistance program, or donation. The affordable housing crisis is the result of nationwide changes in housing demographics prompted by financial incentives aimed at helping places, not people. Low-income Americans, in turn, are displaced and forced to navigate a voucher program riddled with discrimination at the hands of the same individuals profiting from the programs that displaced those low-income Americans in the beginning. The angle at which legislators approach the affordable housing crisis must shift to hold developers and investors accountable when operating under place-based policies and incorporating the voices of actual community members to improve results for not just the place, but the people. Passage of the 2022 Fair Housing Improvement Act in the meantime would extend source-of-income protections to millions of Americans while strengthening the Housing Choice Voucher program. A responsibility falls not only on lawmakers, but investors, developers, community leaders, and citizens to offer empathy towards Americans experiencing homelessness and a voice of accountability towards those making the decisions that brought us here.