A CITY BUILT ON DEBT

FEDERAL RETRENCHMENT, MUNICIPAL FINANCE, AND INEQUALITY IN DALLAS SINCE THE 1960S

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Colin F. McGrath

To Elli and my parents

ABSTRACT

A CITY BUILT ON DEBT: FEDERAL RETRENCHMENT, MUNICIPAL FINANCE, AND INEQUALITY IN DALLAS SINCE THE 1960S

Colin F. McGrath

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Through a case study of Dallas, this Dissertation examines how federal policy during the 1970s and 1980s shaped municipal finance and the urban political economy. Using primary sources from federal archives, Part I tracks shifts in federal programs in the 1970s and 1980s that reduced direct aid to cities while providing local governments greater autonomy. Part I argues that the federal government encouraged cities to use debt to fund housing and urban renewal programs, but did little to regulate cities' uses of debt. Part II uses city archives and historical newspapers to show how shifts in federal policy gave private investors the power to mold local urban policy. In the 1980s, Dallas residents won civil rights lawsuits that increased the racial diversity of the city council. But in response to fiscal strain, city leaders worked with private investors and developers to attract businesses to office buildings in downtown Dallas. The city used tax increment financing bonds and other forms of debt to stimulate housing developments for wealthy professionals while displacing poor residents. The city also invested heavily in its police force and criminalized homelessness while funding artistic and cultural spaces. Residents found that courts were not helpful in combating these injustices, in part because federal programs did not regulate redevelopment projects financed with municipal debt. Dallas's interaction with state and federal government illustrates how community activism, federal law, and private investors and developers shaped land use in the city after the 1960s.

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Introduction

In the mid 1990s, Dallas's downtown real estate market was booming. Young professionals living in the suburbs, many who were unaccustomed to urban life, were allured by glamourous depictions of big cities in popular culture and the prospect of a shorter commute. They came in droves. In neighborhoods surrounding Dallas's central business district, new apartment complexes were fully leased before construction was complete. From 1970 to 1990, the downtown population had fallen by 38 percent, even as Dallas's total population grew. Now the trend had reversed.[1]

For city planners and the City Council, this was a triumph. What they hailed as a downtown revival was largely the result of the policies they designed to encourage investors and developers to start building in Dallas. Throughout the 1980s, the city had rolled out subsidy programs and created special investment vehicles that diverted future tax revenue to finance infrastructure and housing construction. To encourage skittish developers to "keep the dirt flying," the city devoted its limited resources to cutting their costs. With investors confident that new developments would draw wealthy tenants, the money continued to flow into downtown neighborhoods.

Yet, developers were not working with a blank canvas. Before the wealthy moved in, these downtown neighborhoods were already home to poor and working-class people, including whites, African Americans, and Mexican Americans. The flood of private capital, aided by city policies, put pressure on landlords to raise rents, evict tenants, and

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[1] "Housing: The Biggest Piece of the Puzzle," *D Magazine*, October 1996.

sell property to speculators. When the wrecking ball came, there was little that residents could do but leave. In State-Thomas, an African American neighborhood just north of downtown Dallas, Henry D. Hardy watched his neighborhood friends, many of them renters, lose their homes. "I think they're doing us nasty," he told a reporter. "This was our home here. We grew up here. Now they're just kicking us out, leaving us nowhere to go."[2]

In some ways, this process resembled urban renewal programs that cities implemented using federal money in the 1950s and 1960s. In the 1960s, people facing displacement from urban renewal had challenged redevelopment programs in court. They argued that the federal government failed to comply with program regulations in approving plans. By asserting rights under federal law, residents established that federal and state officials had an obligation to consider their interests. But in the 1980s, Dallas did not rely on federal aid. As a result, its redevelopment initiatives were more insidious. Developers and city officials did not need to submit a plan to federal officials for approval. There was little public vetting. In State-Thomas, one of Dallas's first redevelopment areas, the board of a semi-public district used bonds secured by future tax revenue to finance infrastructure development. But private property owners carried out evictions and demolitions without direct support from the city. In the 1980s, the city's incentive programs came with few regulations. Litigation offered little hope to residents who were slated to lose their homes.

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[2] Doug Bedell, "Developers Take Block of History: Historic Freedman's Town District is Being Reshaped," *Dallas Morning News*, February 10, 1985.

The city's policies raise the question: why did life in neighborhoods like State-Thomas became so precarious for poor people in the 1980s and 1990s, and why did the city do so little to help? Changes in federal policy since the late 1960s help explain the city's failures.

Historians of metropolitan politics, urban development, and urban political economy have begun to grapple with post-1970s America, but they have not focused on the relationship between federal policy and city government. In the last thirty years, historians turned their attention to the role the federal government played in shaping metropolitan space from the early twentieth century through the 1970s. Arnold Hirsch and others showed how federal policy caused racial segregation in housing and the rise of independent suburbs that hoarded wealth from central cities.[3] This literature reaches into the 1960s, documenting uprisings that spread across the US,[4] white resistance to metropolitan integration,[5] crises in public housing,[6] and retrenchment of federal urban

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[3] See, for example, Arnold R. Hirsch, *Making the Second Ghetto: Race and Housing in Chicago, 1940-1960* (Chicago, Ill.: The University of Chicago Press, 1998); Kenneth T. Jackson, *Crabgrass Frontier: The Suburbanization of the United States* (New York: Oxford University Press, 1985); Thomas J. Sugrue, *The Origins of the Urban Crisis: Race and Inequality in Postwar Detroit* (Princeton: Princeton University Press, 2005); Wendell Pritchett, *Brownsville, Brooklyn: Blacks, Jews, and the Changing Face of the Ghetto* (Chicago: University of Chicago Press, 2002); David M. P. Freund, *Colored Property: State Policy and White Racial Politics in Suburban America* (Chicago: University of Chicago Press, 2007).
[4] Sugrue, *The Origins of the Urban Crisis*; Gerald Horne, *Fire This Time: The Watts Uprising and the 1960s* (Charlottesville: University Press of Virginia, 1995).
[5] Christopher Bonastia, *Knocking on the Door: The Federal Government's Attempt to Desegregate the Suburbs* (Princeton, N.J.: Princeton University Press, 2006); Sugrue, *The Origins of the Urban Crisis*; Hirsch, *Making the Second Ghetto: Race and Housing in Chicago, 1940-1960*.
[6] Lawrence J. Vale, *From the Puritans to the Projects: Public Housing and Public Neighbors* (Cambridge, MA: Harvard University Press, 2000); D. Bradford Hunt, *Blueprint for Disaster: The Unraveling of Chicago Public Housing* (Chicago: University of Chicago Press, 2009).

spending.[7] It leaves off at the close of the 1970s, when American cities stood at the brink of fiscal crisis, with working class people facing deindustrialization and unemployment.

Recent scholarship has begun to trace shifts in federal urban development programs. Historians have examined the revenue sharing and block grant programs the federal government adopted in the 1970s and documented its use of private actors to implement government policy.[8] Elizabeth Blackmar's research has demonstrated the ways large financial institutions and corporate structures such as Real Estate Investment Trusts facilitated absentee land ownership, shaped commercial property development, and undermined environmental conservation efforts.[9] Scholars have also begun to explore local governments' efforts to marshal private capital to replace federal funding. They have shown how semi-government entities, called "public authorities," became increasingly powerful during the last half of the twentieth century.[10] Scholars have also examined how cities used tax increment financing to replace federal funding, a mechanism that states and the federal government did little to regulate,[11] and how the federal government replaced direct grants to local governments with a "decentralized"

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[7] Roger Biles, *The Fate of Cities: Urban America and the Federal Government, 1945-2000* (Lawrence: University Press of Kansas, 2011).
[8] Ibid.
[9] Elizabeth Blackmar, "Of REITS and Rights: Absentee Ownership in the Periphery." In *City, County, Empire: Landscapes in Environmental History* (Pittsburgh: University of Pittsburgh Press, 2005).
[10] Botein, Hilary, "New York State Housing Policy in Postwar New York City: The Enduring Rockefeller Legacy," *Journal of Urban History* 35, no. 6 (2009); Gail Radford, *The Rise of the Public Authority: Statebuilding and Economic Development in Twentieth-Century America* (Chicago: University of Chicago Press, 2013).
[11] Richard Briffault, "The Most Popular Tool: Tax Increment Financing and the Political Economy of Local Government," *The University of Chicago Law Review* 77 (2010).

system of tax credits that encouraged private real estate developers and banks to create affordable housing.[12]

While illuminating, these studies do not fully capture the role the federal government played in shaping local fiscal policy, land use, and politics.[13] This dissertation addresses this gap by examining the ways federal policy since the 1970s encouraged cities to use municipal debt, particularly to finance affordable housing development. It analyzes how this shift undermined local advocacy for economic and social justice. It draws these connections by advancing four main arguments.

First, federal policy since the 1970s made cities increasingly responsive to the demands of bond buyers. During the 1970s and 1980s, as the federal government cut direct aid for housing and community development, it replaced housing programs with policies that helped states and cities accumulate debt. Municipal tax bases stagnated during this period, leaving local governments with few other means for stimulating housing development. But to sell bonds, cities needed to appease investors.

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[12] Erickson, David, "Community Capitalism: How Housing Advocates, the Private Sector, and Government Forged New Low-Income Housing Policy, 1968-1996," *Journal of Policy History*, 18, no. 2 (2006).

[13] Historians have also overlooked the ways people used legal intervention or other forms of activism to challenge redevelopment after the 1960s. Robert Self provides a brief discussion of one organization in Oakland that attempted to use courts to block the redevelopment of a neighborhood in Oakland, California. See Robert O. Self, *American Babylon: Race and the Struggle for Postwar Oakland* (Princeton: Princeton University Press, 2003), 147. Additionally, a few legal scholars have discussed place-based legal activism in brief articles. See, for example, Georgette C. Poindexter, "Who Gets the Final No? Tenant Participation in Public Housing Redevelopment," *Cornell Journal of Law and Public Policy* 9, no. 3 (2000); Marvin Krislov, "Ensuring Tenant Consultation Before Public Housing Is Demolished or Sold," *Yale Law Journal* 97, no. 8 (1988); Julie Sze, "Asian American Immigrant and Refugee Environmental Justice Activism Under Neoliberal Urbanism," *Asian American Law Journal* 18, no. 5 (2011).

Second, local policies harmed poor communities, but federal courts in the 1980s and 1990s could only rectify racial discrimination in housing and public elections. According to prevailing interpretations of the Constitution and federal civil rights laws, courts had no authority to remedy discrimination based on class. Federal judges had no authority to reduce the influence of private capital over local elections. They could not require cities to help the poor.

Third, even though voting-rights litigation made city government more diverse, change in leadership did not bring more equitable policies. Private capital had become integral to local economic development. Facing a stagnant tax base and loss of federal aid during the 1980s and 1990s, cities adopted policies to attract private investment for housing and commercial property. These programs yielded little housing for the poor, and instead displaced poor families from their homes.

Fourth, fiscally strained municipalities during this period supported the rise of local law-and-order politics. In search of a broader revenue base, cities hoped to attract corporate relocations through aggressive policing of downtown districts and by criminalizing homelessness.

Part I of this dissertation tracks changes in federal housing and urban development policy since the 1960s. From the late 1930s through the 1960s, the federal government supported urban redevelopment and local social services by providing direct grants and loans to municipalities. Federal aid programs during this period relied on private developers and investors to produce housing and implement urban renewal plans. But the federal government directly supported these activities. The federal government

made installment payments on the bonds that public housing authorities sold to private investors, ensuring that investors got paid. In the early 1970s, this changed. Congress worked with federal administrators to dismantle the housing and urban redevelopment programs that had arisen from legislative efforts of the New Deal and Great Society. To replace these programs, the federal government looked to private investors to stimulate affordable housing development and commercial growth. By helping cities accumulate debt, the government harnessed private capital to produce new housing and infrastructure in distressed neighborhoods.

Chapter 1 contextualizes these shifts in policy, highlighting the political and legal significance of federal involvement in financing urban development projects. Communities of color in the late 1960s established that they had standing to challenge the agency's urban renewal policies and decisions in federal court, and they forced the federal government to consider whether its programs caused segregation. For a brief period during the Nixon administration, HUD attempted to use its housing programs to desegregate cities. But, as Chapter 2 shows, this effort provoked a fierce backlash from white homeowners and revealed widespread discomfort with policies that curtailed the freedom of local government. HUD ultimately abandoned its public housing programs, and in 1974 Congress replaced housing construction programs with vouchers that helped low-income people afford rent. Chapter 3 argues that this shift, paired with federal policies that helped cities use debt to finance affordable housing construction, weakened the federal government's ability to regulate local land use and housing policies. Chapter 4 explains that even as the federal government responded to urban fiscal crises by helping

cities take on and manage greater debt, it did little to regulate municipal bond markets and the ways cities used public financing. As cities responded to reductions in federal aid, they were thus subject to minimal federal oversight.

Part II examines the ways local governments responded to these shifts in federal policy, focusing on the Texas state legislature and the city of Dallas. Chapter 5 demonstrates that in the late 1970s and early 1980s, the Texas legislature allowed municipalities to take advantage of federal tax laws, using bonds to replace federal funding for urban development and housing. Lawmakers permitted cities to create semi-public entities, including housing finance corporations, industrial development corporations, and tax-increment financing districts.

To use municipal debt to finance affordable housing development and industrial growth, cities needed to attract investors. But bond buyers were not willing to finance "risky" affordable housing projects. Responding to their demands, local policy became less egalitarian. Cities implemented affordable housing programs that subsidized housing for the wealthy, but offered little help to poor people. As Texas cities gained greater independence from the federal and state government, they became increasingly responsive to investors.

Chapter 6 argues that, as cities grew more responsive to capital, poor residents struggled during the 1980s to combat economic injustices. The Supreme Court refused to recognize poverty or class as a protected characteristic, leaving federal judges with no authority to require cities to provide services to the poor. African American public housing tenants won a lawsuit against the Dallas Housing Authority, obtaining a court

order requiring the city to desegregate its public housing. But the lawsuit also invited disputes among activists. Many civil rights advocates wanted to demolish Dallas's major public housing projects, which they considered a monument to segregation. Advocates for the poor and homeless fought back, hoping to preserve critical housing stock. Voting rights litigation similarly focused on racial discrimination. Throughout the twentieth century, Dallas had maintained an election system that excluded all candidates but those who received the blessing of local business executives. But in response to litigation, federal courts only mandated that the racial integration of city government. Courts did not purge money from politics.

The city's need to appease bond buyers undermined even these limited victories. Successful civil rights litigation created new opportunities for Dallas's communities of color. Black and Mexican American plaintiffs broke the local business oligarchy's control over politics, allowing them to win seats on the City Council. But as Chapter 7 argues, poor people—whether white, black, or Mexican American—still found themselves fighting for limited resources. The city still responded to bankers when formulating its urban redevelopment and housing policies. Dallas created a semi-private corporation to finance low-income housing in the 1980s, but in practice, it awarded subsidized loans to developers to create housing affordable only for wealthy people. The city also poured its resources into tax-increment financing plans that encouraged investors to demolish housing in historically African American neighborhoods and replace it with new developments intended for wealthy downtown professionals—

bankers, consultants, lawyers, accountants. Even as the Dallas City Council gradually grew more racially diverse, affordable housing had no place in its development plans.

Finally, Chapter 8 examines the connections between the fiscal strain of municipal government and the rise of law-and-order politics during the 1980s and 1990s. During the 1980s, Dallas's tax base stagnated, and the city lost downtown commercial tenants as business managers relocated their operations to nearby suburbs. Hoping to prevent further losses, in the late 1980s and early 1990s the mayor and City Council pursued policies to make the city more appealing to capitalists. To attract business owners and wealthy professionals, the city invested heavily in its police force, passed laws forbidding sleeping in public, and tore down encampments that homeless people built under bridges and vacant lots. Simultaneously, the city invested in artistic and cultural spaces. These strategies served a common purpose. In its marketing to attract downtown office tenants in the 1990s, the city at once highlighted its police tactics and its burgeoning arts scene. Dallas was replacing crime with culture, and it hoped this transformation would lure corporate executives.

By the 1970s, the city's racist housing policies had rendered Dallas a divided city. (See Figures 1–3.) In subsequent decades, Dallas's housing, urban renewal, and policing policies merged to deepen the city's divisions. North Dallas, a historically white and wealthy area of the city, stayed that way, while wealthy professionals took control of Dallas's downtown. In Southern Dallas, historically poor and predominantly African American, high rates of poverty persisted. The city did little to provide affordable housing to the families who lived there. In West Dallas, the Dallas Housing Authority

demolished the city's largest public housing project, a sprawling complex of 3,500 units that the city built in the 1950s. Instead of building new affordable units throughout Dallas to rectify racial and economic divisions, the city largely replaced the housing with rental vouchers.

Dallas's interaction with state and federal government illustrates how community activism, federal law, and private investors and developers shaped land use in the city after the 1960s. Dallas's history suggests that shifts in federal urban policy created challenges even for a city in a region experiencing economic growth. Dallas did not endure the same challenges as rust-belt cities, where deindustrialization drove urban decline. Indeed, Dallas became home to many people who moved there from northeastern and midwestern cities in the 1960s and 1970s in search of work. Despite its economic growth throughout the latter half of the twentieth century, the city still faced revenue shortfalls, and leaders turned to municipal debt to replace cutbacks in federal aid. The city's bond buyers—pension funds, insurance companies, commercial banks, and wealthy individuals—demanded a return on their investments. Unable and unwilling to use municipal debt to help those in need, the city invested in neighborhood redevelopment plans intended to attract new businesses and wealthy employees to the city. Dallas was home to people of extraordinary wealth, but the city government was unapologetically cruel to those of little means. Poverty, inequality, displacement, and homelessness became the new normal.

Figure 1: Racial segregation of African Americans in Dallas in 1970. Source: U.S. Census Bureau, 1970.

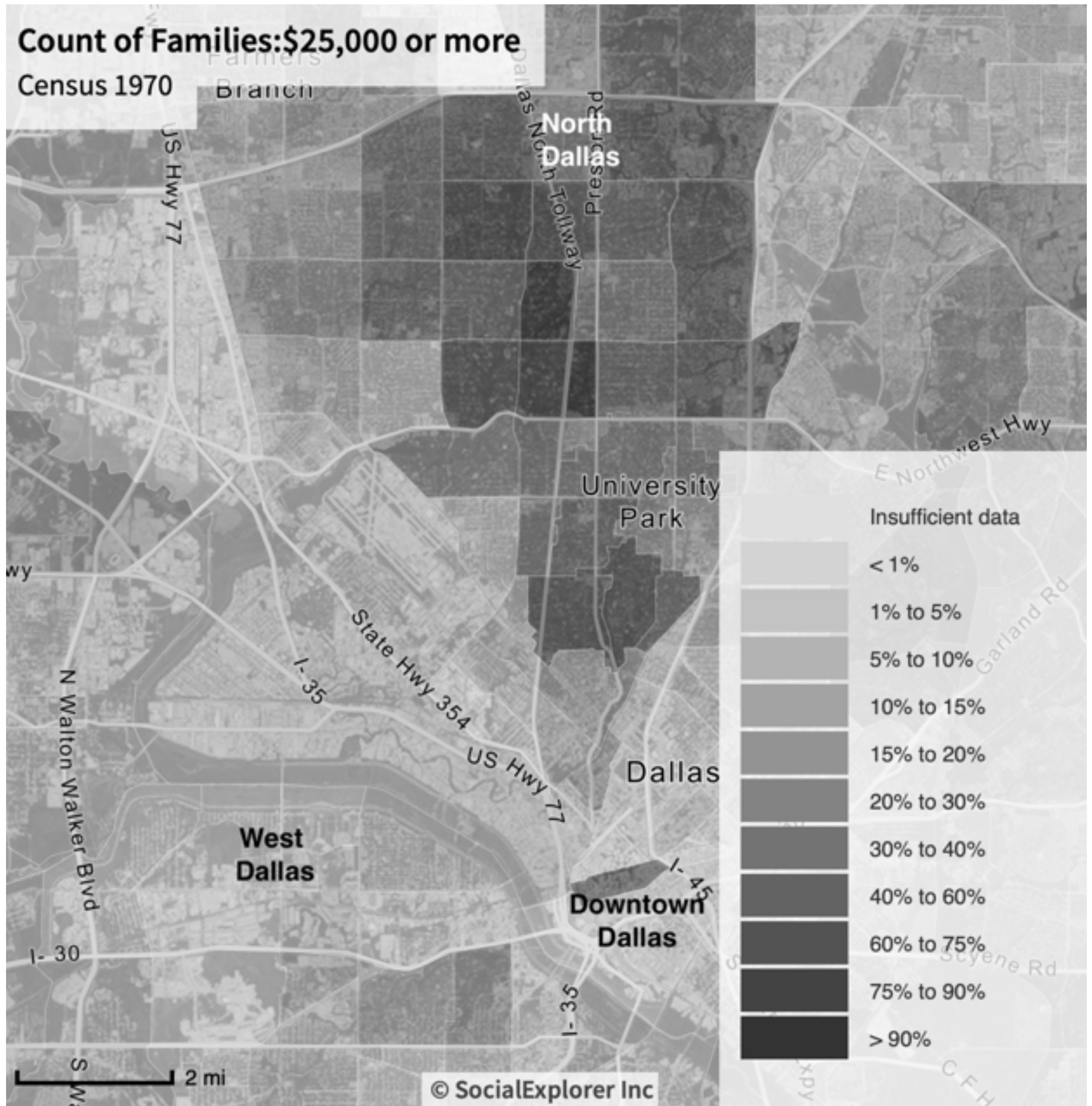

Figure 2: Income-based segregation in Dallas in 1970. Source: U.S. Census Bureau, 1970.

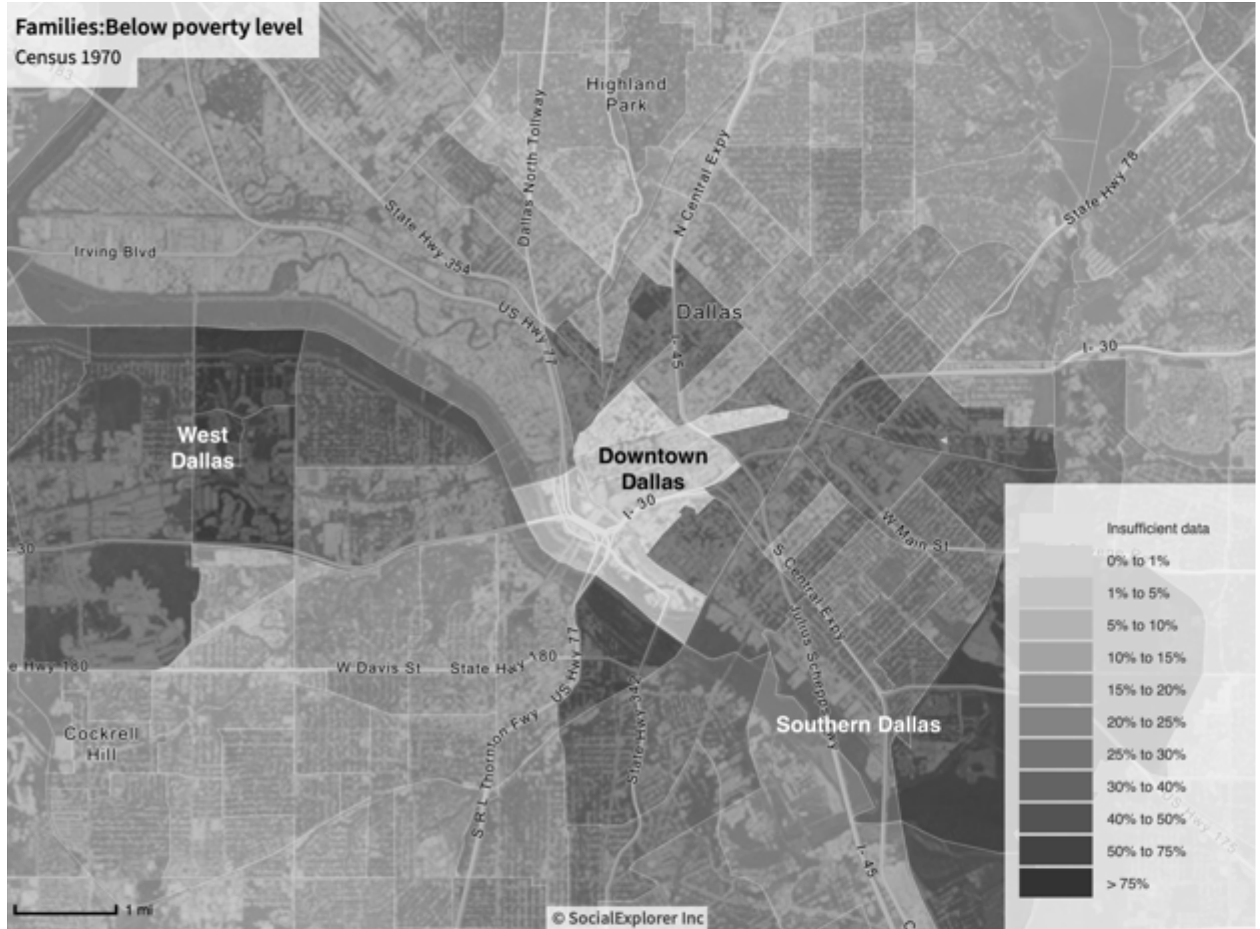

Figure 3: Segregation based on poverty in Dallas in 1970. Source: U.S. Census Bureau, 1970.

Chapter 1

Standing against Displacement: Litigation and Federal Urban Policy in the 1960s

In December 1966, the Redevelopment Agency in Norwalk, Connecticut, acquired the property where an African American couple, James and Julia Mosley, lived with their three children. Officials evicted the family to clear the way for an urban renewal project. Agency officials provided no arrangements for relocation housing, leaving the Mosleys homeless. The Norwalk housing market prevented them from finding decent, affordable housing. Unable to locate a new residence on their own, the Mosleys and their three children all moved into a single room in the house where James Mosley's parents lived.[1]

In 1967, Alejandro Ortiz moved to a dilapidated building owned by the Norwalk Redevelopment Agency. Like the Mosleys, the Redevelopment Agency evicted Ortiz from his pervious home, which fell within a neighborhood that the Agency designated as a redevelopment area. The Agency planned to demolish his home to make way for new development. Though the Agency provided Ortiz temporary relocation housing, it was woefully inadequate. Despite paying $130 per month, the apartment had "gaping holes in the living room and kitchen floors," unrepaired windowpanes, and defective electrical wiring. Water leaked from an apartment upstairs. Outside the building, conditions were

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[1] Affidavit of James Mosley, Jr. and Julia Mosley, Read in Support of Motion, Norwalk Core v. Norwalk Redevelopment Agency, 42 F.R.D. 617 (D. Conn. 1967), folder: Norwalk Congress of Racial Equality v. Norwalk Redevelopment Agency, 1966–67, Box V:205, NAACP Records, Library of Congress.

no better. With a construction project underway at a nearby property, torn up sidewalks and an open trench surrounded the apartment building. The Agency refused to provide the family a permanent residence.[2]

As the Norwalk Redevelopment agency implemented its urban renewal plan, it disregarded the interests of hundreds of other residents. And during the 1960s, like the African American and Puerto Rican families in Norwalk, residents of low-income communities across the United States faced the threat of displacement.[3] Municipal leaders, armed with grants and loans from the federal government, drafted urban renewal plans that they hoped would rejuvenate low-income neighborhoods. Planners and local elected officials saw urban renewal initiatives as opportunities to increase local revenue, drive up returns on property owners' investments, and to eradicate what appeared to local leaders as "slums." To achieve these goals, redevelopment plans often entailed the destruction of low-cost housing, followed by development of new residential and commercial property serving wealthier households. Across the country, residents of redevelopment areas pushed back. In efforts to preserve their communities and shape the content of local redevelopment plans, residents first sought the attention of political leaders. As residents found, political struggle often did little to influence the behavior of local governments.

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[2] Affidavit of Alejandro Ortiz, Read in Support of Motion, Norwalk Core v. Norwalk Redevelopment Agency, 42 F.R.D. 617 (D. Conn. 1967), folder: Norwalk Congress of Racial Equality v. Norwalk Redevelopment Agency, 1966–67, Box V:205, NAACP Records, Library of Congress.

[3] On urban renewal and community displacement generally, see Martin Anderson, *The Federal Bulldozer: A Critical Analysis of Urban Renewal, 1949–1962* (Cambridge: The M.I.T. Press, 1964).

In search of other forms of influence, residents of redevelopment zones across the country turned to federal courts for help. Beginning in the 1960s, as municipal leaders across the US set redevelopment plans in motion, people like Alejandro Ortiz and James Mosley initiated legal actions to preserve their neighborhoods. Through litigation, they attempted to change the balance of power in urban redevelopment.

But litigants had to overcome procedural hurdles before courts would intervene. Their success hinged on how judges responded to a set of fundamental questions: Who should have a right to challenge the actions of a local government? When would it be appropriate for a federal court to intervene in local policy decisions? And under what conditions might a citizen challenge an action of a federal administrative agency? As federal judges evaluated these questions, they expanded the federal doctrine of standing. In so doing, they enabled residents to seek judicial review of federal decisions and local activity. By asserting rights established under federal law, residents made modest progress in counterbalancing the growth interests of urban political elites. By successfully pressing federal courts to expand the doctrine of standing, plaintiffs subjected local governments to greater scrutiny from federal judges and federal administrative agencies. Through their insistence, residents limited the autonomy of local officials.

The doctrine of standing concerned more than procedure. In urban litigation, standing doctrine raised questions about federalism—specifically, what role a federal court should play in policing the urban planning decisions of local governments. Standing also shaped the meaning of a resident's citizenship within an urban community and relationship with overlapping layers of government. As residents or urban renewal areas

pressured courts to grant them standing to challenge federal and local urban renewal policies, they strengthened ties between low-income Americans and federal officials. Through litigation, residents also inserted themselves into the political and legal calculations of local officials. They devised and asserted a modest set of rights, calling on federal courts to enforce civil rights statutes and regulations governing urban renewal programs.[4]

Perhaps most critically, urban renewal litigation contributed to the expansion of federal regulatory authority over local governments. Residents of urban renewal zones across the US urged federal administrators to consider the way urban aid programs affected communities of color. In the late 1960s, as federal judges issued opinions holding local and federal agencies in violation of civil rights laws, federal officials began to rethink their responsibilities in administering housing and urban renewal funding. Alejandro Ortiz and the Mosleys contributed to this shift in the U.S. Department of Housing and Urban Development's (HUD) relationship with local governments. Yet, this chapter depicts a aberrational moment in the history of the American administrative

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[4] Historians have considered the ways the national state has regulated and defined citizenship in various contexts. See, for example, Lizabeth Cohen, *A Consumers' Republic: The Politics of Mass Consumption in Postwar America* (New York: Vintage Books, 2003); Julia Ott, *When Wall Street Met Main Street: The Quest for an Investors' Democracy* (Cambridge: Harvard University Press, 2011); Margot Canaday, *The Straight State: Sexuality and Citizenship in Twentieth-Century America* (Princeton: Princeton University Press, 2009); Mae Ngai, *Impossible Subjects: Illegal Aliens and the Making of Modern America* (Princeton: Princeton University Press, 2014); Linda K. Kerber, *No Constitutional Right to be Ladies* (New York: Hill and Wang, 1998); Martha S. Jones, *Birthright Citizens: A History of Race and Rights in Antebellum America* (Cambridge: Cambridge University Press, 2018). Work on citizenship has focused on "access to the nation-state" through immigation processes or "the nature and qualtiy of citizenship as practiced within th epolitical community." Though historians have examined the ways substantive laws have framed "citizenship," historians have had less to say about citizenship as mediated through legal procedure, and how litigation allowed residents to assert and define citizenship within local contexts.

state. It points to one future that low-income residents envisioned and began to forge, one case at a time. It was a road not taken. The chapters that follow explore the gradual unraveling of this vision. Structural shifts in federal aid to cities since the 1970s diminished the force of early victories.

I.

Until the late 1960s, the federal administrative agencies had done little to police local urban renewal disputes. While the expansion of federal involvement in housing development dated to the 1930s, federal officials avoided scrutinizing the effects that federal housing and urban renewal programs had on the racial composition of cities. In the 1930s, partially as a national recovery measure in response to the Great Depression, Congress introduced what historian Gail Radford identifies as a two-tiered housing policy system. First, Congress in 1933 established the Home Owner's Loan Corporation, and in 1934 passed the National Housing Act, establishing the Federal Housing Administration (FHA). These laws encouraged banks to extend loans to help families buy and repair homes. Second, in 1937 Congress passed the U.S. Housing Act, a law designed to produce public housing for low-income Americans. The FHA's use of discriminatory redlining policies ensured that the first set of housing programs predominantly served white Americans and supported the growth of white suburban communities. Meanwhile, the second tier of housing programs, while initially designed for working-class whites and blacks alike, quickly became a program that primarily housed black households. One tier facilitated private homeownership and mobility towards suburbs among whites. The second tier, in the middle of the twentieth century, supported the production of the U.S.'s

public housing "projects": large-scale developments that allowed cities to segregate residents based on race.[5]

Racial discrimination within federal urban programs grew even more pronounced after Congress passed the Housing Act of 1949. The 1937 legislation provided slum clearance funding so that municipalities could eliminate one substandard unit for every public housing unit it developed. Title I of the 1949 Housing Act, however, establishing funding for clearance as a separate category not related to the development of new housing. The law thus strengthened the legislative foundations for slum clearance. Title I funds allowed municipal governments to purchase and clear "blighted" land. Lawmakers hoped that by supporting land clearance, the federal government could help cities increase property value and tax revenue in depressed communities. Title I funding promised to attract private investment in struggling districts. In practice, while Title III of the law expanded funding for public housing development by authorizing 810,000 new units over six years, new public housing development proved far more difficult for local housing authorities to implement than the slum clearance provisions. In practice, the law tilted the federal policy emphasis from housing development to slum clearance, a policy that largely targeted black communities.[6]

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[5] On the role of the Federal Housing Administration in denying single family home financing to African Americans, see David M. P. Freund, *Colored Property: State Policy and White Racial Politics in Suburban America*, (Chicago: University of Chicago Press, 2007); Kenneth T. Jackson, *Crabgrass Frontier: The Suburbanization of the United States* (New York: Oxford University Press, 1985). Gail Radford developed the theory of a two-tiered housing policy system in *Modern Housing for America: Policy Struggles in the New Deal Era* (Chicago: University of Chicago Press, 1996).

[6] Arnold Hirsch, "Searching for a 'Sound Negro Policy': A Racial Agenda for the Housing Acts of 1949 and 1954," Housing Policy Debate 11, no. 2 (2000).

The Housing and Home Finance Agency, the office charged with administering urban renewal grants, was positioned to intervene in local civil rights disputes. Administers could require local governments to use Title I and Title III funds in ways that either advanced the objectives of civil rights advocates, or at least mandated nondiscrimination in the use of federal aid. Federal officials, however, abdicated this authority. In 1938, the U.S. Housing Authority (USHA) asked Robert Weaver, an economist and then head of the USHA Office on Racial Relations (RRS), to ensure that local projects complied with “a sound Negro policy.” In 1940, Weaver issued a report arguing that “public housing should not be used to extend residential segregation.” But as historian Arnold Hirsch observes, the USHA ignored Weaver’s guidance, as well as the recommendations of his successors. The RRS faced bureaucratic obstacles that limited its influence: the regional offices, where USHA officials reviewed applications for funding, employed no race relations staff who might reinforce Weaver’s policy.[7] But more critically, USHA officials had little interest in breaking white homeowners’ resistance to any measure that augured racial integration.

Throughout the 1950s, even though the race relations staff became more centralized within the HHFA, the agency refused to follow Weaver’s vision. RRS officials presciently worried that local governments might abuse urban renewal funds to “clear entire neighborhoods, change the location of entire population groups and crystallize patterns of racial or nationalistic separation.” They urged administrators to impose conditions on federal funding, for example by prohibiting local leaders from

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[7] Ibid., 396–97.

segregating public housing tenants based on race. The HHFA ignored this recommendation, and citing budgetary concerns, fired most of the RSS staff in 1955.[8]

Yet the Supreme Court's treatment of racial classifications from the 1910s through the 1940s presented HHFA officials with challenging questions. The agency's staff needed to decide whether the agency had a constitutional obligation to regulate the use of federal grants. On one hand, administrators took comfort in the Supreme Court's separate-but-equal doctrine. The Court's 1896 decision in *Plessy v. Ferguson* allowed railways to segregate passengers by race,[9] which some officials regarded as justification for the HHFA's acquiescence to local discrimination. But in the early twentieth century, the Supreme Court began to cabin the effects of *Plessy*. The City of Louisville, Kentucky, for example, argued in *Buchanan v. Warley* that *Plessy* supported its use of a racially-restrictive zoning code. The ordinance prohibited black households from moving into predominantly white communities, and white households from moving into

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[8] Roger Biles, The Fate of Cities: Urban America and the Federal Government, 1945–2000 (Lawrence: University Press of Kansas, 2011), 34; Arnold Hirsch, "Searching for a 'Sound Negro Policy,'" 397–99, 427–28; Joseph R. Ray to Albert M. Cole, Subject: Consolidation and Extension of Racial Relations Service in HHFA and Constituent Agencies, December 6, 1964, folder: Racial Relations Service, 1 of 2, Box 18, Subject Correspondence Files, Albert M. Cole, Administrator, HHFA 1953–58, RG 207, National Archives and Records Administration, College Park (NARA); Charles Abrams, "Discrimination in Housing: Reinstatement of Racial Relations Service Officials is Asked," *New York Times*, August 23, 1955.

With no policy in place, the Washington Bureau Director for the NAACP observed that the HHFA had effectively adopted a position in conflict with the Department of Justice, which had opposed the enforcement of restrictive real property covenants: "The present FHA policy on racial matters is a bad joke in that it is the exact opposite of the position taken by the Justice Department." *Hearing on the Nomination of Albert M. Cole to be Administrator of the Housing and Home Finance Agency Before the S. Comm. on Banking and Currency*, 83rd Cong. 28–29 (1953) (statement of Clarence Mitchell, Director Washington Bureau, National Association for the Advancement of Colored People).

[9] 163 U.S. 537 (1896).

predominantly black communities.[10] But as the Court explained, this type of ordinance infringed on the ability of homeowners to dispose of property—a white homeowner in a white neighborhood could not sell his property to a black family.[11] This restriction, the Court concluded, marked a "direct violation of the fundamental law enacted in the Fourteenth Amendment of the Constitution preventing state interference with property rights except by due process of law."[12] In 1948, the Supreme Court also held that, by enforcing racially restrictive covenants in property deeds, state courts offended the Fourteenth Amendment's guarantee of equal protection of the laws.[13]

HHFA leadership and RRS officials disagreed on what obligations the Fourteenth Amendment imposed on the agency. Frank S. Horne, Weaver's successor as head of the RRS, scolded HHFA for relying on *Plessy* to justify inaction. Residential segregation, he argued, differed from discrimination in public accommodations since "no two residential districts are equal."[14] Furthermore, he read *Shelley* and *Buchanan* to forbid the HHFA from abetting "any locally enforced restrictions upon the ownership or occupancy of real property based upon race or color."[15]

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[10] 245 U.S. 60, 71, 79 (1917).
[11] Finding the Georgia Supreme Court's discussion regarding a similar ordinance to be particularly apt, the Court cited the following language: "In each instance the complaining person was afforded the opportunity to ride or to attend institutions of learning, or afforded the thing of whatever nature to which in the particular case he was entitled. The most that was done was to require him as a member of a class to conform to reasonable rules in regard to the separation of the races. In none of them was he denied the right to use, control, or dispose of his property, as in this case. Property of a person, whether as a member of a class or as an individual, cannot be taken without due process of law." Ibid., 80 (quoting Carey v. City of Atlanta, 84 S.E. 456, 459 (1915)) (internal quotations omitted).
[12] Ibid., 82.
[13] Shelley v. Kraemer, 334 U.S. 1, 20 (1948).
[14] Arnold Hirsch, "Searching for a 'Sound Negro Policy,'" 399.
[15] Ibid.

The Supreme Court lent support to Horne's argument in May 1954. In *Brown v. Board of Education* the Court held that segregation of children by race created inherently unequal learning environments.[16] Horne's office counseled HHFA Administrator Albert Cole on the ramifications of the decision. After *Brown*, Horne explained, the HHFA could no longer facilitate separate, racially segregated public housing facilities. The HHFA for over fifteen years "generally followed the lead of the U.S. Supreme Court in accepting, sanctioning and refining the fallacious concept of 'separate but equal.'" Now that the Court "completely abandoned this dualism," the agency had the "opportunity" to "remove all restrictions from the housing market."[17] The Supreme Court's decision in *Brown* overruled *Plessy*, eviscerating the agency's legal defense for nonintervention. Furthermore, Horne added, the Court had never extended *Plessy* "to the ownership and use of real property," suggesting that the agency's policy was questionable even before *Brown*.[18]

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[16] 347 U.S. 483, 493 (1954).

[17] Frank S. Horne to Albert Cole, Subject: Observations Regarding Implications of Decisions of the U.S. Supreme Court for HHFA Programs and Policies, June 29, 1954, folder: Racial Relations Service, Box 18, 1 of 2, Subject Correspondence Files, Albert M. Cole, Administrator, HHFA, 1953-58, RG 207, NARA.

[18] Ibid. Other decisions from the Supreme Court left more legal uncertainty. In 1950, New York State's highest court held that private landlords could lawfully refuse to admit African American tenants. The U.S. Supreme Court declined to hear an appeal to the decision, thus allowing the state decision to stand. Dorsey v. Stuyvesant Town Corp., 299 N.Y. 512 (1949), *cert denied*, 339 U.S. 981 (1950). According to Horne, some commentators saw the decision as "indirect sanction of the right of private redevelopers to restrict occupancy by race in publicly-aided redevelopment projects." This, he argued, was the wrong conclusion to draw: the discrimination in question lacked the degree of state involvement that was necessary to bring the activity within the ambit of the Fourteenth Amendment, which the Supreme Court construed to only bind state actors. Frank S. Horne to Albert M. Cole, Subject: Observations Regarding Implications of Decisions of the U.S. Supreme Court for HHFA Programs and Policies, June 29, 1954, folder: Racial Relations Service, Box 18, 1 of 2, Subject Correspondence Files, Albert M. Cole, Administrator, HHFA, 1953-58, RG 207, NARA.

RRS staff urged HHFA to enforce the Supreme Court's equal protection doctrine. They argued that the HHFA should require all housing developed with federal funds or insurance be sold or rented "without regard to race, religion, national origin or political affiliation."[19] Horne observed that if "non-white families are to be afforded the *same* rights to the ownership and use of real property as white families," then the agency had no justification for maintaining "minority group housing programs." He suggested that the Public Housing Authority adopt a policy of requiring race-neutral tenant selection. The urban renewal and slum clearance programs should use contract provision forbidding discrimination in accommodations developed using federal aid. The Federal Housing Administration needed to expel "race as any factor whatsoever in underwriting, appraisal and evaluation of property or neighborhood." The FHA should also use contracts forbidding racial discrimination in the sale of housing constructed with FHA support.[20]

Yet, ambiguities in the meaning of "state action" allowed HHFA officials to dodge Horne's advice. HHFA's General Counsel office reasoned that *Brown* did little to shape the agency's obligations. In a memo responding to Horne's recommendations, Associate General Counsel Joseph Guandolo reasoned that because HHFA was not directly involved in any discriminatory behavior that private actors might carry out, *Brown* did not impart a legal mandate for the HHFA to implement Horne's policies. Private developers did not even receive federal subsidies directly. In fact, he explained,

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[19] Joseph R. Ray to Albert M. Cole, Subject: Housing Implications of United States Supreme Court Decisions, July 14, 1954, folder: Racial Relations Service, Box 18, 1 of 2, Subject Correspondence Files, Albert M. Cole, Administrator, HHFA, 1953–58, RG 207, NARA.
[20] Frank S. Horne to Albert M. Cole, Subject: An Approach to Racial Policy in the Housing and Home Finance Agency, Aug. 12, 1954, folder: Racial Relations Service, Box 18, 1 of 2, Subject Correspondence Files, Albert M. Cole, Administrator, HHFA, 1953–58, RG 207, NARA.

federal law required that a developer buy land for a redevelopment project at fair value. A local government could not subsidize the sale of land. As this description implied, the HHFA's involvement in urban renewal differed from the government involvement at issue in *Brown*. Because no subsidy passed to the developer, and the developer in theory was the party responsible for committing discriminatory acts, the HHFA was not involved in state activity that denied any resident or prospective resident their equal protection rights. The Supreme Court's decision in *Brown* and other relevant cases involved "various types of government action." The federal "slum" clearance program presented a different situation: federal action was "far more remote."[21]

Moreover, the HHFA seemed to lack authority to impose such terms on redevelopment contracts. Guandolo argued that the Housing Acts of 1949 and 1954 contained "no express statutory language" authorizing the use of antidiscrimination clauses in redevelopment contracts. Such a requirement would impose "a major extension of Federal authority." Congress had enacted no such policy, even after the Supreme Court

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[21] Joseph Guandolo, Associate General Counsel, to J.W. Follin, Director, DSCUR, Subject: An Approach to Racial Policy in HHFA, folder: Racial Relations Service, Box 18, 1 of 2, Subject Correspondence Files, Albert M. Cole, Administrator, HHFA, 1953–58, RG 207, NARA. Through the 1970s, federal officials persisted in their failure to recognize the role of state actors in residential segregation. David Maxwell, General Counsel for HUD under Secretary Romney, used surprising language in describing the effects of school desegregation cases. He observed: "Lower court decisions are establishing the proposition that segregation of people by race is being brought on as a consequence of State action in the housing field (as by zoning, the selection of public housing sites by public bodies, etc.)." As with segregation in schools, "Some time in the future this Court will recognize that such segregation . . . is in violation of Federal constitutional guarantees." Maxwell nonetheless considered the analogies he drew from "school cases" to be "premature" and "speculative." David O. Maxwell to George Romney, Subject: Supreme Court Opinions Upholding Use of Equitable Powers of Federal District Courts to Eliminate Dual School Systems Established by Governmental Policy, and Their Implication for Housing Policies, 1971, folder: General Counsel – Part VII 1971, Box 36, Subject Files of Richard C. Van Dusen, 1969–71, RG 207, NARA. See generally Thomas J. Sugrue, *Sweet Land of Liberty: The Forgotten Struggle for Civil Rights in the North* (New York: Random House, 2008).

issued its decision in *Brown*. For the HHFA's General Counsel, Congress's restraint indicated that HHFA should not impose new contractual requirements on private developers.[22]

Under the HHFA's hands-off approach to program administration, the racist conduct that Horne warned of played out across the country during the 1950s. Municipalities in the South used urban renewal and public housing policies to manipulate urban segregation to avoid integration in schools. In Dallas, for example, federal officials signed off on the city's plan to segregate African Americans within 3,500 public housing units in West Dallas, an area marked by environmental hazards and extreme poverty.[23] Under the HHFA's programs, cities in the South produced, for the first time, segregated environments in reaction to *Brown*. Meanwhile, in northern cities, federal programs helped local leaders in building "second ghettos." Cities such as Chicago cleared housing in segregated, largely black areas of the city. They replaced "slums" with public housing that they used to stem the drift of African American families into white neighborhoods, while also razing poor communities in desirable locations to make way for wealthier occupants.[24]

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[22] Arnold Hirsch, "Searching for a 'Sound Negro Policy,'" 420–23; Joseph Guandolo, Associate General Counsel, to J.W. Follin, Director, DSCUR, Subject: An Approach to Racial Policy in HHFA, folder: Racial Relations Service, Box 18, 1 of 2, Subject Correspondence Files, Albert M. Cole, Administrator, HHFA, 1953-58, RG 207, NARA.
[23] On the development of public housing in Dallas, see Chapter 6.
[24] Arnold R. Hirsch, *Making the Second Ghetto: Race and Housing in Chicago, 1940–1960* (Chicago, Ill.: The University of Chicago Press, 1998); Thomas J. Sugrue, *The Origins of the Urban Crisis: Race and Inequality in Postwar Detroit* (Princeton: Princeton University Press, 2005); John F. Bauman, *Public Housing, Race, and Renewal: Urban Planning in Philadelphia, 1920–1974* (Philadelphia: Temple University Press, 1987). Hirsch, "Searching for a 'Sound Negro Policy,'" 410–19. As Hirsh observes, African Americans in less developed southern cities

II.

Despite the federal government's weak oversight, residents of poor communities began to resist local leaders' efforts to segregate cities. Viewed from the outside, social scientists and journalists during the 1960s depicted poor communities in the US as pathological sites of social ruin.[25] Urban renewal plans, which called for redevelopment agencies to bulldoze "slums" by destroying declining housing stock and displacing low-income communities, appeared to ratify these ideas. Yet, for the residents of these communities, their environment nurtured valuable social bonds. Housing that appeared "blighted" to urban elites offered an affordable place for raising a family. The surrounding community—family members, neighbors, community organizations, store owners—provided social and economic benefits. When urban redevelopment plans threatened this community fabric, residents showed that they wanted to remain in their neighborhoods and preserve their surroundings. Residents had an interest in protecting

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lived in "scattered enclaves rather than concentrated ghettos," often residing close to whites. Together, Title I and Title III allowed local leaders to reshape this housing pattern. Ibid., 410.

[25] See, for example, U.S. Department of Labor, Office of Policy Planning and Research, *The Negro Family: The Case for National Action* (Washington, D.C.: U.S. G.P.O., 1965); Thomas F. Pettigrew, *A Profile of the Negro American* (Princeton: Van Nostrand, 1964); Kenneth Bancroft Clark, *Dark Ghetto: Dilemmas of Social Power* (New York: Harper & Row, 1965). During outbreaks of violence in cities like Watts and Detroit during the 1960s, reporters depicted poor neighborhoods in disparaging terms, and conflated urban decline with social disorder. In attempting to discern the causes of urban rebellions, some journalists looked to the cultural pathologies that they believed to perpetuate poverty. See Jones Jack, "Neat Little Homes May Be Deceptive Shells," *Los Angeles Times*, October 15, 1965. The study group commissioned to examine the Watts rebellion's causes focused their analysis on the effects of single-parent families. In summarizing its conclusions, the commission stated: "Idleness leads to despair and finally, mass violence supplies a momentary relief from the malaise." California Governor's Commission on the Los Angeles Riots, *Violence in the City: An End or a Beginning?* (1965), 127.

their social and economic security, and attempted to shape redevelopment processes to ensure that the new environment served their needs.[26]

Residents who resisted urban renewal efforts were stymied in putting political pressure on local governments. During the 1960s and 1970s, local political institutions continued to defy low-income African American and Hispanic residents.[27] Federal courts presented an alternative. In the 1960s, residents of low-income communities across the US, hoping to avoid displacement or soften the effects of redevelopment, turned to federal courts for help. In California, for example, residents of a West Oakland community filed a complaint in federal court seeking an injunction barring the Redevelopment Agency of Oakland from carrying out a project that threatened to permanently displace members of the community.[28] While West Oakland residents

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[26] For anthropological work on the use value that poor communities gained from even poorly-maintained housing developments, and the benefits that struggling families gained from the social ties nurtured within these communities, see Carol Stack, *All our Kin: Strategies for Survival in a Black Community* (New York: Harper & Row, 1974); Dwight Conquergood, "Life in Big Red: Struggles and Accommodations in a Chicago Polyethnic Tenement," in *Structuring Diversity: Ethnographic Perspectives on the New Immigration*, ed. Louise Lamphere (Chicago: University of Chicago Press, 1992), 95–144. Though largely overlooked by public officials who investigated urban uprisings in the 1960s, the hearings and interviews that officials conducted when studying the causes of uprisings in Los Angeles and other cities captured stories that demonstrated extraordinary resiliency of individuals living in poor communities, their extensive organizing, and their reliance on community ties. See, for example, "Testimony of Linda Bryant," September 25, 1965, in *Transcripts, Depositions, Consultants Reports, and Selected Documents of the Governor's Commission on the Los Angeles Riots*, reel 3; "Testimony of Opal C. Jones," October 6, 1965, in ibid., reel 3; "Report of Investigation with Mrs. J. L. Tillmon," November 2, 1965, in ibid., reel 4.

[27] In the Bay Area of California, as Robert Self has shown, the Oakland City Council largely served the interests of downtown business owners. As Oakland's black community struggled to make inroads in municipal government, the city government neglected the interests of low-income residents. Robert O. Self, *American Babylon: Race and the Struggle for Postwar Oakland* (Princeton: Princeton University Press, 2003), 246–55.

[28] See Johnson v. Redevelopment Agency of City of Oakland, Cal., 317 F.2d 872, 873–74 (9th Cir. 1963); Self, *American Babylon*, 139–47.

supported rehabilitation of distressed housing, they worried that the plans would instead result in a neighborhood transformation that stripped them of their homes. But while residents and representatives from the NAACP raised these concerns during public hearings, the Oakland City Council paid no attention.[29] The residents contended that the redevelopment plans, which depended on federal funds authorized under the Housing Act of 1949, stood in violation of laws governing the program. Specifically, they argued that the Redevelopment Authority failed to provide an adequate plan for rehousing people displaced during the redevelopment project. The residents further alleged that the proposed development, by targeting neighborhoods largely inhabited by African American residents, violated the Equal Protection Clause of the Fourteenth Amendment.[30]

As residents of redevelopment areas across the US looked to courts for help, they ran into procedural hurdles. Federal courts were reluctant to open their doors to residents looking to challenge redevelopment plans. One roadblock was the legal requirement known as "standing." In the 1923 case *Frothingham v. Mellon*, the Supreme Court examined the meaning of Article III of the Constitution, which described the jurisdiction of federal courts. The language of Article III limited federal judicial jurisdiction to "cases" and "controversies." As the Supreme Court concluded in *Frothingham*, Article III authorized courts to hear matters only where a party suffered or faced the threat of a "direct injury."[31] A generalized injury, such as an individual taxpayer's discontent with

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[29] Self, *American Babylon*, 147.
[30] *Johnson*, 717 F.2d at 874.
[31] Frothingham v. Mellon, 262 U.S. 447, 488 (1923).

the government's use of his or her tax dollars, was not sufficient to establish a case or controversy. Without alleging facts indicating that the party experienced an injury, they would not have standing.

Frothingham was only the beginning of a line of cases that drew divisions between those who could pursue a grievance in federal court and those who could not. After *Frothingham*, the Supreme Court also addressed a series of cases where businesses attempted to challenge the actions of the Interstate Commerce Commission, and issued opinions that narrowed the class of plaintiffs who had standing to seek judicial review of the agency's decisions.[32] In the 1960s, when residents filed actions challenging redevelopment projects, they raised new questions about the role federal courts should play in regulating federal agencies administering urban renewal and housing grants, as well as the policies and actions of local governments. But federal judges in the early 1960s took a cue from standing decisions of the early twentieth century, and following the lead of cases like *Frothingham v. Mellon*, adopted a restrictive view on standing that kept residents out of court.

When West Oakland residents filed claims in the early 1960s, federal judges refused to consider the merits of their claims. For plaintiffs who sued under the theory that a local plan violated federal rules and regulations, courts reasoned that residents had no right to seek review of HUD's decision to approve grants in support of a plan. Program requirements protected interests of the public at large, rather than a subset of property owners in particular. As judges reasoned, an individual had no standing to

[32] Elizabeth Magill, "Standing for the Public: A Lost History," *Virginia Law Journal* 95, no. 5 (2009), 1136–39.

enforce such generalized rights to block federal spending. No individual could properly represent such a broad interest.[33] Federal judges thus avoided reaching the merits of plaintiffs' claims. To assert a claim in federal court, aggrieved residents needed to show that their interests were somehow more acute than those of the general population.

In one of the first important cases challenging an urban renewal project, *Johnson v. Redevelopment Agency of Oakland*, the trial court granted the Redevelopment Agency's motion for summary judgment on the West Oakland residents' claims, resolving the case in the government's favor before it could reach trial. The residents appealed the decision to the Ninth Circuit Court of Appeals, hoping that the appellate court would sympathize with their arguments, but they found no support there either. Before the Ninth Circuit, the legal issue had narrowed to the question of whether the Agency failed to develop a feasible relocation plan as required under federal law. Yet, the Ninth Circuit did not even take up this question. Instead, the court refused to consider the merits of their argument.

As Judge Orr reasoned, the plaintiffs simply had no standing to sue.[34] In *Johnson*, the plaintiffs argued that a provision of the 1949 Housing Act, by requiring adequate relocation plans as a condition for the receipt of federal funds, created a right that West Oakland residents must have the ability to enforce. But the court saw no reason to believe that Congress intended the Housing Act to "give a right of action to those not a party to

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[33] See, for example, Gart v. Cole, 263 F.2d 244, 250 (2d Cir. 1959); Allied-City Wide, Inc. v. Cole, 230 F.2d 827 (D.C. Cir. 1956) (citing Alabama Power Co. v. Ickes, 302 U.S. 464, 480-81 (1938) for the proposition that a party suffering injury resulting from another person's lawful use of money "has no standing to assert that a third person's action in providing the money will be illegal"); Green St. Ass'n v. Daley, 373 F.2d 1 (7th Cir. 1967).
[34] *Johnson*, 317 F.2d. at 874.

the contract between the Redevelopment Agency and the United States."[35] The Act imposed obligations on the Redevelopment Agency, and Congress delegated the duty of enforcing these obligations to the Housing and Home Finance Agency (HHFA), not to private citizens. If the West Oakland residents so desired, he noted, they could present their grievances to the Housing and Home Finance Administrator, who in turn could decide to protect the residents' interests.[36] In other words, the plaintiffs were not a party to any legitimate dispute regarding the execution of the Redevelopment Agency's plans, and thus had no standing under Article III of the Constitution. The Oakland residents, following this line of reasoning, had no right to require a federal judge to review the HHFA's decisions.

In theory, however, the federal Administrative Procedure Act (APA) could enable residents to challenge a federal agency's decision to authorize a grant. In 1946, Congress passed the Administrative Procedure Act, granting the American public a right of action to challenge an administrative action.[37] The law extended the right to seek judicial review to "any person suffering legal wrong" as a result of an administrative agency's action.[38] At the time Congress enacted the APA, a "legal wrong" was one of two bases for standing that the Supreme Court had recognized. The law authorized federal courts to interpret constitutional and statutory provisions that governed administrative actions. It also granted courts authority to compel an agency to act or to forbid an unlawful course

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[35] Ibid.
[36] Ibid., 875.
[37] Administrative Procedure Act, Pub. L. No. 79-404, 60 Stat. 237 (1946).
[38] Pub. L. No. 79-404 § 10(a).

of conduct.[39] Under the APA, for example, the West Oakland residents could theoretically challenge the HHFA's grant to the Redevelopment Authority. In *Johnson*, Judge Orr made no mention of the APA. But considering his reading of the rules governing the grant, including the relocation provision, it seemed unlikely that Judge Orr would have viewed the plaintiffs as having standing under the APA. The program rules imposed an obligation on the Redevelopment Authority; it did not create legal rights for the residents themselves.

Other courts reached similar conclusions. As the Seventh Circuit reasoned that same year, federal grant programs established a relationship between the HHFA and local governments, not with private citizens. It construed the APA more narrowly, drawing an analogy to cases where businesses challenged decisions of the Interstate Commerce Commission that seemed to create "unreasonable" competition. In those cases, courts found that economic injury resulting from heightened competition did not amount to a legal wrong—increased competition did not invade any right belonging to the entity. The analogy to Interstate Commerce Commission cases insinuated that the residents similarly had no inherent right to live without intrusions arising from an urban renewal project. The question of whether the public interest was best served by a development project was best addressed at the legislative level, not by federal courts responding to grievances from "interested citizens."[4041]

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[39] Pub. L. No. 79-404 § 10(e) (scope of review).
[40] Harrison-Halsted Cmty. Grp., Inc. v. Hous. & Home Fin. Agency, 310 F.2d 99, 101–104 (7th Cir. 1962) (quoting S. Rep. No. 81-84, at 37 (1949). The Seventh Circuit, in upholding the district court's decision to dismiss the complaint, reasoned that the Housing Act was merely a "subsidy statute" authorizing grants to local governments. Looking to its legislative history, the court

Issues of standing and jurisdiction limited the federal judiciary's intervention in local disputes over land use and program implementation. Residents who faced the threat of urban renewal asserted that they had a legitimate stake in the content and implementation of redevelopment plans. But federal judges hesitated to invite apparently local disputes into their chambers. As a federal judge in the Fifth Circuit asserted, to hear a case where federal jurisdiction hinged on a federal grant for utilities development was to transform federal judges into "drainage ditch supervisors."[42]

During the 1960s, Congress and the judiciary both had opportunities to define the conditions under which an individual might have the power to sue in federal courts. To residents facing the threat of neighborhood change and displacement, this meant that the

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observed that lawmakers intended that projects receiving federal aid remain "a local undertaking," and "designed to serve local needs." Approval of a grant formed a relationship between the HHFA and local governments, not with private citizens. And while the program guided the HHFA's allocational decisions, it did not "confer legal rights upon plaintiffs, as individuals, separate from their position as members of the general public." To accept the community organization's view of standing, the court explained, would mean that the APA conferred "standing upon any one who suffers economic injury as a result of agency action regardless of whether that person's private rights are violated."

The Seventh Circuit relied on Taft Hotel Corp. v. Hous. & Home Fin. Agency, 162 F. Supp. 538, 539 (D. Conn.), *aff'd,* 262 F.2d 307 (2d Cir. 1958) and Gart v. Cole, 166 F. Supp. 129 (S.D.N.Y. 1958), *aff'd,* 263 F.2d 244 (2d Cir. 1959)). *Taft Hotel* and *Gart* built their reasoning on *Alabama Power Co. v. Ickes*, where the Supreme Court held that economic injury arising from an illegal grant conferred no standing. Economic injury did not amount to a "legal wrong," language that congress later used in the APA's provision authorizing judicial review of an administrative action. 302 U.S. 464, 480 (1938). The legal wrong test grew out of legal challenges to the Interstate Commerce Commission in the 1920s where parties faced changes in business competition resulting from ICC orders directed at other entities. Elizabeth Magill, "Standing for the Public: A Lost History," *Virginia Law Journal* 95, no. 5 (2009), 1137.

[41] *Harrison-Halsted Cmty. Grp., Inc*, 310 F.2d at 105 ("Courts have consistently denied the standing of citizens to challenge the choice made by public authorities between different and competing public uses. The legislature, through its lawfully created agencies . . . is the guardian of the public needs to be served by social legislation.").

[42] *Arrington v. City of Fairfield, Ala.*, 414 F.2d 687, 694 (5th Cir. 1969) (Coleman, J., dissenting). The dissenting judge also expressed concern that if a "racial argument can be thought of . . . the federal courts are now set to intervene in any quarrel arising out of a private slum clearance and rehabilitation, right down to the last detail." Ibid.

question of standing and federal jurisdiction would establish the terms on which they would have the ability to shape the fate of a neighborhood.

By the 1960s, however, federal lawmakers began proposing amendments that potentially expanded the right of action available under the APA. Assuming that Congress did not push beyond what Article III jurisdiction would allow, an amendment to the APA could broaden the class of individuals who might be able to identify an interest in an administrative action, and thus have standing to challenge the decision. Some lawmakers hoped to allow a wider class of citizens to police federal agencies. Their proposed amendments would have clarified that residents of urban renewal zones had standing to challenge federal funding decisions. Using legislative processes, they hoped to modify judge-formulated rules regulating access to courts.[43]

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[43] One amendment proposed to remove the APA's language that restricted review to persons who suffered a "legal wrong." The proposed amendment instead conferred a right to challenge an administrative action on "[a]ny person adversely affected in fact by any reviewable agency action . . . ." S. 1336, 89th Cong. § 10(a) (as introduced in Senate, Mar. 4, 1965). Two years earlier, Senator Everett Dirksen introduced a bill that had a similar effect, but used even looser language. The law provided: "Any person adversely affected or aggrieved by any reviewable agency action shall have standing to seek judicial review." S. 1663, 88th Cong. § 10(a) (as introduced in Senate, June 4, 1963).

In 1966, Senator Sam Ervin presented a bill allowing "any taxpayer of the United States" to bring an action in federal court when a distribution of federal funds allegedly violated the First Amendment of the Constitution. H.R. 2362, 89th Cong. § 601 (as reported by the Subcomm. on Constitutional Rights of the Comm. on the Judiciary, March 8, 1966); S. 2097, 89th Cong. §§ 2-5 (as reported by the Subcomm. on Constitutional Rights of the Comm. on the Judiciary, March 8, 1966). On the reasoning behind these amendments, see *A Bill to Provide for Judicial Review of the Constitutionality of Grants or Loans Under Certain Acts: Hearings Before the Subcomm. on Constitutional Rights of the Comm. on the Judiciary*, 89th Cong. 5 (1966) (statement of Senator Sam Ervin) ("Many Americans share the conviction that the making of grants and loans of tax raised moneys to religious institutions violates the first amendment to the Constitution. Unfortunately, there is grave doubt whether these Americans can obtain a judicial determination of this question."). Senator Sam Ervin's bill would have effectively overturned the well-known standing case, *Frothingham v. Mellon*, 262 U.S. 447 (1923), which held that a person's status as a "taxpayer" did not confer sufficient interest to justify standing to challenge the use of federal

But legislative amendments stalled. Directors of federal agencies resisted legislation that would create new exposure to litigation. Standing balanced administrative efficiency and individual rights. The doctrine defined the limits of an individual's rights and remedies in court. Conceived of too broadly, new standing rules could embroil federal agencies in litigation over every action. Staff of federal agencies feared that a revised APA would produce "a series of legal actions of unprecedented variety and number" that would "paralyze" their work.[44] The Department of Justice argued that the amendment threatened to "glut the courts with spurious challenges."[45] Faced with this opposition, Congress ultimately declined to broaden the APA's standing language.[46]

Any expansion of an urban litigant's right to seek judicial review thus had to come from the courts.[47] But doctrinal change required that plaintiffs keep pressing the

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funds. As the Supreme Court held, the individual needed to suffer a direct injury to have standing to sue.

[44] *Bills to Amend the Administrative Procedure Act and for Other Purposes: Hearings Before the Subcomm. on Administrative Practice and Procedure of the Comm. on the Judiciary*, 89th Cong. 360 (1965) (statement of John Fey, President, University of Wyoming). Other agencies that firmly opposed expansion of an individual's right to judicial review included the Department of Agriculture, ibid., 399 (Detailed Analysis of S. 1336 by the U.S. Department of Agriculture and Comments Regarding the Impact of the Proposed Revision of the Administrative Procedure Act Upon the Programs and Activities of the Department), and the Treasury Department, ibid., 444 (Treasury Department Comments on Certain Major Changes Proposed by S. 1336 in the Administrative Procedure Act).

[45] Ibid., 215 (Appendix to the Statement of Norbert A. Schlei, Assistant Attorney General, Office of Legal Counsel, Department of Justice); *A Bill to Provide for Judicial Review of the Constitutionality of Grants or Loans Under Certain Acts: Hearings Before the Subcomm. on Constitutional Rights of the Comm. on the Judiciary*, 89th Cong. 195 (1966) (statement of the National Rural Electric Cooperative Association on S. 2097).

[46] See S. 2097, 89th Cong. § 10(a) (as reported by Senate, June 9, 1966). In passing an amended APA, Congress struck the "adversely affected in fact" language, restoring the APA's jurisdictional language to the original text, which required a plaintiff seeking review to show a "legal wrong."

[47] Congress played a significant role in expanding access to courts through the enactment of an attorney fee shifting provision for civil rights actions in 1976, 42 U.S.C. § 1988, and the Federal

point that they had an interest in the federal government's contracts with local agencies. In 1966, the legislative process failed to broaden urban residents' standing before administrative agencies. But in the late 1960s, federal judges began to see things differently.

III.

In June 1967, the Norwalk Chapter of the Congress of Racial Equality (Norwalk CORE), representing a proposed class of residents living within the redevelopment project area, filed a claim against the Norwalk Housing Authority and Norwalk Redevelopment Agency. The lawsuit challenged a plan that the City of Norwalk approved in 1962, which resulted in the evictions of Alejandro Ortiz and the Mosleys. As plaintiffs alleged, the Agency's planners knew that "the project would destroy the housing of a significant number of low-income Negro and Puerto Rican families." Yet, the proposed redevelopment plans did not provide for the development of low-cost housing for displaced families. Planners justified their position by arguing that, given the turnover of housing units, existing public housing was adequate to accommodate all those displaced.[48] Plaintiffs countered that the Redevelopment Agency knew that the "purported turnover" in affordable units was "exaggerated," and that the figures were based on estimates that authorities manipulated to imply that it has enough facilities to relocate the families in the Project Area "whose homes were to be demolished."

Rules Committee expanded the feasibility of urban redevelopment litigation by establishing class actions for injunctive relief in 1966 under Fed R. Civ. P. § 23(b)(3).

[48] Complaint, June 15, 1967, ¶¶ 7–13, 18–19, Norwalk Core v. Norwalk Redevelopment Agency, 42 F.R.D. 617 (D. Conn. 1967), folder: Norwalk Congress of Racial Equality v. Norwalk Redevelopment Agency, 1966–67, Box V:205, NAACP Records, Library of Congress.

Furthermore, they argued, given widespread discrimination in the private housing market, displaced residents who could not obtain public housing would be subject to excessive rents and "substandard, dangerous and unsafe conditions."[49]

Plaintiffs asked the court to stop defendants from selling the residential sites where they lived. Their request for relief rested on three legal theories. First, they argued that the government had denied families their equal protection rights under the Fourteenth Amendment because the redevelopment plan deprived African American and Puerto Rican residents "the same rights enjoyed by white citizens in the City of Norwalk to shelter and to purchase, lease and hold property guaranteed to them by the laws of the United States."[50] Second, they asserted that the Redevelopment Agency designed the redevelopment plan with the intent to force plaintiffs out of the city, which served as another means by which the city deprived families of color the "same conditions of shelter and rentals" that white residents enjoyed.[51] Third, the plaintiffs raised a statutory argument, contending that the Agency failed to comply with federal regulations that required local governments to provide displaced households with replacement housing in the project area, or in equally desirable areas, that met their financial needs.[52]

Consistent with federal judges' reluctance to allow residents of urban renewal zones to challenge government actions, the district court granted the Housing Authority and Redevelopment Agency's motions to dismiss. District Judge Robert Zampano was

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[49] Ibid., ¶ 20.
[50] Ibid., ¶ 40.
[51] Ibid., ¶ 42–43.
[52] Ibid., ¶ 44–49 (citing 42 U.S.C. § 1455(c), a provision governing the Loan and Capital Grant Contract that the Norwalk Redevelopment Agency entered with the Housing and Home Finance Agency).

uncomfortable with using the court's authority to obstruct local government activity on a class-wide basis. He first found that plaintiffs could not appropriately maintain a class action. As Judge Zampano believed, the court would need to assess of the adequacy of relocation services for each individual class member. It would involve "factual determinations" regarding "each displaced family's living conditions, places of employment, financial means and other relevant factors."[53] Cast in these terms, the court found that the proposed class failed to satisfy a universal requirement that members of a class share common "questions of law or fact."[54]

The court seemed most uncomfortable with forming a class for the purpose of issuing injunctive relief. The federal rule allowing a court to recognize a class seeking injunctive relief offered the strongest grounds for class certification.[55] But Judge Zampano depicted the request for injunctive relief as requiring the court to provide "dictatorial" redress that exceeded its equitable authority.[56] The court observed: "Even if the Agency has failed, or grievously and willfully neglected, to perform some of its legal obligations in the construction of a massive urban renewal project, the proper remedy,

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[53] Norwalk Core v. Norwalk Redevelopment Agency, 42 F.R.D. 617, 621 (D. Conn. 1967).
[54] Fed. R. Civ. P. 23(a)(2).
[55] The Federal Rules of Civil Procedure, under a redrafting that the Federal Rules Committee had completed just the previous year, authorized three types of class actions. Rule 23(b)(2) allowed plaintiffs to maintain a class where the "party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." Fed. R. Civ. P. 23(b)(2) (1966). The rules also allowed class formation when prosecution of individual claims would risk creating inconsistent or "varying adjudications with respect to individual class members" or when the fund furnishing monetary relief was limited and likely to be depleted. Fed. R. Civ. P. 23(b)(1) (1966). The rules also made a class action available for seeking remedies including monetary relief when "questions of law or fact common to class members predominate" over individual questions, and if the class action was a superior vehicle for adjudication than any other methods. Fed. R. Civ. P. 23(b)(3) (1966).
[56] *Norwalk CORE*, 42 F.R.D. at 621–22.

except in the most extraordinary circumstances, is not a sweeping repudiation or disruption of that project by the Court . . . .” The intervention plaintiffs sought would “seriously affect and irreparably harm the public interest, confidence and treasury.”[57]

Denial of class certification was not enough to make the case go away. After all, one plaintiff acting alone could still raise the same constitutional claims against the local agencies, and seek an injunction, without proceeding on a class-wide basis. But drawing on *Johnson*, the court also decided that the plaintiffs lacked standing. In language echoing decisions in other failed cases challenging redevelopment projects, the court rejected the theory that plaintiffs could “gain standing” by “alleging civil rights violations.”[58] Plaintiffs were not parties to the Agency’s contract with the federal government. And while they alleged separate civil rights violations, the discrimination alleged appeared to be largely the product of private market forces, and thus “accidental” to the relocation plan. The plan itself did not force displaced residents into segregated housing.[59] Judge Zampano asserted that this meant that civil rights legislation provided no remedy for plaintiffs relocated pursuant to an urban renewal plan.”[60]

On appeal, plaintiffs situated these procedural questions within the history of discrimination that African American and Puerto Rican individuals faced. While the legal issues concerned standing and class certification, Norwalk CORE explained, the Second Circuit faced a more fundamental question: “the rights of low-income Negro and Puerto Rican families to safe, sanitary and decent housing within their financial means when

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[57] Ibid.
[58] Ibid., 622.
[59] Green St. Ass’n v. Daley, 373 F.2d 1, 8–9 (7th Cir. 1967).
[60] *Norwalk CORE*, 42 F.R.D. at 623.

their present homes are demolished by governmental urban renewal programs."[61] Their briefing linked the denial of these rights to the "oppression and frustration leading to the urban upheavals which have characterized the last four summers in the United States."[62] By drawing this connection, plaintiffs demonstrated the urgency of the procedural problems at issue, and more important, the inextricable relationship between procedure and the substantive rights of African American and Puerto Rican families.

The NAACP and Connecticut Civil Liberties Union (CCLU) filed amicus briefs on behalf of the plaintiffs. The CCLU conceded that courts were reluctant to review urban renewal plans because "such programs involve practical and political considerations with which the court should not concern itself." But practical considerations, it argued, were exactly why the court needed to hear the plaintiffs' equal protection claims.[63] Recent scholarship revealed the "unequal burden of hardship and deprivation" that urban renewal programs imposed on African Americans. Implementation of redevelopment plans had destroyed some 328,000 housing units, and seventy percent of the affected occupants were nonwhite. While government officials promoted redevelopment plans as bettering the lives of "the urban poor," they had to date produced only 13,000 units of affordable replacement housing in the redevelopment

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[61] Plaintiffs-Appellants' Brief, Norwalk CORE v. Norwalk Redevelopment Agency, 395 F.2d 920, (2d Cir. 1968), folder: Norwalk Congress of Racial Equality v. Norwalk Redevelopment Agency, 1966–67, Box V:205, NAACP Records, Library of Congress.
[62] Ibid.
[63] Brief of Connecticut Civil Liberties Union at 8, Norwalk CORE v. Norwalk Redevelopment Agency, 395 F.2d 920 (2d Cir. 1968), folder: Norwalk Congress of Racial Equality v. Norwalk Redevelopment Agency, 1966–67, Box V:205, NAACP Records, Library of Congress.

areas.[64] Through urban renewal programs, government actors denied nonwhite Americans "equality in the area of housing." And yet, the CCLU explained, the framers of the Reconstruction Amendments to the U.S. Constitution regarded "equality" in the enjoyment of real and personal property as an "essential pre-condition to the realization of other basic civil rights and liberties . . . ."[65] By refusing jurisdiction over plaintiffs' claims, federal courts "failed to carry out this intention."[66]

Norwalk CORE and the NAACP supported plaintiffs' power to enforce federal statutes. Norwalk CORE emphasized a distinction between statutory provisions designed to protect the rights of individuals and provisions that protected the "public at large." A prior case in the Second Circuit found that plaintiffs had standing to sue when a local government failed to hold hearings on the feasibility of an urban renewal project. The Second Circuit in that case also found that the plaintiffs did not have standing to challenge the government's compliance with open bidding requirements for development contracts. As plaintiffs explained, the different outcomes in the Second Circuit's standing analysis turned on whether the respective provisions aimed to protect specific parties or the public. Applying this basic principle, the plaintiffs argued that the regulatory provisions governing relocation assistance, and the provision of replacement housing,

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[64] Ibid., 8–9 (citing Piven, Frances Fox and Cloward, Richard A., "Desegregated Housing," *New Republic*, Dec. 16, 1966; "Comment: Urban Renewal in the Bay Area: The Need to Stress Human Considerations," *California Law Review* 55, no. 3 (1967)).
[65] Ibid., 10 (quoting *Shelly v. Kraemer*, 334 U.S. 1 (1948)) (internal quotations omitted).
[66] Ibid.

aimed to protect the interests of specific parties; plaintiffs should have standing to enforce those provisions of the Housing Act.[67]

To cement their argument, Norwalk CORE also claimed that residents of the redevelopment zone had a "legally protected right to housing." They depicted housing as a "necessity of life," and the power to "take, hold and lease property" as a "fundamental right inherent in every free citizen." The statute authorizing the federal funding for redevelopment projects enabled local "agency action affecting the housing rights of families and individuals in the project area."[68] The relocation provision of the statute protected residents' rights to housing. And where a statute created a provision ensuring a legal right, CORE argued, the APA enabled them to seek judicial review of the agency action that infringes on that right.[69]

All of these arguments drove at one simple, fundamental point: that low-income residents in an urban renewal zone had a unique stake in the redevelopment of their neighborhood. With their discussion on the practical need to enforce constitutional rights, and their arguments attempting to theorize a right to housing, the plaintiffs' appeal to the Second Circuit rested on the claim that an individual had an interest in his or her home and surrounding community. By establishing that such an interest existed, the plaintiffs

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[67] Plaintiffs-Appellant's Brief at 21–24, Norwalk CORE v. Norwalk Redevelopment Agency, 395 F.2d 920 (2d Cir. 1968), folder: Norwalk Congress of Racial Equality v. Norwalk Redevelopment Agency, 1968 Dec., Box V:205, NAACP Records, Library of Congress.
[68] Plaintiffs-Appellants' Reply Brief at 9-10, Norwalk CORE v. Norwalk Redevelopment Agency, 395 F.2d 920 (2d Cir. 1968), folder: Norwalk Congress of Racial Equality v. Norwalk Redevelopment Agency, 1968 Dec., Box V:205, NAACP Records, Library of Congress (internal quotations omitted).
[69] Ibid., 10, 12–13.

hoped to show that they had a unique basis for contesting a governmental action that set them apart from the general public.

The federal government, of course, refused to accept that the Housing Act gave residents of redevelopment zones any "justiciable rights." The test for standing, the government argued, was "not whether the parties asserting it had been the intended beneficiaries" of a law, but rather whether Congress intended to "bestow upon them a legal right to protection." The plaintiffs had not pointed to any legislative history indicating an intent for the relocation provision to "confer judicially enforceable rights upon relocates."[70] And while it may have seemed odd that Congress would create a right without a means for private enforcement, lawmakers often did just that. Indeed, Congress was perhaps reluctant to invite "the interference of the Courts with the performance of the ordinary duties of the executive departments of the Government, [which] would be productive of nothing but mischief."[71] Lawmakers may have designed the program regulations specifically to leave the executive agency, HUD, with the authority to enforce statutory requirements provided in the redevelopment legislation. As the government argued, Congress and the experts working in the executive branch, not the judiciary, were best suited to police HUD's enforcement of the right.[72]

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[70] Brief for Defendants-Appellees Robert C. Weaver and Charles J. Horan at 8-9, Norwalk CORE v. Norwalk Redevelopment Agency, 395 F.2d 920 (2d Cir. 1968), folder: Norwalk Congress of Racial Equality v. Norwalk Redevelopment Agency, 1966-67, Box V:205, NAACP Records, Library of Congress.

[71] Ibid., 10 (quoting Perkins v. Lukens Steel Co., 310 U.S. 113, 131-32) (internal quotations omitted)).

[72] Ibid. (citing Berman v. Parker, 348 U.S. 26 (1954)). *Berman* considered the question of whether the federal government's taking of property in Washington, D.C. served a public purpose, as required under the Takings Clause of the Constitution. But Justice Douglas, writing

Presented with these arguments, Second Circuit Judge Joseph Smith cast jurisdiction questions relating to urban renewal conflicts in new light. The court flatly rejected Judge Zampano's reasoning, along with the theories that the Norwalk Redevelopment Agency and the federal government presented. The decision marked the first breach in the procedural wall that kept residents of redevelopment zones out of court. As Smith observed with respect to plaintiffs' statutory claim, displaced families had "the required personal stake in the outcome of litigation where a violation of [the relocation provision] is claimed."[73]

To reach this conclusion, Smith looked to a recent Supreme Court decision that indicated evolving views of standing. In *Hardin v. Kentucky Utilities Company*, the Supreme Court suggested that federal courts should begin asking a different set of questions when deciding whether to review an agency decision.[74] In *Hardin*, a private utility company sued the Tennessee Valley Authority (TVA), alleging that the TVA's expansion harmed the company. The Supreme Court recognized that economic injury resulting from "lawful competition" alone did not confer standing on a business. But, as

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for the Supreme Court, also question whether a court could appropriately review the way an agency structured an urban renewal plan. 348 U.S. at 35 ("If the agency considers it necessary in carrying out the redevelopment project to take full title to the real property involved [instead of taking title to only objectionable buildings in a tract of land], it may do so. It is not for the courts to determine whether it is necessary for successful consummation of the project that unsafe, unsightly, or insanitary buildings alone be taken or whether title to the land be included, any more than it is the function of the courts to sort and choose among the various parcels selected for condemnation.").

Similarly, the government argued Title VI of the 1964 Civil Rights Act offered no basis for standing, suggesting that Congress designed the statute so that federal officials would simply cut off funds to recipients when officials found discrimination at play. It did not supply a private right of action.

[73] Norwalk CORE v. Norwalk Redevelopment Agency, 395 F.2d 920, 932 (2d Cir. 1968).

[74] 390 U.S. 1 (1968).

the Supreme Court clarified, when a statutory provision had a "legislative purpose to protect a competitive interest, the injured competitor has standing to require compliance with that provision."[75] In amendments to the law authorizing TVA's activities, the Supreme Court found clear evidence that Congress aimed to protect "private utilities from TVA competition."[76] Rather than asking if Congress created a "legal right," the Supreme Court asked whether Congress intended to extend a relevant form of protection. The Supreme Court thus seemed to proceed by inferring from a statute that Congress intended to protect certain parties. This line of inquiry differed from the more explicit search for an affirmative "right" that the Court had followed in previous cases. The Court merged the analysis of legal right with an inquiry into the types of protection that Congress intended to confer through a statute.

Federal judges had previously used narrow conceptions of legal rights to deny plaintiffs standing under the APA. Yet, the Supreme Court's treatment of standing under the APA in *Hardin* helped the Second Circuit follow a less rigid approach.[77] Following the model in *Hardin*, the Second Circuit sidestepped a direct inquiry into whether plaintiffs held any "legal rights" under the Housing Act. Defendants argued that plaintiffs

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[75] Ibid., 654.
[76] Ibid., 655.
[77] Professor Elizabeth Magill suggests that *Hardin* marked a final instance where the Supreme Court used a legal wrong test to assess whether a private competitor had standing under the APA. The real shift in thinking, Professor Magill argues, occurred in Ass'n of Data Processing Serv. Orgs., Inc. v. Camp, 397 U.S. 150 (1970), when the Supreme Court substituted its legal rights analysis for an inquiry into whether an agency action caused a party some "injury in fact, economic or otherwise." Elizabeth Magill, "Standing for the Public: A Lost History," *Virginia Law Journal* 95, no. 5 (2009), 1161 (citing *Data Processing*, 397 U.S. at 152). The Supreme Court in *Hardin*, however, engaged in no analysis of legal rights. Instead, it only asked whether Congress intended to afford private utility companies some protection; the terms "legal right" or "legal wrong" do not appear in the *Hardin* opinion.

had standing to challenge HUD's actions only if Congress conferred a legal right. But a "legal right," Judge Smith wrote, "means, in the abstract, nothing at all." The only question that mattered was whether Congress intended to protect plaintiffs' interests. If Congress intended such protection, then plaintiffs could enforce the relocation provision.[78] The court found clear expression of such purpose: legislative reports explained that the bill included "safeguards against any undue hardship resulting from the undertaking of slum clearance." Furthermore, the Second Circuit held that Congress wanted to remove "slum conditions," not merely shift those conditions to other neighborhoods. Displacement without proper relocation would defy Congress's objectives in creating a program through which poor families could improve their living conditions.[79] As the Second Circuit also observed, the Supreme Court had begun to discuss the APA in increasingly expansive terms, calling for a "hospitable" reading of its "generous" provisions for judicial review.[80] The Second Circuit expressly refused to follow *Johnson*.[81]

The Second Circuit also rejected the theory that plaintiffs had no standing to sue for constitutional wrongs. Plaintiffs clearly had a personal stake in not being displaced. They also had a right "not to be subjected to racial discrimination in government programs." Rather, the district court's tangled analysis seemed to raise "by implication, the question of justiciability"—not standing, which courts evaluated based on the rights of the plaintiffs. Zampano had argued that local venues would be the most suitable for

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[78] *Norwalk CORE*, 395 F.2d at 933.
[79] Ibid. (quoting S. Rep. No. 81-84 (1949)).
[80] Ibid., 933 n.26 (citing Abbott Laboratories v. Gardner, 387 U.S. 136 (1967)).
[81] Ibid., 935.

adjudicating the plaintiffs' grievances, not a federal court.[82] In other words, the concern that truly motivated judges like Judge Zampano was a question of federal judicial authority: should federal courts meddle in local affairs, and should they interfere in administrative agencies' discretionary decisions?

Smith called for a more careful evaluation of the judiciary's appropriate role. He recognized the importance of "discretionary decision making in urban renewal planning," and noted that the vital role of discretion in any administrative framework "would render unfit for judicial decision many questions concerning urban renewal."[83] Careless judicial intervention could stifle effective policy implementation. A court's assessment of relocation plans would "necessarily affect the pace at which urban renewal can take place, and the priority of goals in urban renewal planning." These issues were "in the truest sense of the word, political" because they affected a local government's allocation of resources.

But the plaintiffs, in raising an equal protection claim, argued that the Agency provided inferior relocation housing for African American and Puerto Rican households as compared to white households. They had done more than challenge merely the nature of the agency's discretionary activities: they were asserting that the government actors

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[82] See Green St. Ass'n v. Daley, 373 F.2d 1 (7th Cir. 1967). Similarly, as a dissenting judge in the Second Circuit argued in support of Judge Zampino's position, plaintiffs sought remedies that exceeded the court's power. As the dissent added: "The Federal courts cannot administer the housing program." *Norwalk CORE*, 395 F.2d at 938 (Hays, J., dissenting).

[83] Ibid., 929. The court, for example, cited *Baker v. Carr*, 369, U.S. 186, 217 (1962), where the Supreme Court highlighted conditions that could affect the justiciability of a matter. This might have included a case that involved a "political question," such as a case that would be impossible without first involving a court in "an initial policy determination of a kind clearly for nonjudicial discretion." Ibid.

were applying government resources in a way that deprived them of rights guaranteed under the constitution. Framed in this way, there was no question federal jurisdiction existed. Enforcement of constitutional guarantees, even in ways that cabined the authority of local actors, sat squarely within the proper authority of a federal court. While evaluation of the adequacy of a given form of relocation housing appeared to be primarily a political question, in this case, the court could assess plaintiff's constitutional allegations without reaching the delicate political issues.[84] Having found neither standing nor justiciability arguments compelling, the Second Circuit reversed Judge Zampino's decision.[85]

After the decision in *Norwalk CORE*, other courts soon followed. In December 1967, residents of the Western Addition area of San Francisco brought a similar class action under the 1949 Federal Housing Act and the APA against the U.S. Department of Housing and Urban Development. They asked the court to enjoin the Secretary from approving an urban renewal project.[86] Like in *Johnson* and *Norwalk CORE*, the residents of West Addition argued that the Redevelopment Agency's relocation plan fell short of requirements set out under federal law.[87]

This time, the district court held that the residents had standing. The court noted that after the Ninth Circuit issued its decision in *Johnson*, the Supreme Court had

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[84] *Norwalk CORE*, 395 F.2d at 929.
[85] Ibid., 932, 938.
[86] W. Addition Cmty. Org. v. Weaver, 294 F. Supp. 433 (N.D. Cal. 1968).
[87] Ibid., 435 (citing 42 U.S.C. 1455(c), which required that the Secretary of HUD obtain "satisfactory assurance" from the local agency that displaced residents have "decent, safe and sanitary housing").

"significantly broadened the concept of standing to sue."[88] In *Flast v. Cohen*, the Supreme Court granted standing to individuals who sued in their capacity as taxpayers to challenge a federal statute that allegedly violated the First Amendment's Establishment and Free Exercise Clauses.[89] *Flast* did not directly govern the Western Addition residents' claim to standing. But the district court recognized that the case represented a monumental revision to the doctrine established in *Frothingham v. Mellon*. In *Frothingtham*, the Supreme Court held that an individual, claiming an interest in a case only as a taxpayer who was troubled by the government's misuse of his or her tax revenue, had no standing to sue. In *Flast*, the Supreme Court recognized that a taxpayer could have standing to challenge government expenditures that violated "specific constitutional limitations upon the exercise of the taxing and spending power," which in *Flast* involved violations of the First Amendment's prohibition against establishment of religion.[90] Though not directly controlling in the urban renewal context, *Flast* signaled a liberalized approach to standing.

Given the way judges had begun thinking of standing in broader terms, the Northern District of California judge concluded that it would be wrong to follow *Johnson*. he residents had articulated a clear interest in the content of the redevelopment contract that justified their standing. He allowed the case to proceed.[91]

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[88] Ibid., 443.
[89] 392 U.S. 83 (1968).
[90] Ibid., 102–03.
[91] *W. Addition Cmty. Org.*, 294 F. Supp. at 443. The court also cited Hardin v. Kentucky Utilities Co., 390 U.S. 1, 5–7 (1968)) and Judge Smith's decision in City of Norwalk, Connecticut. The District Court for the Eastern District of Pennsylvania also held that residents threatened with displacement had standing to sue under the Administrative Procedure Act because they had "legal

The Fifth Circuit adopted a similar line of reasoning. Consistent with recent shifts in jurisprudence across the country, and following the broader principles set out in *Flast*, the Court of Appeals reversed the decision of a district judge who believed that as renters, the plaintiffs did not have an interest in the property or redevelopment agreements at issue.[92] On appeal, the Fifth Circuit viewed the "right" that justified standing differently. Plaintiffs had standing to assert their "right not to be subjected to racial discrimination by state action." Plaintiffs' "personal stake" consisted of "their (alleged) displacement from the community with the resulting personal, economic and social dislocation."[93]

Federal courts, five years after *Johnson*, accepted that laws governing the federal urban renewal program gave residents enforceable rights. While local redevelopment agencies in the mid 1960s had reason to believe that the National Housing Act and other federal laws provided no legal rights that justified standing, this doctrine collapsed by the

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rights conferred by the National Housing Act." Powelton Civic Home Owners Ass'n v. Dep't of Hous. & Urban Dev., 284 F. Supp. 809, 821 (E.D. Pa. 1968).

[92] In Alabama, a district judge denied a group of black residents standing to seek an injunction prohibiting the city and a private developer from moving forward with an urban renewal project. The district court justified its standing decision on the theory that, because plaintiffs were renters, not property owners, they had "no interest in the property or interest in contracts regarding the same," and thus had "no right to invoke the jurisdiction" of a federal court. The district judge wanted to link standing, and thus access to courts, to property ownership. Whether this position reflected the district judge's true understanding of Article III standing, or merely a slight of hand to keep black plaintiffs out of court, is unclear. The district court's language is quoted in Arrington v. City of Fairfield, Ala., 414 F.2d 687, 691 (5th Cir. 1969). On appeal, the Fifth Circuit cited *Flast v. Cohen*, 392 U.S. 83 (1968) for the proposition that "standing doctrine focuses on the seeking of adjudication by a party and not on the issues he wishes to have adjudicated." The court also relied on *Flast* for the broader principle that standing requires a plaintiff establish a "nexus" between their status as a litigant and the nature of the right allegedly infringed. Ibid.

[93] Ibid.

end of the decade.[94] Federal courts began to present a viable avenue through which individuals who lacked political and economic influence could shape the processes of urban redevelopment.

Litigation did not stall projects permanently; nor did it always result in significant changes in redevelopment plans. But by challenging officials' adherence to procedural requirements of federal grant programs, plaintiffs forced local and federal administrators to take into account a broader set of facts in designing their plans. In the absence of litigation challenging government action, only federal administrators could protect residents by monitoring local governments' adherence to program regulations. But litigation across the country suggested that federal administrators did not always demand utmost compliance from local governments. With staff floating between regional HUD offices and local redevelopment agencies, HUD tended to defer to local leaders.[95] Litigation upended the cozy relationship that local and federal officials shared.

IV.

As plaintiffs gained access to federal court, they began to shape the way federal administrators thought about urban policy. By seeking judicial review of federal administrative decisions, plaintiffs held local and federal officials accountable to rules designed to protect community members.[96] Residents also began to influence the

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[94] See, for example, *Powelton Civic Home Owners Ass'n*, 284 F. Supp. at 823 (describing defendant's supporting cases and disagreeing with their holdings).

[95] Chester Hartman, *The Transformation of San Francisco* (Totowa: Rowman & Allanheld, 1984), 46.

[96] W. Addition Cmty. Org. v. Weaver, 294 F. Supp. 433, 434 (N.D. Cal. 1968); Munoz-Mendoza v. Pierce, 711 F.2d 421, 423–24 (1st Cir. 1983).

behavior of administrative agencies.[97] By bringing actions against HUD and local governments, residents shifted the way HUD staff thought about program regulations. They placed civil rights legislation at the center of federal urban policy and program administration. In the 1950s, Dallas and other cities used federal funds to maintain discriminatory public housing programs and to displace communities of color. But residents forced federal and local officials to consider the effects of redevelopment projects and housing programs.

In lawsuits that emerged across the US during the early 1970s, plaintiffs sued local governments and the U.S. Department of Housing and Urban Development to prevent the overconcentration of low-income housing in a single market. Residents of predominantly black communities, for example, argued that excess development of subsidized housing would cause their moderately integrated neighborhoods to "become entirely black." Community members claimed they held rights under the Equal Protection Clause of the Fourteenth Amendment, as well as the Fair Housing Act, that required HUD to distribute subsidized housing throughout cities.[98] They asked courts to require

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[97] On the role of administrative agencies in interpreting the constitution, and the role of constitutional thinking in shaping policy in other areas, see Sophia Lee, *The Workplace Constitution from the New Left to the New Right* (New York: Cambridge University Press, 2014); Karen Tani, *States of Dependency: Welfare, Rights, and American Governance, 1935-1972* (New York: Cambridge University Press, 2016).

[98] See, for example, David Maxwell to Richard C. Van Dusen, August 9, 1971, Bentley Historical Library (BHL), George Romney, Post-Gubernatorial Papers, box 8, Folder: memoranda; David Maxwell to Secretary Romney, August 17, 1971, BHL, George Romney, Post-Gubernatorial Papers, box 8, Folder: memoranda. Maxwell's memo highlighted class actions filed in Austin and Houston, TX, Washington, DC, Selma, AL, North Little Rock, AK, Greensboro and Charlotte, NC, Chicago Heights and Chicago, IL, Cleveland and Cincinnati, OH, East Hills Village, MO, New Orleans, LA, Nashville, TN, Milwaukee, WI. David Maxwell to Richard C. Van Dusen, Subject: Pending Site Selection Cases, August 9, 1971, BHL, George Romney, Post-Gubernatorial Papers, box 8, Folder: memoranda. Plaintiffs in Chicago Heights, for example,

HUD to create housing for low-income households in predominantly white neighborhoods.

In 1969, residents of the East Poplar Urban Renewal Area in Philadelphia became concerned about the development of a subsidized multifamily housing project, Fairmount Manor. Under an initial plan for the development of the East Poplar area, the Philadelphia Redevelopment Agency entered a contract with a developer to produce 244 single-family homes. From 1961 through 1969, the developer completed seventy-two of the planned homes, while also demolishing homes that planners had originally scheduled for rehabilitation. During that period, the public housing stock in East Poplar expanded. By 1969, thirteen percent of public housing units in the City of Philadelphia concentrated in East Poplar and its immediate surrounding area. Black and white residents of East Poplar began to worry that the Philadelphia Redevelopment Authority's decision to develop a complex of multifamily housing, instead of single-family homes, would upset what the Philadelphia Inquirer described as the "delicate racial balance of the integrated community."[99] To the consternation of HUD's Assistant General Counsel Arthur Gang, the agency's own officer admitted that the development would "endanger the desired stability of the neighborhood."[100]

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alleged that HUD deprived them of their "constitutional right to live in areas other than areas of minority group concentration." Arthur Gang to Beverly Mason, September 3, 1970, National Archives and Records Administration (NARA), RG 207, Can Duane Papers, Box 20.

[99] Shannon v. U.S. Dep't of Hous. & Urban Dev., 305 F. Supp. 205, 207-08 (E.D. Pa. 1969); James E. Steele, "East Poplar Residents Win Ruling Affecting Integrated Housing," *The Philadelphia Inquirer*, January 10, 1971.

[100] Arthur Gang received "intimations from various persons in the Regional Office that much of the fuel" for the *Shannon* complaint had been "furnished by persons employed by the Regional Office, who view the approvals of the Regional Administrator as an infringement of the rights of

Subsidized housing was likely to attract African American renters, and in the late 1960s the African American population of East Poplar had already been increasing. In 1950, 66 percent of people living in the census tract were African American, and surrounding tracts had similarly high numbers. By 1960, 71 percent of residents were black, and in 1970 the number rose again to 79 percent. The concentration of black families in neighboring tracts also increased by over ten percentage points from 1950 to 1970.[101] For residents concerned with the role subsidized housing might play in perpetuating segregation, the Redevelopment Agency's decision to pursue a multifamily housing development in East Poplar caused alarm.

To prevent an overconcentration of subsidized housing in the community, a group of black and white residents, business owners, property owners, and civic leaders filed a complaint against HUD in the Eastern District of Pennsylvania. Maurice Shannon, a black resident of East Poplar, owned a new row home in the neighborhood. As Shannon told reporters, "We had nothing against the people who live there." Rather, the proposed

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the residents of the area, and who see in the subsequent actions of the City a deprivation of the rights of the residents to equal opportunity." Arthur Gang to Sherman Unger, subject: Administrative Discipline on the Part of Employees and Officials of the Department, n.d., folder: General Counsel – Part II 1969 (3 of 3), Box 35, Subject Files of Richard C. Van Dusen, 1969–71, RG 207, NARA.

[101] U.S. Census Bureau, "Total Population: Black, 1950"; U.S. Census Bureau, "Total Population: Black, 1960"; U.S. Census Bureau, "Total Population: Black, 1970." The proposed subsidized housing development was located in the census tract designated as Tract 0013A000 in 1950, and Tract 131 in 1970. In the neighboring tract to the west, the African American population rose from 78 percent in 1950 to 92 percent in 1970. In the neighboring tract to the south, the African American population rose from 48 percent in 1950 to 59 percent in 1970. In the neighboring tract to the east, the African American population rose from 29 percent in 1950 to 43 percent in 1970. In the neighboring tract to the north, the African American population rose from 57 percent in 1950 to 81 percent in 1970.

development was "just a cheap, cheesy, crappy job that looks like a project."[102] The named class plaintiffs included moderate-income individuals and public housing residents. They alleged that HUD refused to provide an "adequate public hearing," as required under the federal urban redevelopment statute, when the agency approved the Redevelopment Authority's plan modification. They also asserted that HUD's decision to approve the project was unlawful under the Fourteenth Amendment's Equal Protection Clause, and failed to further the "objectives of economically and racially balanced neighborhoods" set out in the Housing and Urban Development Act of 1968. As they argued, federal assistance for the development would "destroy the present economic and racially balanced integration" of the neighborhood, and would "further increase the already dramatic and potentially disastrous over-concentration of segregated public housing in East Poplar and in North Philadelphia."[103]

Hoping to prevent the case from moving forward, HUD questioned plaintiffs' standing to sue. But the *Shannon* plaintiffs benefitted from decisions in prior urban renewal cases that broadened standing since the early 1960s. Building on theories set out in cases like *Powelton*, plaintiffs explained that regulations on displacement and relocation shared a critical feature with regulations requiring community participation in community development planning: the rules governing the Housing and Community Development Act existed "to benefit those people who are living in the community

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[102] Thomas Hine, "East Poplar's Curious 'Victory,'" *Philadelphia Inquirer*, June 29, 1975.
[103] *Shannon*, 305 F. Supp. at 208, 212; Complaint ¶ 1, ¶ 35(a), Shannon v. U.S. Dep't of Hous. & Urban Dev., 305 F. Supp. 205 (E.D. Pa. 1969), folder: General Counsel – Part I 1969 (3 of 3), Box 34, Subject Files of Richard C. Van Dusen, 1969–71, RG 207, NARA.

affected."[104] The district court allowed the case to move forward, and plaintiffs reached a settlement with HUD. Under the agreement, HUD promised to review documents that plaintiffs offered to challenge the project's approval. But after agency officials reviewed memos and data that plaintiffs offered to HUD in support of their opposition to the development, HUD reaffirmed its earlier decision to approve the development.[105]

The *Shannon* plaintiffs then returned to court seeking review of the agency's decision. When they filed their second claim, they relied on new civil rights laws that the federal government adopted during the 1960s. Title VI of the 1964 Civil Rights Act prohibited any recipient of federal funding from discriminating on the basis of "race, color, or national origin."[106] Looking to this statute, the *Shannon* plaintiffs could argue that HUD had was legally barred from approving housing developments that had a discriminatory effect.

The plaintiffs also benefitted from a more recent law, the Fair Housing Act, which Congress passed in 1968. The law was a landmark piece of legislation, which Congress passed in response to years of tumult in urban areas across the country. In the 1960s, American cities appeared in crisis. Municipal tax bases fell as white households moved to segregated suburbs. Uprisings broke out in African American neighborhoods in Detroit, Los Angeles and other cities, drawing attention to the racially and economically fractured organization of American cities. In one famous study of urban uprisings, the National

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[104] Memorandum Contra Motion to Dismiss, 3–5, Shannon v. U.S. Dep't of Hous. & Urban Dev., 305 F. Supp. 205 (E.D. Pa. 1969), folder: General Counsel – Part I 1969 (3 of 3), Box 34, Subject Files of Richard C. Van Dusen, 1969–71, RG 207, NARA (emphasis in original omitted).
[105] *Shannon*, 305 F. Supp. at 207.
[106] Pub. L. 88–352, 78 Stat. 252, § 601 (1968).

Advisory Commission on Civil Disorders concluded that "[d]iscrimination and segregation . . . now threaten the future of every American."[107] Recognizing discrimination in housing as a source of unrest, and an injustice in its own right, the Commission believed that the federal government needed to recalibrate its housing programs to "place more low- and moderate-income housing outside of ghetto areas."[108] Hoping to mollify racial tensions, members of Congress responded in part by enacting legislation designed to prohibit housing discrimination.[109]

The Fair Housing Act, established under Title VIII of the 1968 Civil Rights Act, responded to the Commission's recommendation. The law proclaimed: "It is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States."[110] It prohibited discrimination in the sale of most rental and privately owned housing in the U.S. It also required HUD and other federal agencies to administer

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[107] *Report of the National Advisory Commission on Civil Disorders* (Washington, D.C., U.S. G.P.O., 1968).
[108] *Report of the National Advisory Commission*, 263.
[109] On the legislative history of the Fair Housing Act, see Hugh Davis Graham, "The Surprising Career of Federal Fair Housing Law," *Journal of Policy History* 12, no. 2 (2000): 217–19. While some scholarship has argued that Dr. Martin Luther King's assassination motivated Congress to pass the law, Graham notes that King's murder occurred on April 4. The bill's passage was "no longer in doubt" at this point. The law more likely responded to a longer history of racial conflict in the U.S. The House moved to pass the Senate bill to avoid a conference committee on April 10, 1968.

At the local level, civil rights activists had banded together well before Congress enacted the Fair Housing Act to pressure state legislatures to pass laws guaranteeing families a right to "fair housing." By 1964, twenty-two states adopted anti-discrimination laws. Many municipalities, including Chicago, St. Louis, and New York City, also passed fair housing ordinances. See U.S. Housing and Home Finance Agency Office of the Administrator*, Fair Housing Laws: Summaries and Text of State and Municipal Laws* (Washington, D.C.: U.S. G.P.O., 1964). The federal law extended these rights to all states, placed the federal governments support behind these local efforts, and perhaps most significantly, provided a federal venues through which individuals could pursue claims against discriminatory landlords or sellers.
[110] Civil Rights Act of 1968, Pub. L. No. 90-284 § 801, 82 Stat. 73, 81 (1968).

their programs "in a manner affirmatively to further" the Fair Housing Act's provisions.[111] Critics of the Fair Housing Act faulted Congress for enacting a version of the bill that lawmakers had stripped of some of its original enforcement provisions, including provisions from an earlier draft that allowing HUD to investigate complaints and issue cease and desist letters. Instead of granting HUD authority to adjudicate fair housing complaints, the law empowered the Department of Justice to prosecute discrimination at its discretion. [112] Despite these limitations, the Fair Housing Act provided a private right of action that could allow individuals like Maurice Shannon to assert claims against a wide range of actors, from small landlords to major institutions like national banks and even HUD. And if the law set standards that guided the judgment of administrators as they managed federal housing programs, its effect could be significant.

In their second complaint, the *Shannon* plaintiffs argued that HUD's approval of the development defied Congress's goals in passing the 1964 and 1968 Civil Rights Acts. Congress intended for Title VI and the Fair Housing Act to desegregate American cities, and HUD's activity in East Poplar cut against this purpose. In approving the project, they argued, HUD failed to take into consideration the racial demographics of East Poplar, and

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[111] Ibid., 84 (§ 808(e)(5)).
[112] See Nancy A. Denton, "Half Empty or Half Full: Segregation and Segregated Neighborhoods 30 Years after the Fair Housing Act," *Cityscape* 4, no. 3 (1999); Charles M. Lamb, *Housing Segregation in Suburban America since 1960: Presidential and Judicial Politics* (New York: Cambridge University Press, 2005); Douglas S. Massey and Nancy A. Denton, *American Apartheid: Segregation and the Making of the Underclass* (Cambridge: Harvard University Press, 1993). On the Department of Justice's enforcement authority, see Pub. L. No. 90-284, 82 Stat. 73, 88 (1968) (§ 813).

was derelict in its duty to remedy past discrimination.[113] They argued that the new civil rights legislation called for HUD to "use its programs in an affirmative way to eliminate racial segregation in housing." And to be sure, even if the court did not find Congress to have issued such a mandate, at the very least the Constitution required HUD to adopt a policy on housing segregation that would be "held up to the same affirmative standards as the policy of local school boards with regard to school integration."[114]

But again, the district court granted HUD's motion to dismiss. The court found that the complaint had not sufficiently alleged that HUD abused its discretion when approving modifications to the East Poplar plan without a public hearing. Employing reasoning reminiscent of the justiciability arguments courts advanced in the early 1960s, the district court in *Shannon* also reasoned that the civil rights statutes required plaintiffs to exhaust administrative remedies before seeking judicial review of HUD's judgment. And in an observation that seemed hardly appropriate at the pleadings stage, the court also raised doubts about the factual basis for the claims, observing that "rent subsidy housing is evenly and well dispersed within the city as well as without, in both ghetto and non-ghetto areas."[115] The court found that it had no jurisdiction to review HUD's decision, but also that the plaintiffs failed to make out the basic elements of a Fair Housing claim.

When plaintiffs appealed the decision to the Third Circuit, HUD again raised standing as an issue. But as the Third Circuit observed, "Classes of persons deemed by

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[113] *Shannon*, 305 F. Supp. at 212.
[114] Ibid., 224.
[115] Ibid., 224–25.

the courts to be sufficiently aggrieved by agency action for standing to sue [under the APA] are expanding."[116] The court noted that cases like *Norwalk CORE* and *Powelton* recognized the right of residents in redevelopment areas to bring lawsuits enforcing relocation regulations.[117] But in *Shannon*, the court faced the question of whether residents who did not face the threat of displacement, but rather raised concerns over the economic and racial segregation that a low-income housing development could bring to their community. The court conceded that standing for residents facing the threat of displacement was "somewhat clearer." Plaintiffs in previous cases clearly fell within the "zone of interests" that Congress aimed to protect through the relocation plan requirements it imposed on local governments.

But the trajectory of cases like *Norwalk CORE* helped the court in *Shannon* conceive of standing in more generous terms. As the Third Circuit reasoned, HUD's approval of the program of community improvement "vitally affected" the class of plaintiffs in *Shannon*, "perhaps more than the displaced and relocated former residents or the potential occupants of new housing." Plaintiffs had an interest in "the preservation of a residential community with decent homes and a suitable living environment" and could thus challenge the plan for failing to meet this criteria.[118] As the plaintiffs alleged, HUD's

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[116] Shannon v. U.S. Dep't of Hous. & Urban Dev., 436 F.2d 809, 818 (3d Cir. 1970) (citing Association of Data Processing Service Organizations, Inc. v. Camp, 397 U.S. 150 (1970); Barlow v. Collins, 397 U.S. 159 (1970); Scenic Hudson Preservation Conf. v. FPC, 354 F.2d 608 (2d Cir. 1965); Office of Communication of United Church of Christ v. FPC, 359 F.2d 994 (1966).

[117] Ibid. (citing Norwalk CORE v. Norwalk Redevelopment Agency, 395 F.2d 920 (2d Cir. 1968); Powelton Civic Home Owners Ass'n v. HUD, 284 F. Supp. 809 (E.D.Pa.1968); Western Addition Community Organization v. Weaver, 294 F. Supp. 433 (N.D.Cal.1968)).

[118] Ibid., 818.

decision to approve the development would "adversely affect not only their investments in homes and businesses, but even the very quality of their daily lives."[119] By finding that the plaintiffs in this context had standing, the Third Circuit recognized that residents had a legitimate interest in the government decisions affecting their surrounding environment.

HUD also contested the court's power to review its decision to approve the subsidy. This was a decision, the agency argued, that fell within the broad planning discretion that officials needed to perform their work properly. The scope of HUD's discretion extended to its evaluation of what types of housing proposals would further objectives set out in the National Housing Act.[120] But as the Third Circuit reasoned, civil rights legislation established a "framework" guiding HUD's discretion. The Fair Housing Act and Title VI of the 1964 Civil Rights Act together established "relevant factors" that HUD needed to consider, namely the effect a decision could have on the racial composition of a neighborhood. Furthermore, the affirmative obligations that civil rights legislation imposed on federal agencies enabled judicial review without first requiring that plaintiffs exhaust administrative remedies.[121] Thus, the Third Circuit's reading of federal civil rights legislation cabined HUD's discretion. By establishing criteria that executive agencies needed to follow, the laws drew administrative thinking within the ambit of judicial scrutiny.

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[119] Ibid.
[120] *Shannon*, 436 F.2d at 819.
[121] Ibid. (citing Scenic Hudson Pres. Conference v. Fed. Power Comm'n, 354 F.2d 608, 612 (2d Cir. 1965) for the proposition that a court must set aside an agency decision that fails to consider "relevant factors").

Perhaps most critical for HUD's own administrative policy, the Third Circuit recognized an "interrelationship" between the Housing Act of 1949 and Congress's civil rights efforts in the 1960s. The court's analysis focused on the meaning of a "workable program for community improvement," a type of local plan that the 1949 Housing Act required HUD to approve before entering any contract to provide financial assistance to the locality, and how civil rights legislation modified the meaning of the original law.[122] The court explained: "Read together, the Housing Act of 1949 and the Civil Rights Acts of 1964 and 1968 show a progression in the thinking of Congress as to what factors significantly contributed to urban blight and what steps must be taken to reverse the trend or to prevent the recurrence of such blight." The 1949 law allowed HUD to approve community plans that left patterns of racial segregation untouched. The 1964 law directed the HUD secretary, when assessing whether a community plan was "workable," to "prevent discrimination in housing resulting from [approval of a plan]." And most recently, the 1968 legislation imposed an affirmative obligation on HUD, requiring the secretary to administer housing and urban development programs "in a manner affirmatively to further the policies" of the Fair Housing Act.[123] In effect, as the Third Circuit reasoned, legislation of the 1960s established new statutory standards that a

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[122] See 42 U.S.C. § 1451(c) (1964) (requiring a locality to present HUD a "workable program for community improvement (which shall include an official plan of action, as it exists from time to time for effectively dealing with the problem of urban slums and blight within the community and for the establishment and preservation of a well-planned community with well-organized residential neighborhoods of decent homes and suitable living environment for adequate family life) for utilizing appropriate private and public resources to eliminate, and prevent the development or spread of, slums and urban blight, to encourage needed urban rehabilitation to provide for the redevelopment of blighted, deteriorated, or slum areas . . . ").

[123] *Shannon*, 436 F.2d at 815 (citing 42 U.S.C. 3608(d)(5)).

"workable program for community improvement" needed to meet. The two civil rights laws "refined" the meaning of the workable program.[124] As the court's reasoning implied, by 1968 a workable program needed to offer remedies to residential segregation within a community.

The court next presented a set of questions for HUD to consider when approving a project. HUD should consider the location of low-income, middle-income, and "luxury" housing within a given region, and ask whether some low-income developments were "occupied primarily by tenants of one race." HUD should also assess, among other issues, the availability of alternate sites, the "need for restoration" at the chosen site, and whether "other alternative means of restoration" might "have preferable effects on racial concentration in that area." HUD needed to make an "informed" judgment. To approve a proposal for a deeply subsidized multifamily development in an area like East Poplar, HUD needed to find "that the need for physical rehabilitation or additional minority housing at the site in question clearly outweighs the disadvantage of increasing or perpetuating racial concentration."[125] The Third Circuit thus vacated the district court's decision, and instructed the lower court to issue an injunction barring HUD from continuing to support the project. As the case wound its way through federal courts, developers completed the construction of Fairmount Manor. But before continuing to issue insurance or subsidies to support the development, HUD first needed to conclude that the project would support the "workable program for community improvement," a standard that had shifted since Congress enacted the Civil Rights Acts of 1964 and

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[124] Ibid.
[125] Ibid., 821–22.

1968.[126] In 1975, plaintiffs finally reached a settlement that obligated the city to build additional single-family homes, as described in the original East Poplar redevelopment plan. Fairmount Manor remained standing.[127]

In some ways, *Shannon* was a troubling opinion. The Third Circuit depicted low cost housing in pejorative terms. The court accepted the assertion that subsidized rental housing development, presumably by contributing to concentration of lower income black residents," threatened homeowners' investments and the "quality of their daily lives." Given past discriminatory practices by local housing authorities, and the critical role public housing development played in entrenching residential segregation in the US during the 1940s and 1950s, the *Shannon* development looked like yet another episode in the city's practice of limiting the geography of subsidized housing in the city to poor, non-white neighborhoods.[128] And to advance their argument for standing, the plaintiffs needed to show how the development itself harmed them.[129] This line of argument, as desegregation efforts in the 1980s revealed, ultimately played into the hands of white

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[126] Ibid., 822–23.
[127] Thomas Hine, "East Poplar's Curious 'Victory,'" *Philadelphia Inquirer*, June 29, 1975.
[128] For Maurice Shannon, the development looked like a "project," which inspired him to resist HUD's decision to approve Fairmount Manor. Ibid. On racial discrimination in Philadelphia's public housing program, see John F. Bauman, *Public Housing, Race, and Renewal: Urban Planning in Philadelphia, 1920–1974* (Philadelphia: Temple University Press, 1987).
[129] The *Shannon* plaintiffs could have alternatively argued that approval of the development in East Poplar meant that the subsidy in question was not supporting affordable housing development of similar design in a predominantly white area of Philadelphia. This line or reasoning, however, was likely too speculative to justify standing. HUD's refusal to approve the development did not necessarily mean that the agency would have an alternative project that it could improve in a white neighborhood. As the Supreme Court later held in *Warth v. Seldin*, 422 U.S. 490, 506–07 (1975), a plaintiff did not necessarily have standing to assert a Fair Housing claim against a city that used zoning ordinances to prevent development of multifamily housing. The plaintiff would need to present evidence showing that, if the municipality lifted the restriction on multifamily housing, the action would lead to the development of new housing that the plaintiff could afford. Ibid.

homeowners. When civil rights litigation in the 1980s inspired courts to order local housing authorities to broaden affordable housing opportunities in cities like Dallas, white homeowners advanced similar arguments. Affordable housing development would upset the quality of life that white homeowners achieved and threaten the value of their property. This alleged "injury" justified their standing to bring Equal Protection claims challenging remedial site selection criteria.

Yet, as the following chapter suggests, *Shannon* also lent support to HUD officials as they attempted to regulate local planning more aggressively. As the *Philadelphia Inquirer* observed, the case "helped change national housing policy."[130] Through the litigation efforts of the *Shannon* plaintiffs, the federal government's management of housing programs became enmeshed with initiatives to desegregate American cities. HUD staff and executive-branch committees dove into heated debates on strategies for stemming urban decline, and evaluated HUD's obligation to combat residential segregation. These discussions, which were guided in part by the Third Circuit's decision in *Shannon*, shaped the federal government's approach to urban policy, and inspired administrators to act more assertively to regulate local urban planning.

* * *

During the 1960s, low-income residents across the US used urban renewal litigation to force federal officials rethink the relationship between federal institutions and local governments. Residents of urban renewal zones across the US had good reason to fear that local redevelopment agencies, working in concert with city planners, intended

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[130] Hine, "East Poplar's Curious 'Victory.'"

to drive them out of their homes. Hoping to preserve their way of life, residents filed lawsuits against federal agencies and local units of government to challenge the design of urban renewal initiatives. At the beginning of the decade, courts were hesitant to meddle with local redevelopment plans. Instead, judges prioritized the autonomy of local governments, and declined to assert jurisdiction over the residents' claims. But by the late 1960s, federal judges began to conceive of the judiciary's role differently, and to view residents' stake in urban renewal projects in new light.

Essential to this reframing of judicial authority was an expanded understanding of urban residents' standing to sue local and federal officials to enforce constitutional and statutory rights. The shift in legal thinking suggested that residents had a right to participate in the conversation between the federal government and local leaders. By gaining access to federal courts, residents of low-income neighborhoods formed new relationships with the federal government, and they helped reframe relationships between the federal government and municipal governments, and between residents and local grant recipients. A broadened interpretation of standing recognized that individuals who lived in changing neighborhoods had a legitimate stake in the contractual relationship between the federal government and local recipients.

Urban renewal litigation had two important effects. First, it called federal officials to task, demanding that they evaluate local governments' urban renewal plans with greater care, and to account for the interests of low-income residents in conducting this review. Robert Weaver and Frank Horne, as directors of the U.S. Housing Authority Office on Racial Relations, struggled to convince their colleagues that regulation of local

planning was necessary to protect African Americans against the abuses of local governments. By taking urban renewal disputes to federal court, residents demanded oversight, and forced the federal government to enforce program regulations designed to protect households living in urban renewal zones. In this way, they contributed to an expansion of the federal government's oversight of local affairs, and an enlargement of the government's administrative authority.

Second, after Congress enacted the 1964 and 1968 Civil Rights Acts, residents of urban renewal areas asked federal courts to reinterpret legislation authorizing housing and urban renewal programs. In *Shannon*, the Third Circuit accepted the theory that federal civil rights laws required the government to implement its housing and urban aid programs in ways that furthered the goals of the Fair Housing Act and the Constitution. By holding that HUD needed to consider the effect a development might have on the racial composition of a neighborhood, the court indicated that HUD needed to act proactively to distribute housing throughout metropolitan areas. Given Congress's movement into the civil rights arena, HUD needed to reinterpret its programs and formulate new policies for administering grants.

Cases like *Norwalk CORE* and *Shannon* envisioned national administrative power in new terms. These decisions suggested that HUD had a duty to influence the behavior of grant recipients. The agency had an obligation to shape the geography of cities and to create new residential opportunities in racially exclusive neighborhoods. How HUD would exercise this authority and navigate local resistance to new measures was less certain.

Chapter 2

From Construction to Vouchers, 1968–1974

In 1970, political writer and strategist Kevin Phillips feared that President Nixon would soon face a reckoning with his political base. As he put it, the U.S. Department of Housing and Urban Development (HUD) was "building a bomb." The previous year, Phillips had published a seminal piece of political analysis, *The Emerging Republican Majority*, detailing Nixon's "Southern strategy" and forecasting a realignment in the Republican political coalition built on white Southern voters. Phillips, who served on Nixon's campaign, now cautioned that HUD's recent plans for suburban integration would "blow the Nixon-Agnew vote base to shreds." Nixon's appointee as HUD secretary, George Romney, had called on Congress to prohibit local governments from using zoning laws to obstruct development of federally-subsidized low-income housing. HUD also had developed guidelines requiring suburbs to allow subsidized housing development as a condition for other forms of federal funding. But the "social resentments" of "Middle American suburbanites" had paved Nixon's path to victory, and these voters were sure to protest HUD's "intrusion."[1]

HUD's controversial plans surfaced in the late 1960s. HUD officials, including Secretary Romney, argued that the agency had a moral and legal imperative to integrate white suburbs. After all, the Fair Housing Act, passed in 1968, called for HUD to

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[1] Kevin Phillips, "HUD Is Building a Bomb," *Los Angeles Times*, June 19, 1970; Kevin Phillips, *The Emerging Republican Majority* (New Rochelle, N.Y.: Arlington House, 1969).

affirmatively further the law's requirements. For HUD's low-income housing construction programs, administrators believed federal civil rights laws required the agency to locate new projects in white neighborhoods. HUD responded by developing policies to direct affordable housing to predominantly white communities, sending the agency on a collision course with Nixon's political base in the early 1970s.

In the late 1960s and early 70s, HUD administered two forms of low-income housing assistance: vouchers subsidized tenants' rent payments in existing housing; mortgage insurance and subsidies to stimulate low-cost, private development. But resistance from white residents undermined mortgage subsidy programs for low-income rental projects. HUD could not relegate housing projects to communities of color. That would draw criticism from civil rights activists and possibly result in litigation. In Houston, Texas, even city government officials got involved in the local resistance to federal housing construction. The Houston city council and mayor demanded that HUD allow the city to have a role in approving new projects. HUD did not have the political support required to assert itself when whites resisted. In 1970, HUD was only five years old, and HUD's own Undersecretary, Richard C. Van Dusen, was already thinking about ways the agency could be dissolved.[2] Rather than engage in local battles, HUD backed

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[2] Memorandum for the Secretary, The Future of HUD, Richard C. Van Dusen, November 21, 1972, Bentley Historical Library (BHL), George Romney, Post-Gubernatorial Papers, box 7, Folder: HUD's Future; "The State of the Department, November/December 1972," BHL, George Romney, Post Gubernatorial Papers, box 7, 110. Van Dusen wrote this statement a month after Congress passed the Revenue Sharing Act of 1972, Pub. L. No. 92-512, 86 Stat. 919 (1972). On revenue sharing, see Graham W. Watt, "Legal Policies of the Administration of General Revenue Sharing," *Urban Lawyer* 7, no. 2 (1975); Peter Raven-Hansen, "The Revenue Sharing Act of 1972: Untied and Untraceable Dollars from Washington," *Harvard Journal on Legislation* 10, no. 2 (1973).

down. It abandoned housing construction programs, and adopted policies that allowed the agency to avoid conflict.[3]

As a result, by the mid 1970s HUD replaced housing development programs with the voucher-based model. Vouchers relied on existing housing. By allowing tenants to select their residence, the program protected HUD from accusations that its policies reinforced residential segregation. The shift towards vouchers deepened the federal government's drift towards reliance on the private sector for providing housing assistance. With mortgage subsidy programs, HUD used financial incentives to encourage private developers to produce low-income housing. With vouchers, the federal government relied more completely on the functions of the private real estate market.

I.

By the late 1960s and early 1970s, local housing authorities faced a wide range of problems. As income levels of public housing tenants fell, the revenue collected from rent fell below operating expenses. In popular journalism and academic writing,

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[3] Historians have made few attempts to grasp shifting paradigms in federal urban policy. Roger Biles's synthesis on federal urban policy offers the most complete analysis of low-income housing policy. He characterizes administrations following the Johnson administration as largely ambivalent towards urban policy. His work is largely descriptive and does not investigate reasons for major shifts in policy. Biles, *The Fate of Cities: Urban America and the Federal Government, 1945-2000*. Christopher Bonastia analyzes HUD's "missed opportunity" to integrate suburbs in the early 1970s in Christopher Bonastia, *Knocking on the Door: The Federal Government's Attempt to Desegregate the Suburbs* (Princeton, N.J.: Princeton University Press, 2006). Bonastia finds that HUD provided a weak "institutional home" for enforcing federal fair housing law, as well as promoting residential integration. HUD's housing production mission conflicted with its regulation and civil rights interests. For Bonastia, conflict between Nixon's White House and George Romney's work in HUD, which brought about Nixon's 1973 moratorium on housing programs, illustrated this point. The moratorium, he elaborates, closed HUD's opportunity for integrating suburbs. In using institutional structures to explain policy outcomes, however, Bonastia does not offer an explanation for why, and in which ways, federal policy changed during the 1970s.

commentators drew attention to crime, poor sanitation, and safety hazards endemic in public housing. According to one journalist, urban planners had begun to think “that the anonymity, drabness, and absolute barrenness” of public housing projects tended “to alienate residents.” An “atmosphere of fear,” he added, had fallen upon communities as “[c]riminal and degenerate elements” moved in. Exemplifying the challenges housing authorities faced, a state judge in 1979 ordered the Boston Housing Authority (BHA) into receivership. The judge pinned the deteriorating conditions of the city’s public housing stock on the “gross mismanagement, nonfeasance, incompetence, and irresponsibility” of the BHA’s board. The court-appointed receiver, Harry Spence, recognized that public housing had a damaged reputation. As he observed, critics of public housing had concluded “that concentrations of poor people are synonymous with centers of disorder” and that public housing posed “a threat to the stability and well-being of the larger community.”[4]

Some federal officials considered public housing salvageable, even if they shared some of their critics’ concerns. In a statement to Congress, Acting Assistant Secretary Norman Watson explained that public housing served “many very poor, multi-problem families who are faced with serious health, education, and employment problems.” The government, he argued, needed to reduce the levels of “vandalism and social unrest plaguing many of our housing projects,” and noted that “we’ve got to develop more effective programs to provide real opportunities for upward mobility.” Watson

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[4] George H. Favre, “Public-Housing Onus—A Plan to Remove It,” *Christian Science Monitor*, January 5, 1971; Michael Knight, “Boston Housing Authority is Placed in Receivership,” *New York Times*, July 27, 1979; Lawrence J. Vale, *From the Puritans to the Projects: Public Housing and Public Neighbors* (Cambridge, M.A.: Harvard University Press, 2000), 348.

envisioned increased federal review of local housing authority management policies, combined with the use of model lease agreements that would provide tenants with new rights to file grievances against housing authorities with "an impartial panel or official."[5] By holding housing authorities accountable, perhaps tenants themselves could help restore and maintain adequate living conditions in public housing developments. For Watson, sound management of local housing authorities could restore the federal public housing program.

Other administrators, however, were less optimistic. For some, true reform required a new approach to housing assistance. Management problems aside, public housing tended to accentuate patterns of housing segregation and militated against economic mobility. As Harold Finger wrote, "[W]e should be attentive to the opportunities to do away with the public housing concept as it has been developed and understood in the past." For Finger, federal public housing programs and residential segregation in American cities were closely related. If the government wanted to promote "mixed communities" and encourage local governments to accept low-income housing, the federal government needed to move away from public housing. To this end, he counseled that policymakers incentivize local governments to privatize existing public

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[5] *HUD-Space-Science Appropriations for 1972, Hearings before a Subcomm. of the H. Comm. on Appropriations*, 92d Cong. 352 (1971) (Statement of Norman V. Watson, Acting Assistant Secretary, Housing Management, U.S. Department of Housing and Urban Development).

housing, in part by terminating the "Federal requirement for local tax exception in the conventional public housing program."[6]

Lawmakers responded to Finger, not Watson. In the late 1960s, Congress enacted a new set of housing policies that helped shift the government away from its traditional public housing program. Until the 1960s, federal low-income housing assistance came mainly in the form of public housing. Under the 1937 U.S. Housing Act, local housing authorities received loans from the federal government to finance slum clearance and rental housing production. Local housing authorities acted as developers and property managers. Municipal governments had authority to approve or reject local housing authorities' project plans, thereby controlling site selection and project design.[7] The 1968 Housing and Urban Development Act authorized two new forms of low-income housing, adding two new provisions—Sections 235 and 236—to the 1934 National Housing Act. The new programs aimed to provide deeper subsidies for housing produced by private developers.[8]

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[6] Harold Finger to Under Secretary, Subject: Open Communities Statement, March 6, 1970, folder: ADM 1-16 Open Communities Part II (3 of 4), Box 10, Van Dusen Subject Files, ADM 1-14 – Area & Deputy Director Positions, NARA.

[7] See, for example, Nancy H. Kwak, *A World of Homeowners: American Power and the Politics of Housing Aid* (Chicago: University of Chicago Press, 2015). On the 1937 U.S. Housing Act, see Bradford Hunt, "Was the 1937 U.S. Housing Act a Pyrrhic Victory?" *Journal of Planning History* 4, no. 3 (2005); Gail Radford, *Modern Housing for America: Policy Struggles in the New Deal Era* (Chicago: University of Chicago Press, 1996). On city governments' control over approval and site selection of local housing authorities' projects, see John F. Bauman, *Public Housing, Race, and Renewal: Urban Planning in Philadelphia, 1920–1974* (Philadelphia: Temple University Press, 1987); Arnold R. Hirsch, *Making the Second Ghetto: Race and Housing in Chicago, 1940–1960* (Chicago, Ill.: The University of Chicago Press, 1998).

[8] Housing and Urban Development Act of 1968, Pub. L. No. 90-448, §§ 101, 201, 82 Stat. 476, 477–85, 498–502 (1968).

Section 236 authorized HUD to provide interest reduction payments to owners of rental housing projects "designed for occupancy by lower income families."[9] The law allowed HUD to pay interest subsidies to mortgagees that reduced a project's total monthly payments on principal, interest, and mortgage insurance premium to an effective yearly interest rate of one percent.[10] To maintain eligibility, the project owner had to manage the property in accordance with requirements the Secretary established. HUD's Secretary was required to set the "basic rental charge" below the market rate, given the lowered cost of managing the units under federal subsidies. The Secretary would also set a "fair market rental charge" that would establish the maximum monthly fee tenants paid. Rent could not exceed 25 percent of a household's monthly income.

In practice, the subsidy primarily made rental housing affordable to households with incomes roughly twice the federal poverty line. However, a maximum of twenty percent of units in a Section 236 project could receive an additional rent supplement for "lower income families," including the elderly, people with disabilities, and those who previously occupied substandard housing or were displaced from a dwelling.[11] HUD's General Counsel believed that up to forty percent of units could receive rent supplements.[12] As audits of Section 236 projects in 1971 found, the income tenants who

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[9] Ibid., § 201, 82 Stat. at 498–99 ("§ 236(a)").
[10] Ibid., 82 Stat. at 499 ("§ 236(c)").
[11] The rent supplement was enacted through the Housing and Urban Development Act of 1965, Pub. L. No. 89-117, §101, 79 Stat. 451 (1965). Section 101(j)(C) established the 20 percent limit for rent supplements for units of housing subsidized by federal programs and managed by private nonprofit or limited dividend corporations.
[12] Memorandum, Project Mortgages Insured Under Section 236, David O. Maxwell to George Romney, August 11, 1971, folder: Section 236, Box 11, George Romney, Post-Gubernatorial Papers, Box 11, BHL.

did not receive rent supplements had an average income of about $5,000 per year, equivalent to $32,000 in current dollars; the income of tenants receiving rent supplements averaged approximately $2,500 per year. Most households living in Section 236 housing had incomes roughly twice the federal poverty line, but households receiving rent supplements had incomes equivalent to the poverty line for a two-person household in 1971.[13]

The law contained language conferring broad discretion on HUD officials. It called on HUD to make "rules and regulations," enter "agreements," and establish "procedures" that the secretary found necessary to implement the program.[14] Congress's delegation of authority provided HUD with the opportunity to use its programs, especially Section 236, to invite low-income families into white suburbs. How HUD would implement its new housing programs remained an open question. But as Chapter 1 argued, urban renewal litigation at the end of the 1960s gave HUD officials reason to

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[13] Memorandum, Management Analysis of Section 236 Program in San Francisco, California, Management Review Team on Section 236 Program to Norman V. Watson, Assistant Secretary for Housing Management, no date, folder: Section 236, Box 11, George Romney, Post-Gubernatorial Papers, BHL; Memorandum, Management Team Review of Section 236 Program – Summary of Findings and Conclusions, K.C. Cavanaugh to Norman V. Watson, no date, folder: Section 236, Box 11, George Romney, Post-Gubernatorial Papers, BHL; Memorandum, Summary of Findings on the Section 236 Program in Dallas, Texas, K.C. Cavannaugh to Norman Watson, June 18, 1981, folder: Section 236, Box 11, George Romney, Post-Gubernatorial Papers, BHL; Memorandum, Management Analysis of Section 236 Program in Pittsburgh, Pennsylvania, Management Review Team on Section 236 Program to Norman Watson, June 10, 1971, folder: Section 236, Box 11, George Romney, Post-Gubernatorial Papers, BHL; Memorandum, Management Analysis of Section 236 Program in Indianapolis, Indiana, Management Review Team on Section 236 Program to Norman Watson, July 12, 1971, folder: Section 236, Box 11, George Romney, Post-Gubernatorial Papers, BHL.

The poverty level for a two-person household in 1971 was $2,716 per year. Poverty level figures provided by U.S. Census Bureau, "Historical Poverty Tables—Average Poverty Thresholds." Accessed at http://www.census.gov/hhes/www/poverty/data/historical/thresholds.html.

[14] Pub. L. No. 90-448, §201, 82 Stat. at 499–500 ("§ 236(h)").

believe that federal civil rights legislation imposed an affirmative duty on HUD to use its programs to desegregate metropolitan areas.

II.

Under the leadership of Nixon's HUD Secretary George Romney, HUD officials in 1969 envisioned a more active role for the agency. Secretary Romney came to HUD having served as governor of Michigan since 1962, and as president of the American Motors Corporation before that. Though closely connected to the Republican party and a successful businessman, Romney's personal beliefs skewed far left of his party's political doctrine. Indeed, reporters struggled to pin down Romney's political philosophy during his gubernatorial campaign. In 1961, the *Washington Post* called him "weird duck" who possessed "ideas which are at once disarmingly simple and disturbingly radical." Romney opposed the expansion of welfare programs and the growth of the federal government. Yet he also believed that "[t]he elimination of domestic racial discrimination" was "imperative if we are to be true to our own principles . . . ." And in his view, wealthy people who fled to suburbs had a moral obligation to help those who lived in "the central city where we earn our keep."[15] Richard C. Van Dusen, a well-connected Michigan lawyer and Republican politician who worked as a campaign advisor and legal counsel to Romney, shared Romney's views on civil rights. He followed Romney to HUD to serve as Undersecretary.

Facing criticism for failing to appoint any African Americans to his cabinet, particularly HUD, Nixon appointed two black attorneys to assistant secretary positions.

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[15] Frank C. Porter, "The Credo of George Romney," *The Washington Post*, August 24, 1961.

For assistant secretary for metropolitan development, Nixon appointed Samuel C. Jackson, who was then vice president of the American Arbitration Association. Nixon appointed Samuel J. Simmons, a director for the U.S. Commission on Civil Rights, to serve as assistant secretary for equal opportunity.[16]

Romney, Van Dusen, and other key staff members believed the agency had a duty to reduce residential segregation. Administrators faced the monumental task of figuring out how to use federal programs to reconstitute the racial and economic geography of local communities. The broad terms of federal programs, as well as the Fair Housing Act's mandate to administer programs to "affirmatively further" its provisions, left HUD with discretion in deciding how to shape a policy. In a statement before the Senate Select Committee on Equal Educational Opportunity, Romney affirmed his commitment to implementing the Fair Housing Act's affirmative mandate. But it was up to HUD staff to translate the statute into workable policy. To assess how HUD could best affirmatively further the Fair Housing Act, Secretary Romney set up an informal team within HUD, called the Open Communities Task Force.[17]

The Open Communities efforts intersected with the Nixon administration's broader effort to formulate a "national urban policy." In his first executive order, Richard Nixon created a presidential Council on Urban Affairs, arguing that "the American national government has responded to urban concerns in a haphazard, fragmented, and

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[16] Robert Semple, "Romney Aide Gets HUD Post," *The Atlanta Constitution*, January 17, 1969; Stuart Loory, "Nixon Will Name Two Negroes to Urban Posts," *Los Angeles Times*, January 25, 1969.
[17] "Statement of George Romney, Secretary, Department of Housing and Urban Development, before the Senate Select Committee on Equal Education Opportunity," August 26, 1970, NARA, RG 207, Subject Files of Richard C. Van Dusen, Box 10, Folder: Open Communities (4 of 4), 7.

often woefully shortsighted manner."[18] The executive order claimed that a federal policy—a set of "coherent, consistent positions as to what the national government would hope to see happen"—was a "precondition of success.[19] To head the Council, Nixon appointed Daniel Patrick Moynihan, director of the Joint Center for Urban Studies at Harvard, former Assistant Secretary of Labor during the Kennedy and Johnson administrations, and author of the controversial 1965 report, "The Negro Family: The Case for National Action."[20] Moynihan agreed with Nixon's assessment, arguing that by the late 1960s, the federal government had established no coherent urban policy.[21]

When Moynihan took the helm of Nixon's Council on Urban Affairs, he had established himself as a controversial thinker within the halls of government. Moynihan's 1965 report drew criticism, particularly from black intellectuals, for attributing poverty among urban African Americans with purportedly pathological family structures and the inability of black males to serve as patriarchal father figures. A "tangle of pathology" in urban ghettos, his report argued, reproduced poverty across generations of black households. Moynihan's analysis gave little attention to discrimination or segregation. The report had little to say about the spatial segregation of cities. As Moynihan claimed,

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[18] Executive Order 11452 (1969).
[19] "Statement by the President on Signing the Executive Order Creating the Council on Urban Affairs," January 23, 1969, BHL, George Romney, Post-Gubernatorial Papers, Box 12.
[20] R. W. Apple Jr., "Moynihan, a Liberal Scholar, May Spur Rapid Action on Cities," *New York Times*, December 11, 1968; United States Dept. of Labor, Office of Policy Planning and Research, *The Negro Family: The Case for National Action* (Washington, D.C.: U.S. G.P.O., 1965).
[21] Daniel P. Moynihan, "Toward a National Urban Policy," July 1969, NARA, RG 207, Subject Files of Richard C. Van Dusen, Box 10; "Basic Questions Relating to an Urban Policy," HUD Memo (author unidentified), Circulated George Romney to Assistant Secretary Jackson, May 12, 1970, BHL, George Romney, Post-Gubernatorial Papers, Box 12.

the "tangle of pathology" perpetuated itself "without assistance from the white world."[22] Public backlash against the report likely sunk Moynihan's candidacy for a cabinet-level position at HUD, and his appointment to the Council on Urban Affairs served as a concession.[23]

While working with the CUA, Moynihan shifted his attention towards the issue of racial segregation within cities. In a 1969 paper that circulated among HUD officials, "Toward a National Urban Policy," Moynihan offered a new set of explanations for the "present 'urban crisis.'" Citing Otto Eckstein, a member of the Council of Economic Advisers during the Kennedy and Johnson administrations, Moynihan found that the "logical" economic development of cities had unraveled after World War II. Prior to 1945, the "political jurisdiction of the city" defined the "area of intensive economic development." After the war, "economic incentives and social desires" converged to "produce a fractioning process" that undermined the potential for centralized municipal governance. Urban centers stopped growing and "the core began to rot." The migration of blacks from the south into northern cities, along with the overall growth of the U.S. population between 1945 and 1968, strained municipal services. The two phenomena "drove many whites to the suburbs" in search of "relief." Racial tension exacerbated the

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[22] *The Negro Family: The Case for National Action*, 45–47.
[23] Roger Biles, The Fate of Cities: Urban America and the Federal Government, 1945–2000 (Lawrence: University Press of Kansas, 2011), 164–65; R. W. Apple Jr., "Moynihan, a Liberal Scholar, May Spur Rapid Action on Cities."

"economic stagnation of the central city." This tension fomented the "racial strife" of the 1960s.[24]

In 1965, Moynihan's assessment of urban poverty hinged on the black family; in 1969, his emphasis shifted towards segregation and isolation of black Americans. In the first of ten urban policy principles he presented, Moynihan stated: "The poverty and social isolation of minority groups in central cities is the single most serious problem of the American city today." Efforts to "enable the slum population to disperse throughout the metropolitan areas" needed to take precedence over "efforts to improve the conditions of life in the present caste-created slums."[25] Moynihan looked to dispersal as a method for achieving what he described as the first goal of urban policy: "the transformation of the urban lower class into a stable community based on dependable and adequate income flows, social equality, and social mobility."[26]

Moynihan's recommendations on urban policy found a sympathetic audience among policymakers at HUD. HUD Secretary George Romney attended CUA meetings and received updates on Council activity.[27] Theories Moynihan outlined in his urban policy framework then surfaced in meetings of Romney's Open Communities workgroup, an informal committee that Romney formed to develop policies on housing

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[24] Hardcopy held by Open Communities workgroup. Daniel Patrick Moynihan, "Toward a National Urban Policy," July, 1969, NARA, RG 207, Subject Files of Richard C. Van Dusen, Box 10, 8-9. Paper later published as Daniel Patrick Moynihan, "Toward a National Urban Policy," *National Affairs* (Fall 1969).
[25] Ibid., 11–13.
[26] Scholarship on urban policy describes the short-lived CUA as having few achievements. This characterization is not entirely accurate: its influence on policy at HUD was significant. Biles, *The Fate of Cities*, 167.
[27] Price, John R., "Record of Action for the First Meeting of the Council for Urban Affairs," January 23, 1969, BHL, George Romney, Post-Gubernatorial Papers, Box 5.

integration. In 1970, George Romney forwarded a memorandum on urban policy to John Ehrlichman, Assistant to the President for Domestic Affairs.[28] The document, "Basic Questions Relating to an Urban Policy," highlighted the first of Moynihan's points, which positioned the isolation and poverty of people of color as "the single most serious problem of the American city today." HUD staff, the memo noted, had spent months devoting "careful study to what we can do about this problem." Officials felt ready to "make a real contribution to the development of a national urban policy." Romney endorsed the objective of affording "every American" the opportunity "to live within a reasonable distance of his job and daily activities." This involved expanding "suburban housing opportunities for low income families and particularly members of minority groups." The memorandum rejected Kennedy and Johnson administration policies that focused on redevelopment of disadvantaged neighborhoods. Echoing Moynihan's preference for dispersal over redevelopment of "ghettos," the memorandum depicted previous administrations as "pouring large amounts of money into the ghettos" to little effect while "hermetically sealing them off from the suburbs."[29]

In 1969, the Open Communities workgroup began framing a department strategy for desegregating metropolitan regions. John C. Chapin, Special Assistant to the Secretary, circulated a draft policy paper to Samuel Simmons, Assistant Secretary of Equal Opportunity; Sherman Unger, HUD General Counsel; and Assistant Secretaries

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[28] George Romney to John Ehrlichman, May 12, 1970, BHL, George Romney, Post-Gubernatorial Papers, Box 14.
[29] "Basic Questions Relating to an Urban Policy," HUD Memo (author unidentified), Circulated George Romney to Assistant Secretary Jackson, May 12, 1970, BHL, George Romney, Post-Gubernatorial Papers, Box 12, 1–3.

Charles J. Orlebeke, Harold E. Finger, and Samuel Jackson.[30] The statement defined an "open community" as one where "choices are available, doors are unlocked" and opportunities "exist for the poor who have felt walled within the ghetto and left with no options." Federal policy needed to address "a crucial situation where the poverty-stricken core city is surrounded by an affluent suburban ring," which "effectively blocks the outward flow of ghetto residents and actively prevents any meaningful construction of low and moderate income housing (LMIH) outside the core."[31] Chapin's recommendations drew from Moynihan's ten points on urban policy, especially the first concerning the need to remedy the social isolation of minority groups. The paper concluded that HUD objectives should involve dispersing low and moderate income housing "throughout a metropolitan area, including the suburbs."[32] HUD therefore needed to concentrate its resources where opportunity existed, not in locations with concentrated "problems."[33]

HUD officials considered a range of policies that they could use to achieve their goal of creating "open communities." First, HUD considered legislative options. Secretary Romney instructed the group to discuss "possible legislative proposals to create more suburban housing opportunities for low and moderate income families." This

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[30] "Memorandum from John C. Chapin to Under Secretary Van Dusen, Subject: Open Communities", September 19, 1969, NARA, RG 207, Subject Files of Richard C. Van Dusen, Box 10.
[31] "Draft for a HUD Policy on Open Communities," September 22, 1969, NARA, RG 207, Subject Files of Richard C. Van Dusen, Box 10.
[32] Ibid, 3–4.
[33] Ibid, 6.

included the possibility of legislation "with respect to land use."[34] In an initial meeting, members of the Open Communities workgroup debated the merits of asking Congress to strengthen HUD's authority to influence local planning and land use policy. The committee assessed what motivated suburban resistance to subsidized housing, what suburbs wanted, and based on these desires, what "carrots" might be "big enough and juicy enough to induce significant action" from local governments. Members needed to identify "key pressure points." Options included using financial leverage over states to "induce them to pre-empt or override local zoning," as well as inducing "core cities" to use their own resources as leverage to extract concessions from suburban officials. The committee was vague on how exactly cities could influence suburban leaders. But the most critical point of leverage, as one committee member reasoned, rested with state governments rather than subdivisions like cities or councils of government.[35]

Second, because legislative action would take time, the Open Communities workgroup considered more immediate means for intervention. The agency could change local policy by administering its programs in new ways. As members of the workgroup reasoned, HUD could adopt site selection policies for its housing programs to prevent concentration of subsidized housing "within areas of minority group occupancy" and give

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[34] Memorandum from Richard C. Van Dusen to Assistant Secretaries Jackson, Gulledge, Hyde, Finger, Cox, Simmons, General Counsel, Charles J. Orlebeke, and John C. Chapin, January 23, 1970, NARA, RG 207, Subject Files of Richard C. Van Dusen, Box 10.

[35] Memorandum from Richard C. Van Dusen to Assistant Secretary Sameul Jackson et al., January 23, 1970, folder: ADM 1-16 Open Communities Part II (1 of 4) 1969, Box 10, Subject Files of Richard C. Van Dusen, RG 207, NARA; Memorandum from John C. Chapin to Richard C. Van Dusen et. al, Subject: Meeting of January 28, 1970, January 28, 1970, folder: ADM 1-16 Open Communities (2 of 4) 1970, Box 10, Subject Files of Richard C. Van Dusen, RG 207, NARA.

"preference to those projects which offer opportunities to minority groups to locate outside areas of their own racial concentrations." The agency could also deny recertification of all urban renewal plans for projects that displaced communities of color, and require that the grant recipient provide replacement housing in locations that reduced racial concentrations within the given jurisdiction.[36]

Administrators in HUD could expand HUD's authority by reinterpreting the statutes governing the agency's programs. By reading statutory language in light of Title VI and the Fair Housing Act, administrators found a potential mandate for encouraging the spread of low-income housing throughout suburban communities. Congress gave HUD wide discretion in the implementation of federal grant programs for local governments and housing programs. Administrators could exercise this discretion to promulgate new regulations governing the agency's programs. Housing and civil rights laws set fundamental parameters that structured housing and urban grant programs.[37] But by 1972 the agency had not made a regular practice of publishing agency policies in the Code of Federal Regulations. Under Romney, HUD began publishing all department policy in the Federal Register. One of HUD's "long time bureaucrats" was "aghast" when

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[36] Immediate Administrative Actions to Further Open-Community Objectives, n.d., folder: ADM 1-16 Open Communities (1 of 4) 1969, Box 10, Subject Files of Richard C. Van Dusen, RG 207, NARA; Memorandum from John C. Chapin to Richard C. Van Dusen et. al, Subject: Meeting on January 26, 1970, Jan. 27, 1970, folder: ADM 1-16 Open Communities (1 of 4) 1969, Box 10, Subject Files of Richard C. Van Dusen, RG 207, NARA.

[37] Members of the Open Communities group recognized, for example, that Title VI could be used "more broadly for leverage" in compelling local governments to allow development of low and moderate-income housing in communities that traditionally excluded such developments. Memorandum from John C. Chapin to Richard C. Van Dusen et. al, Subject: Meeting on January 26, 1970, Jan. 27, 1970, folder: ADM 1-16 Open Communities (1 of 4) 1969, Box 10, Subject Files of Richard C. Van Dusen, RG 207, NARA.

he learned of the change in administrative practice: "If you publish the rules," he told Van Dusen, "you'll have to abide by them." Yet, Van Dusen found the publication of rules "a major step in ventilating and disciplining the bureaucracy." By formalizing administrative policy, the agency could ensure that regional offices adhered to new site selection policies and grant review procedures designed to compel the dispersal of low- and moderate-income housing.[38]

As the Third Circuit's opinion in *Shannon v. HUD* suggested, HUD was perhaps obligated to revisit its policies in light of Title VI and the Fair Housing Act. While HUD had begun to consider a more aggressive intervention into local urban affairs, *Shannon* gave both legitimacy and new urgency to the effort. During the Nixon administration, HUD confronted the interpretive problem of whether legislative prohibitions against discrimination applied to the location of a subsidized development. Title VI, for example, clearly forbid a local housing authority from assigning tenants to units based on race. But site selection was less clear. Before *Shannon*, HUD officials had approved a subsidized housing development in Bogalusa, Louisiana, which a federal district court later found to violate Title VI because it was concentrated in a segregated neighborhood.[39] Administrators in the regional office signed off on the project even through agency

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[38] In an extensive appraisal of HUD that Undersecretary Richard C. Van Dusen wrote as a primer for the next Secretary and Undersecretary, Van Dusen encouraged the new cabinet members to continue formalizing agency policies governing discretionary grants in the Code of Federal Regulations. "The State of the Department, November/December 1972," BHL, George Romney, Post-Gubernatorial Papers, Box 7, 26. The 1946 Administrative Procedure Act governs agencies' rule making processes. The Act required agencies to publish proposed rules and allow opportunities for public input in the rule making process. It also established procedures for judicial review of administrative rule making. Administrative Procedure Act, Pub. L. No. 79-404, 60 Stat. 237 (1946).
[39] Hicks v. Weaver, 302 F. Supp. 619, 623 (E.D. La. 1969).

guidelines counseled otherwise. As HUD's Low-Rent Housing Manual stated at the time: "Any proposal to locate housing only in areas of racial concentration will be prima facie unacceptable."[40] *Shannon* clarified that field officers no longer had discretion to ignore this guidance.

The Third Circuit's analysis of civil rights legislation grabbed the attention of HUD officials, who began to see the opinion as compelling—or at least justifying—a more aggressive approach to monitoring local governments' use of federal funds. Leonard Garment, special consultant to President Nixon, observed that HUD interpreted *Shannon* and *Hicks* to "mandate" a policy of "expanding non-ghetto locational opportunities for low and moderate income housing."[41] In his more cautious assessment, Garment saw housing litigation moving toward "compelling all federally-assisted housing to be located outside areas of minority group concentration."[42]

Indeed, as Tom Stoel explained in a memo to Leonard Garment, the Nixon administration could most effectively avoid fair housing involvement by asking the Supreme Court to reverse the Third Circuit's decision in *Shannon*. But that opportunity

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[40] Ibid., 622. The court enjoined the Bogalusa Housing Authority from proceeding with construction, reasoning that the "project was clearly conceived to provide housing for Negroes in Negro neighborhoods." If no injunction issued, the BHA would "succeed in accomplishing its purpose" of "maintain[ing] segregation in public housing in Bogalusa." In finding HUD liable in *Hicks*, the court deferred to HUD's own interpretation of Title VI, writing, "As HUD is the administrative agency charged with the interpretation and enforcement of Title VI in the housing area, its interpretation is entitled to considerable weight by the courts." The court found the interpretation reasonable: the Fifth Circuit had found location to be "highly relevant to non-discrimination in public programs," and this principle clearly reached public housing.
[41] Memorandum from Leonard Garment to John Ehrlichman, Subject: Fair Housing, February 27, 1971, Folder: President and Ehrlichman – 1971, Box 13, George Romney, Post-Gubernatorial Papers, BHL.
[42] Ibid., 9.

had passed: the government had already decided to forego an appeal.[43] Garment informed Nixon's aide John Erlichman that courts were moving in a direction that was "contrary to the position thus far outlined by the President." He argued that Nixon should issue a statement on race and housing to define a "defensible legal position" for the government that would help the administration to "regain the initiative from courts and private plaintiffs and channel future developments in a sounder direction."[44]

But federal courts had already sent HUD along a different path. In 1971, HUD's Office of General Counsel asked the director of Equal Opportunity, Samuel Simmons, to assess the implications of *Shannon*. In Simmons's view, the decision required HUD to establish site selection regulations. *Shannon* was the first appellate decision interpreting the Fair Housing Act, and HUD now needed to broaden its analysis of housing sites in light of the court's opinion. Before *Shannon*, HUD focused on the physical and environmental factors surrounding a proposed development. Now, as Simon explained to HUD's general counsel, HUD needed to consider "social and racial factors" that the court addressed in *Shannon*. He also argued that, according to *Shannon*, HUD should approve sites "in areas of minority concentration" only when "exceptional and urgent" situations

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[43] Memorandum from Tom Stoel to Leonard Garment, Subject: Fair Housing Options, March 11, 1971, Folder: President and Ehrlichman – 1971, Box 13, George Romney, Post-Gubernatorial Papers, BHL.
[44] Memorandum from Leonard Garment to John Ehrlichman, Subject: Fair Housing, February 27, 1971, Folder: President and Ehrlichman – 1971, Box 13, George Romney, Post-Gubernatorial Papers, BHL. Erlichman later harangued Garment, arguing that his analysis "virtually repudiates" Nixon's position opposing affirmative measures to desegregate cities and suburbs. Memorandum from Leonard Garment to John Erlichman, March 15, 1971, Folder: President and Ehrlichman – 1971, Box 13, George Romney, Post-Gubernatorial Papers, BHL.

required the new or rehabilitated housing or if the need for housing "clearly outweighed the disadvantage of increasing or perpetuating racial concentration."[45]

David Maxwell noted that *Shannon* could frustrate HUD's efforts to produce housing. He reasoned that the court's intervention could "make prospective mortgagees reluctant to finance our projects." HUD's continued failure to develop a site selection policy generated uncertainty. It enabled regional offices to approve new projects without considering factors required by civil rights legislation. It enabled approval of projects that were vulnerable to litigation. A federal judge could issue equitable remedies that might delay or terminate projects, an intervention that would generate losses for lenders. Lenders might therefore hesitate to finance HUD sponsored projects, which in turn would undermine HUD's aim of producing affordable housing.[46]

Shannon also influenced the way HUD officials thought about the management of other programs, such as categorical grants. The Office of General Counsel developed a comprehensive memorandum on far housing law, which read recent case law and civil rights legislation to "prohibit HUD from making water and sewer or open space grants to political subdivisions from which minority persons are substantially excluded."[47] The report recognized that, since World War II, the federal government played a key role in developing housing, yet did little to "administer its programs on an equal opportunity

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[45] Samuel Simmons to David O. Maxwell, February 8, 1971, BHL, George Romney, Post-Gubernatorial Papers, box 8, Folder: Legal – 1971.
[46] Memorandum, David Maxwell to Secretary Romney, February 23, 1971, BHL, George Romney, Post-Gubernatorial Papers, box 8, Folder: Legal – 1971.
[47] Confidential Memorandum, Fair Housing, Leonard Garment to John Ehrlichman, February 27, 1971, BHL, George Romney, Post-Gubernatorial Papers, Box 13, Folder: President and Ehrlichman – 1971.

basis." The government was a "major contributor to the development of all-white suburbs" and now had a "clear" obligation to "undo the continuing discriminatory effect of its past actions."[48] This history, according to HUD lawyers, required that the agency make categorical grants available only to "communities which are in fact open to minority group members."[49]

Shannon supported this interpretation. The Third Circuit identified a connection between "racial concentration" and "urban blight," and the legislation enabling federal categorical grants for local governments contained broad language emphasizing that the funds should support "orderly" and "desirable" growth. Congress for example called for sewer and water facility grants to "promote the efficient and orderly growth and development of . . . communities." The federal open space program aimed to "encourage more economic and desirable urban development."[50] Congress's broad aims did not directly speak to discrimination through zoning codes or site selection for public housing. But for HUD, *Shannon* stood for the proposition that when a local government excluded low and moderate income families from its communities, it defied these goals. HUD lawyers believed that, read together, the logic of *Shannon*, the language of Title VI and the Fair Housing Act, and legislation governing HUD's programs all required that HUD reject grant applications from racially exclusive suburbs and other municipalities.[51]

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[48] Ibid., 3.
[49] Ibid., 8–9.
[50] The sewer and water facility grant program was codified at 42 U.S.C. § 3101 (1964). The Open space grant was codified at 42 U.S.C. § 1500a (1964).
[51] Ibid., 9–10 (quoting *Shannon*, 436 F.2d at 816, 820).

With this legal support, HUD officials began to conceive of their authority in broader terms. Across divisions of the agency, officials contemplated new legislative initiatives and agency regulations that would expand federal regulatory oversight of local activity, as well as shape the behavior of local governments, to prevent discriminatory conduct at the local level, and perhaps to unravel the discriminatory effects of the federal government's housing and urban renewal programs. Agency staff scrutinized local housing authorities' management policies, proposing measures that would compel desegregation of public housing developments, require the use of lease terms that strengthened tenant grievance procedures and rights, and compel coordination of resources among municipal governments and housing authorities.[52] One official suggested that HUD require states, as a condition for federal funding, to enact legislation replacing local housing authorities with "Metropolitan Housing Services Organizations" and other regionally-oriented housing authorities. The proposal would also require that states enact laws empowering the new authorities to override local building and zoning codes to enable construction of low-cost housing.[53]

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[52] Draft: Tenant Selection and Assignment Policy for Low-Rent Housing Programs Policy, February, 28, 1970, folder: GC 1-8 Harrisburg, Pa., and Goldsboro, N.C., Housing Authorities, Box 39, Subject Files of Richard C. Van Dusen, NARA; Draft statement of Norman V. Watson, Acting Assistant Secretary, Housing Management, before Subcommittee on HUD, Space and Science, April 1971, folder: Housing Management Part I, 1971, Box 43, Subject Files of Richard C. Van Dusen, 1969–71, NARA; George Lefcoe, "HUD's Authority to Mandate Tenants' Rights in Public Housing," *Yale Law Journal* 80, no. 3 (1971); Arthur R. Hessel to Norman V. Watson, March 29, 1971, folder: Housing Management Part I, 1971, Box 43, Subject Files of Richard C. Van Dusen, 1969–71, NARA.

[53] "A New Strategy for Meeting Low Income Housing Needs," Second Draft, February 16, 1972, folder: Housing Management Part II, 1971, Box 43, Subject Files of Richard C. Van Dusen, 1969–71, NARA.

HUD officials were especially well positioned to use new programs established under the 1968 Housing Act to realize *Shannon*'s mandates, and the goals articulated by the Open Communities workgroup. The administrative structure of HUD's new housing programs was noteworthy in that it gave the agency greater control over program management. The Section 236 subsidy for multifamily housing development marked a shift from previous forms of housing subsidy. Prior to 1968, local housing authorities coordinated most public housing development. They selected project locations, hired architects and construction firms, and managed properties. Some legislation prior to 1968 experimented with placing the responsibility for developing and managing subsidized housing with private organizations.[54] In contrast, the 1968 legislation relied primarily on an administrative structure in which private developers became the direct recipients of federal funding.[55]

With this shift, as some commentators observed, the 1968 Housing and Urban Development Act recast the legal relationship between the federal government and municipalities. Public housing relied on contracts between the state and local housing

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[54] The 1965 Housing and Urban Development Act amended the 1937 U.S. Housing Act to include Section 23, a program under which a local housing authority leased privately owned rental units from landlords and subleased the units to tenants at subsidized rates. The same legislation established a "turnkey" program through which local housing authorities contracted with private developers to produce housing. Once construction was complete, the developer would turn the key over to the local housing authority to manage the property and rent units out to tenants.
[55] Academic commentary in the late 1960s and early 1970s observed the significance of this shift. See Greg Pearson, "Low Income Housing: Section 236 of the National Housing Act and the Tax Reform Act of 1969," *University of Pittsburgh Law Review* 31, no. 3 (Spring 1970); Bibiano Rosa, "Housing I—Federal Low Income Rental Housing," *Texas Southern University Law Review* 2, no. 1 (Fall 1972); Robert Burke and Ira Michael Heyman, "Federally Assisted Housing and the Private Sector," *Business Lawyer* 25, no. 2 (January 1970); Gilbert A. Bartlett, "The Housing and Urban Development Act of 1968: Private Enterprise and Low-Income Housing," *William and Mary Law Review* 10, no. 4 (Summer 1969).

authorities. Local housing authorities needed authorization from local political units, usually city councils, to implement public housing plans. With Section 236, as well as Section 235, HUD staff required developers and non-profit organizations to apply for the subsidies. Staff reviewed applications and selected grantees. HUD contracted directly with developers, which required no consultation or legal relationship with local units of government, which had historically used federal public housing funds to restrict the mobility of low-income families of color.[56]

Section 236 had potential to influence the racial and socioeconomic geography of metropolitan areas. HUD officials anticipated that Section 236 would support production of 400,000 low-rent housing units by the end of 1970. The Central Office of HUD assigned responsibility for awarding Section 236 commitments to its local field offices, meaning that regional administrators would choose which projects would receive federal aid. But HUD issued selection guidelines to coordinate the application review process in local offices. These guidelines incorporated the "open community" goals that officials in HUD's central office adopted.[57] One HUD memorandum proposed the use of a site selection policy that would prevent the "concentration" of HUD subsidized housing

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[56] Bibiano Rosa, "Houston II—the Houston Picture: A View of the Problem of Low Income Housing in Houston, Particularly Section 236 Providing for Multi-Family Dwellings," *Texas Southern University Law Review* 2, no. 1 (Fall 1972). On local governments' abuses of federal public housing funds, see John F. Bauman, *Public Housing, Race, and Renewal: Urban Planning in Philadelphia, 1920-1974* (Philadelphia: Temple University Press, 1987); Arnold R. Hirsch, *Making the Second Ghetto: Race and Housing in Chicago, 1940-1960* (Chicago, IL: The University of Chicago Press, 1998).
[57] "Memorandum, John C. Chapin to Van Dusen, Jackson, Hyde, Cox, Simmons, Finger, Unger, Orlebeke, Gulledge, and Margulies, Subject: Open Communities Task Force Meeting 2/5/70" February 6, 1970, folder: ADM 1-16 Open Communities (4 of 4) Part II, Box 10, Subject Files of Richard C. Van Dusen, RG 207, NARA.

"within areas of minority group occupancy" and prioritize projects that help populations "locate outside areas of their own racial concentrations."[58] Another working paper argued that HUD should establish an "application review process for all programs within a given metropolitan area or housing market area to assure that all programs contribute the maximum towards open-community goals."[59] The plaintiffs' lawyer in *Shannon*, Robert Wolf, believed that similar criteria would help the federal government mediate "local political pressures." Litigation over urban renewal and the site-selection issues raised in *Shannon*, he argued, made it "imperative" that HUD adopt new regulations. HUD needed to actively enforce the terms of the Housing Act, rather than rely on the judgment of local authorities.[60]

In 1972, HUD issued site selection criteria for Section 236 that prioritized applications for projects in non-minority neighborhoods. The rule restricted approval of government-sponsored housing in "areas of minority concentration." Projects in such areas could receive approval only if "there truly exist housing opportunities for minorities" outside the area of racial concentration.[61] The new rule expanded federal control over local program design and established standards to guide the judgment of federal officers in HUD's regional offices. But even as the agency adopted these formal

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[58] "Immediate Administrative Actions to Further Open-Community Objectives," no date, folder: ADM 1-16 Open Communities (1 of 4), Box 10, Subject Files of Richard C. Van Dusen, RG 207, NARA.
[59] "Metropolitan Open Communities," no date, folder: ADM 1-16 Open Communities (1 of 4), Box 10, Subject Files of Richard C. Van Dusen, RG 207, NARA.
[60] Robert B. Wolf to Ashley Foard, February 11, 1969, folder: General Counsel Part I, 1969 (3 of 3), Box 34, Subject Files of Richard C. Van Dusen, 1969–71, NARA.
[61] 37 Fed. Reg. 203 (1972); Project Selection Criteria, 24 C.F.R. § 200, Subpart N (1973).

criteria, HUD had already begun taking action by issuing contracts to organizations that proposed to develop subsidized housing in affluent suburban communities.

III.

With every maneuver, HUD's staff navigated pressures from a wide range of interests, including homeowners, civil rights activists, the real estate industry, Congress, and the White House.[62] While Congress had given HUD discretion in deciding how to implement its housing programs, its exercise of discretion was in many ways guided less by the language of federal statutes, and instead by the need to mediate the various demands placed on the agency. The Open Communities workgroup had one idea about how HUD's programs should operate, but site selection of government-subsidized housing was a particularly delicate policy issue. As one official put it: "There is probably no issue facing the Department that is more politically sensitive than the provision of housing for low and moderate income and minority families in the suburbs." The more HUD attempted to disperse housing "in a highly publicized, breast-beating manner, and

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[62] On theories arguing for the need to recognize the autonomy of state institutions, see Theda Skocpol, "Bringing the State Back In: Strategies of Analysis in Current Research," in *Bringing the State Back In*, ed. Peter B. Evans, Dietrich Rueschemeyer, and Theda Skocpol (Cambridge: Cambridge University Press, 1985). Bonastia relies on a state-centered approach in Bonastia, *Knocking on the Door: The Federal Government's Attempt to Desegregate the Suburbs*. Historiography covering state activity since Skocpol's work has tempered theories of state autonomy. Jennifer Klein demonstrates the influence of non-state power relations in shaping state social security and welfare policy in Jennifer Klein, *For All These Rights: Business, Labor, and the Shaping of America's Public-Private Welfare State* (Princeton: Princeton University Press, 2003). Klein emphasizes the role of corporations, both employers and insurance companies in influencing state action. The role of popular politics and its intersection with national politics and state policy is examined in Meg Jacobs, *Pocketbook Politics: Economic Citizenship in Twentieth-Century America* (Princeton: Princeton University Press, 2005).

the more coercive the technique it uses, the more doomed to failure the effort will be."[63] During the early 1970s, HUD's regional officers awarded contracts for Section 236 projects that would help desegregate suburbs. But these projects quickly ran into obstacles. Suburban residents rejected federally subsidized housing, producing a backlash that embroiled the federal government in litigation involving fair housing and land use disputes, and drawing national attention to its policies on housing, pejoratively described as "forced integration," or "forced housing."

By the 1970s, local opposition to federal intervention had already begun to simmer. In the 1960s, as states and federal lawmakers considered legislation to combat housing discrimination, the National Association of Real Estate Boards (NAREB) mounted a nationwide resistance. In its efforts to undermine the spread of local or national fair housing legislation, the NAREB attempted to coordinate local opposition. The Board developed a "Forced Housing Toolkit," a collection of model speeches, press releases, and published editorials denouncing fair housing. The NAREB offered local advocates guidance on strategy, for example suggesting that they work through civic organizations or property owners' organizations, rather than advocating through regional Real Estate Boards. Advocates would find more success, the NAREB advised, by working through a group that "represents a wide range of interests and occupations."[64]

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[63] Lawrence M. Cox, Renewal and Housing Management, to George Romney, July 20, 1970, folder: ADM 1-16 Open Communities Part II (4 of 4), Box 10, Van Dusen Subject Files, NARA.
[64] Suggested Procedure for Organizing a Civic Association or Property Owners Organization, Forced Housing Kit, February 1964, National Association of Realtors Archives, Chicago, IL (NAR Archives).

The nationwide campaign relied on rhetoric couched in personal liberty and property rights. In coordinating local messaging, the NAREB aimed to build a unified front around the argument that "it is folly to erode the human right of property ownership . . . in the mistaken belief that it will strengthen the rights of minority groups or individuals." As a NAREB model press release stated, realtors "must uphold the human right of property ownership where it is threatened by forced housing laws." The NAREB depicted fair housing as an intervention that invaded core property rights, chiefly a homeowner's right to use property "as the owner sees fit as long as it does not threaten the health or safety of others." The NAREB, in a "Property Owners' Bill of Rights," announced core rights inherent to property ownership, which included the owner's right to "choose his own friends," "determine the acceptability and desirability of any prospective buyer or tenant of his property," and "enjoy the freedom to accept, reject, negotiate, or not negotiate with others." Any denial of these rights, the Bill argued, "diminishes personal freedom and creates a springboard for further erosion of liberty." The president of the Chicago Real Estate Board declared in a speech, "Without the right to choose or not to choose . . . there would be no such thing as HUMAN RIGHTS." Any government restriction on the "right to choice in the sale or occupancy of property is therefore a restriction on human rights."[65]

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[65] Introduction, Forced Housing Kit, February 1964, NAR Archives; State Associations Committee, National Association of Real Estate Boards, Suggested News Release #4, Forced Housing Kit, February 1964, NAR Archives; NAREB, Property Owners' Bill of Rights, approved June 4, 1963, Forced Housing Kit, February 1964, NAR Archives; Excerpts from the Speech of Percy E. Wagner, n.d., President, the Chicago Real Estate Board, Forced Housing Kit, February 1964, NAR Archives.

The NAREB's rhetoric reflected the sentiments of white homeowners. As with the threat of "forced housing" legislation, federal efforts to develop subsidized housing in neighborhoods occupied by white homeowners provoked a vigorous resistance. Many white homeowners organized in opposition to the federal government's approval of subsidized developments in their neighborhoods. In their view, homeowners had a right to live in a neighborhood of their choosing, and to preserve the characteristics of their community. Federal housing programs, by bringing subsidized housing to white neighborhoods, represented a threat to these rights.

One of the federal government's first major conflicts arose in Black Jack, Missouri, a suburban community outside St. Louis. In March 1970, St. Mark's United Methodist Church and the United Methodist Metro Ministry Board submitted an application for financing of the Park View Heights housing project. The two organizations adopted a resolution in December 1969 to co-sponsor the project. United Metro Ministry accepted primary responsibility for project sponsorship. The organizations submitted their application to the St. Louis Insuring Office, a regional division of HUD's Federal Housing Administration, for a $1,835,000 loan subsidized and insured under Section 236. The applicants proposed a 108-unit project, with each unit having one to four bedrooms ranging in rent from $118 to $157 per month. They targeted a location within an unincorporated, relatively affluent suburban area in St. Louis County.[66] In 1970, the federal poverty line stood at an income of $1,954 per year for a

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[66] Application – Project Mortgage Insurance, Project Name: Park View Heights (North Country Methodist Project), FHA Form No. 2013, March 10, 1970, Box 31, Subject Files of Richard C.

single individual and $2,525 for a two-person household.[67] A two-bedroom unit rented at $135 per month, or $1,620 per year. To live in Park View Heights, a two-person family living at the poverty line in 1970 would contribute over half of the household income to rent. Without using additional rent supplements to lower the price of rent, Park View Heights hardly counted as low-income housing.

Local improvement associations organized campaigns to block the project. The Black Jack Improvement Association initiated its attack on Park View Heights during one of its monthly meetings. The *St. Louis Post-Dispatch* reported "several hundred persons cheered" when "a real estate man" stood up and announced, "The north county area has been singled out to dump Pruitt-Igoe-type relief workers." Speakers at the meeting proposed letter-writing campaigns. James Connolley, president of the improvement association, argued that with the community growing and "not yet completely developed," the subsidized housing project would "produce disastrous results for builders and home owners attempting to sell their homes."[68] While opponents denied any racist intent, clergyman who supported the project informed the *St. Louis Post-Dispatch* that they heard parishioners voice concerns about the project drawing minority groups to the community. The Reverend Willard Jones, from St. Mark's Church, the project's co-sponsor, reported one woman complaining that, "she would be afraid to walk out of her

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Van Dusen, RG 207, NARA; Letter, Harry Williams and Virginia Held to Michael Galli, Director, April 7, 1970, Box 31, Subject Files of Richard C. Van Dusen, RG 207, NARA.

[67] Poverty level figures provided by U.S. Census Bureau, "Historical Poverty Tables—Average Poverty Thresholds." Accessed at http://www.census.gov/hhes/www/poverty/data/historical/thresholds.html.

[68] "Political Figures Voice Opposition to Housing Proposal," *St. Louis Post-Dispatch*, April 10, 1970. Clipping located in Box 31, Subject Files of Richard C. Van Dusen, RG 207, NARA.

home because she would see black faces."[69] One community member who wrote Undersecretary Van Dusen in support of the project believed that "those opposed are opposed primarily on racial grounds."[70] A consultant to HUD observed that the only alternative site that residents offered for the project was Kinlock, "a black area."[71] The racist implications of residents' opposition soon become a central issue in litigation over the project.

Opponents attempted to divert attention away from their racist motivations. A pamphlet circulated by the Black Jack Improvement Association aimed to foment residents' anxieties while highlighting non-racial issues surrounding the project. "Do you know," the pamphlet announced, "That unless you express your disapproval immediately the proposal is likely to be approved very soon." The association rejected the plan because the project location was poor: "The area is virtually all-residential" and therefore lacking in employment for low-income families. The project had the potential to "begin a process that completely changes the economic character of the community," as well as the ability to "produce a significant devaluation of the homes that presently exist in the north County area." Furthermore, the "large families" that "are usually involved in a plan such as this" could "create a tax deficit within the school district," thereby placing a "heavier tax burden on existing residents." The "crowding of low income families into

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[69] "Church-Sponsored Housing Project Is under Attack," *St. Louis Post-Dispatch*, April 8, 1970. Clipping located in Box 31, Subject Files of Richard C. Van Dusen, RG 207, NARA.
[70] Letter from Jerome K. Kinnison to Undersecretary Van Dusen, July 24, 1970, Box 31, Subject Files of Richard C. Van Dusen, RG 207, NARA.
[71] Letter, B. Kirk Walsh, S. J., Consultant, to Samuel J. Simmons, Assistant Secretary for Equal Opportunity, Subject: St. Louis Park View Heights, May 6, 1970, Box 31, Subject Files of Richard C. Van Dusen, RG 207, NARA.

such a close space" would further drive up the community's tax liabilities: the concentrated low income population would "result in disturbances that require more police support." Finally, the approval of the project would "open the door to similar projects being located almost anywhere in the North County area." The pamphlet urged residents to write letters of protest to Michael Galli, director of the Federal Housing Administration's St. Louis Office. The Improvement Association correctly observed that the county government had no jurisdiction in the issue.[72]

The Black Jack Improvement Association cautioned residents to avoid hysteria and threats—both would undermine their cause—but this failed to temper the reaction. The Reverend Jones received "multiple letters threatening his life."[73] A hand-written letter to Undersecretary Van Dusen, dated June 22, 1970, urged HUD to not "rush to build a new ghetto."[74] Robert Prange, a Missouri State Senator asked congressman William Huntgate to "see that this project is not permitted to progress any further." Prange's argument followed the Black Jack Improvement Association's talking points. Hungate forwarded Prange's appeal to Van Dusen, noting, "This letter confirms the opposition of hundreds of my constituents who have telephoned, written, and telegraphed

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[72] Pamphlet, from Black Jack Improvement Association to Area Residents, "Do You Know," no date, Box 31, Subject Files of Richard C. Van Dusen, RG 207, NARA. On suburban homeowners' views on property ownership, see generally David M.P. Freund, *Colored Property: State Policy and White Racial Politics in Suburban America* (Chicago: University of Chicago Press, 2007).

[73] Letter, B. Kirk Walsh, S. J., Consultant, to Samuel J. Simmons, Assistant Secretary for Equal Opportunity, Subject: St. Louis Park View Heights, May 6, 1970, Box 31, Subject Files of Richard C. Van Dusen, RG 207, NARA.

[74] Letter from Mrs. J—McCabe to Richard C. Van Dusen, June 22, 1970, Box 31, Subject Files of Richard C. Van Dusen, RG 207, NARA.

me."[75] Soon after Hungate's complaint, the White House issued a stop order on the project.[76]

The stop order only temporarily stalled the project. After less than a month of further review, HUD deemed the project feasible and permitted it to continue.[77] The sponsors formed the Park View Heights Corporation, with 20 percent ownership going to the Bishop of the Missouri Area, 40 percent belonging to the Metro Ministry, and 40 percent to St. Mark's United Methodist Church.[78]

A second organization, the Spanish Lake Improvement Association, joined the assault on HUD. The improvement association's president, Francis Huss, wrote to Congressman Hungate, complaining that Undersecretary Van Dusen and other staff at HUD had failed to cooperate in his attempt to schedule an appointment in Washington D.C. to present his case opposing the project. Huss accused HUD of "cover-ups, evasions, misrepresentation of 'facts', political buck passing, false accusations and a total disregard for the almost unanimous opposition to this project." HUD's behavior, he argued, demonstrated disregard for the "welfare and rights of the citizens of Spanish Lake Township." In a letter to Van Dusen, Huss accused HUD of never completing a

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[75] Letter from Robert Prange to William Hungate, April 28, 1970, Box 31, Subject Files of Richard C. Van Dusen, RG 207, NARA; Letter from William Hungate to Richard C. Van Dusen, May 4, 1970, Box 31, Subject Files of Richard C. Van Dusen, RG 207, NARA.
[76] Letter from William Timmons to William Hungate, May 8, 1970, Box 31, Subject Files of Richard C. Van Dusen, RG 207, NARA.
[77] Letter form Richard C. Van Dusen to William Hungate, June 4, 1970, Box 31, Subject Files of Richard C. Van Dusen, RG 207, NARA; Letter from Harry Sieve to Michael Galli, July 2, 1970, Box 31, Subject Files of Richard C. Van Dusen, RG 207, NARA.
[78] Letter from Harry Williams to Michael Galli, July 16, 1970, Box 31, Subject Files of Richard C. Van Dusen, RG 207, NARA; Letter from Eugene M. Frank, Bishop Missouri Area, to Michael Galli, July 8, 1970, Box 31, Subject Files of Richard C. Van Dusen, RG 207, NARA.

feasibility study. He noted that the improvement association had gathered "approximately 6000 signatures on petitions of people opposing this project who live in the area of the proposed development." He assembled a five-person delegation and requested a meeting in D.C. "before August 14," writing, "We request that you assure us in writing that no further decisions be made on this project until our meeting with you has been held."[79]

As regional officials tried to smooth over the conflict, area residents revealed that racism and class anxieties motivated their resistance. Prior to the meeting with Van Dusen, the FHA regional insuring office director Michael Galli, along with a HUD Regional Administrator, held a July meeting with representatives of the Black Jack and Spanish Lake Improvement Associations. Francis Huss explained that residents were considering incorporating the community of Black Jack. Improvement Association representatives believed the Park View Heights project would serve as housing for displaced residents of the Pruitt-Igoe projects, a public housing development in St. Louis that was experiencing plummeting occupancy rates and potentially facing closure. Ronald Pflueger, president of the Black Jack Improvement Association, cautioned that "vigilante" activity could follow construction of the project. A "less reasonable" Francis Huss offered "veiled suggestions of dire consequences to the project during and after its construction." Harry Morley, the HUD Regional Administrator at the meeting, found residents primarily concerned with the possibility that the project would "concentrate a large number of blacks in an area that is approximately 90% white." Congressman

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[79] Letter from Francis C. Huss to William L. Hungate, July 8, 1970, Box 31, Subject Files of Richard C. Van Dusen, RG 207, NARA; Letter from Francis C. Huss to Undersecretary Van Dusen, July 10, 1970, Box 31, Subject Files of Richard C. Van Dusen, RG 207, NARA.

Hungate, Morley observed, had been involved in “fanning the flames of unrest.” Morley urged Van Dusen to meet with the improvement association representatives as an attempt to calm the situation.[80]

Van Dusen agreed to meet with the Spanish Lake Improvement Association’s delegation on July 27.[81] HUD staff became actively involved in managing public relations. In their meeting with Van Dusen, Spanish Lake delegates invoked Pruitt-Igoe “as an example of all Government-assisted housing.” One of the speakers in the meeting explained that his opposition was related “directly to the unfortunate status of the Pruitt-Igoe low-rent public housing project.” Representatives further claimed that HUD had selected project sponsors that were not financially prepared to operate the development.[82]

The last week of July left HUD’s image damaged. The day after Van Dusen met with Spanish Lakes representatives, Secretary George Romney traveled to Warren, Michigan to quell an uproar over reports that HUD had targeted Warren and Detroit as a test area for “forced integration.” An “industrial suburb of Detroit,” Warren had a daytime workforce that was 30 percent black. But out of a population of 179,000 residents, the suburb housed only 28 black families. A staff member at HUD had reported that HUD was “planning to take steps to reduce housing segregation in the suburbs” and

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[80] Filed report from Harry T. Morley, Subject: Black Jack Community, July 21, 1970, Box 31, Subject Files of Richard C. Van Dusen, RG 207, NARA; Letter from Harry Morley to Richard C. Van Dusen, Subject: Black Jack Community – Section 236 Housing Program St. Marks Methodist Church, July 22, 1970, Box 31, Subject Files of Richard C. Van Dusen, RG 207, NARA.

[81] Letter from Richard C. Van Dusen to Francis C. Huss, July 22, 1970, Box 31, Subject Files of Richard C. Van Dusen, RG 207, NARA.

[82] Letter from W. Beverley Mason, Jr., Acting Commissioner, to William Hungate, August 7, 1970, Box 31, Subject Files of Richard C. Van Dusen, RG 207, NARA.

was "moving to implement the idea in the Detroit area." HUD had proposed plans to bar federal urban development funds from suburban communities that banned low-income housing. This included Warren. During the Warren controversy, Romney claimed that HUD was not in fact planning to withhold funds from the suburb. Multiple newspapers characterized Romney as "dancing between the 'soft' and 'hard' side of the integration matter." The *Chicago Daily Defender* charged Romney with being "unconvincing on both sides."[83] National discussions of HUD's integration policies blended controversies in Warren and Black Jack under the pejorative category of "forced integration," language that questioned the legitimacy of HUD's course of action.

In August, HUD received a barrage of letters from angry residents of North St. Louis County who opposed the Park View Heights project. One writer accused Van Dusen of disregarding the objections that the Spanish Lake delegation raised during the July meeting.[84] Van Dusen and other officials attempted to shift responsibility from HUD to the activity of the project sponsors. Van Dusen explained to one concerned resident: "I hope you realize, the zoning and site selection decisions with respect to this development were made by local officials and local organizations, and not by the Federal government." HUD's sole responsibility involved ensuring that the project be "economically feasible," "architecturally attractive," "well built," and "compatible with

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[83] Jerry M. Flint, "Michiganites Jeer Romney over Suburbs' Integration," *New York Times*, July 29, 1970; Peter Braestrup, "'Open Communities' Is Goal of HUD," *The Washington Post*, July 27, 1970; Ethel L. Payne, "So This Is Washington: 'Unfair Housing,'" *Chicago Daily Defender*, September 5, 1970; John Herbers, "Romney Bars Urban Plan Proposed by Nixon Panel," *New York Times*, August 27, 1970.
[84] Letter from Duane O. Carpenter to Richard C. Van Dusen, August, 26, 1970, Box 31, Subject Files of Richard C. Van Dusen, RG 207, NARA.

the surrounding neighborhood."[85] Beverly Mason, Assistant Commissioner of the FHA, seconded this point, writing to Huss, "You speak of forcing the project upon the community without any regard for the people. On this point, please note that we did not select the site. The site was selected by the local sponsor, and a housing proposal was submitted to our insuring office for consideration." HUD decided to fund the project because it "conformed with the objectives and requirements of the law and was sound from an underwriting standpoint." It was therefore HUD's "responsibility to proceed" in insuring the project.[86]

While HUD managed community relations, residents of the Black Jack area filed a petition with the St. Louis County Council for incorporation. The Council granted the City of Black Jack incorporation as a municipality on August 7, 1970. Up to this point, zoning codes permitted multifamily housing in Black Jack. As an incorporated municipality, Black Jack gained jurisdiction over its zoning laws. On October 20, 1970, the Zoning Commission of Black Jack issued an ordinance that restricted the land use of the region containing the planned Park View Heights development to single-family housing.[87] Black Jack residents failed to convince HUD to withdraw its support for the project. Their next strategy, then, was to block Park View Heights by rendering its development a violation of local land-use regulations. When Black Jack first proposed its ordinance, the Park View Heights Corporation filed a complaint in federal district court,

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[85] Letter from Richard C. Van Dusen to Duane O. Carpenter, September 2, 1970, Box 31, Subject Files of Richard C. Van Dusen, RG 207, NARA.
[86] Letter from Beverly Mason, Jr., Executive Assistant Commissioner, to Francis C. Huss, September 23, 1970, Box 31, Subject Files of Richard C. Van Dusen, RG 207, NARA.
[87] Details of Black Jack incorporation and zoning action covered in 335 F. Supp. 899 (1971).

which the court dismissed on October 16 on grounds that the claim was premature because the ordinance had yet to take effect.[88]

HUD began conversations with the Department of Justice to consider legal action against the City of Black Jack. HUD's General Counsel recommended that DOJ either join with the Park View Heights Corporation in their suit for injunctive relief or take action against the City on behalf of HUD. In urging DOJ to take action, HUD's Assistant General Counsel for Litigation, Arthur Gang, noted that "it is of the utmost importance to this Department that the courts accept the principle that a locality cannot employ its police powers to discriminate against federally assisted housing for the benefit of low and moderate income families." At issue, then, was the federal government's legal authority to override local opposition. Black Jack's actions clearly merited a count "framed under Title VIII of the Civil Rights Act of 1968," Gang argued. But he recommended that DOJ also "frame a count charging unlawful and unconstitutional interference with the operation of a Federal program."[89] This position on zoning, Gang later remarked, was beyond any doubt the opinion of the Department.[90]

In the course of HUD's dialogue with DOJ, Gang's communication to Leonard leaked to the national press, exposing HUD to public criticism at an early stage in

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[88] Letter from Jerris Leonard, Assistant Attorney General, Civil Rights Division, Department of Justice, to Richard C. Van Dusen, October 26, 1970, Box 31, Subject Files of Richard C. Van Dusen, RG 207, NARA; Letter from Beverly Mason, Jr. to Eugene A. Gulledge, October 23, 1970, Box 31, Subject Files of Richard C. Van Dusen, RG 207, NARA.

[89] Letter from Arthur J. Gang, Assistant General Council for Litigation, HUD, to Jerris Leonard, Assistant Attorney General, Civil Rights Division, DOJ, November 6, 1970, Box 31, Subject Files of Richard C. Van Dusen, RG 207, NARA.

[90] Letter from Arthur J. Gang to Mr. Margulies, Subject: Park View Heights Corporation, et al. v. City of Black Jack, et al., CA No. 70-C-517(1), E.D. Mo., St. Louis, Missouri, November 12, 1970, Box 31, Subject Files of Richard C. Van Dusen, RG 207, NARA.

forming its litigation strategy. On November 11, *The Washington Post* announced, "HUD Asks Suit Against Racial Zoning." This request, papers commented, "would mark the Nixon administration's first legal initiative to open up suburbs to low-income or interracial housing under the 1968 Civil Rights Act." Journalists connected the strategy outlined in Gang's correspondence with the DOJ to the controversy that erupted in Warren, Michigan in July. Papers subsumed both issues under HUD's broader open communities strategy, which they observed as suffering a setback following the Warren incident.[91] In the immediate aftermath, Van Dusen asked HUD staff to assert in public communications that the agency was not involved in the suit.[92] Yet, in June 1971, the Department of Justice decided to prosecute, drawing the federal government, including HUD, into the lawsuit.[93]

Local opposition to federally subsidized housing was hardly unique to Black Jack or even Section 236 projects. Indeed, local resistance to Section 235 developments suggested that the characteristics of the households, and not project density, most troubled white homeowners.[94] In Titusville, Florida, for instance, the city issued a

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[91] "Housing Unit Asks Antizoning Suit: Romney Agency Finds Move to Bar Low-Cost Project," *New York Times*, November 11, 1970; Peter Braestrup, "HUD Asks Suit against Racial Zoning," *The Washington Post, Times Herald*, November 11, 1970; "HUD Asks U.S. Suit on Zoning Bias," *Chicago Tribune*, November 11, 1970.
[92] Memorandum from Richard C. Van Dusen to David O. Maxwell, November 17, 1970, Box 31, Subject Files of Richard C. Van Dusen, RG 207, NARA.
[93] Department of Justice, "Annual Report of the Attorney General of the United States, 1971," (Washington, D.C.: U.S. Government Printing Office, 1971), 57; Ronald F. Kirby, Frank deLeeuw, and William Silverman, "Residential Zoning and Equal Housing Opportunity: A Case Study in Black Jack, Missouri," (Washington, D.C.: The Urban Institute, 1972), 27.
[94] In Arlington Heights, Illinois, the Village Board refused to accommodate a developer's plans to develop Section 236 housing. A non-profit developer, the Metropolitan Development Housing Corporation, received a commitment from HUD for Section 236 financing, but found that the Village's existing zoning codes blocked its plans for multifamily development. The Corporation

moratorium on housing construction to block the development of Section 235 single-family housing that HUD approved in 1969. A "Committee of Concerned Homeowners" accused HUD of disregarding the economic fragility of the community and the possibility that the Section 235 development would drive down local property values. In many of the complaints registered in opposition to the project, residents speculated that the new development would draw new families into a community that already faced rising unemployment. Other residents more explicitly expressed racist views.[95] As the conflict in Florida suggested, local resistance to federal housing construction was not contingent on the density of developments. Residents protested federally-subsidized developments based on racist belief that nonwhite families would occupy the new housing, and the fear that low-income families would change the social and economic characteristics of a community.

Similarly, moderate-income communities in Houston, a city with no zoning code, opposed Section 236 housing. William Painter, director of Houston's local FHA office, sensed growing local opposition to 236 developments and received daily complaints from

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filed a suit with the District Court for the Northern District of Illinois after the Village Board, in a 6-1 vote in September 1971, refused to rezone the targeted property to accommodate multifamily development. With the developers tied up in litigation that eventually reached the Supreme Court in 1977, Section 236 housing remained barred from Arlington Heights. 373 F. Supp. 208 (1974); 517 F.2d 409 (1975); 423 U.S. 1030 (1976); 429 U.S. 252 (1977).

[95] Letter from Committee of Concerned Homeowners to Kendell Wherry, October 21, 1969, Box 6, Civil Rights Division, Classified Subject Files, 1930-1987, RG 60, NARA; Civil Rights Division, Notice to Close File, to Chief, Housing Section, Re: Titusville, Florida City Council, Mrs. Karl Vasicek – Complainant, November 14, 1969, Box 6, Civil Rights Division, Classified Subject Files, 1930-1987, RG 60, NARA; Pete Behr, "HUD Studying '235' Issue," *The Star Advocate*, n.d., clipping in Box 6, Civil Rights Division, Classified Subject Files, 1930-1987, RG 60, NARA.

Houston residents.[96] And in February 1971, residents of a Houston neighborhood filed a lawsuit in federal court seeking to enjoin the development of a proposed 96-unit Section 236 development. While the district court dismissed the complaint, the escalating resistance of Houston residents prompted the City Council and Mayor to consider measures that would create an opening for new development while assuaging homeowners' concerns. The City Council eventually proposed an ordinance that would allow the Council to directly review proposed housing development projects.[97] Councilman Frank Mancuso, a key proponent of the ordinance, believed the city should relegate Section 236 housing to its "slums." Marcuso favored the ordinance because it would allow the Council to regulate the site selection of 236 projects, thereby allowing the council to safeguard white neighborhoods from subsidized housing. Meanwhile, opponents of the ordinance labeled it a "zoning law in disguise."[98] Mayor Louie Welch preempted the ordinance, however, by proposing to HUD an independent "neighborhood analysis" program for Section 236 projects.[99]

With the hope of securing a path for Section 236 development in Houston, HUD engaged in a careful dialogue with the mayor's office over the proposal. The City of Houston sought a special agreement with HUD that would govern its approval of Section 236 housing. Revealing the city's anxieties over the development of subsidized housing, Mayor Welch negotiated with HUD officials to establish a policy that would allow local

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[96] Rosa, "Houston II—the Houston Picture: A View of the Problem of Low Income Housing in Houston, Particularly Section 236 Providing for Multi-Family Dwellings," 128.
[97] Ibid., 110–18.
[98] Ibid., 117-19.
[99] Ibid., 127.

representatives to review Section 236 projects before HUD issued its final approval. As HUD officials understood, the City sought ways to ensure that "citizens of Houston could properly participate" in the HUD programs "that so vitally affect them." In February 1971, HUD Assistant Secretary Eugene Gulledge confirmed in writing an agreement reached with the city during a January 18 meeting in Houston.

HUD's agreement granted Houston authority to regulate the placement of new subsidized housing. HUD allowed the city to establish a "citizen's committee" to review all Section 236 development proposals. The Mayor would select three "capable citizens" to serve on the committee, who would then review any Section 236 projects that the regional HUD-FHA Insuring Office considered "feasible." The agreement empowered the committee to "make a neighborhood analysis" and present a recommendation to HUD. The committee's recommendation would address whether a proposed project was "consistent with the general land use of the area," was likely to receive sufficient utility services, and was likely to suit a community in light of "[r]ecreational, cultural, commercial, shopping and occupational considerations." The committee had the power to reject a proposal based on this analysis. If the regional office decided to approve a project that the committee disapproved, administrators would need to document reasons for disregarding the committee's report.[100]

HUD officials worried that the citizen's committee would give voice and effect to community prejudices. The Mayor, acting through his appointees, could easily use the committee to steer housing away from affluent or predominantly white communities.

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[100] Eugene A. Gulledge to Louie Welch, February 10, 1971, folder: General Counsel – Part VII 1971, Box 36, Subject Files of Richard C. Van Dusen, RG 207, NARA.

Gulledge hinted at this concern in his letter to Mayor Welch. In cautious, diplomatic language, he wrote: "We are very much concerned that the building of a project in a given location increases rather than decreases the locational housing choices of the families who will be served by our proposed construction. To this extent, we advise our offices to make certain they are not adding to the 'ghetto' character of any neighborhood as they approve the location of projects." He requested that the committee join HUD in sharing this objective.[101] His deferential tone underscored the extent of HUD's concern for local resistance and the importance of the city's cooperation.

The legal environment of the 1970s left HUD officials worried that their agreement with Houston violated constitutional principles. David Maxwell believed Gulledge's letter raised "serious constitutional questions." As he explained, "By establishing a procedure by which a committee documents reasons to disagree with a housing proposal" the agreement placed a "special obstacle in the way of those who would provide housing for low income persons in Houston." No such obstacle applied to "those who would provide housing for members of other economic classes who tend more frequently to be white." With a large portion of Houston's low-income population also being African American or Mexican American, the agreement would result in discrimination based on income, and race, in violation of the Equal Protection Clause. The agreement, he wrote, "imposes a special burden on poor people and members of

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[101] *Id.*

minority groups who seek housing." With the city and HUD having no "legitimate governmental interest" to justify the arrangement, it "cannot stand."[102]

Yet, the Supreme Court's decision in *James v. Valtierra*, issued soon after Maxwell circulated his analysis of the agreement, required Maxwell to reconsider his reasoning. In *Valtierra*, plaintiffs challenged a provision of the California Constitution that, as amended in 1950, allowed voters to bar public housing from a community through referendum. The Supreme Court held that because the record offered no indication that the referendum discriminated on the basis of race, it did not raise any equal protection issue. The Court did not consider whether the law discriminated against poor families.[103] The Co-director for the National Committee Against Discrimination in Housing predicted that the decision would "increase everywhere the tendency toward local autonomy as a means of perpetuating racial segregation."[104] And as David Maxwell recognized, the decision made it "possible to defend, as a strict matter of law, the agreement with the Mayor of Houston" that would allow the city to reject housing.[105]

HUD's General Counsel nonetheless urged Secretary Romney to defend the agreement. First, Congress had twice rejected provisions for the Section 236 program that required local approval, suggesting that the agreement defied Congress's intent. Second, some important differences distinguished the agreement from the referendum procedure

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[102] David O. Maxwell to George Romney, subject: Letter Agreement with the City of Houston on 236 Site Selection, April 1, 1971, folder: General Counsel – Part VII 1971, Box 36, Subject Files of Richard C. Van Dusen, RG 207, NARA.
[103] *James v. Valtierra*, 402 U.S. 137, 139–40 (1971).
[104] John Herbers, "Housing's Struggle in Suburbia: High Court Decision Shocks Backers of Low-Rent Sites," *New York Times*, April 30, 1971.
[105] David O. Maxwell to George Romney, May 17, 1971, folder: General Counsel – Part VI 1969-70, Box 36, Subject Files of Richard C. Van Dusen, RG 207, NARA.

at issue in *Valtierra*. The agreement lacked the historical roots of California's referendum process, and Houston's proposed ad hoc committee did not clearly represent the "wishes of a majority of the citizens of Houston."[106] At Maxwell's urging, HUD walked back from its earlier agreement with the City of Houston. Gulledge promptly drafted a new letter to Mayor Welch, explaining that, in light of the General Counsel's analysis, it would be necessary to modify the agreement. To avoid Maxwell's equal protection concerns, Gulledge suggested that Houston could authorize a committee to "review <u>all</u> housing proposed for the City of Houston."[107]

As HUD's responses to local opposition suggested, housing development programs presented difficult administrative problems. HUD struggled to produce subsidized housing in moderate income neighborhoods and suburbs. The agency also faced less resistance when regional offices approved developments located in low income urban neighborhoods. New Section 236 developments thus tended to reinforce patterns of segregation within cities. Writing in 1972, *The Washington Post* found that Sections 235 and 236 had gained reputations as segregationist housing programs. While HUD lacked data to help administrators determine the location of its subsidized housing, staff at HUD had the impression that the pattern of multifamily development under Section 236 was "pretty segregated."[108] As the administrator's concession suggested, HUD could not appease white homeowners while also furthering the goals of the Fair Housing Act.

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[106] Ibid.

[107] Eugene A. Gulledge to Louis Welch, draft of May 17, 1971, folder: General Counsel – Part VI 1969-70, Box 36, Subject Files of Richard C. Van Dusen, RG 207, NARA.

[108] Peter Braestrup, "New Housing Project Called Segregationist," *The Washington Post, Times Herald*, October 15, 1972.

IV.

In light of HUD's activity, the Nixon administration attempted to clarify its position on suburban integration. Nixon held a press conference in December 1970 in which he declared his opposition to "forced integration." The federal government had jurisdiction to promote suburban integration "only to the extent that the law requires." This included the requirement that "the federal government not provide aid to housing or to urban renewal where a community has a policy of discrimination and has taken no steps to remove it." But it was not the government's policy "to use the power of the federal government or federal funds" in any way "not required by the law, for forced integration of the suburbs." Some officials at HUD believed the statement ruled out the possibility of the Justice Department intervening in the Black Jack case. The *Wall Street Journal* recognized the awkward position Romney occupied in light of Nixon's statement. Romney's resignation appeared increasingly likely.[109]

But Romney hung on for two more years. In this time he worked with his staff to soften HUD's public messaging on suburban integration. Romney rejected Nixon's use of the term "forced integration," and attempted to recharacterize HUD's efforts. He argued that HUD was in no way forcing integration on American suburbs, and that the term "forced integration" was misleading. Rather, HUD had been bringing affordable housing to the many communities throughout the U.S. that were voluntarily willing to accept

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[109] "Policy Held Same on Housing Bias," *The Washington Post, Times Herald*, December 17, 1970.

more subsidized housing.[110] But in practice, some segments of the federal government continued pursuing policies designed to integrate communities. The DOJ, which Romney had earlier urged to join the lawsuit against Black Jack, pushed forward in its lawsuit against Black Jack, with the Eighth Circuit Court of Appeals ruling in 1974 that the discriminatory effect of the city's zoning actions violated Title VIII of the 1968 Civil Rights Act.[111] The swiftness with which Romney attempted to recharacterize the agency's policies underscored the delicate nature of HUD's fair housing standards, and the importance to HUD's leadership of finding ways to legitimize its programs and policies in the face of virulent community opposition.

Despite Romney's efforts, HUD continued its efforts to orient its multifamily development programs more systematically towards wealthier and predominately white communities. The agency issued formal criteria for the selection of Section 236 projects in 1972. After two iterations of proposed rulemaking, HUD finalized criteria to structure

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[110] Ken W. Clawson, "'Forced Integration' Tag Is Deplored by Romney," *The Washington Post, Times Herald*, January 7, 1971.

[111] A district court judge rejected DOJ's claims in 1974. The court argued that plaintiffs neither proved that discriminatory effect resulted from rezoning nor demonstrated the defendant's racially discriminatory motives. 372 F. Supp. 319 (1974). In the same year, the U.S. Court of Appeals for the Eighth Circuit reversed the decision. 508 F.2d 1179 (1974). The Eighth Circuit reasoned that, to make out a prima facie case of discrimination, "the plaintiff need prove no more than that the conduct of the defendant actually or predictably results in racial discrimination." 508 F.2d 1179 (1974). The court analogized to Title VII of the 1964 Civil Rights Act. In *Griggs* v. *Duke Power Co*, the Supreme Court held that a plaintiff did not need to show discriminatory intent to make out a prima facie case. 401 U.S. 424 (1971). The Eighth Circuit decided that once the plaintiff proved discriminatory effect under Title VIII, the burden of proof fell on the defendant. The City of Black Jack had to demonstrate that its zoning ordinance served a "compelling governmental interest" to justify the discriminatory effect of the policy. The Eighth Circuit found no compelling governmental interest at play and thus held the city's policy in violation of Title VIII. 508 F.2d 1179 (1974).

the project selection practices of its field offices in 1972.[112] As Van Dusen claimed, "The project selection system . . . imposes discipline on project approvals." Field offices had to "address explicitly such questions as the impact of the proposed project on the neighborhood environment" and "whether the project will add to an existing concentration of subsidized housing." Previously, Van Dusen argued, the "two-martini lunch, and similar little amenities" created cozy relationships with local developers and non-profits that made "Federal housing officials feel wanted, needed and important." With the plying of martinis, "A fellow with that warm glow is not likely to object because the 236 project is next to the railroad track," because all subsidized housing "in town is in a single square-mile area," or because a project "will add one more apartment complex to an area of minority concentration."[113]

Staff in HUD's central office hoped to use selection criteria to hold field office employees accountable, ensuring that each office apply standardized policies when selecting Section 236 projects to achieve a minimum level of integration. Under the regulations, a "superior" project would have a location such that "within the housing market area," it would "provide opportunities for minorities" to access "housing outside existing areas of minority concentration." A superior project would be located in an area with "little or no federally-subsidized housing." The rule classified "poor" projects as those that risked "causing a significant increase in the proportion of minority residents"

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[112] HUD published its first proposed project selection rule on Thursday, June 24, 1971 in 36 Fed. Reg. 12032 (1971). The second proposed rule was published October 2, 1971, 36 Fed. Reg. 19317 (1971). The final rule was published in 37 Fed. Reg. 203 (1972).

[113] [Richard C. Van Dusen], "The State of the Department, November/December 1972," 90, folder: HUD's Future, Box 7, George Romney, Post-Gubernatorial Papers, BHL.

or lending the targeted neighborhood the "the character" of being one "one of subsidized housing."[114]

Meanwhile, HUD also helped President Nixon shape his administration's position on residential integration. On June 11, 1971, Nixon issued his "Statement About Federal Policies Relative to Equal Housing Opportunity." Some scholars have characterized Nixon's statement as an ambiguous message that flew in the face of George Romney's efforts at HUD.[115] But HUD staff played an integral role in drafting the statement. HUD offered language that formed the basis for the passages that Nixon eventually used in his public statement to appease his base of white suburban voters. In a clear reversal of the Open Communities workgroup's philosophy, the HUD draft explained, "The nation's conscience, embodied in its law, requires racial non-discrimination but it does not require economic integration." The government's responsibility was "one of responding to local or private initiatives, rather than of imposing its programs upon individual citizens, the public at large, or state and local governments."[116]

Nixon's statement disaggregated the concepts of economic and racial discrimination. While the federal government would not "countenance any use of economic measures as a subterfuge for racial discrimination," it would not "seek to impose economic integration upon an existing local jurisdiction." While the administrator of a housing program should include "nonsegregated housing opportunities" in

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[114] Project Selection Criteria, 24 C.F.R. § 200.710 (1973)
[115] See, for example, Bonastia, *Knocking on the Door: The Federal Government's Attempt to Desegregate the Suburbs*, 109–10.
[116] Proposed Presidential Statement on Equal Housing Opportunity, HUD Draft – May 5, 1971, Box 13, George Romney, Post-Gubernatorial Papers, BHL.

considering applications for assistance, the federal agencies should not "dictate local land use policies."[117] But as Black Jack and Arlington Heights showed, HUD and DOJ also needed local governments to revise their land use policies if developers were to locate multifamily housing in predominantly white suburbs and other locations that affirmatively furthered fair housing. By abandoning efforts to shape local land use policies, HUD found itself without leverage it needed to shape the geography of its affordable housing development programs.

In January 1973, the Nixon administration ordered a moratorium on new federal commitments for housing subsidies. The administration stated that it issued the moratorium to afford the government time to investigate developers' abuses of Section 235 funds for development and rehabilitation of single-family housing, and to evaluate administrative crises that the administration believed to have spread throughout HUD's programs more generally as public housing fell in disrepair, local housing authorities struggled to balance budgets. But this formal justification only came after the administration froze all programs. Commentators and lawmakers saw the freeze as a cynical ploy to either dismantle federal housing programs or to force Congress to enact Nixon's proposed revenue sharing program, a policy that would afford local governments greater autonomy in using federal funds. Samuel Simmons, the Equal Opportunity Assistant Secretary, viewed the moratorium as the administration's strategy for avoiding further confrontation with white homeowners as they revolted against new federally-

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[117] "Statement About Federal Policies Relative to Equal Housing Opportunity," in *Public Papers of the Presidents of the United States: Richard Nixon* (Washington, D.C.: U.S. Government Printing Office, 1972).

subsidized housing developments. Once the moratorium went into effect, HUD's field offices stopped processing applications for Sections 235 and 236, rent subsidy programs, and the public housing program. [118]

During the moratorium, HUD initiated its shift in its programmatic focus from housing development programs towards voucher-based housing assistance. As a working paper for a report on HUD programs observed, after the freeze ended in 1974, the administration "turned to section 23, not only as a means for continuing to lease existing units, but also as a vehicle for encouraging the construction of new housing for low and moderate income families." Section 23 was a precursor to the Section 8 voucher program that Congress introduced with the 1974 Housing and Community Development Act. The authors wondered: "Precisely why this program—which had never figured largely in the total low and moderate income production picture—was selected to be rescued from oblivion is not altogether clear."[119]

The 1974 Housing Act reinstated Sections 235 and 236 by allocating budget authority to HUD that would allow the agency to issue new commitments for multifamily mortgage insurance and subsidies. But even after it lifted the moratorium, HUD administrators chose to impound Section 236 funds. In 1976, Don Edwards, Chairman of the Subcommittee on Civil and Constitutional Rights, wrote to Carla Hills, Secretary of HUD, asking why HUD "refused to reactivate the 236 and traditional public housing

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[118] On abuse of Section 235 housing see Andrew R. Highsmith, "Prelude to the Subprime Crash: Beecher, Michigan, and the Origins of the Suburban Crisis," *Journal of Policy History* 24, no. 4 (2012). For commentary on Nixon's motives, see "Aid for Housing and Communities Frozen by Nixon," *Wall Street Journal*, January 9, 1973; Bonastia, *Knocking on the Door*, 137–38.
[119] Milton P. Semer, Julian H. Zimmerman, Ashley Foard, and John M. Frantz, "A Review of Federal Subsidized Housing Programs," in *Housing in the Seventies Working Papers,* 1976.

programs?" HUD had $50 million in budget authority for 236 housing but instead had only issued Section 8 assistance. Edwards found Section 8 inadequate to meet the housing needs of low-income Americans.[120] Hills responded that Section 236 had only served a "narrow band of moderate income families." Section 8 provided a more "flexible, efficient, and effective means for meeting the need for assisted housing." The voucher program increased "the prospect of economically integrated projects."[121] Vouchers allowed HUD to issue housing assistance to low-income households without building new edifices in urban and suburban landscapes. It allowed HUD to avoid further challenges to its administrative legitimacy from neighborhoods rejecting new housing development. Furthermore, vouchers relied on existing housing, which tenants could ostensibly select at their discretion. If voucher recipients chose to live in low-income, minority neighborhoods, courts could not find HUD responsible for violations of 1964 or 1968 Civil Rights Acts.

With its use of administrative rulemaking and project selection decisions to use its housing programs to integrate suburbs, HUD exercised its administrative discretion to use federal programs to advance its social policy objectives, and to implement what some administrators perceived to be a legal mandate stemming from the Fair Housing Act. When HUD impounded its Section 236 funds, the decision marked an even more profound exertion of institutional autonomy. HUD's actions reoriented federal policy,

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[120] *Equal Opportunity in Housing: Hearings before the Subcomm. on Civil and Constitutional Rights of the H. Comm. on the Judiciary, Part 1*, 94th Cong. 149 (1976) (Letter, Don Edwards to Carla Hills, October 8, 1976).
[121] *Equal Opportunity in Housing: Hearings before the Subcomm. on Civil and Constitutional Rights of the H. Comm. on the Judiciary, Part 2*, 94th Cong. 204–05 (1976) (A Report to the Secretary on the Section 8 Existing Housing Program).

shifting the agency's work away from subsidizing the development of new housing projects. The agency placed new emphasis on voucher-based assistance for low-income households. Through its actions, as well as in testimony before Congressional committees, HUD sent a clear signal to lawmakers: HUD did not welcome multifamily development programs, and would do all that it could to avoid implementing any housing development program that lawmakers might invent.

HUD administrators had reason to steer federal policy away from programs like Section 236. While members of Congress faced little blame when HUD approved Section 236 developments in white suburbs, HUD's legitimacy fell under attack when communities rejected federal housing projects. Rather than blame their representatives for formulating a seemingly invasive housing program, residents of communities like Black Jack asked lawmakers put pressure on HUD to back out of projects. As Daniel Moynihan reminded President Nixon at the beginning of his first term, legitimacy of government institutions mattered. The war in Vietnam and the civil rights movement had eroded Americans' faith in the federal government, and left the country hopelessly divided. "Your task, then is clear: to restore the authority of American institutions," Moynihan wrote. At issue, he explained, was "the continued acceptance by the great mass of the people of the legitimacy and efficacy of the present arrangements of American society."[122] Under Romney's leadership, HUD's housing programs lay bare the societal divisions that Moynihan hoped Nixon would mollify. To restore its institutional legitimacy, the agency retreated from the programs that proved most explosive.

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[122] Memorandum, Daniel P. Moynihan to The President Elect, January 3, 1969, folder: Urban Affairs Council & Moynihan, Box 12, George Romney, Post-Gubernatorial Papers, BHL.

The administration's impoundment of Section 236 did not go unopposed. The U.S. Comptroller General informed Congress in July 1976 that it planned to initiate a civil action against HUD that would force the agency into releasing its multifamily housing development funding. Tenants living in federally subsidized housing also launched a class action lawsuit against HUD, *Underwood* v. *Hills*, to prevent the impoundment of Section 236 from resulting in rent increases. In June 1976, the U.S. District Court for the District of Columbia issued an injunction, requiring HUD to continue paying operating subsidy payments from Section 236 reserve funds.[123] But HUD refrained from issuing new Section 236 commitments. With little knowledge about the potential efficacy of the new Section 8 program, HUD enacted a monumental shift in the nation's system of housing aid. With the GAO and members of Congress opposing HUD's impoundment measures, the agency abandoned mortgage subsidies with the hope that vouchers would bring a better future to the agency and the people it served.

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HUD officials justified impoundment of Section 236 funds as a response to the program's inefficiencies and inability to serve low-income households. Yet, with more careful administration of Section 236 HUD could have remedied these problems. As the U.S. Comptroller General reported to Congress, for example, HUD incurred "interest costs" due to accounting inefficiencies. When HUD paid subsidies to the financial institutions that issued mortgages for construction of multifamily housing, the agency paid mortgage insurance premiums to the mortgagee. Although HUD recuperated the

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[123] Letter, Comptroller General of the United States to the President of the Senate and the Speaker of the House of Representatives, December 23, 1976; 414 F. Supp. 526 (1976).

premium from the mortgagee after six months, HUD could not gain interest on the funds during this time. The Comptroller estimated that Sections 235 and 236 set HUD back $16 million in interest costs in fiscal year 1973. If the agency had instead deducted insurance premiums from its monthly assistance payments, HUD would have avoided interest costs and thereby lessened the cost of subsidizing multifamily development.[124] Furthermore, as HUD audits of Section 236 projects suggested, more precise assessment of operating costs would have prevented project defaults. In short, through careful administrative planning HUD could have brought the programs in line with Congress's objectives.

Furthermore, simple amendments to the 1968 Housing and Urban Development Act would have better positioned Section 236 to serve low-income households. The Act permitted HUD to pay direct rent supplements to Section 236 tenants, an additional infusion of funding that would allow a Section 236 development to serve households living at or below the poverty threshold. HUD has authority to extend the supplements to at least twenty percent of the households living in a building. HUD General Counsel believed that the supplement could be extended to as many as forty percent of the tenants, and a simple amendment to the law would have placed this theory on more stable footing. Either way, if HUD made a concerted effort to extend the supplement to more tenants,

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[124] Comptroller General of the United States, "Report to the Congress: Opportunity for Reducing Interest Costs under Sections 235 and 236 Housing Programs," ed. United States General Accounting Office (Washington, D.C.: U.S. Government Printing Office, November 22, 1972), 3.

the Section 236 program would have better served low-income households.[125] The program was hardly a lost cause.

More likely, the shift towards vouchers occurred because HUD struggled to maintain its institutional legitimacy—and balance the demands of its various constituencies—while issuing contracts for subsidized housing production. HUD officials wanted to integrate communities. They also believed they had a legal mandate to do so. Title VIII required HUD to "affirmatively further" fair housing. Federal court decisions in the late 1960s and early 1970s indicated that housing projects that entrenched patterns of segregation would attract legal action, embroiling HUD in litigation designed to desegregate urban neighborhoods. HUD could no longer operate a program that sanctioned the development of subsidized housing that contributed to the overconcentration of low-income housing in poor communities. But new developments needed to go somewhere, and suburban communities widely rejected multifamily housing developments designed to serve low-income households.

By rejecting multifamily projects, communities obstructed federal policy objectives. HUD had the legal authority, if not a mandate, to locate new multifamily projects in white suburban communities. But Black Jack residents made clear that institutional legitimacy did not inhere in legal authority. By locating housing in a community like Black Jack, the community response distracted from HUD's larger mission of producing attractive, affordable housing, and the agency's public image

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[125] Memorandum, Project Mortgages Insured Under Section 236, David O. Maxwell to George Romney, August 11, 1971, folder: Section 236, Box 11, George Romney, Post-Gubernatorial Papers, BHL.

suffered. And when municipalities like Black Jack and the Village of Arlington Heights exercised their police powers to exclude multifamily construction, the Department of Justice's attempts to strike down local zoning ordinances conjured notions of federal overreach and "forced integration."

Compared to a federally sponsored development located in a white suburb, vouchers seemed less threatening. By relying on existing construction, they subsidized housing without breaking ground in a community and altering, even in subtle ways, the architecture and land use within a neighborhood. With vouchers, tenants chose where to live, protecting HUD against accusations that its programs contributed to racial segregation. By impounding Section 236, HUD, not Congress, drove the shift towards vouchers. HUD's preference for vouchers did not result from a careful analysis of policy. Local opposition to the construction of federal housing, which collided with civil rights case law and legislation in the early 1970s, drove this shift. As HUD retreated from mortgage subsidies, the agency contributed to the decentralization of the federal government's urban policy and deepened its reliance on private actors.

Chapter 3

Deregulation and Segregation: Fruits of Decentralization after 1974

During the Nixon administration's 1973 housing moratorium, HUD and Congress worked in concert to reframe the federal government's policy on housing. With housing programs held in abeyance, Congress enacted a landmark piece of urban policy legislation, known as the 1974 Housing and Community Development Act. The law reformulated HUD's role in housing production by decentralizing federal urban development and housing programs. First, Congress circumscribed HUD's role in providing housing assistance, shifting federal aid from direct financing of housing development to subsidizing low-income tenants' rent payments through a program known as Section 8. Second, the law left the federal government with a limited role in housing development, creating programs to support an emerging type of state institution known as a housing finance agency.[1] Housing finance agencies used private capital to provide subsidized loans for housing construction. By limiting HUD's involvement in housing development to interest payment assistance to HFAs and guarantees on their bonds, Congress shifted authority over policy design to states and cities. The federal government's voucher program had a similar decentralizing effect.

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[1] Housing and Community Development Act of 1974, Pub. L. No. 93-383, 88 Stat. 633 (1974); Milton P. Semer, Julian H. Zimmerman, Ashley Foard, and John M. Frantz, "A Review of Federal Subsidized Housing Programs," in *Housing in the Seventies Working Papers* (Washington, D.C.: U.S. Department of Housing and Urban Development, 1976).

By retooling its housing assistance system, HUD and Congress hoped in part to dissipate conflicts between the federal government and local governments. Liberal and conservative lawmakers disagreed on whether the federal government should continue to fund new housing construction, but they both had little interest in regulating local governments. The previous chapter argued that the government's role in administering housing development programs brought HUD into direct confrontation with white homeowners and local governments. By reconfiguring the government's housing aid system, HUD appeared poised to abandon its earlier attempts to expand the government's regulatory authority over local urban policy. As this chapter argues, the federal government diminished its regulatory authority by changing the structure of federal housing programs. Shifts in federal aid left private actors and local officials responsible for providing housing assistance to low-income households. This change also brought a halt to the government's inchoate policies designed to desegregate cities and to reform local land-use and urban development practices. In implementing new programs, HUD adopted regulations that minimized its oversight responsibilities, a light touch that demonstrated the extent of HUD's growing reluctance to invite confrontations with local and state governments.

While HUD officials once considered themselves subject to a legal mandate to further suburban integration, the 1974 Housing Act also detracted from this perceived responsibility. By routing housing assistance through tenant-based vouchers, HUD's limited role in influencing the geography of urban aid arguably insulated the agency from liability under the Fair Housing Act. Throughout the 1970s, HUD used vouchers in select

instances to help some households of color move to white, suburban neighborhoods. But HUD did little to make anti-discrimination—let alone affirmative integration—a meaningful policy of the Section 8 program. As administered by HUD and local governments, the program tended to reinforce existing patterns of segregation in U.S. cities.

The 1974 legislation also shifted responsibility for housing development to state governments. By charging the federal government with promoting state bond programs, the 1974 Act gave state agencies a central role in financing the development of affordable housing. The devolution exposed low- and moderate-income housing development to the undulations of financial markets. During the 1970s, volatile municipal bond markets prevented state financing bodies from raising capital for housing development. This policy of devolution of financing authority left the federal government and state governments with little in the way of a housing production policy that could influence the racial and economic geography of cities, particularly during economic downturns. As a result, the federal government left any possibility of desegregation to the decisions of individual households.

At the same time, the units available through private housing markets left Section 8 recipients with limited residential options. Section 8 offered families some improvements in mobility, allowing them in theory to choose where to live. Yet, the 1974 legislation left HUD and states unable to systematically alter the racial geography of cities and shape local housing markets. Regulating urban policy became a matter of

overseeing individual behavior.[2] In some areas of the country, HUD did work with local governments to reframe local policy and desegregate public housing projects. But these efforts arose out of litigation in federal court. In Chicago, for example, African American public housing tenants alleged that HUD and the Chicago Housing Authority had engaged in systematic racial discrimination. Responding to a federal court order, HUD worked with CHA throughout the 1970s to desegregate one class of tenants in metropolitan Chicago.[3] As this chapter suggests, the desegregation programs that cities

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[2] Recent studies highlight the gradual privatization of federal housing policy that began in the mid to late 1960s. Historians of urban policy have also begun to examine the problems privatization posed for the civil rights objectives of the 1960s and 70s, which included residential desegregation and household mobility across metropolitan areas. But these preliminary studies have yet to connect privatization with the contours of American federalism and the national government's regulatory authority. See Arnold R. Hirsch, *Making the Second Ghetto: Race and Housing in Chicago, 1940-1960* (Chicago: The University of Chicago Press, 1998); Thomas J. Sugrue, "The Carter Presidency: Policy Choices in the Post-New Deal Era," in *The Carter Presidency: Policy Choices in the Post-New Deal Era*, ed. Gary M. Fink and Hugh Davis Graham (Lawrence: University Press of Kansas, 1998); John F. Bauman, *Public Housing, Race, and Renewal: Urban Planning in Philadelphia, 1920-1974* (Philadelphia: Temple University Press, 1987); David M. P. Freund, *Colored Property: State Policy and White Racial Politics in Suburban America* (Chicago: University of Chicago Press, 2007); Bradford Hunt, "Was the 1937 U.S. Housing Act a Pyrrhic Victory?" *Journal of Planning History* 4, no. 3 (2005); Gail Radford, *Modern Housing for America: Policy Struggles in the New Deal Era* (Chicago: University of Chicago Press, 1996); Lawrence J. Vale, *From the Puritans to the Projects: Public Housing and Public Neighbors* (Cambridge: Harvard University Press, 2000).

[3] While historians have highlighted the difficulties local organizations faced when attempting to use housing vouchers to implement desegregation orders issued by federal judges, these studies have not situated limited desegregation efforts within the broader historical development of the national regulatory state. Historians have had little to say about the broader contours of federal oversight and regulatory activity that accompanied shifts in the structure of federal housing programs. For discussion of privatization and federal housing programs, see Roger Biles, *The Fate of Cities: Urban America and the Federal Government, 1945-2000* (Lawrence: University Press of Kansas, 2011); Sugrue, "The Carter Presidency: Policy Choices in the Post-New Deal Era"; Daniel Stedman Jones, *Masters of the Universe: Hayek, Friedman, and the Birth of Neoliberal Politics* (Princeton: Princeton University Press, 2012). For discussion of policy outcomes associated with privatization, especially abuses of developers under the Section 235 single-family homeownership program between 1968 and 1973, see Andrew R. Highsmith, "Prelude to the Subprime Crash: Beecher, Michigan, and the Origins of the Suburban Crisis," *Journal of Policy History* 24, no. 4 (2012). On impediments to desegregation under market-based

carried out under federal court orders were anomalous, and they relied primarily on existing housing produced by developers using private funding. The policy reforms of the 1974 Housing and Community Development Act, taken as a whole, abolished the federal government's authority to regulate state and local governments.

I.

In the mid-1970s, HUD administrators worked with Congress to build a policy regime that handed responsibility for housing development to state agencies. Although the shift occurred under the watch of a Republican administration, this shift in many respects gained support from Democrats, particularly mayors from large cities who lobbied for more flexible funding streams through the block grant program under the 1974 Housing and Community Development Act. The law passed 76 to 11 in the Senate, and 351 to 25 in the House, with Republicans registering most dissenting.[4] The law, enacted during the Nixon administration's housing moratorium, transformed federal regulatory authority. First, the law made tenant-based rental assistance vouchers central to the government's housing assistance system. Second, to provide federal assistance for new housing development, the law established policies through which HUD could support state housing finance agencies. With these measures, the government reduced its role in directly financing and reviewing new housing development projects.

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housing programs, see Andrea M. K. Gill, "Moving to Integration?: The Origins of Chicago's Gautreaux Program and the Limits of Voucher-Based Housing Mobility," *Journal of Urban History* 38, no. 4 (2012).

[4] See Biles, *The Fate of Cities*, 189–90; *1974 Housing and Urban Development Legislation: Hearings before the S. Subcomm. on Housing and Urban Affairs of the Comm. on Banking, Housing and Urban Affairs, Part I*, 93rd Cong. 449–51 (1973) (Statement of Roman S. Gribbs, Mayor, City of Detroit, Michigan); 93 Cong. Rec. 28384 (daily ed. August 15, 1974).

Congress's foray into reforming federal housing policy originated with a 1973 proposal from HUD, called the Better Communities Act. During Nixon's 1973 housing moratorium, HUD expressed interest in focusing on using rental subsidies as its primary form of housing assistance. In a statement on September 19, 1973, Nixon outlined basic principles that encapsulated the administration's motivation for rethinking housing federal housing policy. Too many public housing projects, Nixon announced, were "monstrous, depressing places—run down, crime-ridden, falling apart." Given the limited availability of housing, he explained, the system was also highly inequitable: "Rather than treating those in equal circumstances equally, it arbitrarily selects only a few low income families to live in Federally supported housing, while ignoring others." Furthermore, housing production was "the most expensive means of housing the poor." It was wasteful, and reflected a flawed assumption that "the basic problem of the poor is a lack of housing rather than a lack of income."[5]

Nixon, however, offered little support. Beyond his observations on inefficient program management and decline in the quality of housing stock, the administration had not offered a sound justification for the moratorium. Nor did the administration offer a plan for improving or replacing the housing programs it attacked. Worse yet, the administration had not considered the harm its moratorium would inflict on individuals needing housing assistance. Despite growing need for assistance, the moratorium brought subsidized housing construction to a standstill. The abrupt decision, with no policy analysis to support it, appeared a to be political maneuver. Nixon's political base of white

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[5] *Message from the President of the United States, Transmitting Recommendations for Improvements in Federal Housing Policy*, 93rd Cong. 7–8 (1973).

suburbanites and southern voters despised the federal government's low-income housing programs. And as white homeowners fought to keep low-income housing out of their communities, HUD's efforts to integrate suburbs had infuriated Nixon's base. The moratorium was a political tool, designed to gut federal housing programs and mollify Nixon's supporters.[6]

Not until the moratorium went in effect did Nixon begin discussing new polices. As soon became apparent, Nixon had no desire to restore subsidized housing development programs. If the administration returned to subsidizing new housing development, new confrontations between HUD and Nixon's base would likely follow. Rather, Nixon proposed to focus federal housing policy on addressing individuals' "inability to pay for housing." As he explained, "direct cash assistance" offered "the most promising way to achieve decent housing for all our families at an acceptable cost."[7]

Following on Nixon's remarks, HUD presented a model bill to Congress. The proposal, which called for tenant-based rent subsidies, met skepticism in Congress. During hearings before the Senate Committee on Banking, Housing and Urban Development in July 1973, Senator Adlai Stevenson, a Democrat from Illinois, pressed HUD for its proposals on federal housing policy, noting, "it is very difficult for us to consider housing and community development in isolation, as if each were separate from

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[6] See *Housing Subsidies and Housing Policy: Report of the Joint Economic Comm. Subcomm. on Priorities and Economy in Government*, 93rd Cong. 3–4 (1973).
[7] *Message from the President of the United States, Transmitting Recommendations for Improvements in Federal Housing Policy*, 93rd Cong. 7–8 (1973).

the other . . . . Housing is part of community development." In response, HUD Secretary James Lynn had nothing to offer.[8]

In October, Secretary Lynn returned to Congress with HUD's housing proposal, which adhered to the framework Nixon outlined the previous month. The administration's proposed approach to federal housing policy, however, found a skeptical audience. Committee Chairman John Sparkman accused Secretary Lynn of submitting no factual evidence to support the administration's cash assistance proposal. The individualized form of aid also appeared detached from the federal government's broader community development objectives. The Senate Committee had been developing a comprehensive bill that integrated housing with community development. Subsidized housing construction, in Sparkman's view, was integral to community development. The administration's proposal, however, merely offered "a cash payment program possibly several years away."[9]

Senators accused the administration of asking HUD to abandon its housing production goals. HUD and Nixon wanted to evaluate "a policy of direct cash assistance." Cash assistance, Secretary Lynn argued, would grant families the "freedom to select their own housing without the stigma of living in a 'project,'" while maximizing the use of existing housing. The administration believed the new program would cost less

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[8] *1973 Housing and Urban Development Legislation: Hearings Before the S. Subcomm. on Housing and Urban Affairs, Comm. on Banking, Housing, and Urban Affairs*, 93rd Cong. 23 (Statement of James T. Lynn, Secretary of Housing and Urban Development, Accompanied by Floyd Hyde, Under Secretary).
[9] Ibid., 2 (Statement of Committee Chairman John Sparkman).

than subsidies for new construction.[10] But to Senator William Proxmire, a Democrat from Wisconsin and a member of the Senate Committee on Banking, Housing, and Urban Affairs, the administration's program appeared to be "a vague and feeble proposal . . . ." Cash assistance, he argued, was a "'no-policy' policy." As he summarized the proposal: "For the first time since the creation of HUD and its predecessors, the head of the housing program in this country has appeared before us to ask us to abandon our historic housing policy and our housing goals." The 1968 Housing Act established a goal of producing at least 600,000 units of low- and moderate-income housing a year for ten years. Now, the administration wanted to abandon its this plan altogether.[11]

Secretary Lynn, following Nixon's policy proposal, acknowledged the need for a small amount of new construction. In some areas of the country "there will simply not be a sufficient supply of safe and sanitary housing for the foreseeable future." To address housing shortages in these locations, the administration proposed a new housing production policy connected to its cash-assistance policy, a program that later became known as Section 8 new construction. The program allowed developers to make newly-constructed units available to low-income families at reduced rents, with the paying the developer the difference between the rent and "fair market" rent. The new construction program thus relied on an incentive system to urge private developers to develop subsidized housing. Only by shifting "responsibility from the Federal Government to private builders," Lynn argued, could the federal government "provide any incentive for cost savings in construction." Furthermore, while the federal government in the late

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[10] Ibid., 10 (Statement of James T. Lynn).
[11] Ibid., 2–3.

1960s set nationwide goals for subsidized housing development, Lynn believed the government should abandon any housing projection targets; the private sector would produce the "right amount of housing."[12]

The administration's proposal reflected a significant philosophical shift in housing policy. Senator Bob Packwood, a Republican from Oregon, believed the administration and Congress's move towards revenue sharing marked one of the government's most significant shifts in policy in recent history. Packwood favored some forms of devolution of federal authority. He approved of the federal government's move towards revenue sharing, a policy by which the government proposed giving funding unattached to any federal programs and policies, a distribution over which local governments received full discretion. As he observed, with the revenue sharing program, "we finally said that perhaps local governments can understand and treat their problems and take care of them as well as we can at the Federal level." But the administration's approach to housing seemed less impressive. As he explained, the administration was "now proposing a substantial philosophical shift, and that is that market forces and private industry will henceforth build houses that we previously subsidized."[13] Faced with this critique, Secretary Lynn struggled throughout his testimony to explain how the administration's proposal would help the private market produce housing. When pressed

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[12] Ibid., 11-12 (Statement of James T. Lynn).
[13] Ibid., 30.

by Senators to explain if the administration believed cash payments would stimulate private development activity, Lynn prevaricated, offering no clear response.[14]

II.

While the administration's shift in thinking grew from perceived failures of the federal public housing program, it also reflected shifting currents in economic and regulatory theory. The federal government's movement towards localism was embedded within changes in economic thought and discourse that captured the minds of policymakers during the 1970s. Central to developments in economic ideas, as historian Daniel Rodgers observes, was the growing importance of the "market" in guiding political discourse. The abstract idea of the "market" represented both a metaphor for freedom of choice and a mechanism for the efficient, optimal ordering of social and economic relationships. Remarkably, as Rodgers notes, an idealized "market" entered political vocabularies during the 1970s, a time of apparent widespread market failure.[15]

The economic tumult of the early 1970s cast some of economists' basic precepts into doubt. In 1961, economist Paul Samuelson had popularized a theoretical relationship between consumer price inflation and unemployment. The theory originated with William Phillips, who used British economic data to discern an inverse relationship between unemployment and inflation, an observation that became popularly summarized in a graphic representation known as the "Phillips Curve." During the late 1950s and 1960s, government economists used the Phillips Curve as a model for guiding

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[14] *Administration's 1973 Housing Proposals: Hearings Before the S. Comm. on Banking, Housing, and Urban Affairs*, 93rd Cong. 26 (1973).
[15] Daniel Rodgers, *Age of Fracture* (Cambridge: Harvard University Press, 2011), 41–44.

macroeconomic policy decisions. But economic conditions in the 1970s brought Phillips's theory into question. Beginning in the late 1960s, as the federal government injected money into the economy through military spending for the Vietnam war, rates of inflation pressed upward, rising to an average of over five percent in 1970. And as members of the Organization of the Petroleum Exporting Countries ratcheted up oil prices, rates of inflation escalated to an average of six percent in 1973 and eleven percent in 1974. During this same period, unemployment rates also crept upward, reaching a peak of nine percent in 1975.[16]

The simultaneous rise in inflation and unemployment, known as stagflation, undermined economists and policymakers' faith in Keynesian economic management. The *Wall Street Journal* reported: "In the 1960s, most American economists ran around with a Phillips Curve in their pockets, just in case they'd be asked to fine tune the economy. Ask them today if they still believe in the Phillips Curve, and those of our acquaintance mumble politely that they have to catch a train." With the Phillips Curve no longer providing sound guidance, the Federal Reserve's expansion of the supply of money and the federal government's use of direct expenditures to counteract unemployment began to appear questionable policies. As the *Journal* elaborated, "anyone whose 'solution' comes down to urging Arthur Burns to print more money cannot be

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[16] Allen Matusow, Nixon's Economy: Booms, Busts, Dollars, & Votes (Lawrence: University Press of Kansas, 1998), 93; Federal Reserve Economic Data, "Inflation, Consumer Prices for the United States," https://fred.stlouisfed.org/series/FPCPITOTLZGUSA; Rodgers, *Age of Fracture*, 48; Mark Blyth, *Great Transformations: Economic Ideas and Institutional Change in the Twentieth Century* (Cambridge: Cambridge University Press, 2002), 135–39.

taken seriously."[17] More fundamentally, the unravelling of Phillips's theory, and the failure of John Maynard Keynes's *General Theory* to account for stagflation, undermined economists' faith in elegant modeling of economic phenomenon. In its annual report to Congress, the Council of Economic Advisors found "no simple explanation for this price behavior which was the most extraordinary in almost a generation and which confounded the Council and most other economists alike."[18]

Lapsed faith in macroeconomic modeling paved a way for critiques of economic regulation. Monetarism, an economic doctrine propounded by the Chicago economist Milton Friedman, called for careful management of the money supply. As Friedman posited, orderly, limited increases in the money supply would control inflation, and that subject to this limited control, markets would self-correct, finding a "natural" rate of unemployment. As early as 1969, economists also began to engage in a doctrinal debate over the microeconomic foundations of aggregate economic behavior. As some economists argued, macroeconomic theories had failed to build from foundational principals of neoclassical economics, which generally recognized the self-interested behavior of individuals and the equilibrating forces of markets. As "rational expectations" critique went, Keynesian macroeconomic theory accorded aggregate economic figures an existence apart from individual actors, an artificial construction that disregarded the ways people shift their expectations and behavior in response to macroeconomic policy. As one self-proclaimed reformed Keynesian economist explained, an individual's expectation that a government intervention will change prices,

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[17] "Throwing the Phillips Curve," *Wall Street Journal*, August 27, 1975.
[18] *Annual Report of the Council of Economic Advisers* (Washington, D.C.: U.S. G.P.O., 1974).

interest rates, or incomes will in turn "influence their current decisions to save or consume," a response that would counteract the effects of the policy. The idea that the rational, self-interested behavior of individuals would counteract macroeconomic interventions provided a foundation for broader critiques of policies designed to regulate businesses and counteract economic downturns.[19]

Perhaps of even greater significance, legal scholars during the 1970s began looking to economic theory and phenomena to guide legal analysis. Known as the law and economics movement within law schools, the discipline eventually gained influence among policymakers partially in response to the challenges posed by stagflation.

The economist Ronald Coase laid the foundations for the academic movement in 1960 with his influential article, "The Problem of Social Cost." In the pages of the *Journal of Law and Economics*, he explored the question of how a society should manage harmful externalities of a business's actions, for example where a factory generates pollution that interferes in another's use and enjoyment of his neighboring land. Rejecting the notion that a business should be held fully liable for its externalities, Coase theorized that in a world of no transaction costs—in other words, where no barriers to negotiation and agreement existed—the two parties would reach the most economically desirable allocation of costs.[20]

Coase used a simple model involving a cattle-raiser whose cattle frequently ventured onto the land of a neighboring farmer. He guided the reader through two

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[19] Blyth, *Great Transformations*, 142–44; Mark H. Willes, "'Rational Expectations' as a Counterrevolution," *National Affairs*, special ed. (1980), 85, 90–96.
[20] Ronald Coase, "The Problem of Social Cost," *Journal of Law and Economics* 3 (1960).

scenarios, one in which the cattle-herder was held liable for damage to the farmer's crops, another where no finding of initial liability was made. Regardless of the assignment of liability, he suggested, the parties would negotiate with one another to find a point of equilibrium in which each person maximized his profits, and thereby also maximize the net value of their collective output.[21] A judge might have relied on principles involving fairness or culpability in assessing whether the cattle-herder should be held liable. But for Coase, this analysis was unnecessary. In either case, the series of transactions through which the two parties reached an agreement would produce an optimal result.

This argument swiftly caught hold in other areas of legal scholarship. The economist's eye for value and pricing captured the attention of lawyers and policy makers, who found in Coase's formulation an elegant method for evaluating legal principles, as well as public policy decisions.[22] The analytical framework also found a receptive audience among policymakers, who theorized that "the market" provided a convenient device for evaluating the costs of regulatory regimes. The seeming efficiency of market relationships in maximizing the value of production allowed some policymakers to conclude the consumer marketplace should be left to govern itself. Viewed in comparison to unregulated market relationships, federal regulation of various sectors of the economy appeared to produce inefficiencies and to burden innovation. Most famously, as energy costs rose during the early 1970s, economics professor Alfred Kahn, serving as chair of the New York Public Service Commission, found that the

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[21] Ibid., 2–8.
[22] See, for example, Richard A. Posner, *Economic Analysis of Law* (Boston: Little, Brown and Company, 1973).

state's utility regulations produced distortions that reverberated through the consumer marketplace. The regulations imposed fixed costs on units of energy, meaning that prices for gas and electricity remained constant regardless of demand. Fixed utility costs, he reasoned, incentivized inefficient economic behavior, the wasteful use of resources and increases in aggregate costs, prompting Kahn to call for reforms to deregulate utility pricing, allowing energy resources to be priced at their marginal cost under actual market conditions. Indeed, to many policymakers in the 1970s, the rising rates of inflation increasingly seemed traceable to federal regulatory interventions.[23]

The administration's proposed shift in housing policy fit within this matrix of ideas. The administration borrowed loosely from many of the arguments that had been circulating among economists, legal scholars, and policymakers. The new model for housing assistance entrusted "the market" to organize economic outputs, namely the production of decent housing. Left alone, the reasoning went, the housing market for the most part produced enough suitable housing for American families to live in; some households simply lacked the income necessary to enter this market. As the administration argued, for example, the housing developed under the governments' subsidized housing programs, such as Section 236, would have been built without federal assistance. For the tenant-based voucher program, HUD Secretary James Lynn expected for "the housing to come from a very healthy growth rate in housing stock brought about by market forces." The administration's justification for market-based voucher assistance also hinged on the assertion that federal housing-development programs distorted local

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[23] Rodgers, *Age of Fracture*, 60–61; Blyth, *Great Transformations*, 267.

housing markets. As the administration posited, housing production programs artificially generated new housing that families could move into, thus leaving existing housing vacant and unmaintained. Housing programs, the argument went, thus contributed to neighborhood decline and in some areas of cities.[24]

Lynn emphasized his faith in private competition. With low-income households receiving additional income to spend on housing, Lynn believed that the housing industry would "respond to the market forces that come from people that have the incomes and better incomes to afford better housing than they presently have." When Senator Biden pressed Lynn on what precisely he imagined those market forces to consist of, Lynn's response revealed the abstract conceptualization that undergirded his proposal. The "market" spoke for itself: rather than enumerate the specific mechanisms that he believed would generate housing attainable by families with vouchers, he simply relied on market outputs as proof that it worked. Noting that housing production had been on the rise in recent years, he added: "[W]hat we are saying is the market forces can be seen by the number of units that are being built in this country."[25]

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[24] *Administration's 1973 Housing Proposals: Hearings Before the S. Comm. on Banking, Housing, and Urban Affairs*, 93rd Cong. 17–18 (1973) (Statement of James T. Lynn, Secretary, Department of Housing and Urban Development). Senator Proxmire worried that without federal stimulus, the private market would not generate enough housing stock to meet household needs. In response, Secretary Lynn argued that the government had not found that Section 236 and 235 contributed to any increases in the housing stock. He suggested that when a household moved from an existing unit to a new subsidized unit produced under Section 235 or 236, a potential result was that the existing housing would potentially deteriorate at a greater rate. Furthermore, he added, "our study shows that up to 80 percent or so of the housing that was built and subsidized would have been built anyway . . . without the subsidy." Federal subsidizes merely presented a contractor with the choice of building "for the market" or instead for a subsidized housing program. Ibid.

[25] Ibid., 26, 30, 36, 40, 62–64.

The administration prioritized "freedom to choose." In the administration's framing of the issue, the housing market was not the problem. Rather, low-income households had been limited in their selection of housing based on their income limitations. Federal public housing programs were even more confining. The public housing program provided housing to families on a "'take it or leave it' basis," the administration argued. Cash assistance, in contrast, "would give the poor the freedom and responsibility to make their own choices about housing," rather than requiring individuals to accept whatever housing the federal government had helped to produce. With monetary assistance directed at household units, the government could enable recipients to "choose their own homes on the private market." Underscoring a central objective of the shift in policy, President Nixon added that cash assistance "would eventually get the Federal Government out of the housing business."[26]

III.

With the government entrusting housing construction to private developers, the question was whether federal authorities would do anything to regulate how individuals used housing vouchers. As the administration worked through the details of its new housing policy, lawmakers worried that it would frustrate efforts at integration. The administration's reliance on individual consumer choice struck lawmakers like Senator Proxmire as suspect as a matter of economic theory. But as a matter of social policy, many of these skeptics also worried that the private "market" would exacerbate segregation. These fears proved prescient. The 1974 Act had a decentralizing effect,

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[26] *Recommendations for Improvements in Federal Housing Policy*, 93rd Cong. 8; *Administration's 1973 Housing Proposals*, 64.

allowing local governments autonomy in administering housing and urban development programs. And consistent with their goal of avoiding confrontation with local residents, HUD officials chose not to regulate state and local governments in the arenas over which the federal government retained policymaking authority.

Democrats in Congress and local urban development leaders rejected the administration's approach to housing. Although they tended to support the block grant component of the proposed legislation, they objected to the administration's reliance on vouchers for housing. As they observed, the decisions of developers and local governments that produced low-income housing concentrated housing in declining neighborhoods. Robert Maffin, speaking on behalf of the National Association of Housing and Redevelopment Officials, argued that "in a mobile and aggressive society as ours," people have as their aim "the improvement of their housing quality." Without federal intervention, he argued, housing for low- and moderate-income Americans became available as other households improved their incomes and moved into higher quality housing. The housing "left over" as families moved became "the housing for the low and moderate income people." This housing, however, was concentrated in "the abandoned and sometimes depressed rural areas of America and in the slums, ghettos, and deteriorating areas of the inner city, where the alternatives for housing are totally inadequate."[27] Edward Logue, the president of the New York State Urban Development Corporation, argued that housing conditions were deteriorating in poor neighborhoods,

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[27] *Administration's 1973 Housing Proposals: Hearings Before the S. Comm. on Banking, Housing, and Urban Affairs*, 93rd Cong. 88 (1973) (Statement of James T. Lynn, Secretary, Department of Housing and Urban Development).

resulting in loss of housing stock. These neighborhoods needed new housing construction and rehabilitation. The housing allowance would do nothing to address these urgent needs.[28]

Without the support of a government-subsidized construction program, the decisions of private developers and property managers limited where low-income individuals could live. As Mafflin explained, "[I]f you operate on the trickle-down theory, which the housing allowance system does, much of the housing would become available in areas where there are inadequate public improvements" and where the housing stock "would be missing the necessary ingredients of a favorable environment."[29] Mayor Richard Hatcher, the first black mayor of Gary, Indiana, believed vouchers would "increase[e] the degree and extent of segregation in this country."[30]

The law that Congress ultimately passed, the 1974 Housing and Community Development Act, did little to alleviate these concerns. The law restructured the federal government's fiscal relationship with cities. It consolidated the categorical urban development grants that HUD previously provided to cities. Under the former categorical grant program, HUD allocated funds for specific purposes, for example providing grants for sewer construction and maintenance or other infrastructure projects. The Community Development Block Grant consolidated the categorical programs into a single grant, conferring discretion on cities in how they used federal aid. Administrators in HUD

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[28] *Housing and Community Development Legislation—1973: Hearings Before the S. Comm. on Housing of the Comm. on Banking, Housing, and Urban Affairs*, 93rd Cong. 559 (1973) (Prepared Statement of Edward J. Logue).
[29] Ibid., 293–95 (Statement of Robert W. Maffin, the National Association of Housing and Redevelopment Officials, Accompanied by Mary Nenno and John Maguire).
[30] Ibid.

regarded the reconfiguration of its urban aid programs as “designed to achieve maximal applicant flexibility and minimal departmental interference.” The agency thus chose to limit its oversight to “post-performance monitoring.”[31]

The law also expanded an experimental voucher program, known previously as Section 23 of the U.S. Housing Act, and now called Section 8. Although the law continued some of HUD’s multifamily development programs, HUD stopped issuing contracts for new development when it impounded Section 236 funds.[32] The Section 8 program contained a provision allowing HUD to use Section 8 commitments to incentivize new construction projects, but as HUD administrators recognized, any new housing development for Section 8 would rely solely on financing from outside sources, both private institutions and state housing finance and development agencies. In practice, this meant that the federal government passed the responsibility for financing new housing development to state governments, with tenant-based rent subsidies remaining HUD’s only substantive housing program. By devolving administrative responsibilities to local governments and relying on the existing housing market, HUD could continue to pursue its “open communities” objectives only through regulatory intervention.

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[31] “DMI – 75 Process Analysis Phase II: Report on Community Planning and Development and HPMC – Section 8,” October 10, 1975, Box 78, Carla Hills Papers, HIA, 7.

[32] An internal memorandum circulated within HUD in the late 1970s summarized HUD’s key housing programs. It noted that Section 236 remained inactive following the 1973 moratorium. The memorandum identified Section 8 as “HUD’s major housing assistance program.” Though the public housing program was reactivated in February 1976, HUD used funding authorized under the program only to “finance capital improvements in older-PHA-owned low income housing projects to upgrade living conditions, correct physical deficiencies and achieve operating efficiency and economy.” See HUD’s Housing Resources for Low and Moderate Income Households, n.d., folder: Metropolitan Policy Task Force, 1977, Box 102, Papers of Patricia Roberts Harris, Library of Congress.

Residential segregation and land use restrictions at least appeared to be a central concern for lawmakers. One of the law's stated objectives was to reduce "the isolation of income groups within communities and geographical areas," as well as increasing "the diversity and vitality of neighborhoods through the spatial deconcentration of housing opportunities for persons of lower income."[33] But this was merely aspirational language.

Few provisions expressly advanced or enforced a policy of desegregation. Both the community development and housing components of the law hewed to the proposals Nixon and HUD presented to Congress in 1973. Congress authorized Nixon's cash assistance proposal with an amendment adding Section 8 to the 1937 US Housing Act. Section 8 served as the key housing provision of the final law. The law's assisted housing language fell under Title II, which declared it the national polity to "assist the several States and their political subdivisions to remedy the unsafe and unsanitary housing conditions and the acute shortage of decent, safe, and sanitary dwellings for families of low income." It placed most responsibility for implementing voucher-based housing programs with local public housing agencies.[34] Section 8, which soon became HUD's primary housing assistance program, had three components: existing housing, substantial rehabilitation, and new construction. The existing housing component of Section 8 subsidized the rent tenants paid to lease units on the private rental market.[35] Section 8 new construction authorized HUD to make assistance payments "pursuant to contracts

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[33] Housing and Community Development Act of 1974, Pub. L. No. 93-383, § 101(a)(1), (c)(6), 88 Stat. 633, 633–64 (1974).
[34] Ibid., §201(a), 88 Stat. at 653.
[35] Ibid., §201(a), 88 Stat. at 662 ("Section 8 (b)(1)").

with owners or prospective owners who agree to construct or substantially rehabilitate housing" in which the owner reserved some or all units for lower-income families.[36]

To further desegregation, federal administrators needed to address the geography of federal housing. Yet, HUD did little to use Section 8 as an instrument of desegregation. In designing Section 8 regulations for the Section 8 existing housing program, HUD encouraged public housing authorities to "promote greater choice of housing opportunities" for households. HUD advised PHAs to "develop administrative arrangements with other PHAs in order to permit Certificate Holders to seek housing in the broadest possible area." HUD gave funding preference to PHAs that provided "[f]amilies the broadest geographical choice of units."[37] The regulations aimed to help Section 8 recipients use their certificates across jurisdictional boundaries. This would allow a household in the city of Chicago, for example, to live in a neighboring suburb where a separate housing authority ran its own voucher program. But HUD's words of encouragement had little practical effect. The regulations offered no criteria showing how HUD would evaluate efforts to provide geographic choice, and did not explain how much weight HUD would assign to housing mobility when allocating funds. The open-ended regulations thus left local officials with little reason to think that a PHA would need an effective desegregation policy to attract HUD funding.

Regulations for Section 8 new construction, however, contained stronger incentives. HUD's final rule prohibited developers from locating a new construction project in "an area of minority concentration" unless "sufficient, comparable

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[36] Ibid., §201(a), 88 Stat. at 663 ("Section 8(b)(2)").
[37] Section 8 Moderate Rehabilitation Programs, 24 C.F.R. § 882.103(c) (1977).

opportunities exist for housing for minority families…outside areas of minority concentration." HUD also permitted construction in a neighborhood of minority concentration if it needed new development to meet "overriding housing needs."[38] HUD also prohibited construction in a racially mixed neighborhood if the project appeared likely to result in an increase in the neighborhood's ratio of minority to non-minority residents.[39]

HUD's legal obligations under the Fair Housing Act may have accounted for the difference in regulations. The more stringent requirements governing the new construction program reflected federal administrators' belief that they had greater legal flexibility in administering cash assistance as compared to housing construction. HUD issued explicit restrictions prohibiting new construction that reinforced or generated patterns of segregation. The language of its regulation closely tracked the standards set out in *Shannon v. HUD*, the lawsuit that played a role in motivating HUD's efforts in the early 1970s to affirmatively integrate communities. With existing housing, however, HUD offered little more than encouragement. The federal government's regulations for the voucher program did not attempt to directly regulate the geography of local government's voucher programs, leaving the government with no direct role in guiding where families would live while receiving assistance. Government officials may have believed that, in administering the voucher program, fair housing laws did not obligate the federal government to prevent voucher recipients form concentrating in communities of color.

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[38] Ibid., § 880.112(c)(1).
[39] Ibid., §880.112(c)(2).

Indeed, one of HUD's only attempts at using Section 8 as a tool for integration occurred under a federal court order. In a lawsuit filed in 1966, public housing tenants in Chicago alleged that the Chicago Housing Authority engaged in rampant discrimination during the 1950s and 60s, and a federal judge ordered HUD and the CHA to develop a remedial program. In response to the court order in *Hills v. Gautreaux*, HUD formulated a policy allowing public housing tenants to use Section 8 vouchers to obtain rental housing in Chicago's surrounding suburbs. Named after the lead class plaintiff, the Gautreaux Program relied on a contract with a local non-profit, the Leadership Council for Metropolitan Open Communities, to help place four hundred households in Section 8 housing in nonminority areas in metropolitan Chicago.[40]

HUD relied on the Leadership Council for Metropolitan Open Communities (LCMOC) to find apartment owners willing to lease units to plaintiff families, notify *Gautreaux* class members of the program, and guide families throughout the process of

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[40] See *Gautreaux* v. *Chicago Housing Auth.*, 296 F. Supp. 907 (1969); *Hills* v. *Gautreaux*, 415 U.S. 248 (1976). *Hills* v. *Gautreaux* hinged on the question of whether a court-ordered remedy for discriminatory conduct in Chicago could require jurisdictions outside the city limits of Chicago to participate. Two years earlier, the Supreme Court overturned a school busing order that aimed to remedy segregation in Detroit's public schools. Chief Justice Warren Burger's opinion in *Milliken* v. *Bradley* reasoned that because no evidence showed that outlying districts had no role in propagating discrimination in Detroit schools, a federal court could not impose a metropolitan remedy for a single-district violation. *Milliken* v. *Bradley*, 418 U.S. 717 (1974). Justice Stuart, in his *Gautreaux* opinion, drew a critical distinction between *Milliken* and *Gautreaux*: HUD, which had authority that spanned city jurisdictions, violated the constitution; in *Milliken*, no entity outside the Detroit school district engaged in unconstitutional conduct. As Stuart argued, *Milliken* did not suggest "a *per se* rule that federal courts lack authority to order parties found to have violated the Constitution to undertake remedial efforts beyond the municipal boundaries of the city where the violation occurred." In the case of HUD, a metropolitan remedy would entail no coercion of entities beyond Chicago's boundaries; HUD already had "authority to operate outside the Chicago city limits." *Hills*, 415 U.S. at 298.

relocation.[41] For Section 8 more broadly, HUD relied on the voluntary efforts of local organizations to negotiate among local public housing authorities to secure agreements allowing household mobility across jurisdictions. LCMOC, for example, secured arrangements among housing authorities in the Chicago metropolitan statistical area, which included housing authorities in Chicago, Cook County, DuPage County, Elgin, Lake County, McHenry County, and Waukegan. Each respective housing authority agreed to set aside five percent of Section 8 certificates for households moving from a jurisdiction covered by another housing authority.[42] HUD provided little oversight or guidance as local organizations negotiated housing authorities' cross-jurisdictional agreements for the exchange of Section 8 certificates.

HUD's inactivity had consequences. A General Accounting Office investigation in 1978 confirmed that HUD officials ignored racial segregation in administering Section

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[41] "Final Report: Program to Assist the Members of the Gautreaux Plaintiff Class to Find Existing Housing Units and to Locate Owners of Housing Willing to participate in the Chicago Section 8 Demonstration Program, Contract H-4086, Prepared for U.S. Department of Housing and Urban Development," January 25, 1978, Chicago Historical Society Research Center (CHSRC), Leadership Council for Metropolitan Open Communities Papers, box 50, folder: Gautreaux – Contract H-4086.

[42] Harry N. Gottlieb, Deputy Director of LCMOC, to Elmer Binford, HUD Regional Director, March 2, 1979, CHSRC, Leadership Council for Metropolitan Open Communities Papers, box 110, folder: Public Policy – Regional Section 8, 1979. By 1979, HUD began to pursue a more aggressive policy for regional mobility using existing Section 8 certificates. LCMOC's activity was voluntary and predated new regulations that HUD implemented under the leadership of President Carter's HUD Secretary, Patricia Harris. HUD's new policy required, "[a]s a condition of participation in the Section 8 program," that each public housing authority in a Standard Metropolitan Statistical Area "establish a program that provides metropolitan-wide applicability of Section 8 Existing certificates." Each PHA had to develop an information resources exchange to serve as an information clearinghouse for households receiving Section 8 certificates to notify them of opportunities throughout the metropolitan area." Memorandum to: Geno Baroni, All Members of Assisted Housing Mobility Task Force, et al., from Andrew B. Weissman, Executive Assistant to the Secretary, Subject: New Policy to Encourage Greater Mobility in Assisted Housing Programs, January 17, 1979, CHSRC, Leadership Council for Metropolitan Open Communities Papers, box 110, folder: Public Policy – Regional Section 8, 1979.

8. The GAO found that, in implementing Section 8, HUD had neglected the objective of deconcentration that Congress established in Title I of the Housing and Community Development Act of 1974. Investigators reported that "key housing and community development personnel are not sure whether deconcentration is a prime objective of the section 8 program." Furthermore, they explained, HUD provided little "formal direction in defining deconcentration or in establishing procedures to achieve it," and established no criteria for evaluating whether Section 8 achieved any form of deconcentration. Some administrators believed the agency had no obligation to develop regulations or procedures on desegregation. The Chief of HUD's Existing Housing Branch believed that, because the program prioritized freedom of choice, HUD could allow voucher recipients to concentrate in segregated communities.[43]

HUD's new construction regulations also had little effect. The GAO noted that while HUD had issued more explicit regulations for the site location of Section 8 new construction units, the agency failed to define segregation. As a result, as an official from HUD's Pittsburgh area office observed, if HUD were to determine that a proposed new construction project presented a risk of undue concentration, that finding would arise only as a result of an administrator's subjective judgment. Furthermore, state housing finance agencies built very little subsidized housing because investors in the 1970s refused to buy bonds, leaving the agencies strapped for funds. The fiscal crisis of cities made desegregation in new developments a moot question.

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[43] "Deconcentration of Lower-Income Persons Through Section 8 Housing Assistance Program", enclosure in letter from Henry Eschwege, Director, to Patricia Harris, Secretary of HUD, October 20, 1978, retrieved from www.gao.gov.

HUD data suggest that Section 8 allowed slightly more mobility for African American and Hispanic households than the old Section 236 program. But families of color still tended to concentrate in census tracts where over half of the population shared the same demographic categorization. Despite the affirmative efforts of the *Gautreaux* Program, Section 8 in Chicago tended to adhere to the city's patterns of segregation.[44]

To the extent that any government entities remained directly involved in financing and producing new low-cost housing, the administration preferred that state and local governments do the work. Indeed, the department left nearly all new construction under Section 8 to state housing finance and development agencies (HFDAs).[45] Historians have noted the ways that the Community Development Block Grant devolved authority to states and cities. Yet, the law devolved authority to local governments in other important ways, chiefly through its attempts to bolster state housing finance agencies. The 1974 Act's attempt to prop up state agencies worked in tandem with Section 8 new construction to assign housing production responsibilities to state governments.

IV.

Among the many competing goals of HUD's programs, federal housing functioned as an economic stimulus during times of recession.[46] The 1974 Act's

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[44] See Statistical Appendix Part II for analysis of the geography of the Section 8 and Section 236 program.

[45] *Deferral and Rescission of Appropriations, 1975–1976: Hearings before the Subcomms. of the H. Comm. on Appropriations, Part 5*, 94th Cong. 76 (1975) (Department of Housing and Urban Development, Proposed Rescission of Budget Authority, Witness: HUD Under Secretary John B. Rhinelander).

[46] National Housing Policy Review, *Housing in the Seventies* (Washington, D.C.: U.S. Department of Housing and Urban Development, 1974), 5. The report observed: "First, housing has long been considered by some observers to be an important element of any countercyclical economic

reduction in direct federal spending for housing production perhaps reflected federal administrators' waning faith in fiscal policy as a mechanism for economic stabilization, as well as concern for inflation. The 1974 law nonetheless contained provisions designed to aid state housing finance agencies, thus facilitating the federal government's devolution of responsibility for housing development.

While federal administrators expected state agencies to produce new housing, local governments struggled to act as a countercyclical force. The rampant stagflation of early 1970s drove up interest rates. In the 1970s, municipal bond buyers consisted largely of commercial banks, high-wealth household investors, and insurance companies. Looking for returns that outpaced inflation, and unwilling to assume what they perceived as risks associated with affordable housing, they refused to bid for bonds at reasonable interest rates.[47] Faced with these demands, housing finance agencies struggled to raise capital they needed for subsidized housing development. By 1975, the recession left some agencies teetering on the edge of financial ruin. While stagflation underscored state agencies' limited capacity to act as a fiscal stimulus in times of economic strain, the 1974 law at least contemplated the possibility that the federal government might help stabilize agencies during economic downturns. In its effort to shift housing development from the federal government to local actors, the 1974 Act included provisions designed to prop up

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strategy. In times of economic recession, special measures designed to stimulate the production of housing have been undertaken to stimulate construction in general, thus reducing unemployment and generating a major multiplier effect through increased demand not only for lumber and other construction materials, but for household furniture and fixtures and singular consumer goods as well."

[47] On the composition of municipal bond buyers, see Judy Temel, *The Fundamentals of Municipal Bonds* (New York, John Wiley & Sons: 2001), 149–58.

struggling local housing agencies, and to enable them to better assist low-income households.

The 1960s and 1970s witnessed the rise of a new public institution: the state housing finance and development agency (HFDA). By establishing HFDAs, state governments provided themselves with a means to subsidize multifamily housing development, and to influence patterns of housing construction. HFDAs thus afforded state governments greater authority over urban policy. Shifts in federal law played a role in enabling this expansion of state authority. New York established the nation's first housing finance agency in 1960. Responding to incentives contained in the Housing and Urban Development Act of 1968, many other states soon joined New York in forming housing finance agencies. By 1973, state governments had established over 30 HFDAs.[48] With HFDAs rapidly spreading across the states, the bourgeoning capacity of state governments created opportunities through which the federal government could pass the responsibility for developing affordable housing onto states and local governments.

New York State's first housing finance agency began as a financing division of the New York State Division of Housing and Community Renewal (DHCR). The agency issued tax-exempt municipal bonds, which allowed it to raise capital at a lower cost than was possible in the private bond market. Private bonds were subject to federal income taxes, whereas the federal government exempted interest on municipal bonds from taxation. Because investors did not expect to pay taxes on municipal bonds, DCHR could attract investors even with lower interest rates. The DCHR thus obtained capital at a

[48] Committee on Housing and Urban Development, "Development of State Housing Finance Agencies," *Real Property, Probate and Trust Journal* 9, no. 4 (Winter 1974).

lower cost, allowing the agency to issue loans to developers at lower cost, reducing the cost of new housing. Other state legislatures in the late 1960s and 1970s modeled their own HFDAs on New York's finance agency.[49]

The 1968 Housing and Urban Development Act encouraged other states to establish housing finance agencies. The legislation added Section 236 to the 1934 National Housing Act, authorizing HUD to subsidize loans for housing development. State lawmakers quickly recognized that the Section 236 interest subsidy would allow an HFDA to deepen its housing subsidy and reach lower-income households. Subsidies on loans that HFDAs offered based on tax-exempt bonds reduced the monthly rent of an apartment by about 10 to 20 percent of the going market rate within a geographic area. By coupling the subsidy with Section 236 assistance, a state housing finance agency could reduce a household's monthly rent by up to 50 percent.[50]

Congress further encouraged local governments to establish HFDAs through amendments to the federal tax code. In 1969, Congress passed a sweeping overhaul of the nation's tax laws, and in the process altered accounting practices that individuals could use to claim deductions when filing returns. One important measure in the 1969 law imposed restrictions on investors' use of an accounting method known as accelerated depreciation. By using an accelerated depreciation schedule when filing tax returns, an individual who invested in a capital asset could claim deductions based on projected reductions in the value of that asset, or the depreciation in its value, but at a rate that exceeded the normal rate of depreciation. Accelerated depreciation would enable an

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[49] Ibid., 472–74.
[50] Ibid., 474–77.

investor to benefit immediately from reduced tax liability, which would allow the individual to use increased retained earnings productively, thus generating more value than would accrue if those earnings were deferred years into the future. Although the 1969 Tax Reform Act generally limited the permissible uses of accelerated depreciation, it nonetheless allowed investors to apply an accelerated depreciation schedule to some forms of real property, which included developments financed under Section 236. Because the accounting mechanism allowed investors to account for asset depreciation earlier in the life of an investment, the exception in the Tax Reform Act allowed investors to use real estate investments as a tax shelter. With tax shelters under the Act limited to real property, demand for mortgage investment increased throughout the 1970s. HFDAs used the rising investor demand to their advantage.[51]

The Housing and Community Development Act of 1974 reflected the federal government's conscious effort to strengthen the capacities of HFDAs. Two provisions of the law aimed to help HFDAs raise capital. Section 802 of the law intended to "encourage the formation and effective operation of State housing finance agencies."[52] First, the provision authorized HUD to guarantee the "bonds, debentures, notes, and other obligations" that HFDAs issued. Second, it allowed HUD to issue grants to HFDAs covering up to one third of agencies' interest payments on securities like notes and bonds. Federal guarantees backing securities helped HFDAs float bonds at lower interest rates,

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[51] Tax Reform Act of 1969, Pub. L. No. 91-172, § 301(a), 83 Stat. 487, 581–83 (1969) ("Sec. 57. Items of Tax Preference"); Selwyn A. Horvitz, "Problems and Benefits in Working with Depreciable Property after the Tax Reform Act of 1969," *The Tax Lawyer* 24, no. 3 (Spring 1971): 570; Committee on Housing and Urban Development, "Development of State Housing Finance Agencies," 77.
[52] Housing and Community Development Act, § 802(a), 88 Stat. at 722.

which allowed HFDAs to issue lower-cost loans. The subsidy offered HFDAs the opportunity to issue bonds in the taxable market alongside non-municipal issuers. While the taxable bond required a higher interest rate, the subsidy reduced the HFDA's interest payments to a level comparable to its tax-exempt bonds. The taxable market was far larger and more stable than the tax-exempt market, meaning that HFDAs could more easily sell bonds during economic downturns.[53] In addition, Congress amended the National Housing Act to authorize a co-insurance program. Though not targeted explicitly at HFDAs, Section 244 authorized HUD to insure any portion of a mortgage, advance, or loan as long as the mortgagee assumed "a percentage of any loss" of no less than ten percent of the issuance. The mortgagee also had responsibility for all underwriting activities, including credit approval, appraisal, inspection, commitment, and property disposition.[54] HFDAs qualified as mortgagees that HUD could coinsure.

As the 1974 law made its way through Congress, and before HUD could take action to implement either Sections 244 or 802, state housing agencies faced financial crises. A coalition of House Representatives wrote to Secretary Carla Hills, calling attention to the "current climate of crisis which shrouds the bonding market." Twelve of the US's thirty-nine state housing finance agencies, they wrote, faced "outstanding bond anticipation notes," which they would soon need to pay off.[55]

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[53] Ibid., § 802(c), 88 Stat. at 722–23; David Cook to Carla Hills, Subject: Implementation of Section 802, September 3, 1975, folder: § 802, box 33, Carla Hills Papers, HIA.
[54] Housing and Community Development Act, § 307, 88 Stat. at 679–80 ("Sec. 244").
[55] Michael J. Harrington et al. to Carla Hills, October 10, 1975, folder: State Housing Finance Agencies, box 33, Carla Hills Papers, HIA.

State HFDAs typically took out short-term notes to provide immediate financing for project needs, with the lifespan of the note usually lasting one to two years. Short-term notes came at a higher cost than long-term bonds, but were easier to acquire. HFDAs then converted the notes into long-term debt by paying off the notes using capital received after issuing bonds in the non-taxable municipal bond market. Before 1975, HFDAs achieved an average long-term interest rate of 6 to 6½ percent on bonds. But in 1975, commercial banks refused to purchase bonds at these rates, making it nearly impossible for HFDAs to issue long-term bonds. Bond issuances became increasingly expensive, with HFDAs unable to sell bonds for less than 8¼ to 8½ percent.[56] (See Figure 1.) In House Appropriations Committee hearings, Representative Edward Bolden of Massachusetts noted that in his home state, tax-exempt bonds sold at just over four percent in February 1975. But as of December, he explained, the agency could not find buyers interested in bonds with an interest rate of less than ten percent. "At these interest rates, no new housing can be generated," which, as Representative Bolden emphasized, included new construction for Section 8 recipients.[57]

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[56] Kenneth G. Hance and Thomas A. Duvall, "Coinsurance: The Key to the Future for State Housing Finance Agencies?," *Urban Lawyer* 8, no. 4 (1976), 723.
[57] *Deferral and Rescission of Appropriations, 1975-1976: Hearings before the H. Subcomm. of the Comm. on Appropriations, Part 5*, 94th Cong. 55 (1975).

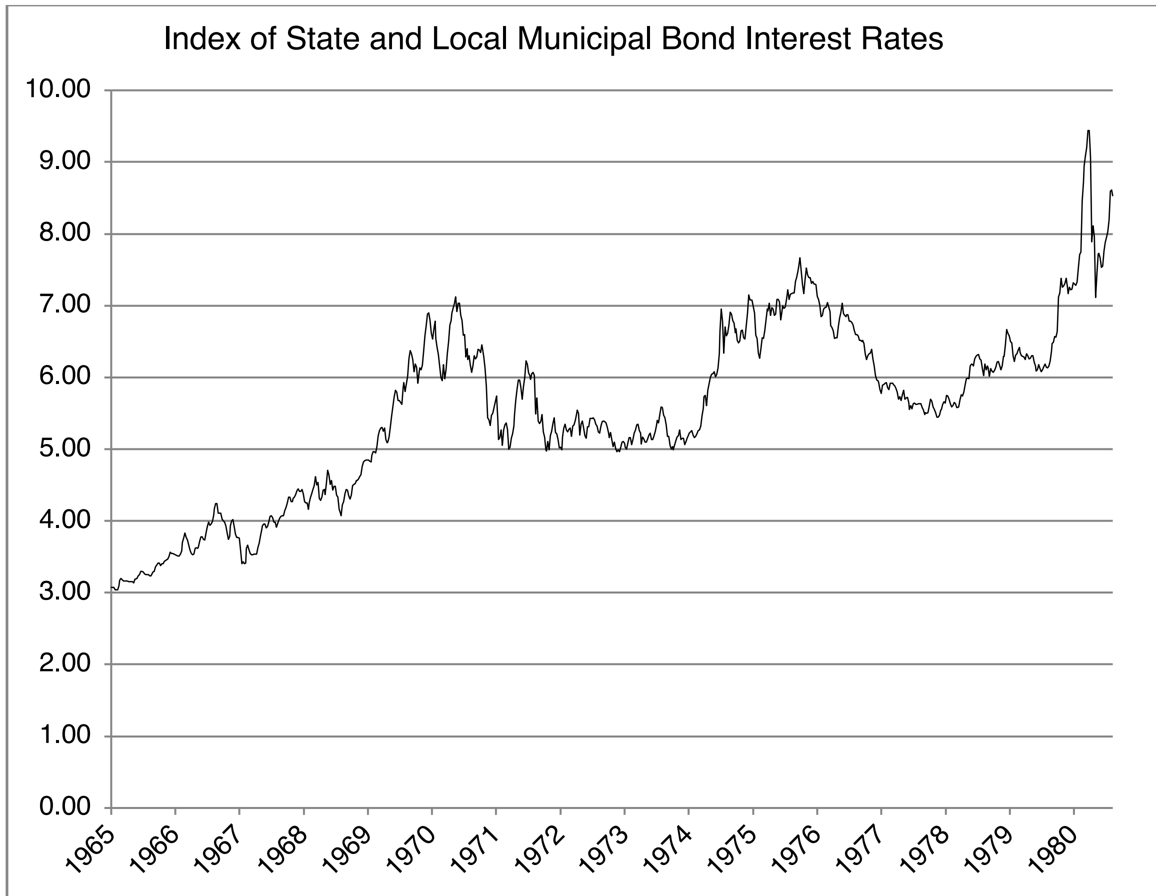

Figure 1: Index of 20 General Obligation State and Local Municipal Bonds, 1965-1980. Source: FRED, Federal Reserve Economic Data, Federal Reserve Bank of St. Louis, State and Local Bonds - Bond Buyer Go 20-Bond Municipal Bond Index, Board of Governors of the Federal Reserve System.

With interest rates rising, HFDAs struggled to convert short-term notes into long-term bonds, creating a fiscal crisis as agencies' short-term notes came due. Massachusetts and New York had a backlog of projects that were complete or under construction but lacked permanent financing. Massachusetts, known for running an exemplary HFDA, had obtained permanent financing for only a quarter of over $600 million of its overall debt for projects both completed and in-progress, and held an additional $300 million in notes

for projects that had yet to begin.[58] As House Representatives noted in their October 1975 letter to HUD, “The aggregate short-term debt of state housing finance agencies in California, Illinois, Massachusetts, Michigan, Minnesota, Missouri, New Jersey, New York, Pennsylvania, Virginia, West Virginia, and Wisconsin totals $1.5 billion.” Outstanding short-term obligations across all HFDAs during the same month totaled $2.4 billion. The Massachusetts Housing Finance Agency had to ask the state for a guarantee on its $500 million in short-term notes “because of the weakening municipal bond market.”[59] And as New York City weathered its municipal fiscal crisis, New York State’s second HFDA, the New York State Urban Development Corporation (UDC), also ran into trouble in 1975. UDC asked the state legislature for an “emergency infusion of $175 million” until the Corporation could work out “some new restructuring and other rearrangements.”[60]

Commercial bankers also began to doubt the secured status of HFDA bonds, which exacerbated the agencies’ fiscal crises. Since the 1960s, some state agencies had secured their bonds by attaching “moral obligation” clauses to their bonds, which indicated that the state legislature would feel compelled to appropriate funds sufficient to honor the bond in the event of default. The concept originated when New York State created its first HFDA in 1960. John N. Mitchell, then serving as counsel to Governor

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[58] Baruch, Morton, Michael BeVier, and John Biasucci, Memorandum: Major Concern with State HFA Viability, n.d., folder: Section 802 Briefing Book, box 95, Carla Hills Papers, HIA.
[59] Michael J. Harrington et al. to Carla Hills, October 10, 1975, HIA, Carla Hills Papers, box 33, folder: State Housing Finance Agencies. Signatories to the letter included forty representatives. Aggregate HFDA short-term note obligation figures are reported in Hance and Duvall, “Coinsurance: The Key to the Future for State Housing Finance Agencies?,” 724.
[60] “Wall Street: Moral Bond Dilemma,” *New York Times*, February 16, 1975.

Nelson Rockefeller, proposed the idea of attaching moral obligation language to bonds the agency sold.[61] The moral obligation provision offered investors no legal basis for recovery; it only informed an investor that a legislature would likely find itself compelled to make funds available to an agency to cover any shortfall in an HFDA's revenue. In 1973, Moody's Bond Survey announced that the term "moral obligation" was "without any standard definition." The meaning an HFDA had in mind "may not turn out to be the same at a court or a state legislature." Moody's deemed the moral obligation commitment "insufficient per se to warrant a high investment standing."[62] In 1975, Moody's reiterated its position that moral obligations held no real value, writing, "The euphoria of the 1960s has not found a home in the mid-1970s." With state public revenue limited, any demand for a state appropriation to support a struggling HFDA "makes certain a public debate of some intensity."[63]

In New York, for example, the state legislature was already short on funds and concerned about the possibility of intervening in New York City's fiscal crisis. Governor Hugh Carey was reluctant to call a special session, an action necessary for the state to make an appropriation to save the HFDA. Instead, in October, state officials arranged a complex transfer of $20 million from the state Facilities Development Corporation to the HFDA to cover notes that came due that month. In state Budget Director Peter C.

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[61] "Former Attorney General Says Moral-Obligation Financing Is Constitutionally Sound," *Wall Street Journal*, October 16, 1975; Klapper, Byron, "Just How Binding Is a 'Moral Obligation'? Bond Market Nervously Awaits Answer," *Wall Street Journal*, February 28, 1975.
[62] "Wall Street: Moral Bond Dilemma," *New York Times*, February 16, 1975; Hance and Duvall, "Coinsurance: The Key to the Future for State Housing Finance Agencies?"
[63] Deputy Assistant Secretary, HPMC-FHA Commissioner, to the Secretary, Subject: OMB Decisions on State Agency Coinsurance Program, n.d., folder: Co-Insurance Program, Box 33, Carla Hills Papers, HIA.

Goldmark's words, the maneuver was "distinguished neither for its elegance nor its comprehensibility." But it could keep the agency afloat until November.[64] In Pennsylvania, investors refused to purchase bonds without receiving some form of security. The Pennsylvania Housing Finance Agency reported that institutional investors and individual bond buyers refused to lend money for low-income housing, fearing that the underlying housing developments could potentially default on loans. The agency intended to raise $2.5 billion to finance 100,000 housing units throughout the state, but struggled to find willing investors. The Vice President for the First Boston Corporation, a major investment bank that served as a bond underwriter for HFDAs, believed that investors were demanding higher interest rates in part because "the New York State moral obligation bond financing problems" had diminished the "credibility" of most HFDA obligations.[65]

As the condition of HFDAs deteriorated, state administrators hoped that provisions of the 1974 Housing and Community Development Act could help their agencies weather the crisis. In Congress, representatives from states with HFDAs believed that the agencies needed federal aid to remain operational. They urged HUD to expedite implementation of Sections 802 and 244, the new programs that allowed HUD

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[64] Greenhouse, Linda, "A Complex Shift of Funds Saves State Finance Unit," *New York Times*, October 10,1975.

[65] *Oversight of Section 8 Housing Assistance Program: Hearing before the H. Subcomm. on Housing and Community Development of the Comm. on Banking, Currency and Housing*, 94th Cong. 5 (1975) (Statement of John M. McCoy, Executive Director of the Pennsylvania Housing Finance Agency); ibid., 7 (Statement of Donald D. Kummerfeld, Vice President, The First Boston Corporation).

to subsidize and insure HFDA bonds and insure mortgage loans.[66] Earlier that year, Edward Logue, President of the New York Urban Development Corporation (UDC), wrote to Vice President Nelson Rockefeller, suggesting that by activating Section 802, HUD "would open a vast new market for the housing bonds of UDC and other State agencies." And the law's guarantee provision would allow the Corporation to "attract investments from public employee and other union pension funds, such as the construction unions whose stake in UDC's program level is very direct." Interest payments would allow the Development Corporation and other agencies to reach taxable investors like insurance companies and savings banks. John Burnett, President of the Council of State Housing Agencies, seconded the Corporation's position.[67]

HUD hesitated, but recognized that if the fiscal conditions of state agencies did not improve, federal mortgage insurance or guarantees might be necessary. This would require a swift reorganization of the agency's staff and budget to support risk assessment of federal guarantees, and might give HUD a "stewardship role." HUD staff also noted that Section 802 might offer a "viable solution" to the challenges facing state housing finance programs.[68] Meanwhile, state agency administrators observed that, despite the reliable quality of many state housing finance agency bonds, investors had lost their confidence. Federal coinsurance guarantees would help to improve investors' perception

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[66] Michael J. Harrington et al. to Carla Hills, October 10, 1975, folder: State Housing Finance Agencies, Box 33, Carla Hills Papers, HIA.
[67] Edward Logue to Vice President Nelson Rockefeller, January 9, 1975, HIA, Carla Hills Papers, box 95, folder: Section 802 Briefing Book; John Burnett to Carla Hills, August 29, 1975, HIA, Carla Hills Papers, box 95, folder: Section 802 Briefing Book.
[68] "DMI – 75 Process Analysis Phase II: Report on Community Planning and Development and HPMC – Section 8," October 10, 1975, Box 78, Carla Hills Papers, HIA, 114–15.

of the state agency securities. Federal coinsurance could help stabilize state agency obligations, "making them less subject to market fluctuations . . . ," and thus increase the productivity of state programs.[69]

But officials disagreed over whether and how HUD ought to put Sections 802 and 244 to use. For Section 244 mortgage coinsurance, HUD prioritized single-family housing, postponing plans for multifamily developments.[70] But this approach left state agencies without financing for Section 8 new construction. HUD staff recognized that "conventional lenders" had become unwilling to take "what they perceive to be substantial risks associated with Section 8 projects." HFDAs were the only non-federal entities willing to finance Section 8 new construction.[71] But while HUD could use insurance and subsidies for municipal bonds under Section 802 to support HFDAs, the program had limitations. In 1975, the interest rates on corporate bonds exceeded rates on similarly rated municipal bonds by 38 percent. The subsidy available under Section 802, however, could at most cover one third of interest payments. While Section 802 was designed to allow HFDAs to access taxable bond markets, the program could not reduce the cost on taxable bonds to non-taxable rates.[72]

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[69] Hance and Duvall, "Coinsurance: The Key to the Future for State Housing Finance Agencies?," 729, 746.
[70] Carla Hills to Michael J. Harrington et al., November 7, 1975, folder: State Housing Finance Agencies Box 33, Carla Hills Papers, HIA; Memorandum from David Cook to Carla Hills, Subject: Viability of State Housing Finance Agencies, August 29, 1975, folder: Viability of State Housing Finance Agencies, Box 95, Carla Hills Papers, Carla Hills Papers, HIA.
[71] David Cook to Carla Hills, Subject: Implementation of Section 802, September 3, 1975, folder: § 802, Box 33, Carla Hills Papers, HIA.
[72] John Weicher to Bernard Carl, Subject: Reply to HPMC Memo on 802, September 9, 1975, folder: § 802, Box 33, Carla Hills Papers, HIA.

Most importantly, federal guarantees would require HUD to monitor state activity more closely. Secretary Hills concluded that federal guarantees and interest subsidies would require the federal government to assume too much risk on behalf of local governments. In her view, federal guarantees for state-financed housing would require stringent oversight of local activity. Reflecting a larger ethos among federal officials that prioritized local autonomy, Hills wanted to extend assistance without imposing regulations or obligations on state agencies. But this was impossible to achieve under a guarantee program. Hills observed: "It would be unacceptable for HUD to merely guarantee bonds without determining that the proceeds were to be wisely invested." If states executed underwriting for mortgages financed using HUD-guaranteed bonds, they would have no incentive to evaluate risk; indeed, state agencies that assumed the greatest risk would receive the most benefit from the federal government. The insurance structure of Section 802 thus carried unwelcome incentives, and federal oversight would be necessary to protect the government's interests.

Furthermore, the language of Section 802 required the federal government to intervene in local policy decisions. The program authorized the federal government to guarantee only bonds that HFDAs issued for "the revitalization of slum or blighted areas . . . or any other program determined to be acceptable by the Secretary for this purpose." Despite HUD's broad discretion in selecting the type of programs that it could aid under Section 802, the programs needed to serve the purpose of revitalizing "slum or blighted areas." But as Secretary Hills observed, most state housing finance activity occurred in suburban areas, which administrators understood to have little "blight." The interest

subsidy would therefore limit the flexibility of HFDAs, requiring the federal government to steer local activity towards cities, where "slum or blighted areas" existed.

Instead, Secretary Hills decided that HUD could best help state agencies by entering coinsurance agreements. In a letter to one representative, Hills assured that the agency was "vigorously pursuing the possible use of Section 244 of the National Housing Act," allowing HUD "to co-insure mortgages, including those financed by state agencies." In contrast to bond insurance under Section 802, through which HUD would guarantee the entire bond, HUD guaranteed only a portion of a mortgage under Section 244. Section 244 was a "coinsurance" program. It mandated that the HFDA, as a mortgagee, assume a portion of the risk of a mortgage. Because HFDAs assumed a share of the risk, state agency officials had incentives to avoid issuing mortgages that were likely to default. HUD would make insurance payments if the borrower defaulted on the loan, but the HFDA would incur losses as well. This meant that co-insurance aligned the interests of HUD and state governments: if the HFDA shared in the losses if a borrower defaulted, the state agency had an incentive to be careful in making lending decisions. HUD could therefore allow HFDAs to perform underwriting functions without requiring the federal government to monitor local government underwriting decisions. Co-insurance resolved Secretary Hill's concern for the independence of local governments. As Secretary Hills emphasized, this would enable local governments to "retain the autonomy they now enjoy."[73] As HUD's preference for Section 244 over Section 802

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[73] Carla Hills to House Representative Richard Ottinger, December 29, 1975, folder: State Housing Finance Agencies, Box 33, Carla Hills Papers, HIA; Pub Law 93-383 (1974), §802(c)(1).

indicated, the government favored aid to local governments that minimized federal intervention, regulation, and oversight.

HUD's decision to withhold the interest subsidy required Congressional approval and invited conflict with legislators. In 1974, responding the Nixon administration's housing moratorium, Congress passed a law called the Congressional Budget and Impoundment Act. The law curtailed the president's power to order an executive branch agency to impound its funds, requiring the executive branch to seek Congress's approval. Unless Congress approved a proposed rescission within a forty-five days of the request, the law obligated the agency to use its full budget authority as initially provided by Congress. Under the Impoundment Act, HUD had full authority to avoid implementing bond and note guarantee component of Section 802 because Congress attached no appropriation to the guarantee. The interest payment component, however, received a modest $15 million appropriation, which required HUD to carry out the program unless Congress accepted HUD's rescission request.

HUD submitted a rescission request to Congress, arguing that Section 244 offered a superior method for supporting housing finance at the state level. But Congress failed to meet its forty-five day approval deadline, requiring HUD to move forward at least with the interest subsidy program. Senator Proxmire wrote to Secretary Hills, saying that he was "more than dubious" about the department's "good will efforts" to implement Section 802, and threatened litigation if it appeared the agency was dragging its feet. A

reader, possibly Secretary Hills, jotted in the margin of the letter: "NASTY!"[74] HUD reluctantly issued regulations in 1977to implement the Section 802 interest subsidy. But HUD did not authorize any guarantees for HFDA bonds.[75] Instead, the agency worked to build a viable coinsurance program.

In setting up a coinsurance program, HUD faced the difficulty of striking a balance between the level of risk it assumed with the benefits state agencies received. HUD recognized that if it imposed too little risk on a state agency, the agency would have little incentive to engage in careful underwriting. Agency officials were hesitant to assign more underwriting authority to HFDAs than was commensurate with the risk HFDAs assumed.[76] Secretary Hills initially proposed an arrangement in which states covered only the first twenty-five percent of any loss. But as state agencies argued, HUD's proposed seventy-five percent share would not be enough to "induce" investors to purchase "significantly more state housing finance agency bonds at lower interest rates."[77] The executive director of the Massachusetts Housing Finance Agency argued that the state agencies should cover only the top ten percent of losses.[78]

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[74] William Proxmire to Elmer Staats, April 13, 1976, HIA, Carla Hills Papers, box 33, folder: §802; Note to: Secretary, Subject: Computation of the 45 Day Count for the President's Rescission Messages on the State Housing and Finance Development Agencies Program (Section 802) and the Rehabilitation Loan Program (Section 312), February 12, 1976, folder: §802, Box 33, Carla Hills Papers, HIA.
[75] Interest Subsidy Regulations, 24 C.F.R. § 260 (1977).
[76] Carla Hills to Honorable Michael J. Harrington, November 7, 1975, folder: State Housing Finance Agencies, Box 33, Carla Hills Papers, HIA.
[77] Deputy Assistant Secretary for Housing Production and Mortgage Credit to Secretary Hills, subject: Risk Sharing for the State Housing Finance Agency Coinsurance Program, July 8, 1976, folder: Co-Insurance Program, Box 33, Carla Hills Papers, HIA.
[78] "H.U.D. Gets Plan to Spur Housing," *New York Times*, November 19, 1975.

The statute, however, set a minimum level of state agency liability at twenty percent.[79] Responding to the argument that the 80-20 balance was not enough to increase investors' interest in HFDA bonds, HUD administrators turned to Congress. HUD proposed an amendment that would require states to absorb only ten percent of losses.[80] Congress followed through, passing an amendment exempting state housing agencies from the original requirement of twenty percent responsibility.[81] By early 1978, HUD began accepting and processing applications for the coinsurance program from a handful of state agencies.[82]

As HUD worked out the details of its coinsurance program, state agencies continued struggling to raise capital. Implementation of coinsurance required amendments from Congress, which delayed HUD's measures to help secure HFDA bonds. And HUD refused to implement the bond subsidy program because it would require the agency to shape local policy. Congress intended for the 1974 Act to help state agencies produce affordable housing. But HUD was unwilling to adopt policies that would require it to regulate local affairs. HUD's inaction left states without aid that could help HFDAs raise funds for affordable housing development. HUD, intending to rely on state housing activity for Section 8 new construction, found itself with no viable housing production policy. For the 1970s, Section 8 relied almost entirely on existing housing.

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[79] 24 C.F.R. §250.738 (1977).
[80] Robert R. Elliott to Honorable Edward W. Brooke, Subject: Proposed Amendments to Section 244 of the National Housing Act, December 1, 1975, folder: Co-Insurance Program, Box 33, Carla Hills Papers, HIA; Hance and Duvall, "Coinsurance: The Key to the Future for State Housing Finance Agencies?," 742.
[81] Housing Authorization Act of 1976, Pub. L. No. 94-375, § 6, 90 Stat. 1067, 1070–71 (1976).
[82] "Fourth Annual Report to the Congress on the HUD Coinsurance Program," March 1, 1978, 8–9, folder: Coinsurance Program (HUD), Box 54, Patricia Roberts Harris Papers, LOC.

V.

As state housing finance agencies struggled to weather the recession, HUD debated what role the federal government should play in regulating state and local governments, which relied on federal tax exemptions to subsidize their housing programs. As evidenced by the key programs established through the Housing and Community Development Act of 1974, government officials aimed to extend aid in a way that afforded states and cities flexibility in establishing their own policy priorities but also pushed responsibilities onto them. Congressional debates on state and city government's use of tax laws raised the question of whether the federal government would regulate such programs. In these discussions, HUD hesitated to steer local policy decisions. Even where officials envisioned a role regulating local and state uses of federal resources, HUD wanted to evade detection as an intervening force, and to minimize the expansion of its administrative responsibilities.

Some officials believed the government should require state and local mortgage finance programs to comply with HUD's priorities. A HUD working group on mortgage bond financing recommended that the government set criteria for local governments to follow. As the group observed, "Tax exempt bond financing, while incurring Federal costs of lost tax revenue, carries with it no obligation on the part of local issuers to follow Federal housing and community development policy mandates." Of particular concern for the workgroup was the potential increase in local governments' involvement in single-family tax-exempt mortgage lending.

By the end of the 1970s, only a few cities had adopted tax-exempt mortgage bond programs, with bond issues totaling only $170 million; state housing finance agencies issues, by comparison, had reached $6 billion. But as more local governments became interested in tax-exempt bond programs, the volume of local bond issuances appeared likely to escalate rapidly. The increase in activity could displace conventional lenders, like savings and loan institutions, which were subject to federal regulatory controls. Municipal agencies, even when engaged in mortgage lending, were not covered by federal banking regulations. As local governments adopted mortgage bond programs that competed with private lending institutions, their increased activity "subtract[ed] from the volume of mortgage lending activity within the jurisdiction of federal bank regulatory agencies (FHLBB, FDIC, NCUA, Federal Reserve Board, Comptroller of the Currency)."[83]

Federal officials had reason to worry about the lack of regulation over municipal mortgage bond programs. While cities appeared to adopt mortgage lending programs in part with the goal of drawing "middle income families to the central city," the programs also threatened to "accelerate displacement of lower income families . . . ." Cities could use mortgage bond programs to inject funding into low-income communities, stimulating new development likely to drive up housing costs. It was unclear, however, whether cities had any obligation to help relocate displaced families. Furthermore, because municipal institutions did not fall within the jurisdiction the federal government's banking

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[83] Memorandum from Under Secretary Janis to Secretary Harris, Subject: Decision Memorandum: City Mortgage Bond Financing, January 15, 1979, folder: Mitchell, Jim, 1979, Box 102, Papers of Patricia Roberts Harris, Library of Congress, 4–6.

regulators, administrators feared that mortgage bond programs would evade the reach of the agencies' Fair Housing and anti-redlining rules.[84]

Instead of leaving the Treasury Department to oversee tax-exempt bond programs, the working group recommended that HUD assume a stronger regulatory role. As one measure, the group proposed that HUD establish a "two-tier income eligibility limit." First, the government should impose an "areawide income limit" set at the area median income of a jurisdiction. Second, HUD should allow local programs to follow more relaxed income-based criteria for housing located in "targeted urban revitalization areas," allowing households with incomes up to double the area median income to receive assistance under the local tax-exempt bond programs. By increasing the limit that applied in urban revitalization areas, HUD hoped that local governments would create an "incentive for middle income families to live in urban neighborhoods which they would not otherwise choose." By regulating eligibility criteria and site selection, HUD aimed to prevent local programs from taking on a "suburban orientation."[85]

In exercising oversight, however, federal officials wanted to minimize HUD's visibility. The proposal raised the issue of how HUD should implement any regulations. The work group suggested that HUD take "a low-profile approach" by having the Treasury Department adopt regulations that advanced HUD's policies. The Treasury may have needed authorization from Congress to adopt the regulations that HUD envisioned. But as the group observed, "The beauty of using Treasury regs as the policy vehicle is that the Federal requirements become self-policing." If the Treasury adopted new

[84] Ibid.
[85] Ibid., 9–10.

regulations, the bond counsel for a city would need to ensure that any new mortgage bond issuance complied with the policies. Otherwise, the city would risk issuing a bond that did not qualify for the tax exemption.[86] By having HUD consult with Treasury in developing tax regulations, rather than implementing its own regulations and reviewing project proposals for approval, HUD would avoid the appearance of exercising direct oversight.

Yet, by the mid-1980s, HUD had done little to steer state and local governments' use of mortgage revenue bonds. Some state housing finance agencies had adopted policies requiring that a significant number of low-income households occupy multifamily developments receiving subsidized mortgage loans. The few agencies that adopted strict standards acted voluntarily, and they represented an exception to the larger pattern of agencies using the tax exemption in ways that did little to produce housing affordable to low-income households. As state and local housing finance agencies proliferated, they remained subject only to the lax standards established under the Internal Revenue Code. The tax code required that low to moderate income households occupy only twenty percent of units in a development receiving tax exempt mortgage subsidies. In many areas, households with above-average incomes qualified as earning low to moderate incomes, thus allowing relatively affluent families to satisfy the twenty percent requirement. As an official from the Treasury Department concluded, the tax exemption thus provided "a very inefficient and very untargeted subsidy." Furthermore,

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[86] Ibid., 11–12.

as Treasury officials admitted, the Internal Revenue Service relied chiefly on "voluntary compliance" with the tax code.[87]

HUD was also reluctant to use its coinsurance programs as a vehicle for regulating lenders and developers. In addition to the Section 244 coinsurance program, Congress in the 1970s had enacted other coinsurance programs that allowed HUD to insure private mortgage lending for affordable housing developments. Unlike with Section 244, HUD staff initially conducted underwriting for its coinsurance programs involving private loans. But during the 1980s, as the administration whittled down HUD's staff, the agency issued coinsurance contracts that shifted underwriting responsibilities for its mortgage insurance programs from HUD to private lenders. In this respect, the Section 244 coinsurance program provided HUD with a model during the 1980s for privatizing its other coinsurance programs. As members of Congress observed, HUD's coinsurance programs allowed the agency to rely on external actors like HFDAs and lending institutions to carry out all risk assessment and underwriting, which in theory enabled the agency to incentivize affordable housing development without needing a

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[87] See, for example, *Tax-Exempt Multifamily Rental Housing Bonds: Hearings before the Subcomm. on Oversight of the H. Comm. on Ways and Means*, 99th Cong. 3–6 (1985) (Statement of Raymond J. McGrath, Representative in Congress from the State of New York); ibid., 9–13 (Statement of Ralph v. Carlone, Deputy Director, Resources, Community, and Economic Development Division, U.S. General Accounting Office); ibid., 88–99 (Statement of Mikel M. Rollyson, Tax Legislative Counsel, Department of the Treasury); ibid., 109–111 (Statement of Feather O'Connor, Vice President, Council of State Housing Agencies, and Executive Director, New Jersey Housing and Mortgage Finance Agency).

large administrative staff to implement the program. In addition to delegating underwriting responsibilities, the agency also did little to audit underwriters.[88]

By delegating underwriting responsibilities to private actors, HUD paved the way for stunning displays of malfeasance. In the early 1980s, HUD entrusted one private lender based in Washington, D.C., DRG Funding Corporation, to underwrite federally-insured mortgage loans for multifamily housing developments. DRG was one of 55 lenders approved to underwrite loans coinsured by the federal government. As mandated under federal statute, HUD required DRG to underwrite three demonstration projects before receiving full authorization to underwrite loans. But once it executed its underwriting demonstration to HUD's satisfaction, HUD authorized DRG to underwrite projects with no federal oversight.

Left with complete autonomy, DRG proceeded to approve insured loans for speculative or poorly-designed projects, often appraised at inflated values. In Houston, where a slump in the economy during the 1980s left demand for new housing at a record lows, DRG closed on a loan for a monumental 1,818-unit development called Colonial House. When one HUD official learned of the decision, it struck him as so mad that he "almost fell out of his chair."[89] But there was little HUD could do. HUD had legally assigned all underwriting responsibilities to DRG, and had no authority to stop the firm. DRG approved a loan of $47.2 million for the Colonial House. After the developer

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[88] *The Abuse and Mismanagement of HUD: Hearings before the HUD/Mod Rehab Investigation Subcomm., S. Comm. on Banking, Housing, and Urban Affairs*, 101st Cong. 21–22, 26, 52–54, 68–71 (1990); *Abuses, Favoritism, and Mismanagement in HUD Programs (Part 3): Hearings before the Employment and Housing Subcomm., H. Comm. on Government Operations*, 101st Cong. 100 (1989).

[89] *Abuses, Favoritism, and Mismanagement in HUD Programs (Part 3)*, 100.

defaulted on the loan and the project entered foreclosure, it sold for only $8.9 million at a foreclosure sale, saddling HUD with a significant loss.[90] DRG underwrote other misguided projects, and subsequent investigations led federal officials to suspect that DRG and other lenders had colluded with developers to inflate their appraisals, a fraudulent practice that allowed firms to receive larger servicing fees and guaranteed developers a larger payout in the event of a default. Indeed, nine other projects in Houston sold for a quarter of their initial appraisal after entering default. By the end of the 1980s, up to $700 million in DRG loans had entered default.[91]

As projects entered foreclosure, HUD officials worried that taking action against private underwriters would invite attention and criticism of the agency itself. As the volume of defaults swelled, HUD in 1990 terminated the program, though it did not revoke existing contracts. Properties financed by other coinsurance lenders entered default throughout the 1980s, and by 1992, HUD took over at least 900 defaulted loans that it had coinsured, which in total amounted $5.3 billion, with HUD's losses on insurance claims projected to rise to $11.9 billion. HUD's lack of oversight affected the lives of tenants. As coinsured housing projects across the country entered foreclosure,

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[90] Ibid.

[91] Gwen Ifill, "HUD to End Co-Insurance Program for Multifamily Housing," *Washington Post*, January 18, 1990; "Federal Mortgage Program Killed: Kemp Cites Huge Losses under Reagan Insurance System," *Chicago Tribune*, January 18, 1990; Ann Mariano, "Costs Escalate on Coinsurance Cleanup Effort: Tab for HUD Program May Reach $8 Billion," *Washington Post*, August 8, 1992; *HUD Multifamily Finance and Coinsurance: Hearing before the Subcomm. on Housing and Community Development of the H. Comm. on Banking, Finance and Urban Affairs*, 101st Cong. 21–24 (1990) (Statement of HUD Under Secretary Alfred Dellibovi).

managers either gave up maintenance, or lacked financing for improvements. Units fell in disrepair, at times leaving tenants without plumbing and electricity.[92]

The striking lack of oversight stemmed from HUD's efforts to cut staff, maximize local flexibility, and ultimately, minimize the federal government's role in administering affordable housing policy. Marvin Siflinger, executive director of the Maryland Housing Finance Agency encapsulated the problem:

> In any system of decentralization, you must have an evaluation component. Now technically HUD had an audit responsibility under the coinsurance program. They did not do it. They simply did not do it. There was such an overreaction to a philosophy of decentralization that common sense did not prevail, which I think led to the abuses.[93]

In its haste incentivize affordable housing loans, minimize the federal government's regulatory activity, and reduce direct federal investment in housing, HUD enabled private financial institutions to exploit federal housing policy.

HUD's coinsurance program adopted a similar minimalist approach to regulation. HUD only required that twenty percent of households in a coinsured project have incomes no more than eighty percent of the area median income.[94] In 1980, HUD replaced these income criteria with a new rule: at least twenty percent of units needed to

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[92] Ann Mariano, "HUD Officials Ignored Warnings About D.C. Lender: DRG Funding's High Rate of Mortgage Defaults Cited," *Washington Post*, August 19, 1989; Ann Mariano, "DRG Funding: Sour Loans, Bitter Charges," *Washington Post*, April 9, 1989; Ifill, "HUD to End Co-Insurance Program," January 18, 1990; Ann Mariano, "HUD Takes Over Control of Mortgages from York: $2 Billion in Federally Backed Loans at Issue," *Washington Post*, July 14, 1990; Mariano, "Costs Escalate on Coinsurance Cleanup Effort," August 8, 1992; Guy Gugliotta, "In Failed Housing Project, HUD is Savior and Villain: Dallas Site Symbolizes $11.9 Billion Debacle," *Washington Post*, July 6, 1993.

[93] *Abuses, Favoritism, and Mismanagement in HUD Programs (Part 3)*, 70.

[94] See, for example, 24 C.F.R. §§ 250.10, 250.201 (1976).

go to Section 8 recipients.[95] As these regulations suggested, HUD did not use coinsurance to pursue its earlier priorities, from suburban integration to metropolitan resource sharing.

Coinsurance thus deregulated housing development and shifted administrative responsibilities from the federal government to cities and private financial institutions. Congressman Henry B. Gonzalez of San Antonio, who had a front-row view of Congress's deliberations on the 1974 Housing and Community Development Act, recognized this. In a 1990 hearing dissecting the wreckage of the coinsurance program, he looked back to the 1970s, and explained: "[I]n relation to [the Community Development Block Grant program] . . . this coinsurance was something that was sort of a corollary." As a program that by 1988 accounted for seventy percent of HUD's multifamily housing development activity, he observed, coinsurance was a as much a piece of the federal government's privatization and deregulation efforts as block grants.[96]

Congress further decentralized the federal government's housing policy system in the late 1980s. The Tax Reform Act of 1986 created an affordable housing development program that was implemented through a new Low-Income Housing Tax Credit. The program allowed residential rental property owners to claim a tax credit for ten years. In exchange for the credit, property owners had to set aside units for low- to moderate-income families, and charge those families rents of no more than thirty percent of their annual incomes. The program also supplemented state housing finance agencies' tax-exempt mortgage revenue bond programs. In addition to allowing developers to claim a

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[95] 24 C.F.R. § 250.6 (1980).
[96] *HUD Multifamily Finance and Coinsurance: Hearing before the Subcomm. on Housing and Community Development of the H. Comm. on Banking, Finance and Urban Affairs*, 101st Cong. 8, 25 (1990); ibid., 62 (Opening Statement of the Chairman Henry B. Gonzalez).

credit worth nine percent of a new construction project's appraisal value, the program alternatively allowed developers to claim a four percent credit for projects financed with nontaxable bonds. In this way, the tax credit program deepened the subsidy available under state housing finance agencies' bond financing programs.[97]

The Tax Reform Act delegated all administrative responsibilities to the Treasury Department. The Act thus absolved HUD from managing what soon became the country's leading affordable housing production program. But the Treasury had little interest in affordable housing. It acted in practice as a pass-through, allocating credits to states based on population. State agencies administered the program, establishing criteria for evaluating applications, and selected projects that received credits. The statute set some minimum standards, for example requiring that a project either set aside twenty percent of units for households with income of fifty percent or less of area median gross income, or set aside forty percent of units for households with income of sixty percent of area median gross income. Aside from these baseline criteria, HUD and Treasury did little to guide state agencies.[98]

The low-income housing tax credit exemplified a two-part shift in the federal government's housing programs. First, it moved administrative responsibility and policymaking authority from federal agencies to state housing finance agencies. Second,

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[97] Tax Reform Act of 1986, Pub. L. No. 99–514, § 252, 100 Stat. 2085, 2189 (1986).
[98] Erickson, David, "Community Capitalism: How Housing Advocates, the Private Sector, and Government Forged New Low-Income Housing Policy, 1968-1996," *Journal of Policy History*, 18, no. 2 (2006), 178–91; Government Accountability Office, *Low-Income Housing Tax Credit: Joint IRS-HUD Administration Could Help Address Weaknesses in Oversight* (Washington, DC: U.S. G.P.O., 2015); Pub. L. No. 99–514, § 252, 100 Stat. 2085, 2195–96 (1986) ("§ 42(g)(1)–(2)").

HUD declined to regulate states' use of the tax credit, and thus did little to influence project design, eligibility criteria, site selection, and coordination with other urban development programs. This shift began with the 1974 Housing and Community Development Act, which gave local units of government new flexibility over the use of community development funding and left state governments with the responsibility for financing and developing affordable housing. It was also evident in HUD's reluctance to monitor state mortgage revenue bond programs, even in coinsured projects. Federal deregulation culminated with the 1986 Tax Reform Act, which left state governments free to implement the low-income tax credit program as they saw fit. Decentralization had eviscerated the government's role in setting urban policy priorities.

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In the early to mid-1970s, HUD and Congress worked in concert to reduce the federal government's role in directing housing and urban development policy. The Housing and Community Development Act of 1974 served as the primary instrument driving this shift. It authorized HUD to subsidize the cost of rent that low-income tenants paid to live in existing housing. Rental assistance, rather than subsidies for new low-cost housing development, become the federal government's primary form of federal housing assistance. At the same time, the law capitalized on the rise of state housing finance and development agencies, which spread across the U.S. between 1968 and 1974. Congress attempted to increase states' capacities for financing the development of new subsidized housing. With Section 802, Congress intended for HUD to subsidize bond interest payments to help HFDAs access the taxable bond market, as well as issue guarantees on

HFDA bonds to attract cheaper capital. With Section 244, Congress authorized HUD to coinsure mortgagees, thereby sharing risk with entities like HFDAs. By bringing the full faith and credit of the federal government behind state housing agency bonds, HUD and Congress intended to stabilize bond sales in the nontaxable municipal market.

HUD administrators, acting at the direction of President Nixon, played an important role in guiding the federal government's shift in policy. In the 1973 legislative proposal submitted to Congress, Nixon and HUD embraced Nixon's belief that private action, rather than federal programs, should guide affordable housing development. The 1974 Act followed this model. And even though Congress reauthorized some of the government's housing development programs, including Section 236, HUD never re-activated its multifamily housing development programs. Instead, administrators focused on establishing a coinsurance program to help states develop affordable housing that they could combine with Section 8 vouchers.

These decisions left affordable housing programs dependent on private investors. In the mid-twentieth century, Congress appropriated funds for direct payments to local housing authorities or developers to subsidize construction. Following Nixon's moratorium and the 1974 Act, the federal government left that financing to private lenders and state agencies that raised capital by selling nontaxable bonds to private investors. The capacity of state agencies to lend and stimulate housing development thus hinged on the performance of U.S. bond markets. As investors became wary of "moral obligation" bonds, and as interest rates increased following the 1973 recession, HFDAs struggled to raise capital to finance development. HUD's coinsurance program offered

some protections against the fluctuations of financial markets, but HUD was slow to implement its plans. As commercial banks refused to buy mortgage revenue bonds, federal and state governments had little ability to stimulate housing development. The new construction component of Section 8 came to naught, leaving voucher recipients to reliant on existing private housing.

Just as important, this shift in federal policy devolved policymaking and regulatory authority to state and local governments. Through their underwriting practices, lending activities, and efforts to raise capital, state and local actors interpreted and applied housing and urban development policies.

George Romney's staff in the early 1970s viewed HUD's programs as mechanisms for implementing a national social and economic policies. HUD's housing production and social policy agendas sat in conflict, undermining the agency's halting efforts to integrate cities.[99] The agency's attempts to confront racial and economic injustices within cities invited stinging challenges to federal authority. Beginning with the 1974 Act, HUD effectively ceded its authority in both arenas, both by terminating its housing production programs and by declining to regulate local actors in their administration of bond-financed affordable housing programs. In its review of federal housing policy, the Nixon administration's leading criticism was that the nation's programs served too many conflicting purposes, ranging from economic development to advancement of civil rights. As the administration argued, the "multiplicity of Federal housing goals helps explain why there has never been unity and coherence, either in

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[99] See, for example, Christopher Bonastia, *Knocking on the Door: The Federal Government's Attempt to Desegregate the Suburbs* (Princeton, N.J.: Princeton University Press, 2006), 12, 104.

housing and community development programs or in administrative organization, for carrying the goals into effect."[100] With the 1974 Act, Congress and HUD appeared to respond to this critique by reducing HUD's role in advancing social policies.

Over the decades that followed, state and local actors gained independence as HUD's regulatory powers dissipated. Where HUD once used housing programs to advance social and economic reform, the devolution of federal policy to state and local governments—and even private actors—reduced this vision to a mere memory.

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[100] National Housing Policy Review, *Housing in the Seventies* (Washington, D.C.: U.S. Department of Housing and Urban Development, 1974), 5–7, 22–30.

Statistical Appendix

HUD data indicate that only a small portion of Section 8 recipients lived in housing financed by state housing finance agencies. The following discussion uses administrative data HUD produced in the late 1970s and early 1980s to examine the geographic differences between Section 8 and Section 236, one of the housing production programs HUD suspended during the Nixon moratorium. It further examines differences between the geography of households living in Section 8 existing housing and households receiving Section 8 certificates to live in housing financed by HFDAs. HUD's data is of varying quality for different geographic areas. Given the comprehensiveness of census tract data for Chicago and Los Angeles, these two metropolitan areas serve as the setting for this analysis.

In the mid-1970s, HUD began using a data system to manage records of households that received assistance under federal housing programs. The system documented households' demographic characteristics and place of residence. The data covered households who entered housing produced under Section 236, as well as households receiving rental assistance under the new Section 8 program. HUD gathered its best data on Section 8 and Section 236 households in 1980. Although HUD impounded Section 236 funds and refused to issue new commitments for housing production, the department continued to pay subsidies on existing Section 236 housing. Geographic patterns of Section 236 housing therefore reflect the housing HUD helped

produce between 1968 and 1973. Because HUD documented the census tract where households lived, the data allow historians to test whether market-based housing programs in fact hindered the mobility of households. Furthermore, the data for Section 8 identify which households lived in housing that HFDAs financed.[101]

Despite the efforts of the Gautreaux Program, HUD's data indicate that Section 8 tended to reinforce patterns of segregation in Chicago. In the Chicago metropolitan statistical area, HUD enrolled for the first time, or recertified, six thousand households for Section 8 assistance. The Chicago metro area included suburbs in the counties of DuPage, Will, Kane, and Lake. Of all households throughout the metro area, 3890 lived in Cook County, which contained Chicago and some suburbs of the city. The remaining 2044 households lived in suburbs outside of Cook County. Only 397 of the households living outside of Cook County were black. This means that only nineteen percent of Section 8 certificate holders outside of Cook County were black, whereas forty-three percent of all households receiving Section 8 assistance in the Chicago metro area were black. Of all black households living outside of Cook County, fifty-nine percent lived in census tracts where over forty percent of the residents were black; twenty-nine percent lived in tracts where over sixty percent of residents were black. (See Figure 2.)[102]

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[101] Records of the Subsidized Housing Admission and Continued Occupancy (SHACO) System, and the Lower Income Assistance Program System (LIAPS), 1974-1982, National Archives and Records Administration (NARA), Record Group 207, ARC ID: 534, General Records of the Department of Housing and Urban Development, box 1, folder: NARA Documentation: List of Documentation.

[102] Section 236 figures in the following paragraphs are based on the data file "Non-Section 8 1982, collected on 8/80 version of form 50059," National Archives and Records Administration (NARA), Record Group 207, ARC ID: 534, General Records of the Department of Housing and Urban Development. All figures on Section 8 in this paragraph and following discussion are from

Section 8 nonetheless appeared to relax the rigidity of Chicago's segregated racial geography.[103] Eighty-four percent of all black individuals in the Chicago metro area lived in census tracts where over sixty-percent of all people were also black. A lower rate of black Section 8 recipients lived in neighborhoods of high minority concentration: sixty-two percent of all black section 8 households lived in census tracts where over 60 percent of households were black. Furthermore, while only five percent of the metro area's entire black population lived outside Chicago's Cook County, fifteen percent of black Section 8 households lived outside Cook County (see Figure 2).

In Cook County, where over half of Section 8 certificate holders were black, Section 8 households had limited mobility outside areas of high minority concentration. The program offered only a slight improvement over HUD's old construction-oriented programs. Sixty-eight percent of black Section 8 recipients lived in census tracts with where over sixty percent of residents were black. And over half of all black Section 8 households—fifty-eight percent—lived in tracts where over ninety percent of all households were also black. By comparison, seventy-two percent of black families living in Chicago's Section 236 housing resided in tracts where over sixty percent of individuals were black; sixty percent of all black households in Section 236 housing lived in tracts where over ninety percent of individuals were black (see Figures 3 and 4).

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the data file "Section 8 1982, collected on 8/80 version of form 50059," National Archives and Records Administration (NARA), Record Group 207, ARC ID: 534, General Records of the Department of Housing and Urban Development. Demographic census tract data from 1980 census of the U.S Census Bureau, retrieved from www.socialexplorer.com.

[103] This finding offers moderate qualification to the argument in Gill, "Moving to Integration?: The Origins of Chicago's Gautreaux Program and the Limits of Voucher-Based Housing Mobility."

Similar patterns arose in Los Angeles, although segregation was less severe. Sixty percent of black Section 8 recipients lived in areas that were over forty percent black; forty-six percent of black Section 8 recipients lived in tracts where over sixty percent of individuals were black. Here, Section 8 appeared more of an improvement over Section 236. Under Section 236, eighty-two percent of black households lived in areas that were over forty-percent black; seventy percent of black households lived in areas that were over sixty percent black (see Figure 5).

Perhaps most importantly, HUD's administrative data indicate that very few Section 8 recipients lived in new construction housing that state housing finance agencies helped produce. In Chicago, the Illinois Housing Development Authority (IHDA), the state's housing finance agency, located all Section 8 new construction in Cook County. The state-financed units served a total 664 Section 8 households, 366 of whom were black. Sixty-three percent of all state-financed Section 8 housing was located in tracts that were over sixty-percent black. The 366 black households perhaps represent too small a sample to illustrate significant patterns, but it deserves mention that ninety-six percent of the black households lived in tracts where over sixty percent of residents were black, and eighty-nine percent of the black households lived in census tracts that were over ninety-five percent black (see Figure 6). In California, where the housing finance agency was only five years old in 1980, state-financed Section 8 was nearly nonexistent. The state contributed to the construction of only 484 units that served households with Section 8 certificates. Only thirty-one of the households were black (see Figure 7). Given the structure of the Housing and Community Development Act of 1974, the lack of state-

financed housing means that government-sponsored development stalled in cities like Chicago and Los Angeles.

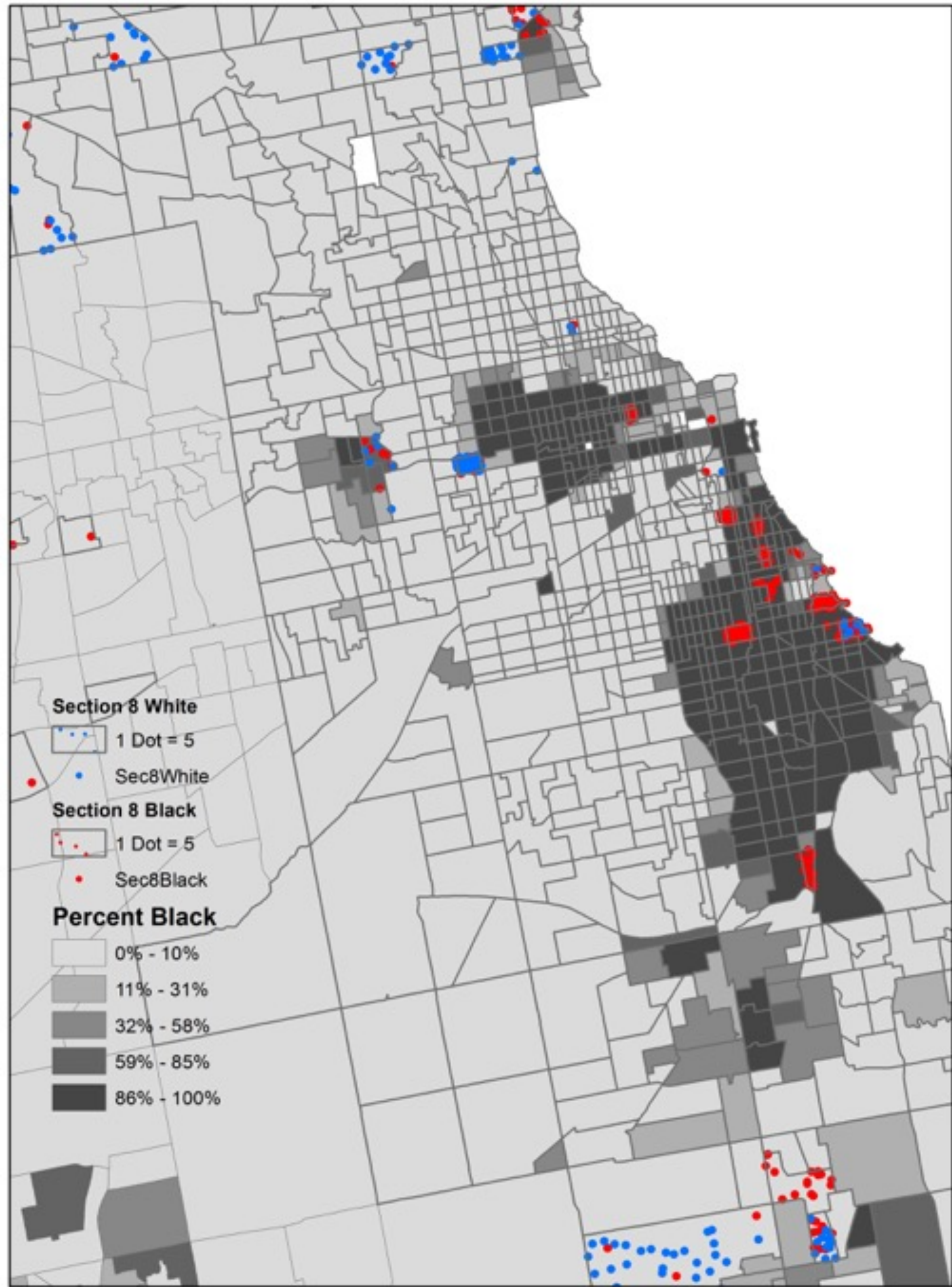

Figure 2: White and black Section 8 households in Chicago in 1982. Blue dots represent white households and red dots represent black households.

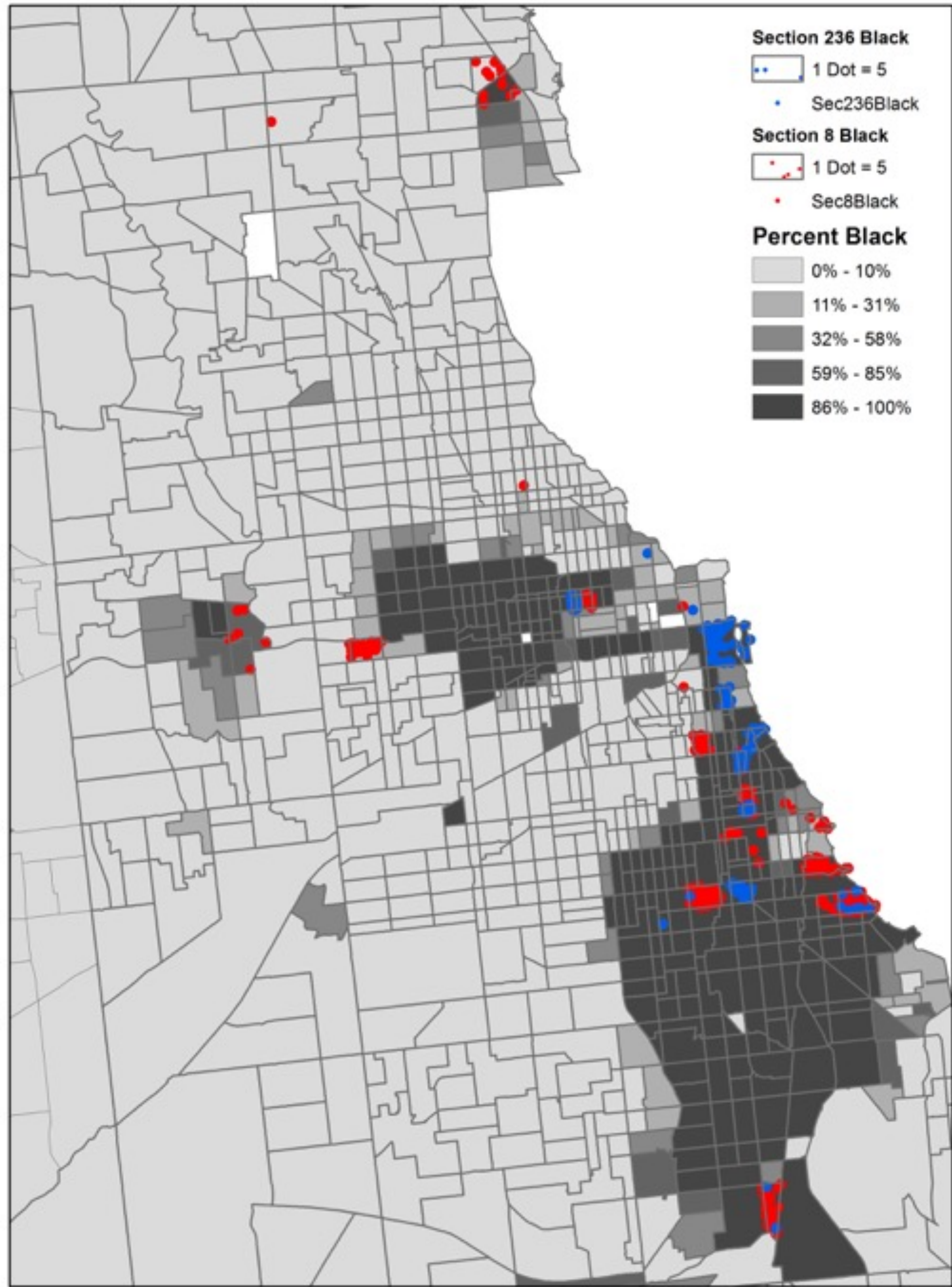

Figure 3: Black households in Section 236 and Section 8 in Chicago in 1982. Red dots represent Section 8 and blue dots represent Section 236.

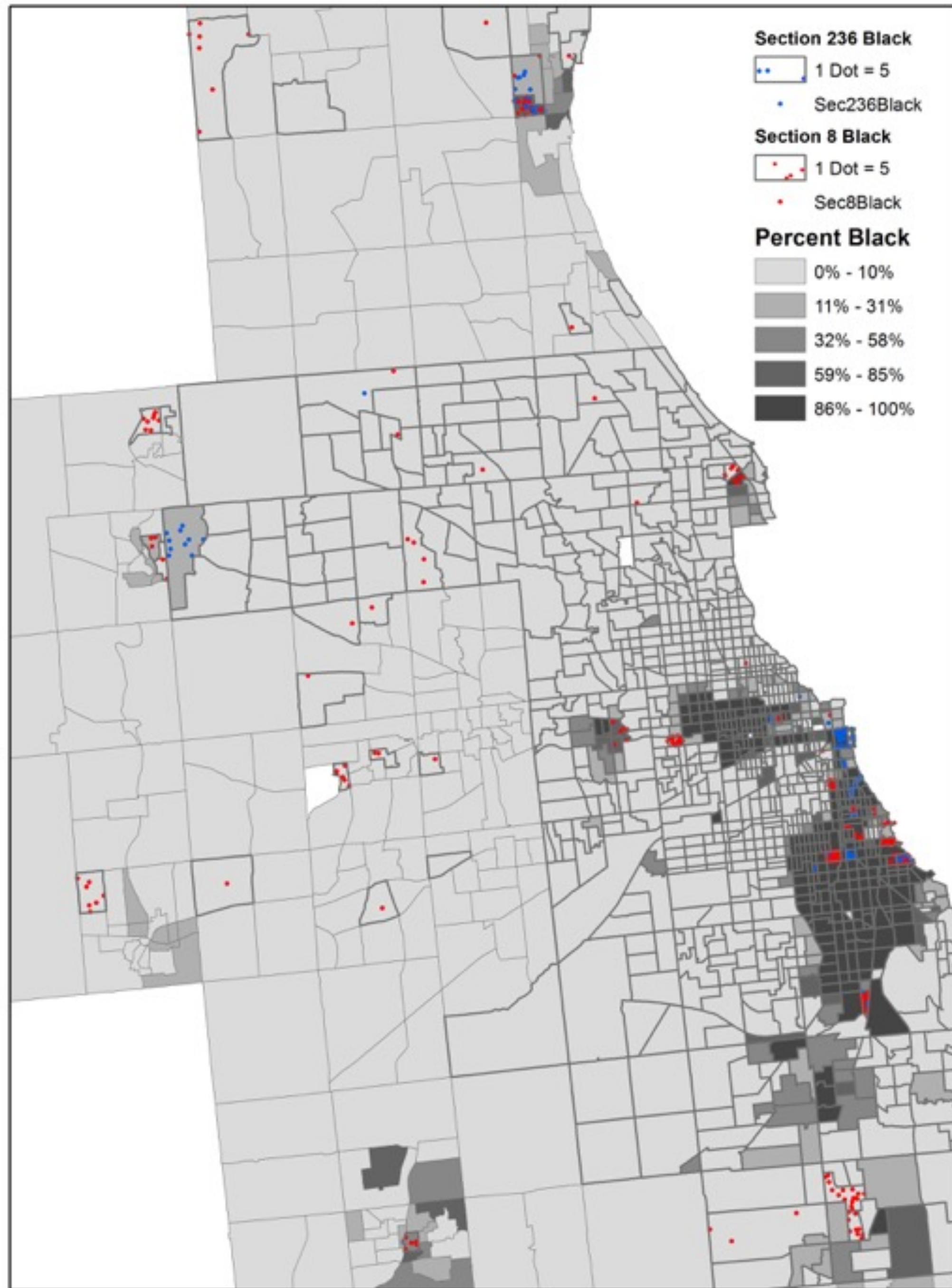

Figure 4: Black households in Section 236 and Section 8 in the Chicago metropolitan region in 1982. Red dots represent Section 8 and blue dots represent Section 236.

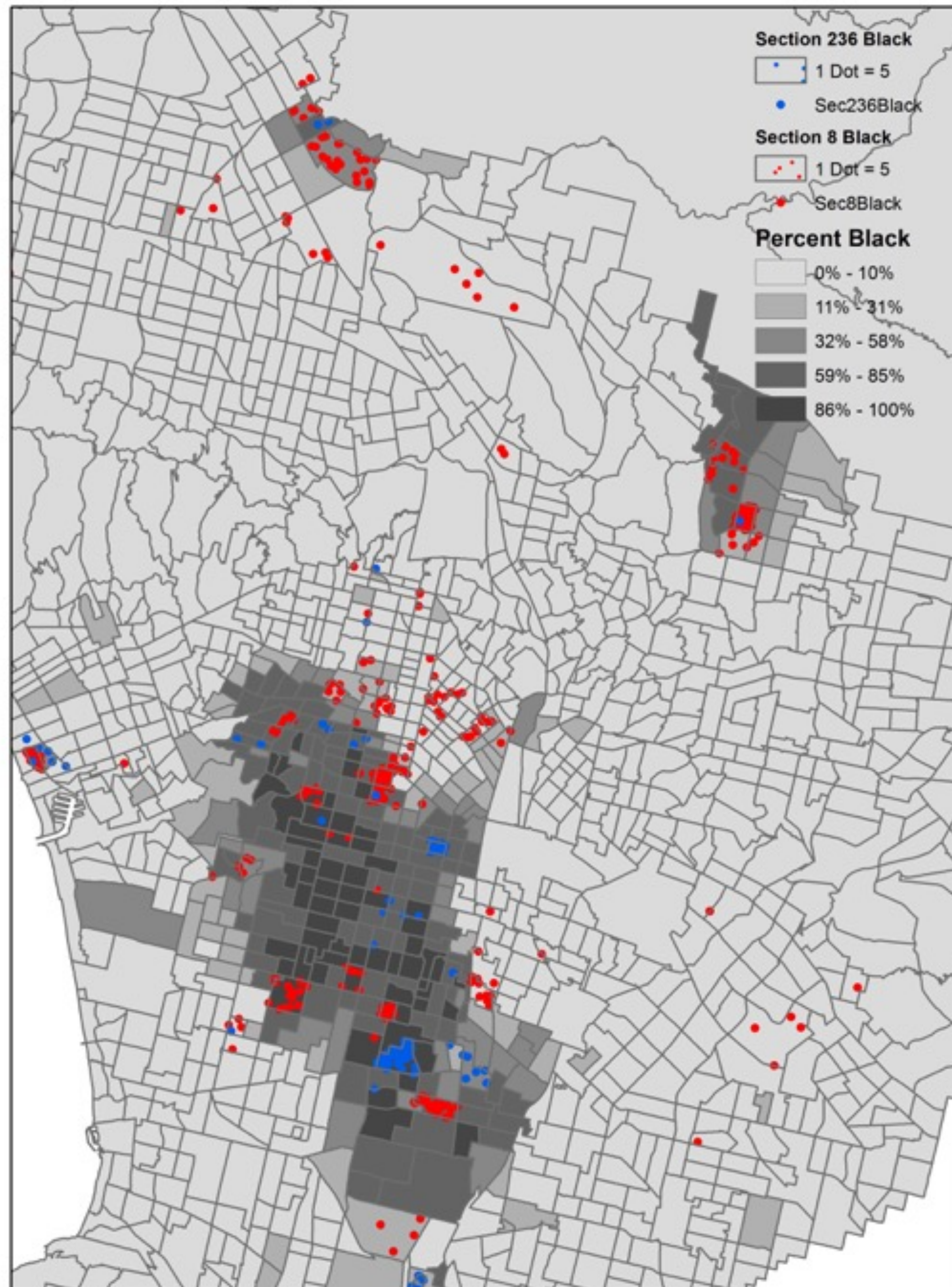

Figure 5: Black households in Section 236 and Section 8 in Los Angeles County in 1982. Red dots represent Section 8 and blue dots represent Section 236.

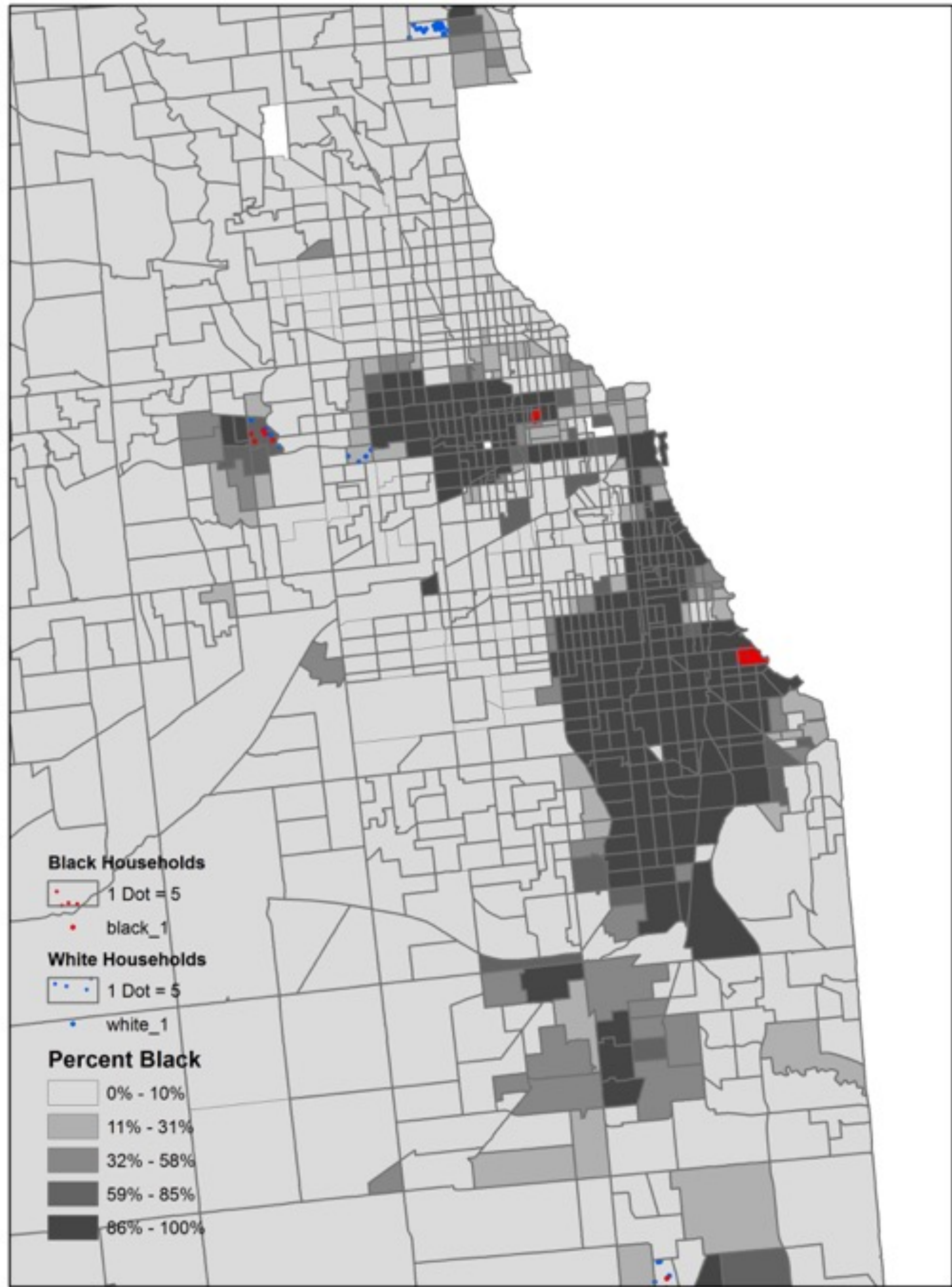

Figure 6: Section 8 recipients in housing financed by HFDAs in Chicago in 1982. Red dots represent black households and blue dots represent white households.

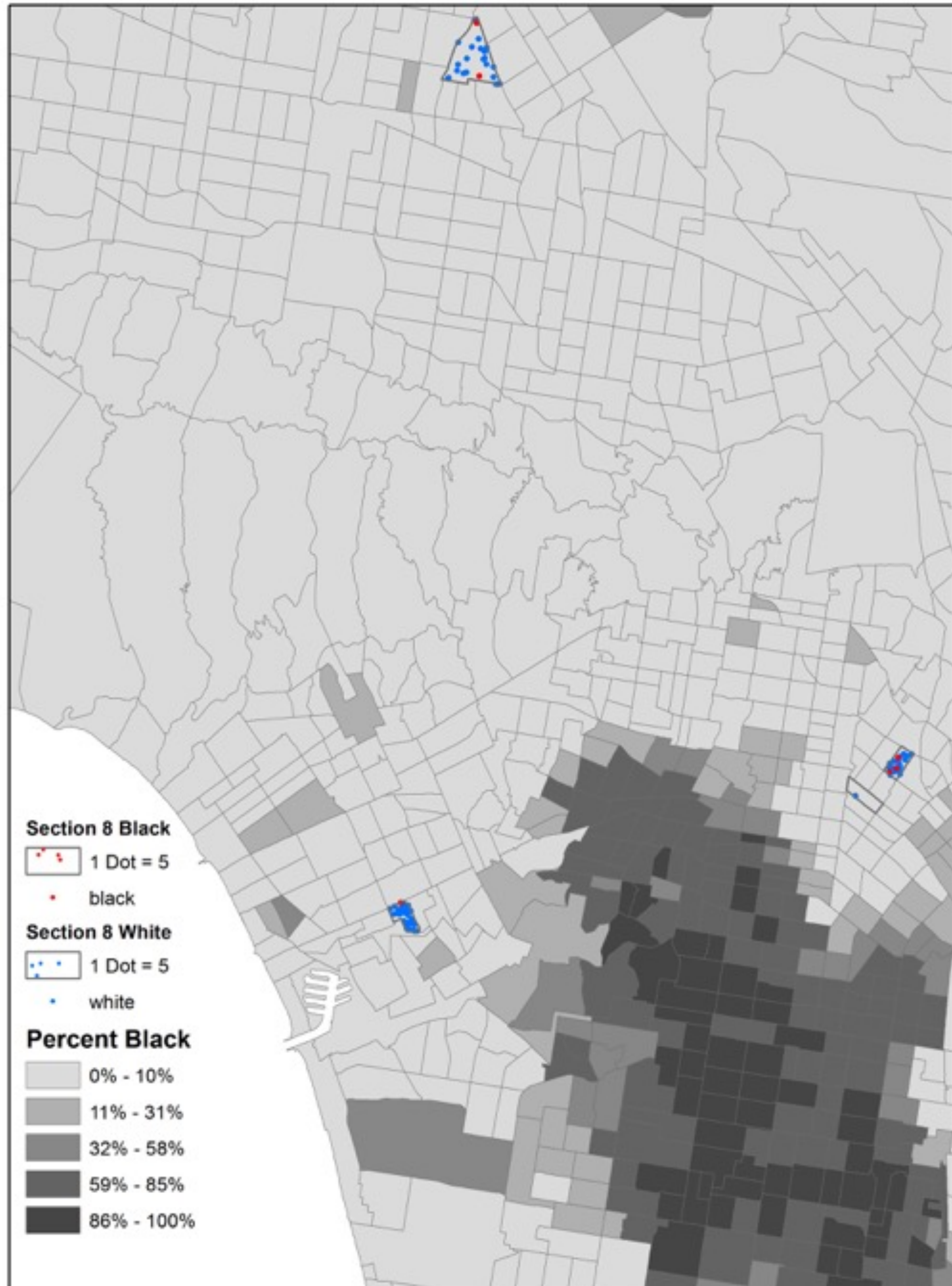

Figure 7: Section 8 recipients in housing financed by HFDAs in Los Angeles in 1982. Red dots represent black households and blue dots represent white households.

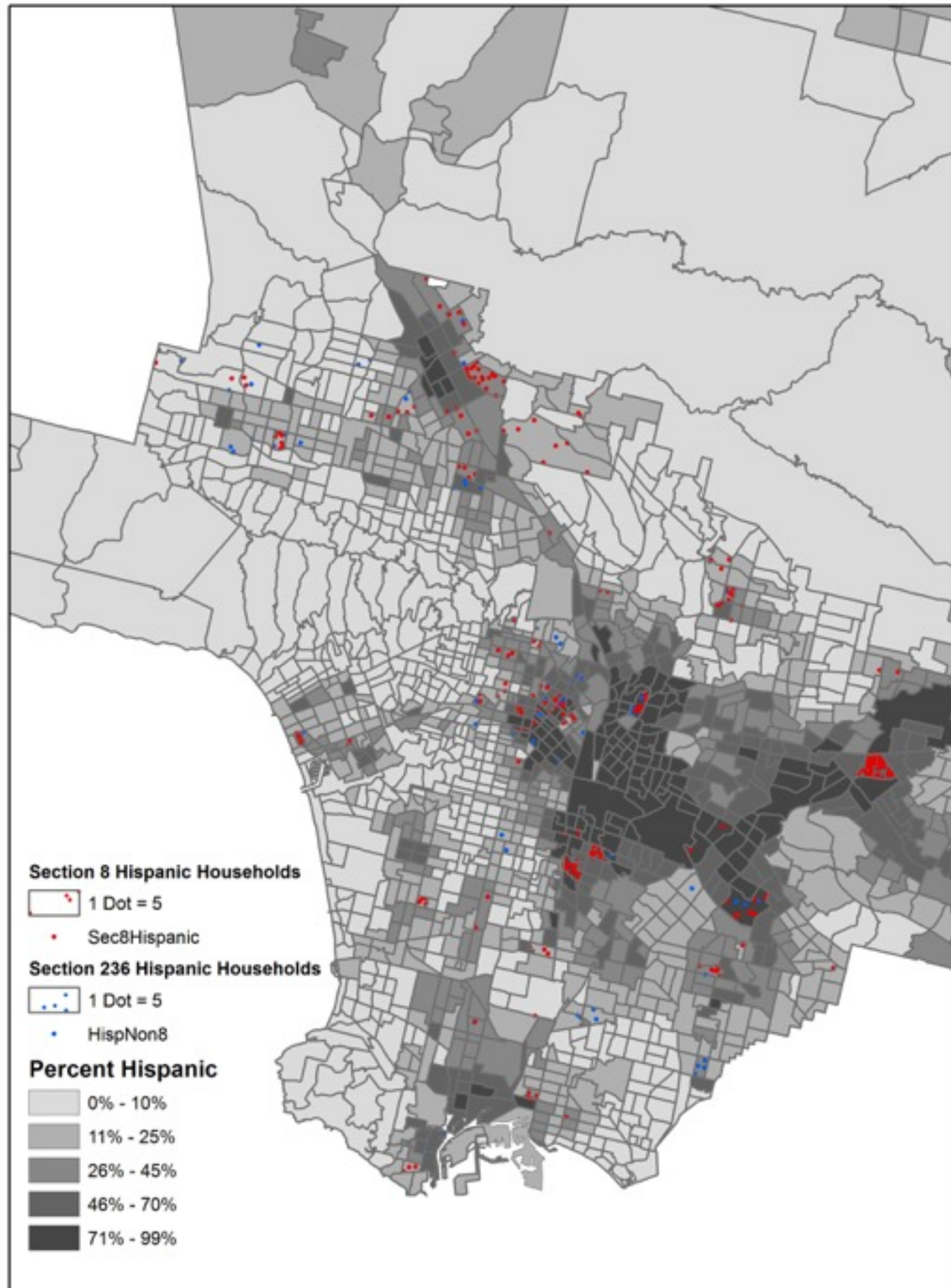

Figure 8: Hispanic households receiving Section 8 and Section 236 assistance in 1982. Red dots represent Section 8 households and blue dots represent Section 236 households.

Chapter 4

Municipal Bankruptcy and the Federal Regulation of Local Finance

Inflation, economic recession, and bankers' demands for higher interest rates brought state housing finance agencies to a standstill in the 1970s. Economic turmoil hit New York's housing finance agencies, and New York City itself, with particular force. In 1975, New York City came dangerously close to defaulting on its debt. The city's fiscal problems reflected the challenges that municipal governments across the U.S. faced in the early 1970s. The Ford Administration debated whether the government should offer some form of bailout to the City, and if so, what type of aid to provide.[1] Writing in the early 1980s, economist William Tabb observed that the "handling of the New York City crisis prefigured the Reagan administration's tactics in its effort to dismantle the welfare state."[2] Similarly, the Administration's response to municipal fiscal crises enshrined new ways of thinking about municipal debt and the federal government's relationship with states and cities.

Leading into the 1970s, many central cities in the United States endured a rapid loss of jobs, coupled with a less dramatic fall in population numbers. As employment opportunities evaporated at rates outpacing population loss, municipalities experienced a

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[1] Other cities faced budget challenges. New Orleans, which in 1975 received greater fiscal autonomy from the State of Louisiana, suffered loss in revenue as affluent households moved to surrounding suburban jurisdictions. See Memorandum for the Director, from William M. Nicholas, Acting General Counsel, subject: Control of the Budget of New Orleans, September 18, 1975, folder: "New York City (4)," Box G7, James T. Lynn Papers, Gerald R. Ford Library.
[2] William K. Tabb, *The Long Default: New York City and the Urban Fiscal Crisis* (New York: Monthly Review Press, 1982), 7.

reduction in local revenue. But individuals who continued to live in cities tended to rely more heavily on municipal services. Urban population decline did little to reduce overall demand for services.[3] Furthermore, as a group of professors from the Maxwell School of Citizenship and Public Affairs at Syracuse University observed, high rates of inflation tended to reduce the purchasing power of municipal funds, while simultaneously generating modest increases in municipal revenue that failed to keep pace with reductions in purchasing power. Signifying the extent to which inflation undercut sources of municipal revenue, state governments felt a reduction in purchasing power totaling $6,648 million, a sum that exceeded states' receipt of 1974 federal sharing funds; the purchasing power of local governments fell by $3.3 billion, amounting to eighty percent of their federal revenue sharing entitlement.[4] Rising rates of inflation, in short, diminished the value of strained municipal resources.

The New York City crisis reverberated throughout other municipalities in the Northeast. Michael Harrington, a representative from Massachusetts, noted that the New York crisis had "destabilized" the "New England bond market." As he explained, investment firms were becoming reluctant to purchase notes issued by state agencies and

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[3] Advisory Commission on Intergovernmental Relations, *City Financial Emergencies: The Intergovernmental Dimension* (Washington, D.C.: U.S. Government Printing Office, July 1973).

[4] The Maxwell School study used inflation between 1972 and 1974 as an example. The study found that if municipalities maintained tax rates in 1974 at 1972 rates, then municipal revenue would increase by fifteen percent. In contrast, the study found that for a municipality that maintained services at constant levels, and adjusted employee compensation only to account for increases in the cost of living, expenditures would increase by 25 percent. *Fiscal Relations in the American Federal System: Hearings before the H. Subcomm. on Government Operations*, 94th Cong. 228–34 (1975) (statement of Alan K. Campbell, Dean of the Maxwell School of Citizenship and Public Affairs, Syracuse University, accompanied by Professors Roy Bahl, David Greytak, and Bernard Jump).

municipalities. Borrowing costs for municipalities across the country increased. Yonkers, a city neighboring New York City, experienced particularly acute effects. The city struggled to sell notes. On one bond issue, investors purchasing only ten percent of $11.5 billion in bond anticipation notes. The city's borrowing costs doubled.[5]

In response to the fiscal crisis of American cities, Congress worked with the Ford administration to amend the nation's bankruptcy laws. The legislative intervention complemented a new system of urban aid that took form during the same time. The government enacted laws to help municipalities use debt to fund development projects and other local needs. As cities weathered the economic downturn of the 1970s, lawmakers considered policies that might help cities sell bonds and negotiate lower interest rates with private creditors. With amendments to the bankruptcy code, which gave large cities access to bankruptcy protections, the federal government created a safety valve, allowing cities to restructure their liabilities when the system of debt-financing grew unsustainable. The federal response to New York City's crisis shaped lawmakers' thinking about urban aid and contributed to the reconfiguration of national urban policy.

I.

From 1969 to 1975, New York City's short-term debt increased from $747 million to $4.5 billion. Cities like New York used short-term debt, a form of obligation

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[5] *Debt Financing Problems of State and Local Government: The New York City Case: Hearing Before the H. Subcomm on Economic Stabilization of the H. Comm. on Banking, Finance and Urban Affairs*, 94th Cong. 2047 (1975) (statement of Richard L. Ottinger and Peter A. Peyser, Representatives in Congress from the State of New York); ibid., 2049 (statement of Michael J. Harrington, a Representative in Congress from the State of Massachusetts).

that usually carries a higher interest rate, to cover immediate expenses in anticipation of either tax revenue or long-term bond revenue. By 1975, it became clear that New York was struggling to pay off short-term debt. The City's overall debt also reached $14 billion.[6] Explanations for the growth of the City's overall and short-term debt ranged widely. Some commentators excoriated local officials for using "unsound budgeting and accounting practices," for example by inflating revenue projections that justified the City's short-term notes.[7] Other critics blamed public employees, their unions, and "extravagant" welfare spending. On the other hand, Al Shanker, President of the local American Federation of Teachers attributed the crisis to the federal government's "mismanagement of our economic affairs." The rise of unemployment, welfare costs, falling tax revenues, rising interest rates, and "runaway energy costs" sat at the "heart of New York's problems."[8] One of New York's representatives in Congress urged his colleagues to recognize that the economic recession, inflation, property tax delinquencies, and the "urban exodus of middle-high income taxpayers" contributed to the crisis.[9] Whether the City's increasingly unmanageable debt was attributable to local mismanagement, structural economic forces, or federal policy, this much was true: New York City in 1975 had come perilously close to defaulting on its debt.

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[6] Securities and Exchange Commission, Staff Report on Transactions in Securities of the City of New York (Washington, D.C.: U.S. G.P.O., 1977), 2–3.
[7] Ibid., 4.
[8] *Debt Financing Problems of State and Local Government: The New York City Case: Hearing Before the Subcomm. on Economic Stabilization of the H. Comm. on Banking, Finance and Urban Affairs*, 94th Cong. 1688 (1975) (statement of Albert Shanker, President, American Federation of Teachers).
[9] Ibid., 1766 (statement of Hon. James M. Hanley, A Representative in Congress from the State of New York).

States and municipalities across the country faced similar budget crises during the 1970s. An economic recession in the early 1970s depressed state tax revenue, and rising Medicaid and welfare contribution costs strained state budgets. Seven of the country's nine largest states confronted looming budget deficits. Some states slashed expenditures to balance budgets. In California, for example, then-Governor Ronald Reagan imposed a freeze on state hiring, construction projects, and major capital expenses, and cut state payments to medical professionals under the Medicaid program by $140 million.[10] Newark, New Jersey, endured a series of crises. The city's 1972 budget showing a $65 million deficit.[11] In 1975, the *New York Times* reported, Cleveland, Milwaukee, Detroit, Buffalo, Boston, St. Louis, and Seattle all had difficult budgetary decisions to make, with most cutting employee salaries and laying off workers to reduce expenditures. A few cities, including Buffalo and St. Louis, considered property tax increases to cover budget deficits, and Seattle raised its tax on business receipts.[12] Public employees fought austerity plans. In New York, Pennsylvania, and San Francisco, public sector workers all walked off the job as the cities laid off police officers, firefighters, and sanitation workers.[13]

New York's crisis commanded national attention, shaping debates on the proper roles of the local and federal governments in sustaining cities. Using New York as a point

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[10] David S. Broder, "7 of 9 Biggest States Face Money Crises," *Washington Post*, December 6, 1970; David Gilbert, "Anatomy of Welfare Crisis," *Chicago Tribune*, November 17, 1971.
[11] Ronald Sullivan, "No End Seen for Newark's Fiscal Crisis," *New York Times*, October 19, 1972.
[12] Eileen Shanahan, "Many Cities in Crisis Cut Payrolls and Raise Taxes," *New York Times*, May 27, 1975.
[13] Phillips-Fein, *Fear City: New York's Fiscal Crisis and the Rise of Austerity Politics* (New York: Metropolitan Books, 2017), 135–36.

of reference, the national conversation evolved into a referendum on municipal fiscal policy. Americans asked whether city leaders or federal policies were to blame for the crisis, and they debated the value of public expenditures on education and welfare. On the right, critics of federal intervention warned of the moral hazard that might accompany a bailout, and the risk to local autonomy that a federal intervention might pose.

The federal government had a clear stake in New York's fiscal condition. HUD officials recognized that a default would cost the government dearly, and undermine the agency's programs. Because New York State and the city could not float housing bonds, new construction and rehabilitation for Section 8 had ground to a halt.[14] The City's brush with default also hampered its ability to commit matching funds that HUD grants required. As a result, the city stood to lose millions in federal aid.[15] Any halt in construction threatened to increase welfare enrolment, shifting the cost of default onto the Department of Health, Education, and Welfare.[16] A default also threatened to undermine federal initiatives for water cleanup and treatment, day care, and child nutrition.[17] Even after the

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[14] S. William Green, Federal Regional Council Chairman, to John B. Rhinelander, Under Secretary, undated, subject: Impact of New York City Fiscal Crisis on HUD funded programs, 3, folder: New York City, Finance (2), Box 8, Orlebeke Papers, Gerald R. Ford Library.

[15] Ibid., 1. Region II FRC Report on Impact of New York City Financial Crisis on Federal Regulatory and Grant Management Activities, Region II Federal Regional Council, November 14, 1975, 3, folder: New York City's Financial Crisis & Impact on Housing & Urban Development (HUD) Programs (3), Box 8, Orlebeke Papers, Gerald R. Ford Library.

[16] Memorandum from Bernice L. Bernstein, Regional Director, to S. William Green, Federal Regional Council Chairman, subject: Attached Information for Region II FRC Submission to the Domestic Council, November 11, 1975, folder: New York City's Financial Crisis & Impact on Housing & Urban Development (HUD Programs (2), Box 8, Orlebeke Papers, Gerald R. Ford Library.

[17] Region II FRC Report on Impact of New York City Financial Crisis on Federal Regulatory and Grant Management Activities, Region II Federal Regional Council, November 14, 1975, folder: New York City's Financial Crisis & Impact on Housing & Urban Development (HUD) Programs (3), Box 8, Orlebeke Papers, Gerald R. Ford Library.

government issued loans to New York City, HUD officials feared the effects of the city's cuts on federal programs.[18]

New York's crisis strengthened the hand of bond buyers, which increased borrowing costs for cities and special districts nationwide. In September 1975, the U.S. Conference of Mayors urged the Ford administration to contain the effects of the New York crisis. As they argued, New York's condition had raised interest rates for municipal bonds. To assure investors and contain interest rates, the committee first proposed that the federal government provide guarantees for tax-exempt bonds that cities issued. Moon Landrieu, New Orleans mayor and U.S. Conference of Mayors President, suggested alternatively that the government provide a guarantee for taxable bonds that cities issued, which might stabilize borrowing costs in at least one segment of the bond market.[19]

II.

Members of Congress, executive branch officials, and President Ford battled over the government's responsibility to cities. HUD administrators suspected that their programs could help New York and other municipalities weather the recession. The agency could use its resources to shift some of the city's obligations off its accounting books. As one official observed, New York City used $1.2 billion of its short-term debt to

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[18] S. William Green, Regional Administrator, to John B. Rhinelander, Under Secretary, subject: Impact on New York City crisis on HUD funded programs, January 8, 1976, folder: "New York City's Financial Crisis & Impact on Housing & Urban Development (HUD) Programs (3)," Box 8, Orlebeke Papers, Gerald R. Ford Library.
[19] Hobart Rowen, "Cities' Fiscal Crisis Grows, Mayors Say," *Washington Post*, September 25, 1975.

finance mortgages for the city's Mitchell-Lama program.[20] Under Mitchell-Lama, New York City acquired property, transferred land to developers for the production of subsidized housing, and extended low-cost loans to finance the housing development. The city financed the operation through the sale of non-taxable municipal bonds. HUD considered using a new program introduced under the 1974 Housing and Community Development Act, called Section 802, to help the city restructure its short-term debt. Officials believed that the city could sell the Mitchell-Lama mortgages to the State Housing Finance Agency, and use the sale proceeds to pay off the short-term debt that financed the mortgages. The State Housing Finance Agency could finance the purchase of mortgages by selling taxable bonds, which HUD would guarantee. It could also subsidize one third of the interest rate, using Section 802.[21]

But HUD's proposal went nowhere. One problem, an official noticed, was that if HUD insured the State HFA's purchase of mortgages, the government would effectively be "giving NYC a grant." A large fraction of the Mitchell-Lama mortgages were in default, meaning that the transaction would require HUD to cover investors' losses on failed loans.[22] Another official proposed having the Government National Mortgage Association purchase the multifamily mortgages, or alternatively guarantee payment of

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[20] John Tuccillo to Charles J. Orlebeke et al., Subject: New York's Fiscal Crisis: Background and General Discussion, 4–5, folder: New York City, Tishman Proposal 1976 (1), Box 8, Orlebeke Papers, Gerald R. Ford Library.
[21] Memorandum, Michael J. BeVier and John Biasucci to Bernard J. Car., Subject: Options for Helping Relieve New York City's Financial Problems through Housing Programs, folder: New York City, Finance (1), Box 8, Orlebeke Papers, Gerald R. Ford Library.
[22] John Tuccillo to Charles J. Orlebeke et al., Subject: New York's Fiscal Crisis: Background and General Discussion, 4–5, folder: New York City, Tishman Proposal 1976 (1), Box 8, Orlebeke Papers, Gerald R. Ford Library.

principal and interest on the securities that private lenders issued.[23] As a condition for providing this type of aid, administrators contemplated requiring the city to raise project rents to ensure solvency of Mitchell-Lama projects.[24] But such forms of direct aid found little sympathy within the Ford administration.

Ford and his closest advisors resisted any direct federal grants or loans. Advisors, including Bill Seidman, Ford's Assistant for Economic Affairs, initially believed that the City, working with New York State, could resolve the crisis without federal help.[25] While the U.S. Conference of Mayors had asked the government to set up a loan guarantee program for municipal bonds, President Ford received letters from other governors, mayors, and members of Congress opposing a bailout. The government should not use taxpayer money, they argued, to rescue New York City from the consequences of what they viewed as its excesses. As one representative put it: "In approving a federal 'bailout' of New York City, you would be condoning the very philosophy and actions which have resulted in the present financial crisis . . . ." In the words of a small-town mayor, government aid would "break faith" with the "hard-working municipal officials across the Country who have had the intestinal fortitude to say 'no' to escalating demands of special interest groups demanding reckless expenditure of municipal tax dollars."[26]

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[23] Memorandum, Michael J. BeVier and John Biasucci to Bernard J. Car., Subject: Options for Helping Relieve New York City's Financial Problems through Housing Programs, folder: New York City, Finance (1), Box 8, Orlebeke Papers, Gerald R. Ford Library.
[24] Ibid., 5.
[25] Memorandum, Guidance on New York City, Bill Seidman, Assistant to the President for Economic Affairs, to Ron Nessen, October 27, 1975, folder: "New York City (3)," Box G7, James T. Lynn Papers, Gerald R. Ford Library.
[26] See Letter, Ben W. Thompson, City Commissioner of Tallahassee Florida, to Gerald R. Ford, October 22, 1975, folder: "LG/N New York City 10/21/75 – 10/31/75," Box 10, White House

Some administration officials also feared that federal aid might harm other cities. Treasury Department officials suggested that if the government used guarantees on New York City's debt to prevent default, the intervention could distort borrowing costs. A federal guarantee, Treasury Secretary William Simon argued in opaque language, would result in a flood of federal "credit" that would affect "borrowing costs throughout the capital markets" and "exacerbate the market access problems of marginal issuers," perhaps issuers like Housing Finance Authorities that struggled to find willing lenders. Simon did not explain why or how a federal guarantee would affect borrowing costs. But nonintervention, he argued, would have fewer ramifications. If New York defaulted on its debt, he argued, the event would have a muted effect throughout the nation's municipal bond markets. According to the Treasury's review of commercial banks' exposure to a New York, a default would not "cause solvency problems for any major bank."[27] The

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Central File, Subject Files, Gerald R. Ford Library; Letter, L. Ted Getterman, Mayor of City of Waco, Texas, to Gerald R. Ford, October 10, 1975, folder: "LG/N New York City 10/21/75 – 10/31/75," Box 10, White House Central File, Subject Files, Gerald R. Ford Library; Letter, L. A. "Skip" Bafalis to Gerald R. Ford, October 22, 1975, folder: "LG/N New York City 10/21/75 – 10/31/75," Box 10, White House Central File, Subject Files, Gerald R. Ford Library; Mailgram, Herbert Pfuhl, Mayor of City of Johnson, to Gerald R. Ford, undated, folder: "LG/N New York City 11/1/75 – 11/7/75," Box 10, White House Central File, Subject Files, Gerald R. Ford Library; Letter, Harry E. Atkinson, Mayor of Newport News, Virginia, to Gerald R. Ford, October 28, 1975, folder: "LG/N New York City 11/1/75 – 11/7/75," Box 10, White House Central File, Subject Files, Gerald R. Ford Library; Letter, Peter J. Page, President of the Pensylvania State Mayors' Association, to Gerald R. Ford, October 24, 1975, folder: "LG/N New York City 11/1/75 – 11/7/75," Box 10, White House Central File, Subject Files, Gerald R. Ford Library.

[27] Letter, William E. Simon, Secretary of the Treasury, to Hubert H. Humphrey, Chairman of the Joint Economic Committee, September 17, 1975, folder: "New York City (4)," Box G7, James T. Lynn Papers, Gerald R. Ford Library; Hobart Rowen, "Cities' Fiscal Crisis Grows, Mayors Say," *Washington Post*, September 25, 1975; *Debt Financing Problems of State and Local Government: The New York City Case: Hearing Before the H. Subcomm on Economic Stabilization of the H. Comm. on Banking, Finance and Urban Affairs*, 94th Cong. 2012 (1975) (statement of William E. Simon, Secretary of the Treasury).

city's investors consisted mainly of large New York commercial banks, including Morgan Guaranty Trust, First National, Chase. As Simon later wrote in a memoir, despite their fearmongering rhetoric, New York's largest banks knew that their investment in the city's debt amounted to less than one percent of their holdings, suggesting that they had "no realistic basis for fearing large withdrawals or a run on the banks."[28]

Federal aid to New York could also set a dangerous precedent, the administration argued, changing the relationship between the federal government and cities. Secretary Simon argued that if the government offered direct aid, it would place the government in the "position of taking over." As he argued, "There would be other localities who would be, regardless of the criteria involved, desirous of taking advantage of the same funds, and I can see the amounts growing beyond those received for New York City itself."[29] Furthermore, federal officials would have to oversee New York City's government operations. If other distressed municipalities demanded federal aid, citing New York as a model, federal control of local affairs would grow.

The Treasury Department also worried that federal guarantees could impose significant costs on the federal government, even if no payout were necessary. Because a federal guarantee would commit the government to paying investors if New York defaulted on its obligations, borrowing costs in municipal bond markets would fall, and

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[28] William E. Simon, *A Time for Truth* (New York: Reader's Digest Press, 1978), 153–54, 157–63. For a discussion on the background behind the publication of *A Time for Truth*, see Kim Phillips-Fein, *Fear City: New York's Fiscal Crisis and the Rise of Austerity Politics* (New York: Metropolitan Books, 2017), 278–81; *Debt Financing Problems of State and Local Government*, 94th Cong. 907–08 (1975) (Statement of Ellmore Patterson, Chairman of the Board, Morgan Guaranty Trust Co. of New York).

[29] *Debt Financing Problems of State and Local Government*, 94th Cong. 2012 (1975) (statement of William E. Simon, Secretary of the Treasury).

cities would find willing bond buyers with greater ease. As private investors bought more municipal bonds, they would divert investment from federal securities. Decreased demand for Treasury securities could drive up interest rates. Edwin Yeo, Treasury Undersecretary for Monetary Affairs, informed a House subcommittee that, while it was impossible to quantify the costs in precise monetary terms, a "proliferation of guarantees" could increase the federal government's borrowing costs. A federal guarantee did not require a direct outlay, but would nonetheless affect the federal budget.[30]

Simon nonetheless intimated that the administration might help New York to maintain "essential services." The city needed to maintain basic services, otherwise the "citizens of New York City would suffer." Simon refused to offer a more specific prediction of what a federal contingency plan might look like, but suggested that it might involve a federal guarantee for city bonds used to fund essential services. A federal guarantee would cost the government less than a "direct cash outlay."[31]

The administration initially refused to offer a general bailout. On October 29, 1975, Ford made a public statement presenting his administration's case for denying aid to the city. After detailing what he perceived as the excesses in the City's municipal employment contracts and wasteful provision of municipal services, he stated: "I am prepared to veto any bill that has as its purpose a Federal bailout of New York City to prevent a default." Direct aid to the city, he argued, would undermine the legal separation of Federal, State, and local governments. Instead, Ford outlined an alternative solution for the public. The Constitution, he explained, authorized Congress to enact uniform

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[30] Ibid., 2016.
[31] Ibid., 2008–09.

bankruptcy laws. Given this authority, he urged Congress to pass an amendment to the national bankruptcy code to allow federal bankruptcy courts to "preside over an orderly reorganization of New York City's financial affairs."[32] *The Daily News* famously encapsulated this proposal with the headline, "FORD TO CITY: DROP DEAD."[33]

On the eve of Ford's announcement, Simon outlined the administration's thinking on bankruptcy in a statement before Congress. As he explained, Congress should pass a municipal bankruptcy law in case city politicians failed to execute "unpalatable" measures necessary to prevent default. The bankruptcy option would allow a federal bankruptcy court to oversee the city's efforts to restructure its debts, to insulate the city from lawsuits brought by creditors, and ensure that it maintain essential services. As Simon's testimony hinted, bankruptcy provided a mechanism that would help the city navigate its crisis, while allowing the federal government to avoid making any explicitly policy judgments relating to the reorganization of the city's debt, and the reformulation of its fiscal policies. A bankruptcy judge, rather than federal administrators, would oversee the city. Thomas Ashely, a Congressman from Ohio and Chair of the Subcommittee on Economic Stabilization, asked Simon whether the administration had a "contingency plan or plans with respect to what might be necessary in the way of direct Federal assistance after default and bankruptcy." Tellingly, Simon responded: "No; because that is the

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[32] Gerald R. Ford, Remarks on a Question-and-Answer Session at the National Press Club on the Subject of Financial Assistance to New York City, October 29, 1975, The American Presidency Project, available at http://www.presidency.ucsb.edu/ws/index.php?pid=5344.
[33] "Ford to City: Drop Dead," *New York Daily News*, October 30, 1975.

purview, assuming the bankruptcy law is changed, of the court."[34] The administration would have to express no affirmative view as to what services were "essential," or decide whether bondholders or municipal workers would shoulder losses. Recomposition of the city's debts and fiscal policies was sure to stir controversy. But in Simon's formalistic view, bankruptcy would allow the administration to remain neutral.

III.

Despite his initial resistance to direct aid, President Ford acquiesced in part to New York City's pleas for help. He worked with Congress to develop a policy extending "seasonal" loans to the city. Henry Reuss, Chairman of the House Committee on Banking, Currency and Housing proposed a modest aid program the day before Ford's October speech. As Reuss explained, the government could extend loan guarantees to the State of New York, but subject to "four ironclad conditions." First, the city must balance its budget. Second, the Government Accounting Office needed to assume authority to audit New York City. Third, the government must receive a first lien to secure its exposure to the city. Fourth, large creditors to the city must accept a "stretch-out" of their debt.[35] This proposal provided a model for short-term aid that Congress enacted later that year.

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[34] *Debt Financing Problems of State and Local Government: The New York City Case: Hearing Before the H. Subcomm on Economic Stabilization of the H. Comm. on Banking, Finance and Urban Affairs*, 94th Cong. 1992–94 (1975) (statement of William E. Simon, Secretary of the Treasury).

[35] Letter, Henry S. Reuss, Chairman of the Committee on Banking, Currency and Housing, to Gerald R. Ford, October 28, 1975, folder: "LG/N New York City 10/21/75 – 10/31/75," Box 10, White House Central File, Subject Files, Gerald R. Ford Library.

As Congress and the Ford administration debated a relief program, the administration began pressing New York City to slash expenditures. If the federal government was to involve itself in helping the City, New York first needed to demonstrate that its leaders were prepared to pursue a policy of austerity, both by reducing municipal outlays and negotiating concessions from creditors. In late November 1975, Hugh Carey, Governor of New York State, wrote to President Ford, explaining that the City had satisfied "financial and legal requirements" that the federal government imposed as "a precondition" to any federal aid. Municipal leaders convinced the state legislature to enact laws raising $200 million in new tax revenues. The City negotiated with eleven banks and five City pension funds to convert $849 million in New York City notes of exchange into a long-term, ten-year obligation.[36] Ford in early December asked Congress to extend a "temporary line of credit" to New York, allowing the city to cover the costs of its short-term obligations. Before making a public statement explaining the plan for federal assistance, Ford wrote to governors across the U.S. He highlighted his initial opposition to federal aid, which would have allowed the City to "avoid taking responsibility for managing its own affairs." But Ford asked governors to recognize that a line of credit would now be permissible because the city's leaders had taken steps to restore fiscal solvency.[37]

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[36] Letter, Hugh L. Carey to Gerald R. Ford, November 26, 1975, folder: "LG/N New York City 12/5/75-12/0/75," Box 10, White House Central File, Subject Files, Gerald R. Ford Library.
[37] Letter, Gerald R. Ford to governors, November 28, 1975, folder: "LG/N New York City 11/26/75 – 11/30/75," Box 10, White House Central File, Subject Files, Gerald R. Ford Library.

Congress acted quickly. On December 9, lawmakers passed the New York City Seasonal Financing Act of 1975.[38] The law authorized the Treasury to extend up to $2.3 billion in loans to the City. The conditions that Congress attached to the loan followed the restrictions outlined in Reuss's proposal.[39] The law authorized the Treasury to require the City or New York State to provide any security as the Secretary deemed appropriate.[40] It enabled the Government Accounting Office to audit the accounts, records, and transactions of both the City and New York State.[41] It required that the Treasury find "a reasonable prospect of repayment of the loan" under its terms before extending any financing.[42]

The Treasury, tasked with implementing the law, worked with the City to develop a three-year recovery plan. The Treasury required $200 million in budget cuts for the fiscal year ending June 30, 1976, and deficit reduction of $1 billion by the end of fiscal year 1978.[43] While the renegotiation of municipal labor contracts threatened to undermine some of the City's progress in reducing expenditures, the New York Emergency Financial Control Board adopted a resolution preventing increases in wage and fringe benefits for employees. The Mayor's efforts reflected "a new-found will to make the hard decisions."[44] In its first report on the Seasonal Financing Act, the Treasury

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[38] New York City Seasonal Financing Act of 1975, Pub. L. No. 94-143, 89 Stat. 797 (1975).
[39] Ibid. §§ 5, 10.
[40] Ibid. § 5.
[41] Ibid. §§ 9, 10.
[42] Ibid. § 6.
[43] Letter, William E. Simon, Treasury Secretary, to Robin Beard, U.S. House of Representatives, May 19, 1976, folder: "LG/N New York City 5/1/76-1/20/77," Box 10, White House Central File, Subject Files, Gerald R. Ford Library.
[44] Ibid.

expressed "cautious optimism" that, given the Mayor's commitment, the plan would work.[45] By October, the Ford administration remained optimistic about the City's recovery, but advisors also recognized that the "main threat to the City's recovery at this point" was the possibility that it would "lose the will to implement the remaining $450–$500 million in cuts" required to satisfy the Treasury's plan.[46]

Despite its efforts, the City's problems remained unresolved. In 1977, Governor Carey announced that the State of New York could no longer afford to "subsidize" the U.S.'s aid to the City. The City's continued struggle to finance short-term borrowing and long-term-bonds, he suggested, stemmed from "the failure of the Federal Government to adequately address the problem of welfare reform." Governor Carey also pointed to a larger problem across the nation, observing that "the burden of welfare funding" pushed governments across the country "toward financial crisis."[47] As the Governor's remarks suggested, New York City's fiscal problems were not unique. While Congress's Seasonal Financing Act was targeted to New York alone, members of Congress had begun working on relief legislation that would apply to all cities. While the Ford administration debated the virtues of a lending program in 1975, it also pursued amendments to the U.S. bankruptcy code that would allow cities like New York to restructure their debts.

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[45] Department of the Treasury News, Statement of the Honorable William E. Simon, Secretary of the Treasury, April 1, 1976, folder: "LG/N New York City 5/1/76-1/20/77," Box 10, White House Central File, Subject Files, Gerald R. Ford Library.
[46] Memorandum for the President from L. William Seidman, Assistant to the President for Economic Affairs, October 12, 1976, folder: "LG/N New York City 5/1/76-1/20/77," Box 10, White House Central File, Subject Files, Gerald R. Ford Library.
[47] Edward Burks, "Carey Says State Subsidizes U.S., And Asks 'Reasonable' Aid for City," *New York Times*, May 17, 1977; "New York City Seen Unable to Borrow When Loans Expire," *Wall Street Journal*, May 17, 1977.

IV.

As New York City teetered on the brink of default, policymakers, attorneys, and legal scholars noted that the bankruptcy laws of the U.S. were ill equipped to serve large municipalities. In his October 1975 speech outlining the administration's position on the New York City crisis, President Ford emphasized that his administration would seek an amendment to the bankruptcy code to provide the city access to the protections of a bankruptcy court. The administration ultimately provided seasonal loans that helped New York city navigate its crisis. But by proposing an amendment to the bankruptcy code, the administration set in motion perhaps the government's most meaningful and enduring intervention into the crisis.

The U.S.'s municipal bankruptcy laws took shape in the 1930s as the federal government responded to a wave of municipal defaults during the Great Depression.[48] After the Supreme Court struck down the nation's first municipal bankruptcy law in 1936, Congress revised the statute to remedy its constitutional deficiencies, passing a new law in 1937 that authorized municipalities to restructure their debts.[49] But by the 1970s, the code proved unworkable for large municipalities. For a city to file a restructuring plan under the 1937 statute, at least 51 percent of creditors needed to approve the plan in

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[48] See Eric Monkkonen, *The Local State: Public Money and American Cities* (Stanford: Stanford University Press, 1995), 30–31.

[49] Congress passed the first municipal bankruptcy law in 1934. Act of May 24, 1934, ch. 345, 48 Stat. 798 (1934). The Supreme Court declared the law in violation of the Tenth Amendment in *Ashton v. Cameron County Water Improvement Dist. No. One*, 298 U.S. 513 (1936). Congress enacted a new Chapter IX in 1937 with the Act of Aug. 16, 1937, ch. 657, 50 Stat. 653 (1937). The Supreme Court upheld the constitutionality of the new municipal bankruptcy law in *United States v. Bekins*, 304 U.S. 27 (1938).

writing.[50] Additionally, for a court to approve the plan, thirds of the creditors needed to accept the plan in writing.[51] For a large city like New York, the number of creditors alone could render the bankruptcy process unworkable.

But in theory, a bankruptcy judge's confirmation of a restructuring plan could bring a city like New York back to solvency. As Federal Reserve Chairman Arthur Burns observed, if the "bankruptcy laws were modified to provide a remedy that would be available to New York City, it would be able to restructure its bonded indebtedness, as well as burdensome contractual obligations, such as those that might be represented by collective bargaining agreements and pension retirement plans."[52] Burns opposed direct federal financial assistance for the city. If Congress insisted on providing financial aid, however, Burns argued that the government should force banks to share in the loss. The city should negotiate reductions in its pension and retirement obligations, as well as negotiate reductions in interest rates for municipal securities.[53]

In some ways, the term "bankruptcy" carried moral connotations that policymakers hoped to avoid. Dick Dunham, Deputy Director of the White House Domestic Council, proposed that the administration pass a statute that would "govern the situation in New York City." The administration "should not use the words bankruptcy or default," he wrote, but euphemistically call it, "A statute providing for the reconstitution

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[50] Act of Aug. 16, 1937, ch. 657, § 83(a), 50 Stat. 653 (1937).
[51] 11 U.S.C. § 403(d) (1970); Act of Aug. 16, 1937, ch. 657, § 83(d), 50 Stat. 653 (1937).
[52] Letter, Arthur F. Burns to Thomas L. Ashley, Chairman of the Subcommittee on Economic Stabilization, forwarded to James T. Lynn, October 24, 1975, folder: "New York City (3)," Box G7, James T. Lynn Papers, Gerald R. Ford Library.
[53] Ibid.

of municipalities' debts." The law would nonetheless use procedures similar to Chapter 11, the nation's bankruptcy law governing corporate reorganizations.[54]

Lawmakers sought amendments to the statute to allow even the nation's largest cities to file for court-supervised restructuring. Dunham proposed using a mechanism by which cities could "by-pass the existing provision . . . which requires the permission of 51% of the creditors" before entering a voluntary reorganization. As Dunham observed, large cities struggled even to find their creditors. Many creditors held bearer certificates, a type of bond that was not recorded in an individual's name, making the bond easily transferrable and the bond holder impossible to track down. By easing a municipality's access to bankruptcy procedures, a city like New York might be able to stabilize its finances. After filing a petition, Dunham theorized, a federal judge would first have authority to reconstitute or convert New York City's $3 billion in short-term notes into long-term bonds held by the New York City Municipal Assistance Corporation. Second, the judge could designate a trustee to enforce a three-year financial plan for the city. The trustee, the New York State Emergency Financial Control Board, would hold the city accountable to balancing its budget over the period of the plan.[55]

As his October speech suggested, President Ford thought amendments to the bankruptcy code would help New York out of its crisis. His staff proposed a bankruptcy law that only extended bankruptcy protections to large cities. The "relief legislation," as the administration proposed, applied only to municipalities with a population of over one

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[54] Memorandum, "New York City," Dick Dunham to Jim Cannon, October 25, 1975, folder: "LG/N New York City 10/21/75 – 10/31/75," Box 10, White House Central File, Subject Files, Gerald R. Ford Library.
[55] Ibid.

million residents. While the administration wished bankruptcy on no city, the President explained that "recent events remind us that we cannot ignore the fact that there must be relief legislation ready and available." Furthermore, he added, the proposed law offered "incentives needed" to "force" large cities "to make the hard decisions" necessary to balance its "revenues and expenditures."[56] The administration's proposal, for example, required that a debtor present a "statement" of "current and projected revenues and expenditures adequate to establish that the budget of [the municipality] will be in balance within a reasonable time after adoption of the plan." The administration's law would require a bankruptcy judge to reject any plan that failed to provide for a balancing of revenues and expenditures.[57] As President Ford stated in letters thanking lawmakers who backed his bill, "I believe our position reflects the views of the vast majority of Americans who know that cities, like individuals, must learn to live within their means."[58]

Senate Democrats initially took a different approach. Senators Proxmire and Stevenson backed a bill that paired an authorization for municipal restructuring with federal guarantees of municipal debt. The bill required a city to adopt a "rigid program of austerity" that included refinancing of bonds and obligations. In exchange, the law allowed the federal government to guarantee the city's debt. This would allow a city to

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[56] *Adjustment of Indebtedness of Major Municipalities: Communication from the President of the United States Transmitting a Draft of Proposed Legislation to Amend the Bankruptcy Act to Add a New Chapter Thereto Providing for the Adjustment of the Debts of Major Municipalities*, 94th Cong. 1 (October 29, 1975).
[57] Ibid., 4, 9 (reporting § 804(c) and § 816(d)(7) of the proposed bill).
[58] Letter, President Gerald Ford to Carrell Hubbard, House of Representatives, November 3, 1975, folder: "LG/N New York City 11/1/75-11/7/75," Box 10, White House Central File, Subject Files, Gerald R. Ford Library.

obtain relief before reaching a "technical default," which other legislative proposals required before allowing city to obtain relief.[59] Lawmakers feared that a default would spook investors, and possibly make bankers reluctant to buy municipal bonds. Federal guarantees, paired with a pre-default restructuring, would avoid this. But this model involved direct federal involvement in any restructuring. Meanwhile, the Judiciary Committee of the Senate proposed legislation that more closely resembled the President's proposed amendments.[60]

Banks lobbied against the proposed legislation. Their motive was clear: bankruptcy would enable a distressed city to reduce what it owed to lenders. Bankers suggested that, if Congress allowed cities to file for bankruptcy, they would demand higher interest rate to compensate for this risk. Morgan Stanley argued that if Congress allowed all cities to have easier access to bankruptcy, this would weaken their "credit standing." Hoping to minimize the effects of the law, the bank urged lawmakers to limit the bill to only "municipalities of substantial size." Some Senators supported this

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[59] Memorandum, Emergency Municipal Reorganization Act," November 4, 1975, folder: "LG/N New York City 11/11/75," Box 10, White House Central File, Subject Files, Gerald R. Ford Library. The law, which the Senate Banking Committee approved and developed in cooperation with the Federal Reserve and the Treasury Department, authorized the Secretary of the Treasury to "guarantee debt certificates" that the City issued to fund "essential services." By requiring the City and State to restructure finances before receiving federal guarantees, the Senate Democrats hoped the policy would avoid "setting off a potential ripple effect on every other municipality in the country that might occur with a technical default under the existing bankruptcy law." Under a separate proposal, which authorized the Treasury to guarantee "debt certificates issued to fund essential services," the law authorized the Treasury to act after the City initiated a proceeding under a proposed Chapter 16 of the Bankruptcy Code. The guarantee covered payments of principal or interest issued pursuant to a provision of the proposed Chapter 16. "Draft Legislation on Provision of Essential Services," November 8, 1975, folder: "LG/N New York City 11/11/75," Box 10, White House Central File, Subject Files, Gerald R. Ford Library.

[60] "Comparison of S. 2597 with the Administration's Bill for Big City Bankruptcies," folder: "LG/N New York City 11/11/75," Box 10, White House Central File, Subject Files, Gerald R. Ford Library.

limitation, and proposed an amendment that made the new bankruptcy law applicable only to cities with a population over one million. As Nebraska Republican Senator Roman Hruska suggested, the bankruptcy legislation was really about helping New York, which already suffered from higher interest rates given its "past practices and malfunctioning," The legislation would punish other cities for New York's alleged misconduct by causing investors to demand higher interest rates on the debt of all cities. Texas Senator John Tower, looking out for his state, offered an amendment that increased the population threshold to 7 million, just enough to push bankruptcy out of reach for Houston and Dallas.[61] Facing accusations that the population threshold criteria unconstitutionally discriminated among cities, these amendments did not survive the legislative process. The final bill made relief available to all municipalities, regardless of their size.

Lawmakers were forced to address the question of federal oversight. Some lawmakers in the Ford administration believed the law should require a state to affirmatively authorize a municipality to file under Chapter 9 in every case. L. William Seidman, President Ford's advisor on economic affairs, worried that the bills in Congress did not "require *specific* State consent before a municipality may utilize the bankruptcy provisions." Seidman saw "little hope of getting the 'specific State consent' requirement" into any bill.[62] As the House proposed, a municipality could file as long as the state "has

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[61] 94 Cong. Rec. 39691–92 (daily ed. December 10, 1975).
[62] Memorandum for the President, from L. William Seidman, December 2, 1975, folder: "New York City," Box G7, OMB Subject File: "Mess Charts" – Government Organization, James T. Lynn Papers, Gerald R. Ford Library (emphasis in original). The government's proposed legislation required that a municipality be "specifically authorized" to file a petition.

not prohibited it." The legislation only required that the municipality formally notify its state government of the filling, which gave the state an opportunity to terminate the proceeding and to assess whether to participate in "formulating and implementing a plan of adjustment" if necessary.[63] A Senate bill required that the municipality be "specifically authorized to file by the chief executive, the legislature or such other governmental officer or organization empowered under State law to authorize filing."[64] Lawmakers reconciled these opposing views by agreeing to a provision that required a state legislature provide for "general authorization" to allow subdivisions to file.[65] In form, the proposed legislation respected state governments' authority over subdivisions.[66] Yet, the law reduced state oversight. Without a specific authorization requirement, the law reduced states' power to directly govern a local government's restructuring.[67]

In April 1976, Congress passed its amendment to the bankruptcy code. The law's preamble observed that, under the old law, bankruptcy was an impractical remedy for large municipalities, which made default a more likely outcome than an organized restructuring for distressed municipalities. The law established no austerity provisions that would apply to municipal debtors. It required only general authorization from the

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"Communication from the President of the United States transmitting a Draft of Proposed Legislation to Amend the Bankruptcy Act to Add a New Chapter Thereto Providing for the Adjustment of the Debts of Major Municipalities," October 29, 1975 (reporting § 803(b)).

[63] H.R. Rep No. 94-686, at 8 (1975).

[64] *See* H.R. Rep No. 94-938, at 16–17 (1976) (Conf. Rep.).

[65] Ibid.

[66] Section 83 of the proposed bill reconciling the House and Senate amendments stated: "Nothing contained in this chapter shall be construed to limit or impair the power of any State to control, by legislation or otherwise, any municipality or any political subdivision of or in such State in the exercise of its political or governmental powers . . . ." Ibid., 5.

[67] A state could still retain authority by refusing to pass authorizing laws until a municipality asked for authorization to file or enacting general authorization laws that required a local government to meet specified conditions before filing.

state to allow a filing.[68] For a court to approve a plan of debt recomposition, the municipality needed approval of creditors holding two-thirds of claims, though limited to only claims of creditors who filed a proof of claim.[69] The legislation, by allowing a city to write down its debt through negotiation with creditors, allowed the government to help a distressed city like New York without inviting criticism that its actions rewarded careless or profligate municipal policymaking. While New York City never took advantage of the new bankruptcy protections, the law stood as the key legislative response of the Ford administration and Congress to the fiscal crisis of New York and other American cities.

The federal government ignored the structural problems underlying municipal budget shortfalls. When the Ford administration refused to provide direct aid to New York City, officials thought direct aid would fail to address the outmigration of high-income residents and the disinvestment of private capital.[70] The policy response the administration developed in 1975 also failed to address the socioeconomic developments underlying New York's fiscal problems. The administration reluctantly approved legislation for providing short-term loans to help New York resolve cash shortfalls. It also pressed for amendments to the nation's bankruptcy laws as a means for rescuing the City. The response did little to stem population loss and increasing rates of urban poverty that eroded New York City's tax base. By 1978, as the City's three-year recovery plan

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[68] Chapter IX Bankruptcy Act Amendments, Pub. L. No. 94-260, 90 Stat. 315, 317 (1976) ("§ 84").
[69] Ibid., 90 Stat. 317, 322.
[70] Gregory Staple, "Unbalanced Urban Development: Issues Raised by City Financial Emergencies," 3–4, folder: New York City, Finance (1), Box 8, Orlebeke Papers, Ford Library.

drew to a close, Congress found itself again debating whether the federal government should continue to provide emergency seasonal loans.[71]

The government's response to New York City's fiscal crisis encapsulated policymakers' developing views towards metropolitan assistance and their envisioned balance of federalism. Rather than provide direct aid to the City through increased funding of welfare programs or other forms of direct spending, the Ford Administration pushed for amendments to the bankruptcy laws of the United States. The Administration sought amendments to allow a large city like New York to file for bankruptcy protection. The government's strategy envisioned large cities negotiating a debt restructuring with private creditors, a negotiation conducted within the protection of a federal court, without the direct involvement of the federal government, and possibly state governments.

V.

As New York's crisis unfolded, lawmakers confronted the fiscal conditions of American cities more broadly, but gave little consideration to direct budget deficits. Focused on fiscal policy, lawmakers neglected the economic and demographic shifts that eroded local tax bases.

In the 1970s, Congress took up policies HUD had been exploring during the 1960s to increase coordination and revenue distribution among local governments. But

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[71] By 1978, New York City remained in fiscal distress despite the Treasury's efforts to implement a three-plan developed pursuant to the 1975 Seasonal Financing Act. In 1978, the City had a budget deficit exceeding $1 billion, struggled to issue notes, and remained at risk of entering bankruptcy. *See New York City's Fiscal and Financial Situation: Hearing Before the H. Subcomm on Economic Stabilization of the H. Comm. on Banking, Finance and Urban Affairs*, 95th Cong. 1–2 (1978) (statement of Stewart B. McKinney) (arguing that New York City's "problems will not go away until Congress recognizes the need for some form of long-term assistance").

the federal government's efforts to reshape intergovernmental relationships met political hurdles. During the 1960s, HUD Secretary Robert Weaver believed that by encouraging the formation of governmental organizations operating at a cross-jurisdictional, metropolitan level, HUD could most effectively combat racial inequities and aid cities facing the loss of white, affluent taxpayers. The Model Cities program, enacted in 1966, required grant recipients to appoint a metropolitan coordinator to liaison with the federal government and coordinate programs among local jurisdictions. In a 1967 amendment to the Model Cities Act, however, Congress cut funding for regional coordinators.[72] The shift during the Nixon administration from categorical grants to the urban development block grant program reinforced the fragmentation of local planning and eroded the government's ability to shape metropolitan planning.[73]

The fragmentation of local governments contributed to the fiscal decline of cities. Professors at Syracuse University urged Congress to consider federal policies to help cities shift "functional responsibilities" to a "higher level." To capture new sources of revenue, cities could also redraw local jurisdictional boundaries, either by annexation, consolidating governments, or forming regional governments. The current "boundary system," the professors argued, "results in a mismatch between revenue base and service needs" for many jurisdictions.[74]

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[72] Wendell E. Pritchett, "Which Urban Crisis? Regionalism, Race, and Urban Policy, 1960–1974," *Journal of Urban History* 34, no. 2 (2008), 268–69, 274.
[73] Ibid., 281.
[74] *Fiscal Relations in the American Federal System: Hearings before the H. Subcomm. on Government Operations*, 94th Cong. 236–37 (1975) (statement of Alan K. Campbell, Dean of the Maxwell School of Citizenship and Public Affairs, Syracuse University, accompanied by Professors Roy Bahl, David Greytak, and Bernard Jump).

Laws offering structural solution to cities' fiscal problems, however, struggled to survive the legislative process. In the 1970s Congress considered methods for supporting cooperation among local governments. One early bill included the Humphrey-Reuss revenue-sharing bill. The Nixon administration's revenue sharing program offered local governments no incentive to coordinate among themselves. In response, Representative Henry Reuss and Senator Hubert Humphrey, both Democrats, proposed a statute in 1971 requiring states to prepare a "master plan" before receiving federal revenue sharing funds. The law suggested action items for states to include in a plan. These included provisions allowing local governments to annex jurisdictions with greater ease and to transfer functions from municipalities to counties. The law also urged states to shift zoning authority from municipalities to metropolitan entities, counties, or states, particularly to prevent smaller municipalities from using zoning authority to exclude low-income families.[75] Reuss and Humphrey also pushed for the federal government to assume greater responsibility over welfare programs. The federal government already covered half of the nation's welfare costs, but without more help, Reuss and Humphrey argued, cities were unlikely to find any relief from their financial obligations.[76]

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[75] *Intergovernmental Revenue Act of 1971 and Related Legislation, Hearings before S. Subcomm. on Intergovernmental Relations of the Comm. on Government of Operations*, 92nd Cong. 32–43 (1971).

[76] Frank C. Porter, "Welfare Takeover, Revenue Sharing Link Urged," *Washington Post*, February 23, 1971; Eileen Shanahan, "White House Set to Compromise on Fund Sharing," *New York Times*, February 23, 1971; *Intergovernmental Revenue Act of 1971 and Related Legislation, Hearings before S. Subcomm. on Intergovernmental Relations of the Comm. on Government of Operations*, 92nd Cong. 90–91 (1971) (Statement of Joseph A. Pechman, Director of Economic Studies, Brookings Institution).

Reuss and Humphrey's bill, however, never became law. The revenue sharing program that Congress ultimately enacted contained none of the incentives they proposed. Rather, it carried minimal reporting obligations, requiring local governments to report to the Treasury Secretary how they used revenue sharing funds, as well as a broad mandate that local governments not use the funds in any discriminatory manner.[77] It did nothing to relieve local governments of their obligations under the federal welfare program.

The House Subcommittee on Government Operations revisited these policies later in the 1970s. HUD Assistant Secretary Donna Shalala emphasized that states had "enormous potential in correcting structural and functional problems" of local governments that left declining cities at a disadvantage. By shifting some government functions and taxing units from cities to "the metropolitan level," a state could help reduce responsibilities of cash-strapped cities and give them access to a broader tax revenue base.[78]

In 1977, the House had proposed a bill that would address some of HUD's concerns. The law, called the Intergovernmental Coordination Act of 1977, aimed to "establish a national policy on areawide planning" through the use of local coordinating officials and planning districts created through federal programs.[79] It contained a provision that would allow an areawide agency, consisting of elected officials or their representatives, to ask federal agencies administering grant proposals to waive planning

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[77] Federal Revenue Sharing Act of 1972, Pub. L. No. 92-512, 86 Stat. 919 (1972).
[78] *Federal Role in Dealing with Urban Decline and the Intergovernmental Coordination Act of 1977, Hearings before the H. Subcomm. on Government Operations*, 95th Cong. 51 (1978).
[79] Ibid., 3.

requirements specific to that agency, and instead allow the areawide agency to develop a "unified and comprehensive areawide development plan." The legislation also authorized funding to assist areawide agencies with planning efforts.[80]

The Intergovernmental Coordination Act represented a more comprehensive take on planning strategies HUD officials had been debating. In 1977, President Jimmy Carter had established a "Task Force on Metropolitan Policy." The head of the group, HUD Community Planning and Development Director Robert Embry, reported that President Carter believed that "the problems of our cities have intergovernmental roots which require the effective collaboration of whole metropolitan areas." Embry charged the group with developing "metropolitan strategies and policies which will enable [HUD] to administer all of its programs in a way which will better serve the needs of our troubled urban centers."[81] Task Force members responded with various proposals primarily focused on HUD's administration of its planning grant program, for example imposing "performance requirements" on states, areawide organizations, counties, and cities, and requiring local governments to use planning funds to support "[l]ocally coordinated short-term programming for housing, community facilities and services, parks, recreation, economic development and other activities to solve local problems to meet national goals." Most importantly, the Task Force proposals called for planning at the metropolitan level, requiring local governments to use federal planning grants to develop a "metropolitan development guide" identifying "where urban growth should and should

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[80] Ibid., 14–16 (§§ 702(a), 703(a)).
[81] Robert C. Embry to Donna E. Shalala et al., Subject: Task Force on Metropolitan Policy, April 11, 1977, folder: Metropolitan Policy Task Force, Box 102, Papers of Patricia Roberts Harris, Library of Congress.

not occur," establish "fair share programs for major economic development and resultant tax yields," and metropolitan "housing resource plans."[82]

The proposed Intergovernmental Coordination Act, however, did little to shift tax revenues from affluent suburbs to struggling municipalities. The law might have allowed local governments to make better use of limited federal grants, but it did not provide a mechanism to support annexation of suburbs or to encourage reallocation of resources. In the legislative hearing, subcommittee chairman L.H. Fountain recognized the heart of the problem the federal government faced. How, he asked, could the "Federal Government help bring about the kinds of metropolitanwide tax base sharing and other cooperative arrangements" that HUD envisioned? The question prompted Assistant Secretary Shalala to observe that the problem was a political one. By conditioning discretionary grants on intergovernmental cooperation, she suggested, the federal government could persuade local jurisdictions to share resources at a metropolitan level.[83] But local governments were unwilling to relinquish tax revenue. Lawmakers lacked the political will to adopt

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[82] Future Directions for the Comprehensive Planning Assistance Program, October 3, 1977, folder: Metropolitan Policy Task Force, Box 102, Papers of Patricia Roberts Harris, Library of Congress; Note from James F. Selvaggi to Robert C. Embry, n.d., folder: Metropolitan Policy Task Force, Box 102, Papers of Patricia Roberts Harris, Library of Congress; United States Department of Housing and Urban Development Departmental Program for Implementing Regional Strategies: Summary and Recommendations of HUD Task Force, July 7, 1977, folder: Regional Strategies, Box 123, Papers of Patricia Roberts Harris, Library of Congress. In a 1974 survey, they U.S. General Accounting Office had called for similar adjustments to HUD's planning grant program, which had been established under Section 701 of the Housing Act of 1954. As the GAO observed in its 1974 report, overlapping jurisdictions in metropolitan areas had produced duplicative reports using federal planning funds, prompting the GAO to recommend that HUD ensure that state and inter-state regional planning agencies coordinate to avoid redundancies in planning efforts. See Wilbur D. Campbell, GAO Associate Director, to David O. Meeker, HUD Assistant Secretary for Community Planning and Development, February 20, 1974, https://www.gao.gov/assets/200/190958.pdf.

[83] *Federal Role in Dealing with Urban Decline*, 59.

coercive measures. As Shalala noted: “[T]here are very strong feelings in this country about local control . . . .”[84] Despite the modest intervention the proposed bill offered, it did not become law. Unwilling to pass legislation helping cities coordinate resources and planning more effectively with surrounding jurisdictions, lawmakers instead adopted policies regulating the behavior of single units of government.

VI.

While the federal government did little to help redirect local tax revenue to struggling city governments, Congress adopted laws during the 1970s and 1980s that expanded some forms of federal regulation of municipal bond markets, while leaving local governments with little direct federal oversight. Congress meanwhile adopted revisions to the tax code that aimed to expanded the capacity of local governments to access capital markets for essential government services. With these legislative interventions, Congress reduced local governments’ borrowing costs and increased municipalities’ access to capital markets. In a 1991 statement to Congress, the Government Finance Officers Association recognized that municipal bonds had become increasingly integral to local fiscal policy. As the Association concluded, “The importance of a strong municipal securities market cannot be overstated.”[85]

Congress’s first significant intervention came when it passed the Securities Acts Amendments of 1975. The law imposed registration requirements on municipal securities

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[84] Ibid., 69.

[85] *State and Local Governments Under Stress: The Role of Capital Markets, Hearings before the S. Subcomm. on Securities of the Committee on Banking, Housing, and Urban Affairs*, 102nd Cong. 198 (Opening Statement of Jeffrey S. Green, Deputy General Counsel, Port Authority of New York and New Jersey, on Behalf of Government Finance Officers Association).

brokers, which primarily included the private institutions involved in underwriting municipal bond issuances. Instead of directly regulating municipalities, the law extended the Securities and Exchange Commission's oversight authority to dealers.[86] Broker-dealers acted as intermediaries between issuers and investors, buying up municipal bonds and selling the bonds in secondary markets. Though the law did not govern municipalities directly, Congress had found that broker-dealers played a significant role in many of the fraudulent trading practices investigations the SEC had opened in cases involving municipal securities. As the SEC's complaints suggested, broker-dealers had engaged in practices including "unconscionable markups, churning of customers' accounts, misrepresentations concerning the nature and value of municipal securities, disregard of suitability standards, and scandalously high pressure sales techniques." The time had come, the Senate Committee on Banking, Housing, and Urban Affairs concluded, to "subject municipal securities professionals to essentially the same regulatory scheme that applies to other securities activities."[87]

To implement its goals, the law required the SEC to establish a Municipal Securities Rulemaking Board (MSRB). The Board, however, was self-regulating: it consisted of fifteen SEC-appointed members, with ten of the members associated with or representing brokers or dealers, and the remaining five representing investors.[88] Congress authorized the MSRB to establish rules governing municipal securities dealers, including rules governing the "form and content" of any broker or dealer's quote related to

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[86] Securities Acts Amendments of 1975, Pub. L. No. 94-29, 89 Stat. 97 (1975).
[87] *Municipal Securities Act of 1974: Report of the S. Comm. on Banking, Housing, and Urban Affairs to Accompany S. 249*, 93rd. Cong. 6 (1974).
[88] Pub. L. No. 94-29, 89 Stat. 132 (§ 15B(b)(1)).

municipal securities. The Act required the MSRB ensure that quotes were "fair and informative." It also called for the Board to establish conditions under which a dealer could, during "the underwriting period," sell a new issue of securities to an investment portfolio.[89] While the law curbed the abuses of zealous underwriters, it left the MSRB with limited powers. It did little to regulate a municipality's representations to investors.

Some members of Congress urged the federal government to assume greater regulatory authority over local issuers. In 1976, Congress held hearings on municipalities' disclosure of financial information in connection with securities transactions. Until the early 1970s, lawmakers believed that the antifraud provisions of federal securities laws had been sufficient to "achieve the necessary discipline in the offering of municipal securities." But the events in New York and other cities shook investors' confidence in municipal bonds. The narratives of New York's fiscal crisis, as told by bankers and conservative politicians, suggested that the city had lied to investors about its financial condition to take on additional debt to finance its excessive spending on public services. Investors needed help evaluating the risk of investing in a city. Philadelphia's Director of Finance offered several reasons why investors would have difficulty evaluating a bond offering. First, local governments had no "universal accepted accounting procedure" to follow, leaving investors hard pressed to draw any firm conclusions based on the contents of an accounting statement. Second, no uniform standards governed local governments' disclosure of information relating to financial conditions. Hoping to restore investor "confidence" in municipal securities, Senators

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[89] Pub. L. No. 94-29, 89 Stat. 131–34 (§ 15B(b)).

Harrison Williams (D-NJ) and John Tower (R-Tx) proposed laws designed to institute uniform accounting and disclosure standards.[90] In the late 1960s, Tower fought vigorously against federal spending for cities, proposing in 1968 to cut in half funding for the federal model cities program. More recently, he had opposed federal aid to help New York City avert a default. To Tower, standardized disclosure rules looked appeared a better form of assistance. Disclosure rules would reduce investors' perceived risks, and help cities raise capital at lower cost. Senators Tower and Williams thus considered the measures vital to protecting municipal workers and residents. But by adopting disclosure and reporting standards, the federal government would impose new regulatory burdens on local governments.[91]

The senators wanted investors to have more confidence in the financial reporting of municipalities, but did not want to subject them to direct federal oversight. The senators proposed amending the 1934 Securities Act, which would establish specific disclosure requirements for cities holding outstanding debt exceeding $50 million. The law required minimum expansion of the Security and Exchange Commission's regulatory authority, requiring it only to prescribing reporting requirements.

Senator Thomas Eagleton (D-Mo), however, introduced a bill that involved more aggressive regulatory oversight. Eagleton had served since 1969 as chairman of the Committee on the District of Columbia, which oversaw affairs relating to the District of

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[90] *Municipal Securities Full Disclosure Act of 1976: Hearings before the S. Subcomm. on Securities of the Comm. on Banking, Housing and Urban Affairs*, 95th Cong. 1–2 (1976).
[91] See ibid., 15 (statement of Thomas Eagleton, U.S. Senator from Missouri); "$5 Billion Housing Bill OKd By House," *Chicago Daily Defender*, June 3, 1968; "Aid Plan for City, Balked in Senate, Gains in House," *New York Times*, October 23, 1975.

Columbia. In 1975, he ordered the District to conduct a complete audit of its financial books, something it had never done. District officials regarded the intervention as paternalistic and an attack on home rule. Then-councilman Marion Barry called it "subtle racism." But Senator Eagleton expected the intervention would instill fiscal discipline in a jurisdiction with per capita debt that was approaching New York City's level. Eagleton was convinced that the "artful accounting and management practices" of large cities had sent them on a path towards financial ruin. He wanted to save cities from themselves. With his background overseeing the District of Columbia, he proposed a more aggressive approach to fiscal oversight, suggesting that Congress amend the Securities Act of 1933. The 1933 Securities Act established registration and reporting requirements for securities offered to the public, while explicitly exempting states and municipalities. Eagleton's amendment would strike these exemptions from the 1933 Act, thus subjecting local governments to the "full sweep of the registration provisions" of the law.[92]

The Treasury Department supported Senator Eagleton's call for federal oversight. Undersecretary for Monetary Affairs Edwin Yeo noted that cities had rapidly changed over recent decades. Since the Securities Act was passed in 1933, cities had grown more complex, adopting a wider range of taxes and expanding their services. Furthermore, while municipal market investors had once mostly included large institutions like banks and insurance companies, individual investors had begun to assume a larger presence in

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[92] Ibid., 3–15 (S. 2574 and S. 2969); "The City's Audit," *The Washington Post*, November 29, 1975; "Mayor Flays Eagleton Plans for D.C. Audit," *The Washington Post*, November 27, 1975.

the market.[93] As one bond analyst noted, individual investors did not have "the background to wade through a budget document the size of a Manhattan telephone book," and the high cost of subscribing to a rating service like Moody's was not feasible.[94]

Analysts reported difficulty evaluating cities' general obligation bond offerings. The absence of a standardized "informational statement" required investors to "rely on the issuer's budgets, annual reports, fiscal newsletters, Census Bureau data, credit reports of the rating services, special reports prepared for us by municipal bond broker/dealer firms, and other data sources." And while many states imposed balanced-budget requirements on municipalities, the requirement offered little assurance for investors. A municipal budget relied on projections for future receipts and expenditures, and those calculations depended on assumptions that governments often did not explain. Local governments often overestimated their revenues and underestimated expenditures to produce a balanced budget compliant with state laws, though in many cases the figures might not appear realistic to analysts.[95]

But city leaders balked at federal oversight. The bills' opponents included local government advocates that had lobbied forcefully for federal aid to New York City. The National League of Cities had pressed the Ford administration for a bailout. But as a lobbying arm of local governments, the League of Cities advocated for policies that preserved the autonomy of municipalities. The organization argued that New York's

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[93] Ibid., 31 (statement of Edwin H. Yeo, Under Secretary of the Treasury for Monetary Affairs, accompanied by Robert Gerard, Deputy Assistant Secretary for Financial Resources Policy).
[94] Ibid., 204 (Statement of Gilman C. Gunn, Senor Municipal Bond Analyst for the Chubb Corp.).
[95] Ibid., 203–04 (Statement of Gilman C. Gunn, Senor Municipal Bond Analyst for the Chubb Corp.).

fiscal crisis was anomalous, and did not justify broader regulation of municipal finance. Speaking on behalf of the U.S. Conference of Mayors and the National League of Cities, Peoria, Illinois mayor Richard Carver contended that municipalities since 1935 had defaulted on only $5 million in total debt, resulting in only losses of $10 million to investors. and that over the last four decades, investors had lost little to investments in municipal securities. Given the historical reliability of municipal securities, the senators' proposed legislation appeared to be merely a response to New York's crisis; it also carried a more widespread application that would unnecessarily burden cities.[96]

The proposals also appeared unnecessary, costly, and offensive to local sovereignty. The antifraud provisions of federal securities laws were sufficient to address the few instances of knowing misrepresentation. Furthermore, many states, including Illinois, had begun adopting uniform accounting standards. Cities and states, Mayor Carver argued, "ought to be given the opportunity to solve this particular problem on their own . . . ."[97] As the Board of Commissioners for the National Association of Counties added, "The specter of paperwork, redtape and its attendant costs which would be imposed on States, counties, and cities by such registration is not appealing." It would also infringe on the "right of local self-determination."[98]

Congress could not muster the political will to impose disclosure requirements on municipalities. The proposed legislation may have had Constitutional implications that

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[96] Ibid., 155–57 (Statement of Richard Carver, Mayor, Peoria, IL, Representing the National League of Cities and the U.S. Conference of Mayors).
[97] Ibid.
[98] Ibid., 168 (Statement of Jim Flaherty, Chairman, Allegheny County Board of Commissioners for the National Association of Counties).

undermined the Senators' case for federal oversight. Registration, reporting, and disclosure requirements arguably threatened the sovereignty of states and their subdivisions. As one legal scholar suggested a decade later, the Supreme Court's developing views on local autonomy during the mid 1970s offered a compelling explanation for Congress's inaction.[99] In a landmark case, the Supreme Court in 1976 gave new life to the Tenth Amendment of the Constitution, holding that it limited Congress's power to disturb particularly integral functions of local government. The case, *National League of Cities v. Usery*, involved a challenge to 1974 amendments to the Fair Labor Standards Act, in which Congress expanded coverage of the law's minimum wage and hour regulations to states and municipalities. In striking down the amendment, the Supreme Court reasoned that the Constitution's structure prohibited the federal government from imposing regulations that "directly displace the States' freedom to structure integral operations in areas of traditional governmental functions."[100]

The Supreme Court's expansive language confounded commentators, jurists, and lawmakers alike. After all, having proclaimed that Congress could not meddle with operations integral to "traditional" functions, the Court did little to delimit what these functions might be. But considering the centrality of fiscal policy to any government's operations, lawmakers had good reason to believe that *Usrey* had set a standard

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[99] See Ann Judigh Gellis, "Mandatory Disclosure for Municipal Securities: A Reevaluation," *Buffalo Law Review* 36 (1987), 18–19.
[100] 426 U.S. 833, 852 (1976).

restricting federal regulation of municipalities' fiscal disclosures.[101] Not until 1985, when the Supreme Court abandoned *Usrey*'s holding in *Garcia v. San Antonio Metropolitan Transit Authority*, did regulation of municipal disclosures find sound constitutional footing.[102]

Through its inaction, Congress left the Municipal Securities Rulemaking Board to regulate underwriters while avoiding direct supervision of municipal financing. Despite Congress's reluctance to intervene in local fiscal policy, it nonetheless adopted other measures that aimed to regulate the ways municipalities used tax exempt bonds, and protected the capacity of municipalities to use debt to finance government functions and social welfare policies. As the previous chapter argued, Congress at the same time responded to the nation's low-income housing crisis during the 1970s by passing legislation designed to help states and local governments use municipal bonds to subsidize affordable housing development. Federal aid to cities consisted increasingly of methods to help local governments issue debt, but Congress did little to regulate this activity.

Many of Congress's most significant interventions came with amendments to the tax code, which aimed to curtail abuses of tax exempt financing, and to thus minimize local governments' borrowing costs. In the 1980s the Municipal Finance Officers Association reported to Congress that the tax-exempt market had been deteriorating. The

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[101] "Federal Regulation of Municipal Securities: Disclosure Requirements and Dual Sovereignty," *Yale Law Journal* 86 (1977), 935–39; Lewis B. Kaden, "Politics, Money, and State Sovereignty: The Judicial Role," *Columbia Law Review* 79, no. 5 (1979).
[102] 469 U.S. 528 (1985); Stephen Bradford Lyons, "SEC Registration Requirements for Taxable Municipal Securities," *The Urban Lawyer* 21, no. 2 (1989), 235.

growing volume and uses of tax-exempt issuances had diminished the "value of tax exemption for state and local governments." Local governments had floated a growing volume of tax-exempt bonds for "private" purposes, for example to finance subsidized loans supporting the development of industrial and commercial facilities to attract business activity, as well as helping households purchase single-family housing. [103]

Small-issue industrial development bonds, for example, assumed an increasingly prominent share of the tax-exempt market, representing sixteen percent of the tax-exempt market by 1982. These bonds, the Association explained, crowded the conventional state and local debt markets by absorbing capital that would in earlier decades have gone to "traditional government activity," thus driving up interest rates.[104] Single-family mortgage revenue bonds similarly contributed to rising costs. Yields on long-term municipal bonds, for example, had doubled from 1979 to 1982, and the difference between taxable and non-taxable bond yields had narrowed, indicating that the tax exemption as saving municipalities increasingly less money.[105] The tax-exempt bond market had expanded rapidly since the late 1970s, with the annual volume of long-term bonds rising from $43.3 billion in 1979 to $77.3 billion in 1982. Private-purpose bonds accounted for most of the growth, and by 1982 local governments used over half of new

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[103] *Trends in Municipal Financing and the Use of Tax-Exempt Bonds to Finance Private Activities: Hearings before the H. Comm. on Ways and Means*, 98th Cong. 638 (1983) (Statement of the Municipal Finance Officers Association).
[104] Ibid., 641.
[105] Ibid., 639.

issues to finance projects involving housing, industrial development, student loans, and other private activities.[106]

As a form of aid to local governments, the Association requested that Congress "curb" the tax exemption. Its position may have appeared unexpected at first glance; cities had increasingly used industrial development bonds to bolster their commercial economies. But as the Association argued, industrial development bonds rarely succeeded in influencing a corporation's decision to relocate to a city or to expand its operation in a given location. And cities too often used single-family mortgage revenue bonds to help relatively affluent households. The value of both bonds was questionable. Furthermore, as a senior fellow of the Brookings Institution explained in a separate hearing, the tax exemption tended to encourage "undesirable interstate competition": each state "feels forced to offer tax-exempt financing to private borrowers in response to the offerings of other States." A limitation on local borrowing practices would relieve local governments of competitive pressures, while helping to reduce the interest rates municipalities paid on general obligation and revenue bonds.[107]

Local officials had recognized the connection between overuse of tax exempt bonds and municipal finance since at least the mid-1970s. In advocating for the federal government to subsidize state affordable housing bonds, the Council of State Housing Agencies argued in 1975 that interest subsidies could allow state agencies to issue bonds

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[106] Martha Hamilton, "States, Cities Use Bonds for New Purposes," *Washington Post*, January 1, 1984.
[107] *Trends in Municipal Financing*, 98th Cong., 642; *Tax Reform Proposals—VIII: Hearing Before the S. Comm. on Finance*, 99th Cong. 66 (1985) (Statement by Dr. Harvey Galper, Senior Fellow, the Brookings Institution).

in the taxable market. In addition to facilitating access to a more stable market, the Council believed that the subsidy would reduce states' reliance on the nontaxable market as a housing subsidy, thus "reducing the general glut of tax exempt issues which is jeopardizing municipal credits across the nation, and is itself a national problem worthy of Federal concern."[108] By the 1980s, the overuse of the nontaxable bond market appeared to have grown worse. Some coordination of local and state governments' access to the market could help contain costs and relieve municipalities of escalating interest rates.

Texas lawmakers led the charge to limit industrial development bonds. Representative J.J. Pickle, a Democrat from Austin, Texas, introduced a bill to limit the use of small-issue industrial development bonds. As he put it, "why should the [f]ederal [g]overnment finance Du Pont's project of $40 million down in Mississippi?" Representative Sam Hall, a Democrat from East Texas, brought state senator Ed Howard from Texarkana to testify before Congress on the problems with small-issue industrial development bonds. Howard had introduced and advocated for state legislation that brought industrial development bonds to Texas in the late 1970s, but now changed his views. As Howard explained, he introduced the bill "because my district borders Arkansas, Louisiana and Oklahoma, and all those States had it," and Texas was "trying to compete with them." The beneficiaries of the bonds—private businesses—successfully lobbied to broaden the statute. Howard recalled one project that involved a $54 million

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[108] John Burnett to Secretary Carla Hills, August 29, 1975, folder: § 802, Box 33, Carla Hills Papers, HIA.

loan in Texas City that created only eleven jobs.[109] The Texas lawmakers were upset that overuse of revenue bonds was driving up interest rates. Representative Pickle's legislation would help lower operating costs for Texas cities.

The legislative debate pitted the Texas lawmakers against representatives from districts experiencing economic decline. George Latimer, the mayor of St. Paul, Minnesota, announced that he represented an "old and cold city that is landlocked" and explained that cities in Minnesota relied on industrial revenue bonds to keep local economies alive. He opposed any intervention that would prevent St. Paul from using the bonds to the full extent possible. Similarly, a representative of an industrial development council from Mississippi stated, "Mr. Pickle, unlike your [s]tate of Texas, Mississippi is a capital deficit State." He added, "I made that comparison because Texas is a rapidly developing State, and the area of Mississippi which I represent is not a rapidly developing area." Mississippi and Minnesota issued industrial development bonds with the hope of stemming economic decline. Texas lawmakers saw no need for the subsidy and were willing to limit its use to lower municipal borrowing costs.[110]

The Municipal Finance Officers Association urged Congress to reconsider other policies that drove up interest rates on nontaxable bonds. The spread between taxable and nontaxable bond interest rates depended on federal income tax laws. Municipalities could sell bonds at lower interest rates because investors did not pay income tax on the interest. But if investors expected to pay little in taxes on non-municipal bond interest,

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[109] *Trends in Municipal Financing*, 98th Cong., 143–44, 154, 174, 199.
[110] Ibid., 161, 163–64 (Statement of Hon. George Latimer, Mayor of St. Paul Minn.); ibid., 190 (Statement of Chip Morgan, Chairman, Legislative Affairs, Southern Industrial Development Council and Executive President, Delta Council).

municipalities would need to offer higher interest rates to find willing buyers. In 1981, Congress reduced top marginal tax rates for personal income from seventy to fifty percent and lowered capital gains rates from twenty-eight to twenty percent. This shift in tax rates meant that the exemption on municipal bond interest became less valuable for individual investors. A 1982 law also limited the deduction private banks took on interest paid on capital used to purchase municipal bonds. While banks previously used this deduction to reduce tax payments, the 1982 law only allowed banks to deduct eighty percent of interest payments. With this deduction curtailed, banks demanded higher interest rates from municipal issuers to cover their additional expenditure on federal taxes.[111]

The following year, Congress passed legislation responding to many of the concerns expressed by the Municipal Finance Officer Association.[112] The 1984 Deficit Reduction Act established statewide volume caps on industrial development bonds, limiting the total issue for a state to $150 per resident or $200 million, whichever may be greater, with the volume scheduled to reduce to $100 per resident in 1986. It capped total outstanding small issue bonds at $40 million for a single beneficiary. Finally, the law limited the ways local governments could use industrial development bonds, for example by disallowing a business from using accelerated depreciation accounting for land purchased using industrial development bond financing, preventing states from using the bonds to purchase land or existing facilities, and forbidding some of the more frivolous,

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[111] *Trends in Municipal Financing and the Use of Tax-Exempt Bonds to Finance Private Activities*, 639–41.
[112] 98 H.R. 4170 (1984).

imprudent uses that municipalities had found for the bonds, including financing of liquor stores, sky boxes, private airplanes, and casinos.[113]

Then, in 1986, Congress passed a landmark overhaul of the tax code that further restricted the ways states and municipalities could use tax exempt financing. The Tax Reform Act of 1986 established statewide caps on all private-purpose municipal bonds, a category that encompassed both mortgage revenue bonds and industrial development bonds. By setting a limit on an overarching category of bonds, the law allowed state governments significant autonomy in bond financing projects. Whereas the 1984 law imposed caps that applied specifically to industrial bonds, a state could decide for itself how state agencies and local governments would use its overall private purpose allocation.[114] The law classified a private activity bond as any issuance where the issuer intended over ten percent of the proceeds to involve a "private business use."[115] The law set a state's cap at the greater of either $75 per resident of the state or $250 million, with the cap scheduled to fall to $50 per resident or $150 million after 1987.[116]

City officials, particularly local finance officers, believed that the 1986 law went too far. The law's restrictions on industrial development bonds appeared overbroad. If a city hired a private contractor to manage a waste management plant, for example, the law's limitations on private bond issues would apply. The law also prohibited local governments from investing tax exempt bond revenue into securities bearing higher

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[113] *Tax Reform Act of 1983: Report of the H. Comm. on Ways and Means on H.R. 4170*, 98th Cong. 30–32 (1983); Deficit Reduction Act of 1984, Pub. L. No. 98-369 §§ 621, 626, 98 Stat. 494 (1984).
[114] Tax Reform Act of 1986, Pub. L. No. 99-514, 100 Stat. 2085, 2632 (1986) ("§ 146(e)").
[115] Ibid., 100 Stat. 2085, 2603 ("§ 141(b)").
[116] Ibid., 100 Stat. 2085, 2631 ("§ 146(d)").

interest rates, a practice known as "arbitrage." But while some local governments may have issued excessively large bonds with plans to use the funds chiefly for arbitrage investments, governments used arbitrage for many legitimate reasons. Cities often raised the funds through a single issuance to cover multiple stages of a development project, meaning that a city often would not need to expend the funds until each stage began. Arbitrage investments thus allowed cities to offset municipal bond interest costs during early stages of infrastructure projects. While the Government Finance Officers Association supported restrictions on municipal bonds to keep interest rates under control, the Association considered these other restrictions an "assault on all tax-exempt bonds." [117]

Despite Congress's reform efforts, Northeastern and Midwestern cities continued to face fiscal challenges. Having endured President Ronald Regan's "New Federalism," through which the administration sought to limit the federal government's role in urban policy by cutting funding for important urban aid programs by sixty percent, cities entered the 1990s with difficult budgetary decisions to make, and some faced the threat of budget deficits.[118] Philadelphia ran a budget deficit, and Bridgeport, Connecticut,

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[117] James Lebherz, "How the Tax Reform Act Dealt a Blow to Public Financing," *Washington Post*, September 4, 1988; *Tax Reform Proposals—XX: Hearing Before the S. Comm. on Finance*, 99th Cong. 95 (1985) (Statement of John T. Walsh on behalf of Government Finance Officers Association).

[118] *Report of the President's Commission on Housing* (Washington, DC: Government Printing Office, 1982); Daniel Stedman Jones, *Masters of the Universe: Hayek, Friedman, and the Birth of Neoliberal Politics* (Princeton: Princeton University Press, 2012), 89–100; *State and Local Governments Under Stress: The Role of Capital Markets, Hearings before the S. Subcomm. on Securities of the Committee on Banking, Housing, and Urban Affairs*, 102nd Cong. 23–24 (1991) (Testimony of W. Wilson Goode, Mayor of Philadelphia, on behalf of The U.S. Conference of Mayors).

projected a 1992 deficit of $30 million out of a $300 million budget, up from a $7.6 million deficit in 1991.[119] Members of Congress recognized that New York City was facing its greatest economic difficulties "since it went almost went bankrupt in 1975." As the New York Times reported, the city's debt had grown so costly that it needed to commit three quarters of its tax revenue to cover payments on interest and principal. Detroit also had a rising deficit, and as the National League of Cities found in a survey of over 500 communities, two thirds reported that they had experienced increased difficulty in meeting their financial needs.[120] The ongoing and deepening problems of local governments resulted from increased expenditures on essential services involving law enforcement, education, health care, welfare, and homelessness, combined with reductions in federal contributions to state and local governments.

Responding to municipal fiscal crises, Congress held a hearing in 1991. Speaking on behalf of the U.S. Conference of Mayors, Philadelphia Mayor W. Wilson Goode emphasized the importance of cities' access to capital markets. Philadelphia's credit profile, he reported, had reached "critical condition," making it difficult for the city to access markets. To illustrate his point, Mayor Goode recounted the city's recent challenges in executing a "temporary loan note transaction." A temporary loan note, he explained, was a "simple transaction" that could be "structured and sold in less than three weeks." In Philadelphia's case, because the investment community had "backed away from the city" after a credit rating downgrade, the transaction involved six months of

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[119] *State and Local Governments Under Stress*, 102nd Cong. 3 (Opening Statement of Senator Christopher Dodd).
[120] Ibid., 11–12 (Statement of Senator Donald Riegle); Sarah Bartlett, "Tough Choice for New York: Pay Debt Cost or Halt Repairs," *New York Times*, March 5, 1991.

"intensive effort."[121] Philadelphia was hardly alone. With Standard and Poor's lowering the rating of 474 issuers, 1990 marked a record year for municipal credit rating downgrades.

During the hearings, Democratic Senator Chris Dodd engaged Mayor Goode in a line of questioning on investor confidence. Opening with the observation that "investors don't have a whole lot of confidence in the Philadelphias of this country," Dodd suggested that until they reformed their strategies for managing "the underlying fiscal distress that our cities face," a city like Philadelphia was unlikely to "increase investor confidence." How, he asked "do you respond to that?" Mayor Goode argued that investor confidence had little to do with how cities managed themselves. More important, he argued, was the "structure that we have between local and state and [f]ederal governments." Philadelphia's status as a state subdivision, and the state control that accompanied its legal status, meant that the city had to seek authorization from the state before it could implement some fiscal policies, for example an increase in the local sales tax. The city had to wait for state approval, which slowed its response to fiscal problems, and in turn shook investor confidence. He summarized: "[T]he lack of investor confidence is based, not upon the managerial ability of cities, but upon whether or not there is a political relationship between the city and its State government, that can have those kinds of issues resolved, and resolved very quickly."[122]

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[121] *State and Local Governments Under Stress*, 102nd Cong. 13 (W. Wilson Goode, Mayor of Philadelphia, on behalf of the U.S. Conference of Mayors).
[122] Ibid., 34–35.

Presented with this assessment, Senator Dodd asked for the Mayor's thoughts on what a federal legislator could do to help. Mayor Goode provided a simple answer: the government should consider how cities like Philadelphia "can best access the market." He suggested that lawmakers work with cities to evaluate regulations, including some restrictions imposed through the 1986 Tax Reform Act, to help cities borrow money, particularly during times of fiscal stress. As he put it, "there has to be something done about how the investors look at our ability to repay, and separate out . . . the political uncertainties which exist." Of course, Goode added, reversing the federal government's "absolute abandonment" of cities over the last decade through "reinvestment" in urban programs would also help solve Philadelphia's problems.[123]

Other witnesses noted that some provisions of the 1986 Tax Reform Act had diminished commercial bank demand for municipal bonds. While lawmakers may have aimed for the tax overhaul to bring some order to the municipal securities market, the law included provisions designed to increase federal tax revenue. In its effort to recapture lost revenue, Congress revised tax laws on deductions banks were allowed to take, which had unanticipated consequences for municipal bond markets. As one bank executive observed, federal tax laws before 1986 enabled banks to deduct eighty percent of the interest paid on deposits used to purchase municipal bonds. The 1986 Act, however, removed this deduction altogether, with the result that banks were "virtually eliminated from [the municipal bond] marketplace." Without the deduction, the difference between deposit interest costs and municipal bond revenue narrowed. As banks exited the

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[123] Ibid., 35–36, 40.

municipal market, demand for municipal bonds fell, and individual investors began to occupy a larger share of the market. Commercial bank demand had been declining significantly since the 1970s. But over five years after the law passed, Banks reduced their municipal bond holdings further yet, from $232 billion $123 billion. Yields on municipal bonds rose, meaning that financing costs for local governments increased, and interest rates also grew increasingly volatile.[124]

Yet, Congress also used the 1986 Act to focus local governments' use of tax exempt financing on projects serving a "public purpose." The law provided an exception permitting banks to continue deducting interest paid on capital used to purchase bonds from smaller local governments—those issuing $10 million or less in debt per year—as long as the bonds did not finance some form of private activity. As a result, banks continued to purchase qualifying bonds, producing a "yield advantage" over other municipalities. Local governments issued qualifying bonds at rates averaging 0.2 to 0.3 percentage points lower than the rates other municipalities paid. The spread also indicated the extent to which banks' participation in municipal bond markets could affect local governments' borrowing costs. In response, the Government Finance Officers Association urged Congress to restore the bank interest deduction. A Congressional

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[124] Ibid., 44, 49–50 (Statement of Ralph Horn, Chairman, Public Securities Association, and Executive Vice President, First Tennessee Bank, Memphis, TN); ibid., 67 (Statement of Gedale Horowitz, Senior Executive Director, Salomon Brothers Incorporated, and Chairman, New York Local Government Assistance Corporation); ibid., 203 (Opening Statement of Jeffrey S. Green, Deputy General Counsel, the Port Authority of New York and New Jersey, on Behalf of Government Finance Officers Association); John E. Petersen, *Tax-Exempts and Tax Reform: Assessing the Consequences of the Tax Reform Act of 1986 for the Municipal Securities Market* (Washington, DC: Government Finance Research Center, Government Finance Research Officers Association, 1987), 3-7–3-9.

commission chaired by Congressman Beryl Anthony expressed similar worries, and recommended that Congress expand the exemption to cover governments issuing up to $25 million in debt annually.[125]

The tenor of the Committee's discussion reflected how thinking on federal aid to cities had shifted over the past decade. Federal aid appeared out of the question. In introducing the hearing, Senator Dodd observed that "cities and States desperately need help from the Federal Government," but that "our ability to help is limited by our own fiscal deficits." The Committee framed its task as examining how "the capital markets play a role in financing the needs of States and cities" and evaluating "steps that can be taken to ensure that States and cities that seek to raise funds in the capital markets can do so at the lowest possible cost." Senator Dodd emphasized that Congress should consider using the tax code and other mechanisms to increase investor demand for municipal bonds, and to improve investor confidence in the municipal market.[126] Senator Heinz, having recognized reductions in federal spending as a factor contributing to local governments' challenges, suggested that Congress revisit provisions in the 1986 Tax Reform Act that "reduced the attractiveness of municipal bonds." Felix Rohatyn, a banker known his role organizing the Municipal Assistance Corporation in the 1970s in response to the New York City fiscal crisis, had suggested that Congress pass laws enabling and encouraging pension funds—both public and corporate—to invest in the

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[125]Tax Reform Act of 1986, Pub. L. No. 99-514, 100 Stat. 2085, 2380–81 (1986) ("§ 265(b)(3)"); *State and Local Governments Under Stress*, 102nd Cong., 50 (Statement of Ralph Horn); ibid., 199 (Opening Statement of Jeffrey S. Green); Anthony Commission on Public Finance, *Preserving the Federal-State-Local Partnership: The Role of Tax-Exempt Financing* (1989), 29**.**
[126] *State and Local Governments Under Stress*, 102nd Cong., 2–3 (Opening Statement of Senator Dodd).

municipal bond market. Senator Terry Sanford urged his colleagues to "give some thought" to the idea.[127]

Remarkably, despite their concern for investor confidence, lawmakers ignored proposals related to federal securities regulations.[128] By the mid-1990s, municipal accounting practices remained unstandardized, and local governments remained exempt from direct securities regulation.[129] Over the previous two decades, the federal government intervened in local fiscal policy by limiting access to private-purpose bonds. At the same time, the government avoided providing any direct regulatory oversight of local governments' disclosure of financial information. As individual investors came to occupy an increasingly large percentage of the bond market, and banks withdrew from the market, the federal government left states and municipalities with wide discretion in managing their accounting practices. Financial disclosure depended solely on what underwriters and investors might demand from local governments. Illustrating the autonomy that local governments retained over their fiscal practices, in some instances individual financial officers assumed extraordinary authority and discretion to manage local governments' balance sheets, and with little external oversight.

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[127] Ibid., 3–4 (Opening Statement of Senator John Heinz); ibid., 5 (Opening Remarks of Senator Terry Sanford).

[128] One private sector witness, John Cregan, raised the issue. He noted that while the MSRB had effectively set "sound rules for interdealer and dealer-investor relationships," the lack of direct regulation of issuers hampered the timeliness of disclosures. Ibid., 70–71 (statement of John B. Cregan, Vice President and General Manager, Fixed Income Portfolio, General Reinsurance Corp., Stamford, CT).

[129] *Debt Issuance and Investment Practices of State and Local Governments: Hearings before the H. Subcomm. on Capital Markets, Securities, and Government Sponsored Enterprises of the Comm. on Banking and Financial Services*, 104th Cong. 6 (1995) (Statement of Representative Christopher Cox).

While New York City may have first demonstrated the need for some oversight of municipalities or banks, one municipality in the 1990s, Orange County, California, revealed the risks that lingered. In December 1994, Orange County, California, filed for Chapter 9 bankruptcy. Unbeknownst to other government officials or investors, the County's financial officer, Bob Citron, had invested $7.6 billion in County funds and pooled pension assets from across the state in high-risk derivatives called "inverse floaters." In the early 1990s, when Citron began investing in derivatives, his investment strategy yielded impressive results. The investment vehicle generated returns based on an inverse relationship with Federal Reserve Board interest rates, which had fallen steadily in 1991 and 1992. Using borrowed funds, Citron built a $19.5 billion investment portfolio from the County's $7.6 billion in assets, which he invested in derivatives based on his confidence that Federal Reserve rates would not rise. But in 1994, as the Board began to increase interest rates, the value of the County's investments plummeted. Faced with staggering losses exceeding $1.6 billion, the County filed for Chapter 9 bankruptcy to ward off investors' efforts to seize County securities. In filing for bankruptcy, Orange County became the first large municipality to benefit from Congress's 1978 amendments to the federal bankruptcy code.[130] The problem raised by the bankruptcy, as a

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[130] In re Cnty. of Orange, 183 B.R. 594, 598 (Bankr. C.D. Cal. 1995). The derivatives, called "inverse floaters," generated yield when the interest rate on underlying assets decreased. Ibid., 598; Public Policy Institute of California, *When Government Fails: The Orange County Bankruptcy, A Policy Summary* (1998); "County Official Lists Securities; Derivatives Attracted Criticism," *Wall Street Journal*, April 20, 1994; Sarah Lubman, "Before the Fall: Hubris and Ambition in Orange County," *Wall Street Journal*, January 18, 1995.

representative from California put it, was "why almost no one in the market knew just what Bob Citron was up to and how dangerous his investment practices really were."[131]

Orange County's bankruptcy exemplified the important role municipal bankruptcy laws played in the regulatory system surrounding municipal fiscal policies. In 1978, California voters passed Proposition 13, imposing limits on property taxation across the state that restricted local governments' power to raise revenue. The measure, which soon became a model for a tax revolt that swiftly spread across the US, placed pressure on fiscal managers to find new sources of revenue. In search of non-taxation revenue, a leveraged investment strategy involving high-yield securities appeared an attractive solution to the County's budget constraints. As Citron's investment strategy earned lucrative returns for Orange County and other participating municipalities and pension funds, he drew recognition as "the top treasurer in the nation, if not the world," as one county treasurer in California put it. Despite being a Democrat in a staunchly conservative county, Citron defeated a Republican, John Moorlach, in the 1994 election for county treasurer. Leading up to the election, Moorlach campaigned on the claim that Citron's investment in derivatives amounted to a reckless form of fiscal management. Citron brushed off these allegations, and won the election in a landslide.[132] Whether local voters did not understand the risks that Citron was taking, or simply did not care, they

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[131] *Debt Issuance and Investment Practices of State and Local Governments*, 104th Cong. 4 (Statement of Representative Christopher Cox).

[132] Robert O. Self, *American Babylon: Race and the Struggle for Postwar Oakland* (Princeton: Princeton University Press, 2003), 321, 326–26; Laurie Cohen and Karen Brandon, "Orange County Ills Open Hornet's Nest," *Chicago Tribune*, December 18, 1994; "The Affluent Passing the Buck," *The Washington Post*, December 15, 1994.

appreciated the results of his investment strategy, and chose him over the Republican opponent.

Either for lack of transparency, or lack of will, local political systems were not capable of identifying and correcting fiscal misconduct. And Orange County was not entirely alone. Other cash-strapped governments adopted similar financial practices. Like many other local governments in the 1990s, for example, the City of Detroit also adopted a leveraged investment strategy involving derivatives to finance its pension obligations, a practice that contributed significantly to the financial meltdown that brought city officials to federal bankruptcy court in 2013.[133] In search of new revenue, local governments like Orange County assumed new forms of risk, and took on greater levels of debt. Amendments to the bankruptcy law, passed in response to New York City's financial distress in the 1970s, enabled municipalities to manage the accompanying risk.

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The 1970s amendments to the bankruptcy code coincided with the rise of federal policies that increased the ability of local governments to accumulate debt. By granting cities the power to restructure their obligations under the protection of a federal bankruptcy judge, Congress in effect enlarged the financial and legal independence of local governments.

Congress's treatment of local governments during the 1970s reflected broader shifts in thinking about the role of cities within a federalist system. Rather than viewing municipalities as creatures of state governments, lawmakers and federal judges acted as if

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[133] See Wallace C. Turbeville, *The Detroit Bankruptcy* (New York: Demos, November 2013), 26–28.

municipalities were independent actors. As New York City tried to claw its way out of its fiscal crisis in the 1970s, for example, the U.S. Supreme Court issued a landmark decision interpreting the ways aggrieved individuals could assert federal civil rights claims for monetary damages against state actors.[134] Reversing an earlier decision, the Court held in its 1978 decision, *Monell v. Department of Social Services*, that an individual could recover damages for a constitutional harm caused by a policy or custom of a city. By recognizing conditions under which an individual or class of people could hold governments financially liable for unconstitutional behavior, the Supreme Court exposed local governments to liability that did not extend to state governments. After all, the Court had interpreted the Eleventh Amendment to immunize states from monetary liability for constitutional claims. Its decision in *Monell* thus treated local units of government as distinct entities subject to liability.[135] The exposure of local governments

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[134] In Monroe v. Pape, 365 U.S. 167 (1961), the Supreme Court had limited the reach of a federal statute, 42 U.S.C. § 1983, a law that provided a right of action for plaintiffs asserting constitutional claims against governments. In *Monroe*, the Court held that Section 1983 did not authorize a right of action against municipal governments, reasoning that the term “person” in the law contemplated only individuals, not a branch of the state. But in 1978, the Supreme Court abandoned this position, reasoning instead that a local government constituted a “person” for purposes of § 1983, and thus could be held liable for a constitutional deprivation arising from a policy or custom of the government. Monell v. Dep’t of Soc. Servs. of City of New York, 436 U.S. 658 (1978).

[135] See *Monell*, 436 U.S. at 690 n.54 (citing Lincoln Cty. v. Luning, 133 U.S. 529 (1890), for the proposition that the Eleventh Amendment presents no “bar to municipal liability”). The Supreme Court, under its reasoning in Fitzpatrick v. Bitzer, 427 U.S. 445 (1976), could have arguably held states liable for constitutional violations under Section 1983 because the right of action was enacted to effectuate the protections of the Fourteenth Amendment, which the Court in *Fitzpatrick* interpreted to abrogate a state’s sovereign immunity. The Court later foreclosed this possibility in Will v. Michigan Dep’t of State Police, 491 U.S. 58 (1989). Because Congress did not make “unmistakably clear in the language of the statute” its intent to “alter the ‘usual constitutional balance between the States and the Federal Government,’” the right of action under Section 1983 did not expose states to monetary liability. Ibid., 65.

allowed individuals with constitutional grievances to shape municipal conduct in ways that were beyond the control of states.

The federal government's treatment of local government's fiscal practices complemented this shift in legal doctrine. During the 1970s and 1980s, Congress gave cities new tools for independently managing their finances. As local governments expanded their use of revenue bonds, Congress adopted laws both limiting the ways local governments could use bonds, both to reduce the federal deficit, but also to steer local borrowing in ways that reduced interest rates that municipalities paid on debt. At the same time, Congress committed itself to using the tax code as a conduit for subsidizing affordable housing development and industrial investment. By permitting cities to use municipal bonds for purposes of economic development, Congress expanded opportunities for independent municipal activity. The 1968 Revenue and Expenditure Control Act, by exempting a range of residential development activities from restrictions it imposed on the use of municipal bonds, permitted local governments to use revenue bonds to finance housing projects.[136] In the 1970s, cities across the U.S. took advantage of this law and established mortgage-backed bond programs, issuing loans for the purchase of single-family homes. It allowed cities to provide services where states fell short. As an Urban Institute report observed, cities pursued these measures in part because they "believed that their mortgage financing needs were not being met by state housing finance agencies."[137]

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[136] Revenue and Expenditure Control Act of 1968, Pub. L. No. 90-364, 82 Stat. 251 (1968).
[137] George E. Peterson, *Tax Exempt Financing of Housing Investment* (Washington, D.C.: Urban Institute, 1979), 163.

As Congress safeguarded local governments' authority to finance housing and economic development projects, it also provided municipalities with new tools for managing risk associated with municipal borrowing. Congress's 1976 amendment to the Bankruptcy Code expanded the capacity of local governments to manage debt and possibly use federal restructuring procedures either to write down unmanageable debt, or to use the threat of bankruptcy to compel state governments to provide financial assistance.[138]

But as Congress expanded and protected the spheres of independent financial activity available to local actors, it declined to regulate municipal interaction with bond markets. Just as the federal government abandoned regulation of urban planning decisions because it embroiled the government in uncomfortable disputes implicating individual property rights, Congress avoided oversight of local fiscal policy because this area of regulation seemed too integral to local sovereignty. Combined with Congress's amendment to the federal bankruptcy code in 1976, which allowed local governments to access a procedure that the federal government denied to states, the federal government left municipalities with discretion over accounting, disclosure, and fiscal management policies. Local governments retained this independence as they increased their reliance on capital markets to support urban renewal programs and other local policies. Federal

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[138] See, for example, Clayton P. Gillette, "Fiscal Federalism, Political Will, and Strategic Use of Municipal Bankruptcy," *University of Chicago Law Review* 79, no. 1 (2012), 319–25 (arguing that municipal bankruptcy proceedings may prevent central governments like states from assuming control over distressed municipalities). While few municipalities used Chapter 9 to restructure debts during the 1970s and 80s, the widespread use of municipal bankruptcy in response to the 2008 recession demonstrated the importance of the code for urban fiscal management and sustaining the viability of highly-leveraged municipal governance.

laws designed to facilitate local borrowing allowed local officials greater flexibility in setting their own urban development policies. But by competing with other jurisdictions for capital, local independence had its perils, creating new opportunities for financial institutions to shape local policy.

Chapter 5

Governing with Debt: Scarcity, Municipal Bonds, and Local Authority

At the close of the 1970s, the Texas Municipal League was embroiled in a battle over legislative initiatives at the state capitol. As an association of officials representing local governments, the Texas Municipal League presented itself as an advocate for the fiscal independence of local governments. As "political subdivisions" of Texas, the League observed in a briefing paper, local governments fell under the direct supervision of state lawmakers. "No aspect of city government," the League noted, "escapes the attention of the Texas Legislature."[1]

In the late 1970s, the Municipal League worried that the state legislature's attention would turn to local government tax policies. In the wake of California's Proposition 13 tax revolt, a "taxquake" had spread across the county, prompting the Texas governor to call a special legislative session. The taxing and spending practices of local governments came under the scrutiny of state lawmakers, and local governments soon faced a bevy of laws designed to cap property taxation, limit the issuance of new debt obligations, and subject fiscal policy decisions to voter approval. The Municipal League urged state representatives to reject the bills. As the League argued, local governments already maintained "relatively low" property tax rates, and local governments that capped tax expenditures became "federal aid addicts." Facing pressure from local governments, the legislature failed to enact any of the special session tax

[1] Memorandum to City Officials Invited to Serve on the TML Legislative Policy Committee on Finance & General Municipal Affairs, September 29, 1978, Box 21, Robert Folsom Mayoral Papers, DPL, 1.

expenditure limitation bills. The Municipal League nonetheless feared for the independence local governments.[2]

In fact, despite this initial bevy of threats, local governments over the following decade secured greater independence from the state legislature, perhaps more than the Municipal League had ever envisioned. This chapter explores this reversal of fortune. Fiscal independence involved more than a local government's power to tax. When local governments in Texas avoided tax limitations that many states imposed on localities, local control over taxation proved insufficient to cover their social welfare and urban development programs. Through the use of municipal bonds, cities financed projects outside the scope of ordinary tax revenue. But local governments were subject to state restrictions on the use of municipal bonds. Throughout the twentieth century, states had imposed restrictions on their subdivisions' abilities to issue bonds, in part by establishing caps on debt, and imposing balanced budget requirements.[3] To help local governments navigate a new landscape of fiscal austerity, the Texas legislature enacted a series of laws that provided local governments authority to use debt financing for new purposes, and to enter partnerships with private actors to achieve public goals.

Throughout the 1980s, as federal aid to local governments declined, municipalities increasingly relied on tax exempt bonds to finance development projects. In 1981, 41.7 percent of state and local capital financing depended on federal grants, and debt financing covered 37.5 percent. By 1989, this ratio inverted. Federal grants fell to 26

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[2] Ibid., 12–15.
[3] For discussion on borrowing limitations imposed through state constitutions, see Richard Briffault, "Foreword: The Disfavored Constitution: State Fiscal Limits and State Constitutional Law," *Rutgers Law Journal* 34 (2003).

percent of capital financing, and debt financing rose to 53.9 percent.[4] As Texas's administrative and political history suggests, state governments enabled this change. While some scholars have interpreted local governments' use of revenue bonds and other forms of debt as means by which they evaded state government regulations, this chapter suggests that the state government played an important role in expanding the autonomy of local governments.[5] In effect, new grants of power from the state legislature marked a significant expansion of local governments' home-rule authority.

I.

Municipalities have long been subject to the control of their chartering state governments. Some of the U.S.'s oldest cities began as chartered corporations that maintained rights and power independent from the state. But over the course of the nineteenth century, local leaders, state officials, and jurists reformulated the legal position of city governments, ultimately recognizing cities as subject to the full control of state legislatures. The early history of New York City encapsulates the shifting legal status of municipalities in the U.S. In the early eighteenth century, the "Corporation of the city of New York" operated under a British Royal charter, which allowed the corporation to hold, and dispose of property. The Charter also authorized the corporation's Common Council, consisting aldermen and the mayor, to create streets, regulate markets, license

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[4] *State and Local Governments Under Stress: The Role of Capital Markets, Hearings before the S. Subcomm. on Securities of the Committee on Banking, Housing, and Urban Affairs*, 102nd Cong. 198 (1991) (Opening Statement of Jeffrey S. Green, Deputy General Counsel, Port Authority of New York and New Jersey, on Behalf of Government Finance Officers Association).
[5] Alberta M. Sbragia, *Debt Wish: Entrepreneurial Cities, U.S. Federalism, and Economic Development* (Pittsburgh: University of Pittsburgh Press, 1996).

individuals to practice trades, and oversee the inspection of goods.[6] But as historian Hendrik Hartog has shown, the City through the early nineteenth century primarily governed through management of its property, which citizens considered the City's "proper business." By attaching requirements to waterfront property grants—for example obligating recipients to build streets, provide public spaces, or develop docks—the Council used its control over property to regulate commerce and stimulate economic growth.[7] The City's regulatory authority was thus intricately bound up with its property rights, and in this respect, the Charter conferred on the city remarkable autonomy.

New York's powers and rights shifted after the American Revolution. The City's corporate independence swiftly drew criticism from political leaders during the revolutionary period, who regarded its distance from the democratic state government as inconsistent with their understanding of republicanism. Presented with this critique, and perhaps to assuage doubts about the institution's legitimacy, city aldermen in the early nineteenth century began to treat the City as dependent on the State. Though no

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[6] Hendrik Hartog, *Public Property and Private Power: The Corporation of the City of New York in American Law, 1730-1870* (Ithaca: Cornell University Press, 1983), 15–17; Hendrik Hartog, "Because All the World Was Not New York City: Governance, Property Rights, and the State in the Changing Definition of a Corporation, 1730–1860," *Buffalo Law Review* 28 (1979), 96–97.
[7] Ibid., 40–43, 50–51. Jon Teaford finds that municipal leaders in Philadelphia and other local governments at the beginning of the nineteenth century, including New York City, used regulations, rather than property grants, to encourage and manage trade. Jon C. Teaford, *The Municipal Revolution in America, The Origins of Modern Urban Government, 1650–1825* (Chicago: The University of Chicago Press, 1975), 17. Hartog, in contrast, argues that the New York City Common Council chiefly concerned itself with management of its corporate estate, finding that the Common Council had little interest in commercial regulation. Hartog, *Public Property and Private Power*, 37–38. Of course, Hartog's analysis suggests that regulation of trade and management of the corporate estate were not mutually exclusive priorities—in fact, property disposal supported the City's regulatory aims. See Jon C. Teaford, "Review: The Birth of a Public Corporation," *Michigan Law Review* 83 (1985), 698.

permission was required, the Common Council began voluntarily asking the State legislature to authorize its regulations and tax laws.[8]

Courts also began to adapt to the city's shifting political position. By the 1810s, New York City had transformed itself into a public entity, one resembling modern municipalities. But while aldermen had started to treat the City as subordinate to the state legislature, its legal status remained uncertain. Though the Supreme Court recognized in the 1819 case *Dartmouth College v. Woodward* that a state could not impair a private organization's contracts, the Court did not determine whether this constitutional limitation applied to public corporations.[9] But in the 1840s, the New York Court of Appeals issued a series of decisions recognizing limits to the autonomy of public corporations. As the Court explained in one decision, no property of the City was safe from "the control of the legislature as the supreme law-making power of the state."[10] By the 1870s, the subordinate position of public corporations was encapsulated in John Dillon's treatise on the law of municipal corporations, which positioned municipal

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[8] Hartog, *Public Property and Private Power*, 30–32; 84–85, 126–29.

[9] 17 U.S. 518 (1819). Also see ibid., 669, 671 (Story, J., concurring) ("When the corporation is said . . . to be public, it is not merely meant, that the whole community may be the proper objects of the bounty, but that the government have the sole right, as trustees of the public interests, to regulate, control and direct the corporation, and its funds and its franchises, at its own good will and pleasure.").

[10] Ibid., 256, 259–60 (citing *Town of E. Hartford v. Hartford Bridge Co.*, 51 U.S. 511 (1850); *People v. City of New York*, 32 Barb. 102 (N.Y. Sup. Ct. 1860); and *Darlington v. City of New York*, 31 N.Y. 164, 193 (1865)). The Court in 1848, for example, found that the legislature's grant of a franchise to a public corporation did not constitute a contract. In the 1860s, the New York Court of Appeals expanded on this shift in legal doctrine. In a decision reversing the New York Supreme Court's ferry decision, the Court of Appeals held that the grant of a franchise was subject to legislative intervention, and that the legislature could require a public corporation to compensate individuals using assets from its private estate.

governments as legally subordinate to their state legislatures.[11] In the early twentieth century, the Supreme Court reinforced this shift by holding in two cases that state governments had unfettered control over the affairs of municipalities.[12]

By some accounts, the growing influence of Dillon's Rule, and the expansion of state oversight of municipal corporations, reflected the efforts of state legislatures to curtail competitive activity among cities.[13] In the latter half of the nineteenth century, many local officials engaged in speculative activity designed to lobby railroad companies to run routes and open terminals near their city. Cities issued municipal bonds and cobbled together financial aid packages with the hope of outdoing other competing governments. Local governments promised railroads subsidizes through low-cost loans. Many governments, not interested in paying off bonds once they secured a railroad terminal, also strategically defaulted on their bond obligations. In the 1840s, hoping to shift the issuance of debt for investment in commercial development onto local units of

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[11] John Dillon, *Treatise on the Law of Municipal Corporations* (1872). Historians have expressed some disagreement on the reasons for this shift in the legal status of municipalities. While Hartog conceives of this shift as stemming from ideologies of republicanism that surfaced during the American Revolution, Herbert Hovenkamp considers shifting legal treatment of corporate entities, including municipal corporations, as imbedded in the theories of political economy that influenced intellectuals and judges during the nineteenth and twentieth centuries. Herbert Hovenkamp, *Enterprise and American Law, 1836-1937* (Cambridge: Harvard University Press, 1991), 39. Hovenkamp links John Dillon's thinking about the regulatory authority of local governments, and his commitment to restricting local subsidies to activates serving a "public purpose," to Dillon's understanding of general incorporation acts. State general incorporation laws enabled incorporation of businesses as a right. Dillon believed general corporation acts served to free enterprises by "cut[ing] up by the roots the mischief of special legislation, particularly in respect to corporations, both public and private," but did not extend this freedom to municipal corporations. See *Commercial Nat. Bank v. Iola*, 6 F. Cas. 221, 222–23 (C.C.D. Kan. 1873) *aff'd sub nom. Commercial Nat. Bank of Cleveland v. City of Iola*, 154 U.S. 617 (1875).

[12] *Atkin v. Kansas*, 191 U.S. 207 (1903); *Trenton v. New Jersey*, 262 U.S. 182 (1923).

[13] See, for example, David Schleicher, "The City as a Law and Economic Subject," *University of Illinois Law Review* 2010, no. 5 (2010), 1549–55.

government, states across the U.S. had amended their constitutions to restrict state governments' use of debt. By shifting debt to local governments, legislatures aimed to bring entrepreneurial activity of governments—and the risks that inhered in debt-driven investments—under closer scrutiny of a voting public.[14] But in response to the speculative and often abusive activity of municipalities, state legislatures in the 1870s also enacted constitutional amendments to impose debt limits on local governments, and restricting municipalities' use of debt to support private activity.[15]

In the middle of the twentieth century, as economic incentives for cities to compete over transportation routes subsided, states passed "home rule" statues that returned some authority to local governments. Home rule statutes varied from state to state, but generally, the laws conferred legislative authority on city governments. In Texas, where state judges consistently followed Dillon's conception of municipal corporation law, the state legislature in 1912 passed a home rule amendment to the state constitution. The amendment enabled the citizens of any city with a population exceeding 5,000 to adopt by vote a home-rule charter. It provided that any city adopting a home rule charter would receive full authority to engage in legislative activity so long as it complied with the state constitution or other restrictions imposed by the legislature. The constitutional amendment nonetheless imposed some limitations on cities' power to tax and issue debt. Taxation could not exceed an effective rate of two and a half percent of

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[14] Eric Monkkonen, *The Local State: Public Money and American Cities* (Stanford: Stanford University Press, 1996), 35–37.
[15] Ibid., 15, 38–39.

taxable property of a city, and a city could not issue debt without providing for assessment and annual collection of revenue sufficient to pay interest on the debt.[16]

Yet, the shift towards home-rule governance had a muted effect in Texas. In the first legislative session following the amendment, lawmakers passed an "enabling act," clarifying the powers delegated to cities. Under the law, home rule cities in Texas remained subject to "general laws" of the state. Though cities retained the "full power of local self-government," the legislature also enumerated specific powers delegated to cities for all other purposes. By listing specific powers not related to self-government, the act implied that a city received legislative and administrative authority only over those enumerated activities. The legislature reduced a city's home-rule autonomy solely to matters involving self-government. In all other areas, local governments needed legislative authorization to act.[17]

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[16] John P. Keith, *City and County Home Rule in Texas: Public Affairs Series No. 7* (Austin: The University of Texas Institute of Public Affairs, 1951), 11, 24–26. The home rule charter read:

> Cities having more than five thousand (5000) inhabitants may, by a majority vote of the qualified voters of said city, at an election held for that purpose, adopt or amend their charters, subject to such limitations as may be prescribed by the Legislature, and providing that no charter or any ordinance passed under said charter shall contain any provision inconsistent with the Constitution of the State or of the general laws enacted by the Legislature of this State; said cities may levy, assess and collect such taxes as may be authorized by law or by their charters; but no tax for any purpose shall ever be lawful for any one year which shall exceed two and one-half per cent, of the taxable property of such city and no debt shall ever be created by any city unless at some time provision be made to assess and collect annually a sufficient sum to pay the interest thereon; and provided further, that no city charter shall be altered, amended or repealed oftener than every two years.

Tex. Const., Art. XI, §5 (1912).

[17] See *City and County Home Rule in Texas*, 75–76; Acts 1913, Cities and Towns—Authorizes Cities of More than 5000 Inhabitants to Adopt and Amend their Chapters, 33rd Leg., R.S., ch. 147, § 4, 1913 Tex. Gen. Laws 307, 310–16 (Tex. H.B. 13).

The Texas Constitution also imposed limitations on local fiscal policy. Amendments passed in 1904 delimited the conditions under which local governments could issue debt. Under the amendments, the constitution required a two-thirds majority vote of "resident property taxpayers" before a municipality could issue bonds or "lend its credit" in any other way. The amended constitution also capped a municipality's total debt at one-fourth of the "assessed valuation" of the real property within the jurisdiction.[18]

While local governments could issue debt "under legislative provision," the constitutional amendment circumscribed the legislature's authority. The amendment specifically targeted legislation allowing cities to finance private activity. The legislature, the constitution stated, had no authority to enact laws allowing a local government to "lend its credit or to grant public money" to aid "any individual, association or corporation whatsoever, or to become a stockholder in such corporation, association or company." Under narrow exceptions to this rule, the legislature could allow municipalities to issue debt to finance infrastructure projects, including waterway improvements and flood management.[19]

State control of local finance also applied to revenue bonds. In other states, municipalities used revenue bonds to circumvent constitutional restrictions on their use of general obligation debt, but Texas municipalities lacked this freedom. To issue revenue bonds to finance private activity, cities in Texas needed permission from the legislature. Constitutional debt restrictions did not apply to revenue bonds. As the Texas Supreme

[18] Tex. Const., Art. III § 52(b) (1948).
[19] Tex. Const., Art. III § 52(a)–(b) (1948).

Court explained, revenue bonds committed only the revenue drawn from a specific project, rather than a municipality's general tax revenue.[20] The enabling act, however, was silent as to the power of municipalities to issue revenue bonds or to establish public authorities as conduits for bond-financed projects. Indeed, the act's only reference to revenue bonds involved a provision specifically allowing cities to have the right to "maintain and operate water works," and to pledge the receipts from the water works for paying the principle and interest on bonds issued to finance improvements or maintenance of any water works system.[21] While cities had full authority over activities involving self-governance, a city's use of revenue bonds hardly qualified as such a matter. Though revenue bonds became increasingly important to local urban policy during the 1970s, they involved local governments in entrepreneurial behavior that relied on private entities.[22] Without further legislative action from the state, local governments remained limited in their capacity to harness private-market resources.

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[20] See, for example, *Martin v. Richter*, 161 Tex. 323, 342 S.W.2d 1, 6–7 (1960).

[21] See Acts 1913, Cities and Towns—Authorizes Cities of More than 5000 Inhabitants to Adopt and Amend their Chapters, 33rd Leg., R.S., ch. 147, § 4, 1913 Tex. Gen. Laws 307, 310–16 (Tex. H.B. 13).

[22] When the Texas Supreme Court upheld local governments' authority to issue certain forms of revenue bonds, it looked to specific authorizations from the state legislature. See, for example, *Lower Neches Valley Auth. v. Mann*, 140 Tex. 294, 305–06, 167 S.W.2d 1011, 1017 (1943) (overruling an objection to a mortgage revenue bond because the legislature had enacted a law in 1941 authorizing the Lower Neches Valley Authority, a conservation and reclamation authority, to pledge revenues from its facilities and property for payment of bonds) (citing Acts 1947, Lower Neches Valley Authority—Directors, 47th Leg., R.S., ch. 570, § 4, 1947 Tex. Gen. Laws 1113–14 (11 H.B. 1084)); *Atkinson v. City of Dallas*, 353 S.W.2d 275, 279 (Tex. Civ. App. 1961) (citing Arts. 1111 and 1112 V.A.C.S. as authorizing cities with a population over 5,000 to issue revenue bonds in connection with maintaining or improving lighting, water, and sewer systems); *City of Corpus Christi ex rel. Harris v. Flato*, 83 S.W.2d 433, 434–39 (Tex. Civ. App. 1935); *City of Richmond et al. v. Allred, Attorney General*, 123 Tex. 365, 71 S.W.2d 233 (1934). On uses of revenue bonds that the legislature authorized through the 1970s, see Elbert M Morrow,

II.

At the beginning of the 1980s, local governments in Texas appeared in good financial condition. In revenue collection and accumulation of debt, Texas's cities fared better on average than the rest of the country. Per capita revenue for cities in Texas increased 86 percent from $118.81 in 1972 to $220 in 1977. The average per capita revenue of cities across the entire US rose a slightly more modest 83 percent, from a level of $264.65 in 1972. Texas cities also incurred less outstanding debt per capita than the average US city. Outstanding debt per capita rose from $331.25 in 1972 to $431.92 in 1977. Across the US, the average rate grew from $397.63 to $525.20.[23] And during the first half of the 1970s, Texas cities received a significant increase in federal transfers.[24] Much of this increase, according to the Texas Advisory Commission on Intergovernmental Relations, came from the Nixon administration's revenue sharing program. While a single city in 1970 received a significant percentage of its revenue from the federal government—only 2.3 percent—by 1979 federal funding composed between 5.1 and 19.3 percent of budgets for cities that the Advisory Commission surveyed.[25]

Texas's cities also appeared to have survived the 1960s without succumbing to ailments that beset many large urban centers. A report on housing in Dallas observed that the city seemed to "escape the patterns for income distribution established by many other central cities." While many cities in the U.S. faced declining annual household incomes,

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"Financing of Capital Improvements by Texas Counties and Cities," *Southwestern Law Journal* 25 (1971), 405–10.

[23] Texas Advisory Commission on Intergovernmental Relations, *Trends in Local Government Finance: A Profile of Selected Texas Cities and Counties* (1981), 1–2.

[24] Ibid., 6.

[25] Ibid., 14.

Dallas witnessed a gain in high-income households. The city's influx of high-income households between 1960 and 1976 exceeded its increase in low- and moderate-income households by 10,000. High-income households rose from 16 percent of the city population to 29 percent during that period.[26] Reflecting the strength of the local economy, Dallas's City Manager proposed a budget for the 1979-80 fiscal year that required no increase in property taxation. The "robust economy," he commented, "provides the resources to meet current needs and the reason and ability to look with ambition to the future."[27]

These figures, however, obscured the anxieties that captured the minds of state and local officials in Texas by the end of the 1970s. The possible uses of federal funding shifted across the decade. While federal transfers to Texas's cities grew in aggregate, cities lost access to revenue supporting key municipal functions. Nationwide, federal urban renewal funds fell from a 1975 level of $6.2 billion to just under $1 billion in 1979, and $632 million in 1980. Held in constant dollars, the decline was even more dramatic. Funds for subsidized housing rose moderately from $6 billion in 1975 to $7.7 billion in 1980, through this increase hardly kept pace with inflation, and in real dollars reflected a loss in housing funding.[28]

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[26] Department of Housing and Urban Rehabilitation, The Housing Plan for the City of Dallas, September 1978, Box 42, Juanita Craft Collection, Dallas Public Library (DPL), 75. The report defined high-income households as those earning over $10,000 in 1960 and over $20,000 in 1976.
[27] George R. Schrader, City Manager, to Honorable Mayor and Members of the City Council, August 15, 1979, folder: Budget Proposal for 1979/80, Box 26, Robert Folsom Mayoral Papers, DPL.
[28] In 2017 dollars, urban renewal funding fell from a 1975 level of $28,421 million to $1,870 million. Subsidized housing funds in 2017 dollars fell from $27,184 in 1975 to $22,811 in 1980.

The 1980s brought far more dramatic reductions in government resources. In 1981, the Reagan administration signaled that cuts in operating subsidies for public housing were imminent. The Dallas Housing Authority (DHA) operated with thin margins, and cutbacks in federal subsidies could ruin it. Like most housing authorities, the DHA received rent payments from public housing tenants. But residents' rent contributions were capped at thirty percent of their monthly income. The income level of tenants was so low that many families paid the DHA $10 or less each month. On average, the DHA received about $40 per unit, while spending $117.66 for utilities, upkeep, and management for each unit. Federal contributions covered the difference. While HUD used a formula to calculate its operating subsidy payment to a housing authority, it paid the DHA just over 85 percent of the sum. The DHA responded by dipping into its emergency reserve funds, fired 31 employees, and put off improvement and maintenance plans. DHA staff expected HUD contributions to fall short again in 1982.[29]

By the late 1980s, the federal urban renewal program no longer existed. And local governments' allocation of federal aid from the revenue sharing and the Community Development Block Grant (CDBG) programs plummeted. Nationwide, CDBG outlays to local governments fell from $3.9 billion in 1980 to $2.8 billion in 1990, which in constant

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Office of Management and Budget, *Budget of the United States Government: Historical Tables* (Washington, D.C.: U.S. Government Printing Office, 2003) (table 12.3).

[29] *Disposition of Public Housing—Dallas Housing Authority: Hearing before the H. Subcomm. on Housing and Community Development of the Comm. on Banking, Finance and Urban Affairs*, 98th Cong., 84–85 (1983) ("Legislative Considerations by the Federal Government and its Implications for DHA Operations," November 30, 1981).

2017 dollars represented more than a fifty percent reduction in federal aid.[30] By the 1990s, as the executive director of the San Antonio Development Agency noted, the city of San Antonio had fallen back on CDBG funds to support local housing subsidy programs. But the federal commitment to San Antonio had fallen from a high of $40 million to $19 million. With the city's CDBG budget squeezed, he noted, the city had begun using bond issues instead of its block grant funding to cover infrastructure needs. That way, the city could continue using CDBG funds for housing assistance.[31]

Dallas faced similar problems. The city's revenue sharing allocation fell from $16 million in the 1982-83 fiscal year, to $10 million in 1985. City planners projected revenue sharing to fall further to $5 million in 1986, and anticipated that Congress would eliminate the program altogether that year.[32] Dallas's CDBG funding fell from $13 million in 1980 to $8 million in 1986.[33]

Federal spending cuts for urban development programs served as a reminder that Dallas and other cities in Texas benefitted from federal aid programs. The Dallas city council anticipated that a smaller pool of federal funding would intensify competition for grants. Recognizing the city's vulnerability to federal spending cuts, the City Council

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[30] In 2017 dollars, CDBG outlays to local governments fell from $11.5 billion in 1980 to $5.2 billion in 1990. Office of Management and Budget, *Budget of the United States Government: Historical Tables* (Washington, D.C.: U.S. Government Printing Office, 2003) (table 12.3).
[31] *Effectiveness of Federal Assistance Programs in Meeting Fiscal Distress—Part I: Field Hearings before the Subcomm. on Housing and Community Development, H. Comm. on Banking, Finance and Urban Affairs*, 102d Cong. 30 (1991) (Statement of Winston Martin, Executive Director, San Antonio Development Agency).
[32] City of Dallas Annual Budget, 1985-86, 364-65, Collection 1991-062, Budgets and Financial Reports, Dallas Municipal Archives and Records Center, Office of the City Secretary (DMARC).
[33] City of Dallas Annual Budget, Grants and Trusts Budget, 1990-91, 21, Collection 1991-062, DMARC.

authorized $100,000 in city funds for hiring a lobbyist in Washington, D.C. to help prevent the city from being pushed aside as other cities scrambled to secure scare resources.[34] One Dallas resident, in a screed denouncing the City Council for wasting taxpayer money on a D.C. insider, reminisced of a time when "Dallas refused to become a child like dependent upon the Federal Government and would not take their offers."[35] But times had changed, and city officials were worried about the consequences of reductions in federal spending.

Economic conditions compounded the effects of federal spending cuts. In the mid 1980s, a sharp decline in oil prices shook the Texas economy. Unemployment throughout the state rose to levels that exceeded national averages. The Texas Treasury lost revenue as oil prices fell.[36] City managers in the state's larger cities found themselves squeezed between residents' increased demands for services, demands to reduce local taxation, and declines in federal funding. Policy analysts working for a state legislative committee, the Committee on Urban Issues, also recognized that the state's cities were in trouble. Having canvassed the state, hearing testimony from city officials and academics, the Committee reported: "Texas is no longer in a position to take economic well-being for granted." The report predicted that fiscal problems would remain a concern for local

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[34] KDFW-TV Editorial, Washington Lobbyist for Dallas, April 16, 1982, folder: Lobbyist in D.C. 1982, Box 3, Max Goldblatt Collection, DPL.
[35] J.P. Ashcraft to Mayor Jack Evans and Members of the Dallas City Council, folder: Lobbyist in D.C. 1982, Box 3, Max Goldblatt Collection, DPL.
[36] Texas House and Senate Joint Special Committee on Urban Issues, An Urban Strategy for Texas, Report and Recommendations to the 70th Legislature, 1986, 10, Box 5, Collection 2006-001, Dallas Municipal Archives and Records Center, Office of the City Secretary (DMARC)

officials for the rest of the decade.[37] The state would need to play an active role in helping cities weather economic downturns.

But the state had limited resources and had historically offered little to cities. With the state government facing a $6 billion deficit, Texas lawmakers were unlikely to start giving more.[38] Through legal reforms, however, the state could help cities harness private resources to stimulate economic growth. The Committee proposed that cities become savvy negotiators, using public land, facilities, and bond revenue as leverage to enter contracts with private businesses. Private contracts could deliver public services at minimal cost to cities. But, as the Committee recommended, local governments needed the state to enact laws allowing them to enter arrangements with private entities.

The Committee on Urban Issues adopted a broad set of recommendations aimed at allowing local government to play a larger role in "planning for economic development." The Committee's recommendation limited the state to a role as "facilitator," for example by providing modest grants for planning and technical assistance.[39] The state could encourage local governments to form "public-private partnerships" by revising laws that limited local discretion. As council members and mayors from across Texas told the Committee, state law left municipalities with little authority to form partnerships with private parties. Local officials reported that they needed state legislative approval to enter partnerships, which impeded their ability to

[37] Ibid., 15.
[38] Ibid., 13, 16.
[39] Ibid., 28.

explore new arrangements. In response, the Committee urged the state to identify laws that restricted to local discretion when entering contracts and using of public resources.[40]

The state could further aid development by affording cities more authority over land use policy. Large cities had difficulty coordinating regional development plans with surrounding jurisdictions. Suburbs hoarded resources, including tax revenue, and impoverished core cities. One solution involved "limited purpose annexation," a policy under which the core city could gain control over surrounding governments' land use decisions without fully annexing the surrounding suburb. As the Commission explained, annexation for the purposes of regulating land use policy would increase the efficiency of regional infrastructure development, thus driving down costs and reducing demands on municipal resources. It could also allow cities to control development patterns in immediately surrounding areas, for example preventing development of "substandard" facilities or housing that might harm nearby neighborhoods and depress tax revenue in the core city.[41]

While many of the recommendations that the Committee on Urban Issues developed did not translate into legislative action, its observations highlighted the role private resources increasingly played in local governance. Revenue from taxation and federal transfers fell during the late 1970s and the 1980s. Local governments in Texas, hoping to redevelop land, pursue new infrastructure projects, and build thriving economies, needed new tools to allow them to steer private activity to achieve government objectives. The Committee offered its suggestions in 1986 at the apex of the

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[40] Ibid., 29–30.
[41] Ibid., 43–44.

Regan administration's budget cuts. But the state legislature over the previous decade had already pursued measures to expand the independence of local governments for precisely the reasons the Committee had identified.

III.

To help cities do more with limited resources, the Texas legislature enacted laws that authorized local governments to use new forms of municipal debt. In the 1970s, as state lawmakers and legislative committee analysts considered ways to expand the resources available to cities in Texas, they gave little thought to raising taxes. Instead, lawmakers proposed statutes allowing cities to use revenue bonds to fund local programs, from industrial development to affordable housing development.

In 1972 the Texas Urban Development Commission published a report on the future revenue needs for local governments. The Commission, a research group appointed by Governor Preston Smith in 1970 to study impediments to economic growth and recommend policies for resolving urban problems, found that local governments across Texas raised revenue chiefly from property taxes. Forty-three percent of local revenue came from local property tax, 27 percent from state government transfers, and three percent from the federal government.[42] But as the Commission observed, local taxes had drawn "increasing criticism in Texas and throughout the country." As the Governor's Commission argued, the system subjected property owners to unfair treatment, discouraged the rehabilitation of housing and commercial properties, and disadvantaged populations with fixed incomes, especially retirees. The system was also difficult to

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[42] Texas Urban Development Commission, *Local Government Fiscal Structure in Texas* (1972), 7.

administer. Because the market value of property determined taxation, the property tax system operated with little concern for any change in the actual productivity of land. Speculative investment and rising urban land costs deepened the disjunction between productivity and value. If investors began trading property in a neighborhood, speculation could drive up valuations, saddling moderate-income residents with increased tax bills. Property taxation could become an unfair burden for some groups of property owners.[43]

In identifying revenue sources, the Commission focused instead on sources that it believed to impose less of a burden on taxpayers. Local revenue needs appeared likely to increase in coming years. But other methods of taxation appeared to have drawbacks. Sales taxes and personal income taxes would be difficult to assess at the local level. As an alternative, the Commission considered the use of the state's credit to help local governments. The low level of state and local debt in Texas, the report suggested, created an opportunity for the use of municipal bonds as a source of revenue. The state's water quality program provided an early example: after a constitutional amendment in 1971, Texas created a program to use state bond revenue to support projects to improve the quality of water supplies. As the Commission observed, this program "could serve as a model for state involvement in other areas of environmental improvement, housing, or community development."[44]

The Texas Urban Development Commission's report reflected an emerging ethos among state and local leaders during the 1970s. Local government leaders, seeking new sources of revenue to develop infrastructure, build subsidized housing, and stimulate

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[43] Ibid., 11–12.
[44] Ibid., 21–22.

commercial and industrial investment, appealed to state lawmakers for greater flexibility in managing municipal balance sheets. Specifically, local leaders sought autonomy in their use of debt to fund local projects. As the Urban Development Commission's report predicted, debt offered a promising supplement to local governments' traditional sources of revenue.[45] While some debt-financing programs generated conflict between vying local interests, local leaders used bond revenue to avoid politically hazardous tax increases and navigate declines in federal transfers. During the 1970s, a coalition of business and government leaders aligned in support of methods generally outlined in the Urban Development Commission Report. They began advocating legislative action and amendments to the state constitution to expand the debt financing capacity of local governments.

In the late 1970s, state lawmakers began to think in new ways about local debt. In 1977, Texas Senator Ray Farabee, a Democrat who entered office in 1974, proposed a bill to enable cities to establish tax increment financing (TIF) districts. Tax increment financing was a new but rapidly spreading strategy that allowed local governments to finance urban renewal projects. By enacting a TIF law, state legislatures allowed local governments the freedom to commit future increases in property tax revenue resulting from rising property values for the repayment of municipal bonds. Under TIF programs, a local government first designated a TIF district. The government then calculated the district's tax revenue for a given year, and made projections about how execution of a proposed renewal plan would increase the district's tax revenue. Based on these

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[45] Ibid.

projections, the government could then sell municipal bonds secured by the projected increase in tax revenue.[46]

The practice originated in 1952 in California, where lawmakers devised TIF as a method for raising matching funds required under the federal urban renewal program. But as federal urban development funding decreased and a nationwide tax revolt set limits on local property taxation, local governments began using TIF bonds as a standalone mechanism to fund renewal projects. Local officials across the United States began to see tax increment financing as a valuable method for investing in economic development projects. The practice was rare in the 1950s and used only to supplement federal programs.[47] As TIF spread during the 1970s and 80s, local governments had begun using TIF as the primary means for funding urban renewal.[48] At the end of the 1970s, six states joined California in passing legislation authorizing TIF. By 1984, thirty-four states enacted TIF laws. As TIF spread during the 1970s and 80s, it evolved into a freestanding development tool.[49] But by the end of the 1970s, Texas had not yet joined the trend. Senator Farabee's proposal would allow Texas's cities to join the municipalities in a handful of states that used municipal debt as a substitute for federal urban renewal funding.

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[46] American Planning Association Planning Advisory Service, *Report Number 389: Tax Increment Financing* (1985).
[47] Richard Briffault, "The Most Popular Tool: Tax Increment Financing and the Political Economy of Local Government," *The University of Chicago Law Review* 77 (2010); Mark Skidmore et al., "The Relationship between Tax Increment Finance and Municipal Land Annexation," *Land Economics* 85, no. 4 (November 2009); House Study Group, Texas House of Representatives, *Tax Increment Financing: Texas Tries a New Urban Development Tool* (1982), 5.
[48] Briffault, at 68–69. By 1984, thirty-four states enacted TIF laws.
[49] Briffault, "The Most Popular Tool," 68–69.

In 1976, the mayor of San Diego promoted TIF financing to the Dallas Central Business District Association. Urban decline, he argued, created a "climate of doubt" around redevelopment. Developers saw property values falling, and viewed investments as too risky. A tool like tax increment financing, however, allowed a city to "convince a developer that he won't be a pioneer." No developer wanted to spearhead a "lonely project" in a "blighted area." TIF offered cities like San Diego a way of signaling to investors that their projects would be integral to a larger redevelopment plan. As evidence, the mayor touted San Diego's success: the city redeveloped large segments of its downtown areas, increasing tax revenue in one fifteen-block segment from $50 million to $250 million.[50] Later that year, the Dallas City Council decided in an informal vote to support a state TIF law.[51]

The Texas public, however, presented an obstacle. TIF legislation in Texas conflicted with the state constitution's provisions on taxation. The constitution required that the state tax all real property "in proportion to its value," and that taxation "shall be equal and uniform."[52] The authorization of a TIF district could arguably impair the uniformity of the rate a taxing entity applied to TIF and non-TIF districts. If the state's attorney general, or state courts, found the provision in violation of the constitution, the legislature would need to present a constitutional amendment to state voters. Anticipating

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[50] "San Diego Mayor Reports on Inner-City Rebuilding," *Dallas Morning News*, March 24, 1976.
[51] Henry Tatum, "City Backs Tax Reforms Bill," *Dallas Morning News*, December 13, 1976.
[52] Tex. Const., Art. VIII, §1(a)–(b).

this hurdle, Senator Farabee drafted the bill such that enactment was contingent on a constitutional amendment that would override the equal taxation provision.[53]

Supporters mounted a statewide campaign in support of the constitutional amendment, revealing that a core base consisted of developers and real estate investors. Dallas billionaire Ray Hunt spearheaded the campaign, traveling to the largest cities around the state to "explain to the public how it all works." Hunt was the heir of an oil empire his father, H.L. Hunt, built during the 1930s. Though he remained in charge of Hunt Oil Co, Ray Hunt expanded his business. In the 1970s, he ventured into the Texas real estate market, exploring prospects for developing commercial property in Dallas's Central Business District. He also served as board chairman for the Dallas Central Business District Association.

As Hunt began touring the state, his real estate company, Woodbine Development Co., had invested in a development known as the "Reunion Project," a cluster of downtown restaurant and hotel developments. Hunt disavowed the notion that, at the time he began advocating for the TIF law, his business stood to gain from it. But he admitted that the law would help similar projects slated to fit into the broader redevelopment vision, including in the warehouse district.[54] The profitability of his investment arguably hinged on other investors pursuing projects that would complement Reunion, and TIF looked like a coordinating mechanism that could help.

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[53] Tex. S.J. Res. 44, 65th Leg., R.S. (1977).
[54] William Stevens, "An Unruffled Dallas Sees Little Damage to the Hunts," *New York Times*, March 29, 1980; Henry Tatum, "Ray Hunt Stumping for Financing Proposal," *Dallas Morning News*, October 18, 1978.

Urban growth coalitions in cities like Dallas also saw ways to benefit from the law. Texas mayors aligned themselves with Hunt and other TIF advocates. Mayor Robert Folsom of Dallas considered the TIF law critical to the downtown development projects his administration hoped to accomplish. On the eve of the statewide constitutional referendum, developers had bid on an iconic downtown high rise, known alternately as the Mobil Building or the Magnolia Building. An architect from Atlanta, John Portman, had offered the city a deal: if the city acquired the land in the block surrounding the building, he would purchase the building for $2 million. Portman would then develop a hotel and retail complex on the acquired property, a proposal that would cost roughly $140 million.[55] The TIF law would possibly help the city acquire the property and provide low-cost capital to support other elements of Portman's plan, thus allowing the city to play a larger role in subsidizing redevelopment projects. By lowering developers' and investors' anticipated costs, the city could attract private investment.

Despite Ray Hunt's efforts, voters narrowly rejected the amendment.[56] The following year, Senator John Traeger proposed a different TIF bill that required no constitutional amendment.[57] The bill allowed cities to commit increases in their own tax

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[55] Henry Tatum, "Vote Seen as Crucial to Mobil Deal," *Dallas Morning News*, November 4, 1978.

[56] In November 1978, Texans cast 818,439 votes in favor of the constitutional amendment, and 878,111 votes against. House Study Group, Texas House of Representatives, *Tax Increment Financing: Texas Tries a New Urban Development Tool* (1982), 7.

[57] The Texas House of Representatives passed an earlier bill, H.B. 2028, that required no constitutional amendment. If the amendment did not pass, however, the bill required residents to approve TIF projects in their communities. House Study Group, Texas House of Representatives, *Tax Increment Financing: Texas Tries a New Urban Development Tool* (1982), 7. The bill that became law, S.B. 1211, passed the Senate with a 31 to 0 vote and the House with a 114 to 20 vote. Ibid., 8.

revenues for the TIF. It did not allow cities to commit revenue from overlapping taxing entities like special districts, which could potentially avoid conflict with the constitution's equal and uniform taxation clause. Texas Attorney General Mark White, however, declared the law unconstitutional. Attorney General White concluded that diversion of a resident's taxes for a TIF-backed project would drain the resident's taxes from the general revenue of a city. If property values in a TIF district increased, the city would receive a lower percentage of a TIF district resident's assessed property tax as compared to a resident living outside the district. El Paso and Laredo, anticipating that a law would eventually pass, nonetheless pressed forward, defiantly establishing TIF zones in anticipation of a new law.[58]

The coalition of developers, mayors, and lawyers that supported TIF legislation remained strong. To ensure that TIF survived the Attorney General's criticism of the 1979 law, Senator Farabee worked with Representative Steve Wolens to introduce a new set of bills during a 1981 special session. Local leaders from throughout the state spoke out in support of a proposed package of tax abatement and tax increment laws, paired with legislation taking a constitutional amendment again before voters in Texas. Representatives for the Texas Municipal League, a lobbyist for San Antonio, and a Houston bond lawyer testified in support of the legislation.[59] The tax increment bill reflected lawmakers' concern that "blighted areas of cities" in Texas were "a serious and growing menace, inimical to the public health, safety, morals, and welfare of the

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[58] House Study Group, *Bill Analysis: S.J.R. 8, Tax-Increment Financing; Tax Abatement* (1981), 1.
[59] House Study Group, Texas House of Representatives, *Tax Increment Financing: Texas Tries a New Urban Development Tool* (1982), 9.

residents of the state."[60] As a legislative report on the bill observed, "Developers have little incentive to attempt renewing such blighted areas."[61] TIF bonds would allow cities to attract developers. The law specified that TIF bonds were not general obligation bonds, meaning TIF bonds were not secured by a city's general tax revenue. But proponents felt that the mechanism carried little risk. Default was unlikely because "investors and city officials would demand solid prior evidence that property values would increase sufficiently to pay off the bonds."[62]

The new bill drew some criticism, especially from public school advocates. Unlike the 1979 legislation, the new TIF bill strengthened the power of local governments to divert revenues from other taxing districts. The law required all entities that received revenue from a district to freeze assessment values and commit increment revenue to the TIF. As opponents to the bill recognized, the creation of a TIF zone froze revenues for all entities, which could include school districts. This meant that a school district's tax revenue would remain at pre-TIF levels, even if the district's population grew and property values increased. If TIF-sponsored redevelopment drew new residents to a district, the TIF would in fact impose new, unanticipated costs on the school district while limiting its revenue. The law effectively allowed cities to "'capture' the tax

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[60] See July 20, 1981 Draft, Tex. S.B. 16, § 2, 67th Leg., 1st C.S. (1981). The final bill did not contain a statement of policy, but adopted criteria for designating reinvestment zones that used similar language, requiring that the targeted area impair economic growth, or otherwise "constitute an economic or social liability and be a menace to the public health, safety, morals, or welfare in its present condition . . . ." 67th Leg., 1st C.S., ch. 4, § 1, 1981 Tex. Gen. Laws 45, 46 (Tex. S.B. 16).

[61] House Study Group, *Bill Analysis: SB 16, Tax-Increment Financing in Reinvestment Zones* (1981), 3.

[62] Ibid., 4.

revenues of a school district, water district, hospital district or other taxing unit." A city could, for example, divert "school taxes to pay for a downtown parking garage," which struck opponents as a "highly questionable act."[63] While there was little doubt that the state legislature would enact the law, the previous failure at a constitutional amendment gave backers reason to worry.

Proponents, acting through the organization "Citizens for Proposition 1," initiated another statewide campaign. Large city mayors endorsed the constitutional amendment, as did the Texas Municipal League. Law firms, oil companies, banks, and a particularly vocal coalition of developers in Port Arthur contributed funding to the effort.[64] In Dallas, city council members spoke out in support of the amendment. The city's Economic Development Advisory Board, which had undertaken a study of economically distressed South Dallas, considered the TIF legislation essential to its redevelopment strategy.[65]

At the federal level, a key advocate for the law was Representative Jack Kemp, who became Secretary of HUD in the 1990s. In Congress, Kemp sponsored a federal law on the creation of "enterprise zones." In 1981, Congress held hearings on the Urban Jobs and Enterprise Zone Act, legislation that would allow HUD to designate up to twenty-five localities around the country over the course of a three-year period to allow local businesses to receive various forms of tax relief, presumably to encourage local hiring. President Reagan endorsed the idea, describing the policy as using "the market to resolve

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[63] Ibid., 5.
[64] House Study Group, Texas House of Representatives, *Tax Increment Financing: Texas Tries a New Urban Development Tool* (1982), 10–11.
[65] Henry Tatum, "Amendments to Aid Growth of S. Dallas, Supporters Say," *Dallas Morning News*, October 25, 1981.

urban problems."[66] Under the policy, HUD could only designate an economically distressed area for federal assistance if the secretary determined that the local government had committed itself to reducing "the various burdens borne by employers or employees" in the area. The proposed law set forth criteria by which HUD could evaluate a local government's commitment, which included an applicant's actions to lower tax rates or increase "the level of efficiency of local services."[67] The law amended the tax code to allow employers operating within a designated enterprise zone to receive reductions in their tax liability, and for their employees to receive some relief from income taxation.[68]

The enterprise zone policy exemplified the new direction Congress had taken with federal urban aid. As direct funding declined, federal lawmakers offered tax incentives to stimulate growth. President Reagan considered the law a valuable substitute for direct assistance. As he argued, "More than government expenditures and subsidies, residents of economically-depressed areas need opportunities." The enterprise zone incentives, the argument went, would encourage hiring in economically stagnant communities.[69] Some federal lawmakers recognized that the Reagan administration's proposal offered an anemic response to the challenges cities faced. Congressman Charles Schumer argued that cities needed more than tax incentives. The law appeared to provide a "smokescreen by which those who don't believe in social programs" might "retreat from those

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[66] *Message from the President of the United States, Transmitting Proposed Legislation Entitled, "The Enterprise Zone Tax Act of 1982"*, H. Doc. No. 97-157, 97th Cong. 1 (1982).
[67] H.R. 3824, 97th Cong. §101(a) (1981) ("§ 7871(d)").
[68] Ibid., §§ 201, 221.
[69] *Message from the President of the United States, Transmitting Proposed Legislation Entitled, "The Enterprise Zone Tax Act of 1982"*, 5.

responsibilities."[70] As the debate raged, lawmakers in Texas recognized that TIF legislation could attract federal benefits.

Despite reservations from educators, the state enacted the tax increment financing and tax abatement bills in August 1981. Lawmakers also approved a constitutional amendment for a state referendum.[71] As proposed, the constitutional amendment enabled the legislature to give a city authority to commit property tax increases for the repayment of TIF bonds or notes.[72] In November 1981, the amendment passed with a 58 percent vote in favor. As a state report on the new TIF law observed, the legislation "gave the governing bodies of incorporated cities and towns unprecedented new power over the affairs of other taxing units."[73]

And as Dallas journalists observed, the law allowed cities to "replace federal urban aid" they had lost.[74] As State Representative and TIF proponent Steve Wolens wrote in the *Dallas Morning News*, the state's TIF law promised to help a city like Dallas find a way to navigate federal funding cuts. Reductions in federal funding evoked "thoughts of downtown Dallas and other urban areas gradually falling victim to the urban blight which has plagued many northeastern cities to near ruin." But, Wolens explained,

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[70] *The Urban Jobs and Enterprise Zone Act of 1981: Hearing before the H. Subcomm. on Economic Stabilization of the H. Comm. on Banking, Finance and Urban Affairs*, 97th Cong. 42 (1981) (H.R. 3824).
[71] Acts 1981, 67th Leg., 1st C.S., ch. 4, 1981 Tex. Gen. Laws. 45 (1981) (Tex. S.B. 16); Tex. S.J. Res. 8, 67th Leg., 1st C.S. (1981).
[72] Tex. S.J. Res. 8, 67th Leg., 1st C.S. (1981).
[73] House Study Group, Texas House of Representatives, *Tax Increment Financing: Texas Tries a New Urban Development Tool* (1982), 10–11.
[74] Sam Kinch, "Lawmakers Seek Ideas to Replace Federal Urban Aid," *Dallas Morning News*, March 1, 1981.

voter approval of the constitutional amendment enabling the use of TIF districts "paves the way for cities like Dallas to develop land without having to rely on federal funding."[75]

IV.

Cities also turned to bonds to attract commercial and industrial activity. Because the IRS exempted interest payments on municipal bonds from taxation, state and local governments could raise capital at a cheaper rate than available in the private bond market. State and local governments used that capital to extend low-cost loans to commercial borrowers.

Local governments could use municipal bonds to subsidize business investments, a strategy that promised to stimulate private commercial development. In 1979, Texas passed a law allowing local governments to form non-profit corporations to issue industrial development bonds. The corporations used bond proceeds to finance private industrial development projects. While earlier versions of the bill limited corporations to using bonds for financing construction projects, the statute ultimately allowed corporations to use bond revenue to help entities acquire land, develop buildings and facilities, and purchase equipment. Because interest payments on the bonds were exempt from the federal income tax, the non-profit corporations could extend loans at lower interest rates, thus subsidizing private enterprise. Proponents argued that the bill was vital for keeping business in Texas: most other states allowed local governments to issue

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[75] Steve Wolens, "TIF Funds Viewed as Godsend to Replace Federal Cutbacks," *Dallas Morning News*, August 16, 1982.

industrial development bonds (IDBs), thus allowing them to "steal potential businesses from the state."[76]

Lawmakers designed the non-profit corporations to avoid imposing new taxes on the public. Perhaps to quell concerns that prompted voters to reject a 1977 constitutional amendment relating to industrial development bonds, the law specified that local governments could not commit public money or public credit for bond repayment. This meant that a city could not use tax revenue—either property or sales taxes—as a security for IDBs. The statute limited the corporations to issuing revenue bonds, a type of bond that was secured solely by loan proceeds rather than a city's general revenue. Structured this way, the corporations only needed approval from the Texas Industrial Commission to issue bonds.[77]

The IDB law also put municipalities in a difficult position. The general manager of one manufacturing company, for example, in 1980 informed the Fort Worth city council that he hoped to move his facility to the city, but only on the condition that the city create an IDB authority.[78] A city could either risk that the business manager was

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[76] Development Corporation Act of 1979, 66th Leg., R.S., ch. 700, § 2, 1979 Tex. Sess. Laws 1675, 1676 (Vernon) (S.B. 1275). For discussion of earlier versions of the bill, see House Study Group, *Bill Analysis: HB 2093, Creation of Non-Profit Corporations to Issue Industrial Development Bonds* (1979). An amendment in 1982 expanded the authority of corporations further to allow lending generally for commercial development in areas designated as "blighted or economically depressed." Industrial Development Corporations and Texas Small Business Development Corporation, 67th Leg., R.S., ch. 792, § 2, 1982 Tex. Sess. Laws 3025, 3026.
[77] In 1977, the Texas legislature presented voters with a constitutional amendment assuring that the legislature could pass laws local governments to issue revenue bonds to support "industrial development." Tex. H.J. Res. 75, 65th Leg., R.S. (1977). Voters rejected the constitutional amendment, calling into question whether lawmakers might legitimately enact industrial revenue bond legislation. House Study Group, *Bill Analysis: H.B. 2093, Creation of Non-Profit Corporations to Issue Industrial Development Bonds* (1979).
[78] "Revenue Bonds Urged for Businesses," *Dallas Morning News*, September 8, 1979.

bluffing, and refuse to set up an bond-issuing authority, or cave to the manager's demands, throwing city resources behind a venture that the business might have pursued anyway. Fort Worth decided not to establish an IDB authority after the Fort Worth Chamber of Commerce counseled the city to hold off, reasoning that Fort Worth fell within the jurisdiction of the Trinity River Authority (TRA), an entity already empowered to issue IDBs. Instead of setting up a separate authority, the Chamber opted to refer businesses to the TRA.[79]

Some businesses used industrial development bonds to lower operating costs while refusing to assume responsibilities to local communities. In 1984, the Dallas Industrial Development Board extended a $1 million loan to a bottle-making company for capital investments to stimulate job growth in South Dallas. While an IDB loan committed a city to a long-term financial relationship with a business, the company had no such commitment to Dallas. The company had promised to use the equipment it purchased with the IDB loan in Dallas, but the manager soon found local demand for his product inadequate, and move the company's operations to New Jersey. Surprisingly, the loan documents did nothing to restrain the business's mobility.[80]

IDBs imposed costs on cities while offering few guarantees. While the subsidy to businesses came from federal tax exemptions, the program nonetheless diverted municipal resources. To extend subsidies, municipal governments needed to set up

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[79] Pat Svacina, "City Won't Venture Into Industrial Bonds Market," *Dallas Morning News*, February 14, 1980.
[80] George Rodrigue, "Dallas Agency Wants Firm to Repay Bonds," *Dallas Morning News*, September 10, 1985. On the mobility of manufacturing businesses and the way businesses have used relocation to find favorable labor climates, see Jefferson Cowie, *Capital Moves: RCA's Seventy-Year Quest for Cheap Labor* (Ithaca: Cornell University Press, 1999).

industrial development corporations, hire staff to evaluate applications, and monitor the performance of awardees. IDBs also passed indirect costs onto municipalities. Municipal governments sold bonds in a single market with finite capital. By expanding the use of IDBs, municipalities increased the demand for capital in the nontaxable market, potentially driving up interest rates, and thus raising the cost cities incurred when raising funds for other purposes. Financial analysts offered a "conservative" estimate of the subsidy's cost, finding that residents in Texas paid $17.5 million each year in increased local taxes to cover increases in interest rates connected to the influx of IDBs in the tax-exempt market.[81] Texas's branch of the Municipal Finance Officers Association opposed the IDB enabling legislation for exactly this reason. Directors of the Texas Municipal League, while generally supportive of legislation that avoided regulating local governments, similarly worried that the policy could "jeopardize" the credit rating of municipalities and decided to take no position on the law.[82]

The IDB program also shifted risk from businesses to cities. When a municipality committed its resources to expand industrial activity, it ran the risk that the business might fail or relocate. It was not clear how and to what extent the city would recover money lent to a failed venture. The IDB program thus required city officials to not only evaluate the ways a business might benefit residents, create new jobs, or contribute to the

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[81] As Representative J.J. Pickle had argued, while IDBs allowed cheaper financing for private businesses, they also "increased the cost of public projects" and "put our cities and counties in the position of serving as financial intermediaries for private sector developers and speculators." Anne Swardson, "Tax-Exempt Borrowing Offers Room for Abuse," *Dallas Morning News*, November 24, 1983; Sam Kinch, "State Law Benefits Hotel's Renovation," *Dallas Morning News*, October 25, 1981.

[82] Minutes, Texas Municipal League Board of Directors Meeting, June 4, 1978, Box 21, Robert Folsom Mayoral Papers, DPL, 4.

city's broader economic environment, but also evaluate the viability of commercial enterprises.[83]

Despite these problems, the Texas legislature forged ahead. In 1987, it presented Texas voters with a constitutional amendment that would allow smaller local governments to extend loans and grants for "the public purposes of development and diversification of the economy of the state."[84] The amendment removed constitutional restrictions that precluded governments from using general obligation bonds, thus enabling cities to use tax revenue to support Economic Development Corporations in Texas. Voters approved the amendment that year. With this new constitutional authority, the Texas legislature then revised the state Development Corporation Act, allowing cities with a population of less than 500,000 to adopt a one-half percent sales tax to support financing to economic development corporations.

The law initially limited Economic Development Corporations to using sales taxes, a highly regressive form of taxation, for industrial development. Facing complaints from members of the business community, however, the state soon expanded the powers of EDCs. In 1991, the legislature passed an amendment that authorized cities to form a second type of EDC with a broader set of powers. Through the new entity, small cities

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[83] Dallas, for example, attempted to use Industrial Revenue Bonds to influence the behavior of developers. The city issued a $14 million bond to finance the development of a parking garage in the central business district, on the condition that the developer also produce downtown housing units on top of the garage. The developer, however, provided the city little more than its assurance that it would make a "strong effort" to develop the housing. See "Downtown Housing: The City's Role," *Dallas Morning News*, November 9, 1984.
[84] Tex. H.R.J. Res. 5, 70th Leg., R.S. (1987).

could commit sales tax revenues to secure bonds financing the creation of parks, stimulate tourism, or develop affordable housing.[85]

Despite the risks and uncertainties that inhered in local governments' use of revenue bonds to sustain business activity, the Texas legislature throughout the 1980s broadened the ways that cities could use revenue bonds. The legislature specifically designed economic development laws to be budget neutral in a formal sense: the legislature envisioned cities stimulating economic development without spending tax revenue outright. Rather, the laws focused on bonds that did not contribute to debt of a local government, and instead relied on revenue from municipal investments as a security for the bonds. But these programs put other costs on cities. Local governments could not rely on federal grants to support economic development, and lawmakers at the state and local levels were unwilling to consider tax increases. By using semi-governmental organizations to issue revenue bonds, local governments bridged the widening gap.

V.

The Texas legislature also state agencies to assume debt to carry out their own duties to help cities. The policy began with the creation of the Texas Housing Agency in 1979, which gave the state responsibility for subsidized housing development. The legislature also passed a 1981 law that allowed cities to create housing development corporations. Similar in structure and function to industrial development agencies, they allowed cities to use municipal bonds to subsidize housing development. The turn to

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[85] Nicholas Bauroth, "Quasi-Governmental Institutions as a form of Local Boundary Change: Explanations for the Proliferation of Economic Development Corporations in Texas," *Public Administration Quarterly* 33 (2009), 275–77.

bond financing required that state and local governments provide housing assistance on terms acceptable to bond buyers and private developers. The early history of the state Housing Finance Agency illustrated the challenges that ensued.

At the end of the 1970s, the state faced a housing crisis. The cost of housing in Texas rose 89 percent from 1970 to 1978. Meanwhile, the median household income rose 47 percent.[86] State lawmakers wanted to bridge the gap, but they were unwilling to appropriate state funds for housing. By creating a state housing finance agency, and allowing cities to create housing development corporations, lawmakers hoped to use municipal bonds to extend low-cost loans to finance new housing development. Lawmakers hoped the program would "be totally self-supporting," involve no "large bureaucracy," and avoid developing any "public housing projects.[87]

With the Texas Housing Agency (THA), lawmakers created a new relationship between the state, financial institutions, and private developers that largely bypassed municipalities. The agency's charter authorized it to set interest rates for mortgage loans, evaluate applications from private developers, and assess the eligibility of projects. But lawmakers expected that the agency would only issue loans that private financial institutions recommended.[88] Cities had little control over the program; decision-making authority resided with banks and the housing agency's commissioners.

The THA needed to attract bond investors to function. In 1980, soon after the agency's formation, the board held meetings with prospective underwriters. The THA's

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[86] House Study Group, *Bill Analysis: Creating a State Housing Finance Agency for Low-Income Housing Loans, S.B. 296*, May 17, 1979.
[87] Ibid., 2.
[88] Ibid., 1–2.

underwriters were expected to purchase bonds from an issuer, and then sell the bonds to investors. Prospective underwriters attempted to impress the THA with their respective abilities to set the THA's bonds apart in a crowded, competitive marketplace. The board received one proposal from three Texas firms, Rauscher Pierce Refsnes, Underwood Neuhaus, and Rotan Mosle, which had formed a management group with the international investment bank Salomon Brothers after learning that the bill passed.[89] The co-manager of the municipal finance department at Salomon Brothers promised to locate "proper buyers," and develop a "rating agency game plan."[90] In a competing bid, Goldman Sachs stressed that a sound marketing plan would lower costs.[91]

Underwriters also stressed that the THA's programs must appeal to bond buyers. A representative of Morgan Bank, which was one of the partners in Goldman Sachs's management group, explained that with "more housing bonds coming to the market than ever before," the THA needed to "distinguish" its "project"—or "product"—from all others. For this, the bankers promised to help the THA sell its program to bond buyers. The THA needed to secure a favorable rating from the "major rating agencies," identify the most important institutional investors, and hold in-person meetings with these investors to explain why the program would guarantee them a return.[92] As Morgan Bank's pitch implied, investors would be interested in understanding how the THA planned to use its bond revenue. The structure of the underlying housing finance program

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[89] Transcript, Board Meeting of the Texas Housing Agency, July 16, 1980, Box 1991/187-1, Texas Housing Agency Records, Texas State Archives, 161-63.
[90] Ibid., 182.
[91] Ibid., 214.
[92] Ibid., 214–18.

would affect THA's ability to sell bonds, which could in turn determine the interest rate the THA's bonds would ultimately take.[93]

As a state agency, the THA's broad geographic reach worked to its advantage. Unlike local governments, the agency had more leeway to pursue developments in what administrators perceived as riskier neighborhoods to invest in. Local housing finance agencies operated in smaller markets and were less likely to pursue projects that might default. One THA board member was interested in using the agency's resources to complement local government programs. The THA, she argued, should issue loans in "older neighborhoods" that might be neglected by local programs. While she wondered whether such a program would be marketable, the vice president of Merrill Lynch was optimistic. Because the projects within a state housing finance agency's portfolio could have such geographic diversity, reaching markets with a wide range of social and economic characteristics, state agencies usually received lower interest rates than bond programs serving a single geographic area.[94] As the exchanges between board members and prospective underwriters indicated, all parties involved in setting up the THA considered the structure of the underlying housing finance program critical to the marketability of the THA's bonds.

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[93] In setting up its bond program, the THA ultimately broke up the prospective management groups. The board selected Goldman Sachs and Morgan Guaranty Trust Company to serve as senior co-managers, and the First City National Bank of Houston, First National Bank of Dallas, Lehman Brothers, Smith Barney, and Texas Commerce Bank to serve as co-managers. Transcript, Board Meeting of the Texas Housing Agency, July 16, 1980, Box 1991/187-1, Texas Housing Agency Records, Texas State Archives, 335-36.

[94] Ibid., 114–15, 119–20.

While underwriters emphasized marketing strategy, THA's staff hoped to choose projects through a lottery system. For its initial bond issue in 1980, the THA board decided to focus solely on financing loans for single-family home mortgages. THA would allocate funds to lending institutions, which would then manage and underwrite the mortgage loans. If lenders applied for more funding than THA had available, the THA would hold a lottery to select recipients. Rather than set strategic priorities, the committee saw random selection as a fair way to allocate funding.[95] Farness, in this analysis, meant allocation of resources without intentionally favoring one demographic or neighborhood over another. It also meant that the THA chose not to target its funds to reduce inequality.

Despite the committee's preference for random allocation of resources, it also set income criteria for potential homebuyers. Reflecting the fiscal limitations of the state's housing finance program, the committee's recommended eligibility criteria suggested that the program would do little to help the state's poorest households. After looking at income data from the state, and reviewing other state policies, the committee decided to set the program's "low income" threshold at $25,000, equivalent to just over $70,000 in 2019 dollars. The committee suggested reserving half of the funds for families with incomes under $19,500, or about $54,800 in 2019 dollars. In each category, the eligibility limit would increase by $1,000 for each additional member of a family.[96] In an urban center like Dallas, the committee's criteria would allow the Housing Agency to support

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[95] Transcript, Board Meeting of the Texas Housing Agency, August 13, 1980, 46–47, Box 1991/187-1, Texas Housing Agency Records, Texas State Archives.
[96] Ibid., 34–35.

relatively well-off households. In Dallas County, half of the households receiving state assistance would, under the THA's criteria, have incomes between 73 percent and 94 percent of the mean family income, which in 1980 sat at $26,600. The proposed criteria reserved half of the loans in Dallas County for households with incomes exceeding the area median income, and reaching as high as 43 percent over the median household income level. Put another way, half of the households eligible for housing assistance in Dallas County would earn more income than half of all households in the county.[97]

The legislature in 1981 also passed a bill allowing local governments to form housing finance corporations. Under the law, cities and counties could use nonprofit corporations to issue municipal bonds. As with industrial revenue bonds, housing finance corporations could then use the bond revenue to subsidize housing development and homeownership. The law limited housing finance corporations to lending capital to financial institutions. Lenders could then use the funds to issue mortgages for homebuyers or finance the development of new housing.[98] Proponents argued that the law could help cities "revitalize deteriorating neighborhoods." By helping low and moderate income families buy homes, the law could also help increase the property tax base of cities.[99]

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[97] The mean family income in Texas in 1980 was $23,188. U.S. Census Bureau, "Average Family Income in 1979 Dollars, 1980." The mean Dallas household in 1980 reported an income of $23,000. U.S. Census Bureau, "Average Household Income in 1979 Dollars, 1980." Median household income in Dallas sat at $18,600. U.S. Census Bureau, "Median Household Income in 1979 Dollars, 1980."

[98] Texas Housing Finance Corporations Act, 66th R.S., ch. 835, 1979 Tex. Gen. Laws. 2186 (Tex. H.B. 1876).

[99] House Study Group, *Bill Analysis: Housing Loans to Low and Moderate Income Families, H.B. 1733*, April 30, 1979.

Critics worried that the bill gave local governments too much discretion in designing programs. While it aimed to help low and moderate income households obtain housing, the law offered no criteria for determining which households could qualify for assistance. Furthermore, the law could put the credit rating of local governments at risk. The legislature structured the program such that a housing finance corporation bond would not qualify as an indebtedness of the local government. This meant that a failed project would not implicate a municipality's general revenue. Some legislative analysts nonetheless worried that if a housing finance corporation issued bad loans and defaulted on the bonds, rating agencies might lower the municipality's score.[100] As Chapter 7 explains, local governments' implementation of mortgage revenue bond programs reflected much of the investor-oriented thinking that characterized the THA's deliberations in establishing the state housing program.

VI.

During the 1980s, the Texas legislature passed laws that allowed state institutions to finance their operations using debt. It also authorized some state institutions, including state pension funds, to commit financial assets to venture capital funds. These strategies arguably gave state institutions access to new streams of revenue. But more importantly, they served as a mechanism by which the government generated commercial activity within the state.

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[100] Ibid.; Texas Housing Finance Corporations Act, 66th R.S., ch. 835, 1979 Tex. Gen. Laws 2186.

In the late 1980s, legislative analysists reported that the state was "strapped for funds for education and prisons."[101] State prisons and mental health facilities were overcrowded and poorly maintained.[102] In response, the legislature passed a law enabling state agencies to use general obligation bonds to support the state facilities, a measure reflecting the challenges the state was facing in keeping up with pension costs. With general obligation bonds, the agencies pledged the state's full faith and credit in support of repayment.[103] The legislation suggested that lawmakers had accepted that debt could substitute for ordinary appropriations and tax revenue.

To make do with less, the state legislature also sought ways to increase the productivity of capital. Pension systems in Texas, both state and local, held large capital reserves. By allowing pension funds to pursue a wider range of investment strategies, the legislature could use their funds for economic development. New forms of investment could also expand the revenue generating capacity of pensions. To this end, the 1987 legislature explored laws that would enable state agencies to invest capital in new enterprises in the state, a measure that aimed to stimulate local economic development. The executive director of the Texas Economic Development Commission, David Brandon, believed that the state needed to create a "growth fund." It would draw capital

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[101] House Research Committee, *Bill Analysis, Creating a Texas Commerce Department with Bond Powers, H.B. 4*, April 7, 1987, 11.
[102] House Study Group, *Bill Analysis: Bond Issue for Corrections, TDMHMR Facilities, S.J.R. 56* (1987).
[103] Acts 1987, 70th R.S., ch. 696, § 4, 1987 Tex. Gen. Laws 2561 (Tex. S.B. 1407).

from pension funds in the state and use the resources as venture capital to support new businesses.[104]

Responding to Brandon's recommendation, which Governor Bill Clements supported, lawmakers proposed a bill that would enable a city or other subdivision of the state to grant retirement systems permission to "invest assets of the retirement system in individual or pooled venture capital projects."[105] The law required only that managers consider the investment "prudent."[106] Opponents to the bill argued that this was a high-risk investment. Failed investments could drain retirement savings. But in a 1988 referendum, voters nonetheless approved a proposition that established the Texas Growth Fund. Through the fund, pension systems could allocate up to one percent of their endowment for venture capital investments.[107] Although the proposition restricted the amount of resources a pension fund could commit to new business growth, it marked yet another instance of state legislative activity that recruited state and local resources in support of private commercial activity. And as with the use of IDBs, the new legislation allowed government entities to assume new forms of risk.

VII.

As the Dallas Morning News observed in 1978, in Texas, public debt "was once avoided like the plague." This attitude seemed to have waned among local leaders by the

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[104] Maria Halkias, "Aid for Small Businesses Urged," *Dallas Morning News*, January 28, 1987.
[105] S.B. 1397 (1987) (§14.002(a)); G. Robert Hillman, "Panel Urges Reorganized Economic Plan," *Dallas Morning News*, January 24, 1987.
[106] Tex. S.B. 1397, 70th Leg., R.S. (1987) (§14.002(g)).
[107] Alice Dykeman, "Establishing Good Climate for Small Businesses," *Dallas Morning News*, December 2, 1988. Governor Clements envisioned a $200 million pool of capital, consolidated from pension and education trust funds, for "small business development."

end of the 1970s. In 1977, the debt of Texas's local governments rose $2.53 billion, a 35 percent rate of increase. The writer nonetheless urged readers not to worry. Most of this increase consisted of "healthy debt," the *News* argued, consisting of bond money raised for capital improvements. It hardly included the more troublesome variety, which included debt used to finance "current operations." The increases in debt, up to 1978, were likely attributable to population growth, which required investment in schools and infrastructure development—large projects that often required the use of long-term bonds.[108] Another shift was afoot as well. While local governments' use of debt through the 1980s continued to finance infrastructure projects, it increasingly served to replace funding for public services that the federal government once provided.

As a political correspondent for the Dallas Morning News put it, federal aid for cities was "all but dead." In response, the state enabled municipalities to use complex tax laws to build "revenue-producing" neighborhoods and combat "urban blight."[109] In the words of Steve Wolens, a Dallas Democrat who helped sponsor legislation on Tax Increment Financing, a mechanism like TIF was nothing less than a "godsend to replace federal cutbacks."[110] These new uses introduced new semi-public institutions that operated tax increment, industrial development, or housing finance programs. Cities established new special districts and nonprofit corporations that served as vessels for

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[108] "Public Debt: Pressure of Progress," *Dallas Morning News*, February 20, 1978.
[109] Sam Kinch, "Lawmakers Seek Ideas to Replace Federal Urban Aid," *Dallas Morning News*, March 1, 1981.
[110] Steve Wolens, "TIF Funds Viewed as Godsend to Replace Federal Cutbacks," *Dallas Morning News*, August 16, 1982.

selling municipal bonds and managing city programs. These entities acted on behalf of local governments, but also maintained considerable independence.

In some respects, these semi-public institutions were nothing new. In the 1930s, the federal government relied on public authorities to implement the New Deal's public housing and infrastructure development programs.[111] But the public authorities in the 1930s expected to receive installment payments from the federal government to cover the cost of municipal bonds. The institutions that cropped up in Texas at the end of the 1970s relied solely on project revenue and speculative increases in property value to repay bonds. These new entities were also greater in number, and managed far more debt. Public authorities in the 1930s expanded the capacities of local governments. In the late 1970s, they became integral to government operations.

To legitimize new institutions and market-driven strategies, local leaders devised ways to depict private investment as serving the public interest. The array of new powers that local governments received by the 1990s all blended private and public institutions, which policymakers described as "public-private partnerships." The cheerful term obscured the ways local governments' fiscal restructuring shifted power from voters to bondholders and banks.

As in cities throughout the U.S., leaders in Texas struggled after federal spending and program cutbacks began in the 1970s. The loss of federal funding, coupled with increased demand for city services, forced local bureaucracies to evolve. Some depictions of urban government in Texas present a history of democratization. In one account of

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[111] See, generally, Gail Radford, *The Rise of the Public Authority: Statebuilding and Economic Development in Twentieth-Century America* (Chicago: University of Chicago Press, 2013).

local politics of Dallas, for example, the "Dallas Way" of business oligarchy gave way to a more representative, popular politics in the second half of the twentieth century as political reforms reduced the power that white business elites held over local elections.[112] This characterization of political institutions overlooks the way fiscal management in the 1970s and 80s removed policy decisions from the public view, and shifted power from elected leaders to private actors.

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By passing laws allowing local governments to use municipal bonds to support community and economic development goals, the state legislature enabled a shift in local governance. Authority over implementation of public policy and financing decisions shifted from city agencies to semi-public entities. The concomitant rise of entrepreneurial and public management practices thus redrew the axes along which urban political struggles unfolded. As the following chapters argue, the state's response to fiscal challenges allowed decision-making power to consolidate within entities like special districts and non-profit corporations; experts within these entities performed their duties hidden from the public eye. While many financing arrangements involved some degree of approval from city council members, municipal technocrats crafted city plans and financing strategies with little state and public oversite. And while elected leaders remained accountable to their constituents, they also increasingly operated within the

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[112] See, for example, Harvey J. Graff, *The Dallas Myth: The Making and Unmaking of an American City* (Minneapolis: University of Minnesota Press, 2008), 125–60. On the rise of managerialism and entrepreneurialism in urban governance since the 1970s, see generally Peter Eisinger, "City Politics in an Era of Federal Devolution," *Urban Affairs Review* 33, no. 3 (1998); David Harvey, "From Managerialism to Entrepreneurialism: The Transformation in Urban Governance in Late Capitalism," *Geografiska Annaler* 71, no. 1 (1989).

confines of what investors and private actors would consider appealing, or at least tolerable, government activity.

In addition to accentuating the entrepreneurial and technocratic features of urban governance, federal disinvestment also expanded the legal autonomy of Texas cities, at least with respect to their relationship with the state government. Legal scholars have often treated municipal power as a function of formal legal guarantees from state governments.[113] But power flows not only from formal grants of power, but also through leverage that institutions gain by accruing access to capital. In response to reductions in federal aid, state lawmakers in Texas enacted legislation allowing local governments to take on new forms of debt, largely for financing economic development. In so doing, the state government expand the fiscal independence of local governments.

The state's interventions encapsulated the interplay between federal urban aid, the structure of state and local government policy, and the powers of local governments. As the state enacted laws adapting to federal cutbacks, cities gained new sources of autonomy. While still subject to state home rule laws, local governments gained the power to establish industrial development agencies and housing finance corporations. In creating these entities, local governments relied on relationships they developed with private investors. Municipalities remained subject to state legal authority. But their access to private capital—through industrial development bonds, tax increment financing, and mortgage revenue bonds—added new variables to municipalities' relationship with the

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[113] Gerald E. Freug, "The City as a Legal Concept," *Harvard Law Review* 93, no. 6 (1980); Eric H. Monkkonen, *The Local State: Public Money and American Cities* (Stanford: Stanford University Press, 1996); Richard Schragger, *City Power: Urban Governance in a Global Age* (New York: Oxford University Press, 2016).

state. Rather than reflecting efforts to escape state regulation, however, these shifts arose from the state government's efforts to overcome financial strain. The state legislature gave private investors new opportunities to shape urban governance.

Chapter 6

Who Governs Dallas?: Democracy, Litigation, and the Challenges of Reform

In 1990, a reporter for the *Dallas Morning News* announced, "The way it stands now, the most powerful person in Dallas city government may be a federal judge."[1] Judge Jerry Buchmeyer, a former partner at a Dallas firm who joined the federal bench in 1979 as a Carter appointee, had two cases on his docket. The first involved the city's political system. African American residents sued the city in 1988, arguing that the government's districting system, which held at-large elections for two City Council seats and the mayor, diminished their voting power. The litigation positioned Judge Buchmyer to overturn the old election system, order the city to develop a new election plan, and force a re-election under the new system.[2]

The second case involved the city's budget and economic development policies. The litigation concerned the City's role in encouraging the Dallas Housing Authority to discriminate against black residents in the development of public housing since the 1950s. By holding the city liable for civil rights violations, Judge Buchmeyer gained the power to compel officials to open the city's coffers and adopt new policies on housing development. City Council member Jerry Bartos wagered that an order from the court would cost the city over $75 million.[3]

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[1] David Jackson, "U.S. Judge Presides over Dallas' Future," *Dallas Morning News*, January 16, 1990; David Jackson and Lawrence Young, "Judge on the Hot Seat: Buchmeyer Decisions Weigh Heavily on City," *Dallas Morning News*, December 17, 1990.
[2] Williams v. City of Dallas, 734 F. Supp. 1317 (N.D. Tex. 1990).
[3] David Jackson, "U.S. Judge Presides over Dallas' Future," *Dallas Morning News*, January 16, 1990.

Judge Buchmeyer's 1990 caseload grew from the city government's long history of racial oppression. In the early twentieth century, an organized network of white business leaders consolidated control over the Dallas City Council. White elites, operating through an organization called the Citizens Charter Association, directed the flow of large campaign contributions to candidates they selected. Under the city's at-large voting system, the coordination of financial recourses and campaign messaging allowed them to effectively hand-pick the city's leaders. Through the 1980s, this system produced a government that advanced the interests of its white, affluent constituency at the expense of Mexican American, African American, and working class residents. City officials, for example, used the city's public housing program to protect the interests of white property owners. During the 1940s and 50s, black households began moving into white neighborhoods in search of better conditions. City officials, fearing racial conflict, urged the Dallas Housing Authority to develop public housing units in predominantly black areas of the city. Explicitly designated as housing for black and Mexican American families, public housing in areas like West Dallas restricted mobility and secured the homogeneity of white neighborhoods.

Through decades of racist housing policies, discrimination, and electioneering, Dallas became and remained deeply divided. West Dallas, located across the Trinity River to the west of downtown, was predominantly African American and suffered from extreme poverty. The area of Dallas south of downtown was also poor and predominantly black. North Dallas, home to most of the city's elected officials through the 1970s, was predominantly white and wealthy.

Efforts to reform Dallas's public housing and voting systems responded to the same deficiencies in local government. When African American residents looked to the District Court for the Northern District of Texas in the early 1980s, Deputy Mayor Pro Tem Diane Ragsdale asked an important question: why did citizens need to "appeal to a federal judge" to force the DHA to serve them? Dallas's City Council, composed almost exclusively of white representatives until the 1970s, was a far cry from a representative government. Ragsdale believed Dallas citizens "were treated in an unfair way." Only litigation could bend the will of city leaders.[4]

Litigation over housing discrimination, which concerned 3,400 units of public housing developed in West Dallas in the 1950s, allocated unprecedented power to a class of plaintiffs, their counsel, and Judge Buchmeyer. Into their hands fell the city's future policies on affordable housing and the fate of West Dallas. The court found both DHA and the city liable for intentionally restricting the location of public housing to predominantly black neighborhoods. But with the plaintiffs' legal intervention rooted in antidiscrimination law, namely the Fair Housing Act, the parties developed a remedy that prioritized dispersal over neighborhood development. By the late 1980s, the public housing stock in West Dallas was crumbling, but preservation remained a possibility. The structure of the plaintiffs' legal claims, however, compelled a different outcome. At its core, the legal response to housing segregation in Dallas substituted public housing in West Dallas for tenant-based voucher assistance that purported to allow households to choose where in Dallas they preferred to live. While it served to deconcentrate black

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[4] David Jackson, "U.S. Judge Presides over Dallas' Future," *Dallas Morning News*, January 16, 1990.

households in West Dallas, it also drove rifts between civil rights and economic justice advocates focused homelessness, housing preservation, and community-based development. The case pitted a judge dead set on desegregating West Dallas against advocates committed to ensuring that all people in Dallas had a place to live.

Similar costs attended voting rights litigation. In the 1970s, a cohort of activists, both white and black, launched attacks on the city's business oligarchy. One group of residents formed a political organization, Citizens for Representative Government (CRG), to compete against the Citizens Charter Association. The committee aimed to help city council candidates who owed no allegiance to Dallas business leaders win elections. Voting rights litigation, however, soon outpaced the CRG's efforts. While white candidates failed to formulate compelling legal strategies to weaken the control of money in local politics, black plaintiffs launched an assault on the city's districting system, ultimately producing a pure single-member district system in 1990, which allowed voters to select a representative from the district where they lived. Over two decades, federal judges issued opinions that gradually dismantled Dallas's at-large system. But as plaintiffs, activists, and city officials reformulated the voting system, political discourse shifted from a critique of Dallas's oligarchy to questions about the racial composition of districts. The collapse of Dallas's at-large system stripped the CCA of its formal power. But as this chapter argues, the city government remained susceptible to the influence of money.

The point here is not to question or denigrate civil rights plaintiffs' hard-won victories. Indeed, both housing and voting rights litigation produced monumental shifts in

local policy, providing people of color with access to new neighborhoods and levers of political power. Rather, this chapter suggests that the structure of federal civil rights laws had limitations. Dallas's most groundbreaking civil rights cases shifted political authority from business leaders to households of more modest means. As subsequent chapters argue, new institutions—particularly semi-governmental entities that used municipal debt to finance redevelopment projects—emerged as plaintiffs marched towards victory in federal court. While the city council grew more diverse, new leaders remained responsive to business interests. Litigation left much of the business oligarchy's political authority undisturbed.

The court's intervention in Dallas's municipal affairs reflected a central conflict between democratic and legal processes in urban governance. Urban governance, in theory, if rarely in practice, rested on the maintenance of legitimate representation. Elected officials supposedly made decisions designed to serve the interests of their constituents. Yet, as a long history of civil rights litigation suggested, local democracy systematically disadvantaged significant groups of Americans. Supreme Court Justice Harlan Stone famously observed in a 1938 case, *United States v. Carolene Products*, that political processes might not reliably protect "discrete and insular minorities." The Supreme Court's decision in *Carolene Products* curtailed the power of federal courts to review state legislation, limiting scrutiny of an economic regulation to the question of whether it had any "rational basis." But Justice Stone also recognized that where state activity evinced prejudice for vulnerable groups, circumstances might require "more

searching judicial inquiry."[5] Justice Stone's observation, while not explicitly cited as a justification to expand the range of suspect classifications and rights, provided a touchstone for civil rights lawyers who in the middle of the twentieth century envisioned courts as mainsprings of social reform.[6] The framework set out in *Carolene Products* set the terms on which a court, a body that could hardly claim to represent local electorates, could legitimately countermand the policies of majoritarian institutions. This framework in turn structured the claims that Americans might assert in federal court.

During Dallas's institutional struggles, the structure of federal laws shaped municipal reform efforts. Excluded from positions of power, African American and Mexican American residents relied on federal laws to reconstitute local political processes and urban development policy. Their reform efforts unfolded within the US's legal framework, and thus bore the imprint of Constitutional doctrine and civil rights law. Over the preceding century, federal lawmakers and judges organized civil rights laws around the protection of rights rooted in racial and ethnic identities, as well as the recognition of particular "fundamental rights" like reproduction and bodily integrity.[7]

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[5] United States v. Carolene Prod. Co., 304 U.S. 144, 152-53 n.4 (1938).
[6] Regents of Univ. of California v. Bakke, 438 U.S. 265, 290 (1978); Laura Kalman, *The Strange Career of Legal Liberalism* (New Haven: Yale University Press, 1998), 2.
[7] For seminal opinions finding government actors liable for racial discrimination, see, for example, Brown v. Bd. of Educ., 347 U.S. 483 (1954); Griggs v. Duke Power Co., 401 U.S. 424 (1971); Metro. Hous. Dev. Corp. v. Vill. of Arlington Heights, 558 F.2d 1283 (7th Cir. 1977). For important bodily integrity and personal privacy cases, see Skinner v. Oklahoma ex rel. Williamson, 316 U.S. 535 (1942); Rochin v. California, 342 U.S. 165 (1952); Griswold v. Connecticut, 381 U.S. 479 (1965); Roe v. Wade, 410 U.S. 113 (1973); O'Connor v. Donaldson, 422 U.S. 563 (1975). Federal civil rights statutes enacted during the 1960s established protections that forbid discrimination based on individual traits like race, ethnicity, national origin, and sex. See, for example, the Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 241 (1964); Civil Rights Act of 1968, Pub. L. No. 90-284 § 801, 82 Stat. 73, 81–89. On the ways identity-based litigation took priority within the American civil rights bar, and displaced litigation directed at

This legal framework oriented advocates towards interventions grounded in racial identity, rather than class or income. Legal advocates targeted the city's discriminatory treatment of African Americans and Mexican Americans. They focused on expanding the diversity of political institutions like the Dallas City Council, and on the desegregation of neighborhoods. By emphasizing the integration of neighborhoods and political institutions, advocates deemphasized questions of economic justice, especially Dallas's shortage of low-income housing. As this chapter argues, civil rights litigation in Dallas sat in tension reform efforts organized around redistributing power along lines of wealth or class.

I.

In February 1950, a bomb exploded at the South Dallas home of Horace Bonner. While the assailant remained unknown, Dallas officials assumed the attack an act of white resistance to integration. Bonner, an African American resident, had recently moved from a predominantly black area of Dallas to a white neighborhood nearby. Two other African American households had also recently purchased homes in the area. The bombing initiated a debate over how city could prevent future violence.

Many city officials called for new segregated public housing to end racist violence. Dallas Mayor Wallace Savage remarked, "Despite the fact that the Negro population has increased in proportion to the white population, there has been practically no Negro housing built in Dallas since the war." Black families were "living two, three and four families in in small dwellings." The Mayor found it "impossible" to keep the

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class-based issues during the mid-twentieth century, see Risa L. Goluboff, *The Lost Promise of Civil Rights* (Cambridge: Harvard University Press, 2007).

families "from overflowing into white areas unless places are provided for them." If private developers acting alone were unable to provide a "satisfactory solution," Mayor Savage stated, "at least some relief must be provided by means of public housing."[8] The Dallas Home Builders Association insisted that public housing was not necessary, but as City Council member Jess S. Epps summarized the problem, "Everybody wants more Negro housing, but they want it in some other part of town." West Dallas, an area already home to a significant African American population, offered a promising location for new construction.

Until 1952, West Dallas sat outside the Dallas city limits. As an unincorporated region located west of downtown Dallas, Dallas's investment in infrastructure and sanitation did not extend there. The availability of cheap land and housing drew low-income households to the area, and by 1948 24,150 people lived in West Dallas. About thirty-seven percent of the population was African American and 86 percent of households lived in "substandard" housing. Few homes had baths, toilets, or running water. West Dallas advocates petitioned the city for annexation, hoping that it might bring improved water and drainage facilities, as well as community parks and swimming pools.[9] But in 1947, citing the immense costs that annexation would impose on the City

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[8] Allen Quinn, "Public Housing Demanded for Dallas Negroes: Bombing of Home Sets Off Proposal by Mayor Savage," *Dallas Morning News*, February 10, 1950.

[9] Louis Sager, "West Dallas' Best Bet: Annexation," *Dallas Morning News*, July 28, 1946. The US Census reports no data on West Dallas until 1960, the first census conducted after West Dallas's incorporation. The population figures and other survey statistics produced in a study conducted by the Council of Social Agencies are reported in Joe M. Dealey, "Questionnaire Bares West Dallas' Needs," *Dallas Morning News*, August 1, 1948. Surveys of African American housing are reported in Council Sees "Negro Need for Housing," *Dallas Morning News*, January 12, 1949.

and a limited budget, the Dallas City Council refused.[10] In 1949, after touring West Dallas, the Los Angeles architect Richard Neutra concluded that the area faced a public health crisis. He denounced Dallas voters and the city government for using the "silly, ridiculous and provincial alibis" of inadequate funds to refuse annexation.[11]

Despite their reluctance to annex West Dallas, members of the Dallas City Council and other city officials considered the area a promising site for public housing. The Dallas City Manager reported in 1938 that West Dallas, which was "located in the center of a well established Negro district," was "ideally suited as a possible location for a Negro housing project . . . ."[12] The city manager viewed public housing as a tool to reinforce existing racial segregation. The city manager's survey, for example, urged the DHA to locate the "Mexican project . . . as near as possible to the district in which [Mexican-American residents] now reside."[13] By the end of the 1940s, members of Dallas City Council had publicly endorsed the Dallas Housing Authority in its efforts to secure federal funding to build public housing in West Dallas.[14] As the DHA argued in support of the idea, the "growing Dallas slums have a direct impact upon the financial structure of the City of Dallas and every taxpayer." By constructing public housing, the DHA argued, the development would prevent crime and sanitation hazards from bleeding

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[10] Allen Quinn, "West Dallas Annexation Refused: Move Out at Least Until 1949," *Dallas Morning News*, December 3, 1947; "Aid Urged for Blighted Area," *Dallas Morning News*, December 3, 1947.
[11] "'Menace' Label on West Dallas," *Dallas Morning News*, March 26, 1949.
[12] District Judge Buchmeyer provided a detailed history of public housing development in Dallas in Walker v. U.S. Dep't of Hous. & Urban Dev. (*Walker III*), 734 F. Supp. 1289, 1293 (N.D. Tex. 1989).
[13] The survey discouraged development of housing in the existing Mexican-American neighborhood given its promise as a future site for industrial development. Ibid., 1293 n.15.
[14] "Council Sees Negro Need for Housing," *Dallas Morning News*, January 12, 1949.

into the rest of the city, and reduce city expenditures on emergency services in West Dallas.[15]

The Dallas Housing Authority, established by the City Council in 1938, was an independent, semi-public institution. Yet, during the 1940s and 1950s, the DHA followed the city's recommendations on site selection. In 1942, the DHA opened one of its first projects, Roseland Homes, which the DHA and City Manager described as the "Negro project."[16] Of the four projects the DHA opened from 1943 through 1953, all exclusively housed black families. DHA located the housing developments in census tracts that held the city's highest concentrations of black households.[17] The DHA designated other projects as "white" and "Mexican."[18]

The 1950 bombing of Horrace Bonner's home further motivated official support for public housing development in West Dallas. A 1950 report by a joint committee of

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[15] "Dallas's Backyard Needs Cleaning," Dallas Housing Authority 1950 to July 1951 Report, Dallas's Backyard Needs Cleaning, 18, folder: 10 (Report – "Better Housing in Dallas"), Box 1, Collection 91-022 Housing, 1938–1993, RG 16, Dallas Municipal Archives and Records Center, Office of the City Secretary (DMARC).
[16] *Walker III*, 734 F. Supp. at 1294.
[17] DHA completed Frazier Courts, consisting of 550 units, in 1943, at 4900 Hatcher St., located in Census Tract 27, which in 1940 held a population that was 40 percent black and 50 percent black in 1950. DHA completed Brackins Village, consisting of 102 units, in 1952, near the corner of East Clarendon Drive and North Corinth St., in Census Tract 0041, which in 1950 had a population that was 62.3 percent black. DHA completed Turner Courts, consisting of 294 units, in 1953, near the corner of what today is Carlton Garrett St. and Bexar St., located in Census Tract 0039, which held a population that was 72.6 percent black. DHA completed Rhodes Terrace, consisting of 426 units, in 1953, near the intersection of the C.F. Hawn Freeway and Bexar St, located in Census Tract 0039, which in 1950 had a population that was 72.6 percent black. U.S. Census Bureau, "Total Population: Black, 1940"; U.S. Census Bureau, "Total Population: Black, 1950." Street addresses for housing developments are listed in "Housing Chief Says Police Neglecting Projects," *Dallas Morning News*, February 23, 1989.
[18] The DHA completed the city's second all-white project, Washington Place, in 1943. The development, located near the corner of North Washington Ave and Elm St, straddled Census Tracts 22 and 31, which held populations that were respectively 74.7 percent and 83.7 percent white. *Walker III*, 734 F. Supp. at 1294; U.S. Census Bureau, "Total Population: White, 1940."

the Dallas Chamber of Commerce, the Dallas Citizens Council and the Dallas Inter-Racial Committee worried that whites would respond with violence as black families moved in. Their report stated: "[I]f we do not provide home sites for Negroes who want to, and can afford to, buy or rent suitable and decent homes, the alternative is terrible overcrowding, dissatisfaction, disease, tension resulting from Negroes buying into white neighborhoods, and many other serious consequences."[19] "The only satisfactory and permanent solution," The Committee argued, was through the enforcement of "racial segregation."[20] The DHA looked to West Dallas as a promising site for segregated public housing. It was home to a "sprawling slum community," as DHA officials explained in an application to HUD.[21] Even through a lead smelting plant in the area presented a significant environmental hazard, city officials wanted to built a massive housing complex in the community, effectively replacing "slum" housing with public housing.[22] The city government played an important role in guiding the DHA's selection of the site.

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[19] Ibid., 1295 (quoting the 1950 Joint Report on Negro Housing).
[20] Ibid.
[21] Ibid., 1296 n.22.
[22] On environmental hazards, see Complaint ¶ 7, U.S. v. Quemetco Metals Ltd., 01-cv-00924 (N.D. Tex. May 16, 2001). In an environmental remediation lawsuit, the U.S. recounted the history of environmental hazards in West Dallas, explaining: "The RSR Corporation Site ("Site") is an area of approximately 13.6 square miles in the vicinity of the intersection of Westmoreland Road and Singleton Boulevard in Dallas, Dallas County, Texas. A secondary lead smelter operated near the center of the Site beginning in the 1930s until it ceased operations in 1984. Hazardous substances, including, but not limited to, lead, cadmium, arsenic, were released and/or disposed of at the Site as the result of smelter and related operations that included a battery breaking operation Site. Air emissions from the smelter stack contaminated the Site with hazardous substances during the entire time the smelter operated." Tests conducted in the early 1980s indicated that children living in areas near West Dallas lead smelters had dangerously elevated levels of lead in their blood. See Industrial Lead Pollution in Dallas: The Report of the Neighborhood Committee on Lead Pollution, Presented to the Dallas City Council July 13, 1983, Box 6, James Hart Papers, Dallas Public Library Archives.

In a letter Mayor Savage sent to the DHA in 1950, he urged that West Dallas become the site for the development of 3,500 public housing units.[23]

Following the Mayor's recommendation, the DHA applied to HUD for funding. After receiving a commitment from HUD, the DHA began developing three racially segregated projects in West Dallas. The George Loving Place development provided 1,500 units exclusively for white families; the Edgar Ward Place development provided 1,500 units for black families; and the Elmer Scott Place provided 500 units for Hispanic families. "Green belts" between the sites ensured "geographical segregation of the various races."[24] Occupancy in the white and Hispanic projects plummeted in the first two years of operation, which the DHA attributed to the "stigma" and "environmental disadvantages" of West Dallas, as well as the wider options that Hispanic and white families had in other parts of Dallas.[25] The DHA therefore allowed African American families to move into the development. It became 35 percent black by 1967, and 95 percent black by 1974.[26]

Meanwhile, the project fell in disrepair. DHA failed to secure financing for maintenance, in part because DHA and city officials failed to comply with federal regulations addressing tenants' rights and discrimination. HUD required compliance with policies as a condition for receiving additional housing aid, and by refusing to comply the

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[23] *Walker III*, 734 F. Supp. at 1296.
[24] Dallas Housing Authority, Annual Report, 1951, 11, folder: Housing Reports, Box 1, Collection 1991-022, DMARC.
[25] *Walker III*, 734 F. Supp. at 1296.
[26] Ibid., 1297.

DHA lost out on $31 million in modernization funding.[27] By 1983, the City Task Force on Public Housing reported that over one third of the units were uninhabitable. A Mayor's Task Force on Public Housing recommended a $88 million rehabilitation plan, and suggested that DHA apply for and use of Community Development Block Grant funding to finance the project. HUD officials offered only $18 million, and the City of Dallas refused to commit any funding. As councilman Max Goldblatt commented, "[Y]ou're not changing the economic or cultural habits or desires of the people that are in there, and you're not going to change it by spending a bucket of money. It's a bottomless pit."[28]

II.

But racial segregation had an unintended consequence. By concentrating African Americans in West Dallas and near the Central Business District, the City created avenues through which African Americans could build political power. Under a district-based voting system, wards containing African American neighborhoods could elect African American leaders to city offices. For Dallas's affluent white population, political control required diluting the black vote.

In the early twentieth century, Dallas adopted an at-large election system. The 1907 City Charter divided the city into eight districts. In elections for City Council, a candidate ran for the seat associated with the district where he or she lived, but residents of the entire city voted for candidates in each district. Thus, a white candidate living

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[27] Lyke Thompson, "Housing Authority has Problem in West Dallas," *Dallas Morning News*, May 25, 1975.
[28] *Walker III*, 734 F. Supp. at 1307-08; Terry Maxon, "DHA Plans to Rebuild West Dallas Projects," *Dallas Morning News*, April 5, 1984.

within a predominantly black district received votes from across the city, and residents tended to vote along racial lines. In 1965, for example, voters in predominantly black neighborhoods voted 86 percent in favor of an African American candidate running against a white candidate. Seventy-five percent of voters in white neighborhoods voted for the white candidate. In the at-large contest, the white candidate took 62 percent of the vote, winning the election. The at-large method effectively excluded African American candidates from office until the 1970s, even though nearly a quarter of Dallas residents were black. Up through the 1970s, only two African Americans ever held office in Dallas. Mexican Americans, who represented approximately eight percent of Dallas residents, also struggled to win elections. [29]

The at-large voting system ultimately enabled white business leaders to control city politics. In the 1930s, municipal reform advocates, consisting largely of bankers and business leaders looking to enshrine a predictable political regime, formed the Citizens Charter Association as part of an effort to establish a system of city manager government. Under the system, which Dallas voters approved in a 1930 amendment to the city charter, the city council designated one of their members as mayor and selected an unelected official to serve as city manager. As the system took shape, the CCA consolidated its authority to dictate the terms of council elections. After a slate of CCA candidates lost a 1935 election, the city's business leaders staged a political takeover. Two hundred of the city's corporate leaders established an organization, the Dallas Citizens Council, to guide

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[29] Lipscomb v. Wise, 399 F. Supp. 782, 786–87, 792 (N.D. Tex. 1975).

the CCA's efforts.[30] The CCA soon became the political advocacy branch of the Dallas Citizens Council.

The Citizens Council, under the direction of banker Robert Thornton, limited its membership to the executive officers of corporations. Thornton considered the city's government too disorganized and inefficient. He recognized that businessmen already held some influence over municipal government in Dallas and other cities across the country. But he wanted to formalize this influence. The Citizens Council, Thornton believed, could in effect run the city, and do so most effectively than fractious elected officials. Critical to ensuring its efficacy in governing the city, the Citizens Council excluded individuals who might introduce a divergent perspective to the Council's deliberations, including religious leaders, healthcare professionals, and educators. Yet, for business leaders like Thornton, efficiency required policies they believed would generate economic growth. The Citizens Council thus advanced candidates who would ward off unions and slash welfare spending to keep taxes low. By using the Citizens Charter Association to engineer city council elections, the Council promoted candidates who would dutifully advance this platform.[31]

The CCA emerged in 1931 during a campaign to replace Dallas's commission-based government with a city manager form of government. Exercising his veto power under the commission government, Dallas's mayor vetoed the commissioners' vote in favor of holding a city charter election. The CCA responded with a campaign to secure

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[30] Roger Biles, "The New Deal in Dallas," *Southwestern Historical Quarterly* 95, no. 1 (1991): 3–4.
[31] Ibid., 4–5.

petition signatures, which resulted in a citywide referendum in which voters approved of a city-manager government.[32] To members of the CCA, a city manager government more closely resembled the managerial structures that business leaders were familiar with from their professional lives. In a city manager government, the manager assumed a role similar to that of an executive director, an expert who could efficiently direct the city's daily functions. The city council assumed a role akin to a corporate board, making large-scale decisions, and holding the manager accountable.

From 1959 through 1975, 82 percent of candidates endorsed by the CCA won their elections.[33] The few successful African American and Mexican American candidates for City Council during this period received carefully-negotiated endorsements from the CCA. Fearing that it needed to secure black votes to continue winning elections as Dallas's African American population grew, the CCA endorsed the city's first black City Council member, George Allen, in 1969. Allen had served on the Committee of 14, a group of seven Citizens Council representatives and seven black community leaders that the Citizens Council formed in 1960. The Citizens Council feared that youth sit-ins and non-violent protests could stifle business, and asked the Committee of 14 to negotiate and develop plans for desegregating schools and public accommodations. Based on Allen's work with the Committee of 14, the CCA considered him a candidate who could represent the interests of capital. In exchange for the CCA's endorsement, Allen agreed to support an amendment to the city charter adding two new

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[32] Kit Bauman, "City Hall Facing Sixth Change in 121 Years," *Dallas Times Herald*, July 17, 1977, clipping in folder: Politics, City (Dallas), Citizens' Charter Association—General, Box 1, Donald Fielding Collection, DML.
[33] *Lipscomb*, 399 F. Supp. at 786.

seats to the City Council, an amendment designed to minimize Allen's influence on the Council.[34]

Beginning in the late 1960s, various residents—including lawyers and other professionals excluded from the Citizens Council and working class whites, African Americans, and Mexican Americans— experimented with strategies to break the Citizens Council's stranglehold on municipal elections. They needed to either develop organizing strategies that could allow non-CCA candidates to win council seats, or force the hand of CCA-nominated council members.

In 1968, a Dallas attorney, Joe Devany, launched one organizing effort when he contacted Don Fielding, a Dallas store owner who earlier founded an organization to place educated professionals, rather than corporate executives, on the school board. The attorney identified Fielding, based on his school board organizing, as a community member who was "well qualified" to join a small team working to "reorganize" the CCA. The goals of the reorganization were to "encourage public interest in good city government," to advance "worthy civic projects for the welfare of all the people in the city," and establish "law and order." The team aimed to "transfer control of the CCA to the people." In late 1968, Fielding and Devany began working together to establish the Citizens for Representative Government to challenge the CCA's slate. The CRG endorsed six candidates in the 1969 election. To avoid any comparison to the CCA,

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[34] Ibid., 787; William R. Carmack and Theodore Freedman, *Field Reports on Desegregation in the South: Dallas, Texas: Factors Affecting School Desegregation* (New York: Anti-Defamation League of B'nai B'rith, 1962), https://files.eric.ed.gov/fulltext/ED023708.pdf; Theodore M. Lawe, "Racial Politics in Dallas in the Twentieth Century," *East Texas Historical Association*, 46 no. 2 (2008).

Fielding explained that the CRG had merely chosen candidates to support; they were not presenting a "slate" of candidates, as was the CCA's practice.[35]

The CRG struggled to break the CCA's monopoly on local politics. Only one of the CRG's candidates, Wes Wise, won a seat in the 1969 election.[36] While the CRG had difficulty matching the CCA's resources and control over political messaging, the organization also grappled with its own political identity. The CCA had a clear constituency. The CCA, as CRG president Averil Sweitzer recognized, represented a "handful of businessmen downtown"—largely conservative Democrats. The CRG needed to build a coalition to buoy its own candidates. One path towards increased influence, according to Sweitzer, was for the CRG to operate not as a "second party" in Dallas politics, but as a coalition of the "disenfranchised." The Republican party could serve as one effective "faction," but Sweitzer also hoped to build a base involving blacks and Mexican-Americans. To hold its broad coalition together, the CRG planned to endorse candidates based solely on the requirement that "they represent the views of their community," meaning that candidates needed to represent the interests of residents within a given neighborhood. The CRG would endorse conservative and liberal candidates; it

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[35] Joseph A. Devany to Donald B. Fielding, February 23, 1968, folder: Politics, City (Dallas), Citizens' Charter Association—General, Box 1, Donald Fielding Collection, DML; "Another City Party Under Way," *Dallas Times Herald*, November 21, 1968, clipping in folder: Politics, City (Dallas), Citizens' Charter Association—General, Box 1, Donald Fielding Collection, DML; Ron Calhoun, "CCA Outdated—Fielding," *Dallas Times Herald*, September 10, 1968, clipping in folder: Politics, City (Dallas), Citizens' Charter Association—General, Box 1, Donald Fielding Collection, DML; Jerry McCarty, "CRG Backs 6 for Council," *Dallas Times Herald*, March 1969, clipping in folder: Politics, City (Dallas), Citizens' Charter Association—General, Box 1, Donald Fielding Collection, DML.

[36] Carolyn Barta, "City Political Wheels Churning," *Dallas Morning News*, November 29, 1972, clipping in folder: Politics, City (Dallas), Citizens' Charter Association—General, Box 1, Donald Fielding Collection, DML.

would adopt no particular political platform. While the organization generally supported a charter-reform movement to adopt single-member districts, Sweitzer worked "under the premise that we will not have them."[37]

The CRG focused on political process, not race. In some ways, its strategy reflected a class-based approach to organizing. While the CRG did not claim to represent any particular group, for example working class or low-income voters, the organization aimed to strip power from Dallas's wealthy business leaders, including developers who maintained control over the city's land use policies. Leaders like Sweitzer and Fielding envisioned a shift from business oligarchy to a genuinely representative government. The CRG wanted to promote "people-oriented councilmen," candidates who would "exercise as much concern for human problems as for those of concrete and steel." Hoping to shift political power away from local developers, the CRG called for a "moratorium on residential zoning changes," the only substantive policy the organization advanced. Developers contributed generously to the CCA to secure zoning decisions that "enhance their land values," the CRG announced, but "with little regard for the well-being of the home owner." By preventing residential zoning changes, the CRG hoped to safeguard homeowners against speculative development practices.[38] The CRG struggled to unify a coalition around these ideas. Political process was too broad an issue to motivate support,

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[37] Carolyn Barta, "CRG Plans Drive to Organize Coalition of Disenchanted Voters," *Dallas Morning News*, December 8, 1972, clipping in folder: Politics, City (Dallas), Citizens' Charter Association—General, Box 1, Donald Fielding Collection, DML.
[38] Pamphlet, "Citizens for Representative Government," n.d., folder: Politics, City (Dallas), Citizens for Representative Government—Correspondence, 1968–1973, Box 1, Donald Fielding Collection; Press Release from Citizens for Representative Government, April 5, 1976, folder: Politics, City (Dallas), Citizens for Representative Government—Correspondence, 1968–1973, Box 1, Donald Fielding Collection.

and the interests of homeowners may have been too narrow. Meanwhile, the CRG could not match the CCA's financial resources.

As the CRG's efforts stalled, other residents sought reform from outside legislative and political processes. African Americans, recognizing that the election system diluted their voting power, believed they might have a constitutional claim against the city. Al Lipscomb, an African American who ran an unsuccessful campaign for mayor in 1971, had qualms with the CRG. White liberals of the CRG, he believed, were cynically attempting to win African American votes while doing little to support black leaders. Lipscomb and his supporters in fact crashed a 1971 CRG planning dinner in the district where he lived. In protest, they seized food provided for CRG representatives and instead fed it to "hungry black children." The "people," he declared, took over the meeting.[39] Rather than rely on the CRG, Lipscomb turned to federal court after losing his campaign. In *Lipscomb v. Wise*, he and a class of plaintiffs argued that under Dallas's voting system, the white vote in effect held more weight than the African American vote. By denying black residents participation in the political process, plaintiffs argued, the system violated the Equal Protection Clause of the Constitution, as well as the Fifteenth Amendment.[40]

III.

Dallas's at-large election system troubled black and white residents alike. For African Americans, it sustained the segregation and deterioration of public housing. To

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[39] Dave McNeely, "White Liberals Draw Blast: Lipscomb Says Black Votes Taken, Then Forgotten," *Dallas Morning News*, February 13, 1971, clipping in folder: Politics, City (Dallas), Citizens' Charter Association—General, Box 1, Donald Fielding Collection, DML.
[40] Ibid., 788; Lipscomb v. Johnson, 459 F.2d 335, 337 (5th Cir. 1972).

whites, it stifled debate by barring dissident candidates from office. In the 1967 City Council election, for example, a white resident and small business owner, Max Goldblatt, won sixty percent of the vote in his district, but lost the election.[41] The CRG's efforts demonstrated the challenges of building a political coalition that crossed lines of race, neighborhood, and class. Yet, the organization also highlighted ways that citizens could organize across racial lines against the influence of money in politics. Its organizing efforts suggested that it was possible to imagine a future where white homeowners and African American renters recognized they held common objectives. Voting rights litigation, however, raised a different set of questions. In the hands of federal judges, political reform became primarily a matter of race.

The Northern District of Texas was a better venue for Al Lipscomb than Don Fielding and Max Goldblatt. After his failed 1967 campaign, Goldblatt filed a lawsuit against the city. He asserted an Equal Protection claim, arguing that Dallas's at-large voting system allowed wealthy individuals to control city politics. The system deprived Goldblatt of his Equal Protection rights by excluding city council candidates who lacked the CCA's deep pockets.[42] Unsympathetic to his argument, the District Court granted the city's motion for summary judgment, a decision the Fifth Circuit upheld on appeal. A voting system, by preventing a candidate who carried his district from entering office, did

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[41] Evaluation of Voting By District in Dallas, n.d., folder: Politics, City (Dallas), Citizens for Representative Government, At-Large Voting / Single-Member Districts—General, Box 1, Donald Fielding Collection, DML.
[42] Appellant's Brief, Goldblatt v. City of Dallas, 414 F.2d 774 (5th Cir. 1969), on file at folder: Politics, City (Dallas), Citizens for Representative Government, At-Large Voting / Single-Member Districts—General, Box 1, Donald Fielding Collection, DML; Goldblatt v. City of Dallas, 279 F. Supp. 106, 107 (N.D. Tex. 1968).

not "amount to discrimination against either the candidate or against the voters of that district," the Fifth Circuit explained. "Stripped of legalese," the court concluded, Goldblatt was "complaining because the citizens of Dallas either from apathy or by design have not exercised the power of the ballot to rid themselves of what the appellant regards as an evil political machine." With his argument distilled in this form, the court found itself without authority to right the "wrong of public apathy."[43]

Since the 1940s, civil rights lawyers had focused on building a strong Equal Protection doctrine prohibiting discrimination. The strategy, as historian Risa Goluboff argues, came at the cost of other legal arguments. Attorneys in the 1930s conceived of civil rights law in broader terms. The Department of Justice dedicated a section of attorneys to fighting exploitive labor practices using arguments rooted in the Thirteenth Amendment, which prohibited slavery and involuntary servitude. Other attorneys believed the Constitution capable of supporting a right to economic equality. After the Supreme Court's decision in *Brown v. Board of Education*, however, civil rights attorneys focused their energy on applying *Brown* to other forms of racial discrimination, as well as crafting remedies to integrate school systems.[44] In rare instances, civil rights attorneys pursued cases that directly targeted the effects of wealth inequality. Presented with an anemic body of supporting law, and a judiciary uncomfortable with using any indices of inequality as the basis for establishing a protected class, these efforts faltered.

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[43] *Goldblatt*, 279 F. Supp. at 110; Goldblatt v. City of Dallas, 414 F.2d 774, 776 (5th Cir. 1969).
[44] Risa L. Goluboff, *The Lost Promise of Civil Rights* (Cambridge: Harvard University Press, 2007), 5, 238-70.

In Texas, for example, a group of elementary-school students and their parents challenged the financing structure for public education in Texas, which they believed disadvantaged low-income students. A system that relied on the property tax, they argued, made the quality of education a "function" of the local tax base. Children living in poor districts received less than those in affluent districts. Plaintiffs did not suggest that the Constitution require parity in funding levels for all schools, but rather argued that it mandated "fiscal neutrality": a financing scheme could not allow wealth to determine the level of spending for a child's education. The District Court for the Western District of Texas concluded that discrimination based on wealth amounted to a denial of equal protection.[45]

In 1973, however, the Supreme Court rejected this theory. Justice Powell's opinion illustrated the awkward fit between Equal Protection doctrine and wealth-based inquiries. To invalidate the financing scheme under the Equal Protection Clause, the Court needed to identify a "disfavored class." While the district court, and some other state and lower federal courts had found wealth discrimination in conflict with the equal protection, the Court worried that these decisions "virtually assumed their findings of a suspect classification." Justice Powell imagined three possible methods for defining a disfavored class: first, the class could consist of "poor" people; second, the class could be drawn along lines of "relative wealth"; and third, the class could consist of all people living in poor areas. None of the three methods appeared workable. The Court was unwilling to assume that poor families clustered in districts with poor property values,

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[45] Rodriguez v. San Antonio Indep. Sch. Dist., 337 F. Supp. 280 (W.D. Tex. 1971).

and as Justice Powell noted, the plaintiffs had introduced evidence showing a correlation between property value and family income based on a survey of just ten percent of school districts in the country. Poor students, Powell reasoned, did not necessarily receive less funding for education. Relative wealth presented too amorphous a basis for analyzing a constitutional harm. And if a class consisted of all people living in poor areas, which would possibly include affluent and poor households alike, it would also constitute a group to broad to justify the Court's "most exacting scrutiny."[46]

The Court had struck down classifications impinging on poor plaintiffs in a rare set of cases. As Justice Powell observed, however, those cases shared a core set of traits. First, the Court found that the policy at issue "operat[ed] to the peculiar disadvantage" of a "class fairly definable as indigent." Second, the policy "occasioned an absolute deprivation of the desired benefit." In *Rodrigquez*, the plaintiffs did not show that the education finance system met either condition. Having refused to identify a suspect class, the Supreme Court reversed the district court's decision.[47]

Litigation challenging an election system that barred all but wealthy citizens from office faced similar challenges. Max Goldblatt's lawsuit demonstrated that federal courts were unwilling to question an election system that in effect, or even by design,

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[46] San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1, 27–29 (1973).
[47] Ibid., 17–25. The Supreme Court reached similar conclusions in other contexts. In *Maher v. Roe*, the Court held that financial need of a woman seeking an abortion alone could not provide the basis for a suspect classification. In *Maher*, a state statute in question limited Medicaid benefits to covering first trimester abortions to only those considered "medically necessary." The Court explained, "An indigent woman desiring an abortion does not come within the limited category of disadvantaged classes so recognized by our cases." The only relevant inquiry for the Court, then, was whether the statute interferes with a "fundamental right explicitly or implicitly protected by the Constitution," which the Court believed to impose no significant obstacles to an elective abortion. Maher v. Roe, 432 U.S. 464, 470–74 (1977).

discriminated based on wealth. Goldblatt's attorneys struggled to define a compelling protected class. The Fifth Circuit's discussion of political apathy highlighted a core problem: Goldblatt's grievance appeared too easily resolved through political processes. A white, moderate-income, independent candidate, though lacking the capital of any candidate backed by the CCA, hardly resembled the "discrete and insular minorities" Justice Harlan invoked in *Carolene Products*. As Goldblatt's case made its way to the Fifth Circuit, Don Fielding sent a note to then Solicitor General Thurgood Marshall seeking his thoughts on the effect of a favorable ruling from the Supreme Court, assuming the case made it that far. The Solicitor General wrote back to Fielding, expressing optimism that litigation would eventually bring a single-member district system to Dallas. But it would not be on account of Goldblatt's case. As he surmised, the plaintiff needed to be black.[48]

In a lawsuit filed two years after Goldblatt's case failed, Al Lipscomb demonstrated the prescience of Thurgood Marshall's insight. Lipscomb's claims mirrored Godlblatt's. He in part argued that the at-large voting system allowed the CCA to exclude independent candidates from City Council. But his claims were also more specific: Lipscomb held himself out as a representative of African American voters. By alleging

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[48] Don Fielding to Hon. Thurgood Marshall, Solicitor General, March 10, 1967, folder: Politics, City (Dallas), Citizens for Representative Government, At-Large Voting / Single-Member Districts—General, Box 1, Donald Fielding Collection, DML. Solicitor General Thurgood Marshall's letter to Fielding has gone missing, but a note from a Dallas Municipal Library archivist states: "[Marshall] said that single member districts will become a reality when the plaintiff is the right person (black)." Note from archivist, folder: Politics, City (Dallas), Citizens for Representative Government, At-Large Voting / Single-Member Districts—General, Box 1, Donald Fielding Collection, DML.

that the CCA rarely selected black candidates for its slate, Lipscomb could show that the system harmed a more definite, politically vulnerable, class of voters.

In 1975 the Northern District of Texas found the election system constitutionally deficient. Following a standard set out by the Court of Appeals for the Fifth Circuit, the court reasoned that the at-large voting system diluted the votes of black citizens. The history of "official discrimination" in Dallas concentrated about ninety percent of black residents within a "definable minority area." Past discrimination, the court explained, denied blacks "effective participation in the electoral system." Additionally, the CCA's influence over elections, and its reluctance to endorse African Americans, denied black citizens equal access to the "process of slating candidates."[49]

Rather than impose its own reapportionment plan, the court allowed city officials to propose a new election system. In response, the City called for the election of eight council seats through single-member districts, and the election of three seats, including the mayor, through at-large voting. The Fifth Circuit believed that the remedy for Dallas's constitutional violations required the use of single-member districts only.[50] But in 1978, the Supreme Court upheld the City Council's proposal.[51]

Under the new political system, the Citizens Council lost its grip on city elections. To maintain influence over Dallas's elections, and municipal government generally, the

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[49] Lipscomb, 399 F. Supp. at 790. The Fifth Circuit set out four factors that would indicate that an electoral system diluted the vote of a class of citizens. The court considered whether citizens had been denied "access to the process of slating candidates," whether legislators were responsive to the "particular minority concerns," whether a viable policy motivated the use of an at-large voting system, and whether "past discrimination in general" hindered participation in elections. Ibid., 789.

[50] Lipscomb v. Wise, 551 F.2d 1043 (5th Cir. 1977).

[51] Wise v. Lipscomb, 437 U.S. 535 (1978).

city's business leaders needed the Citizens Charter Association to shape voter opinions in each district. But in Dallas's African American neighborhoods, voters were more willing to vote for their own candidate than anyone perceived as an agent of white business leaders.[52] In the years following *Lipscomb*, the *Dallas Morning News* observed, a successful candidate needed to develop "neighborhood contacts"; they relied on "shoe leather" more than the CCA, which soon vanished from Dallas's political scene.[53]

But to conservative city officials, democratization appeared to erode the efficiency of city government. Political reform opened City Council to a broader pool of candidates. Individuals who had participated in the fight to reform the city's election system ran successful campaigns. One of the *Lipscomb* plaintiffs won a Council seat in 1980, and the named plaintiff, Al Lipscomb, won a seat in 1984. Max Goldblatt joined the City Council in 1980.[54] Candidates who appealed to voters in their districts, but perhaps not to the city as a whole, entered office. Local journalists worried that the fragmentation of Dallas's political system would bring a ward style of politics to the city. Council members focused on their own districts and employed "patronage" strategies rewarding district residents who served on their campaigns.[55] One commentator lamented the CCA's decline, noting that the organization "encouraged long-term careers of civic

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[52] Terry Maxon, "Changing Times Have Changed Face of City Government," *Dallas Morning News*, August 19, 1984.
[53] George Rodrigue, "Citizens Council Chief Announces Retirement," *Dallas Morning News*, October 15, 1985.
[54] Terry Maxon, "Changing Times Have Changed Face of City Government," *Dallas Morning News*, August 19, 1984.
[55] Carolyn Barta, "On Single-Member Districts," *Dallas Morning News*, March 25, 1985.

involvement" that often culminated in a run for a city position. With the old grooming process dismantled, one political columnist argued, the quality of candidates declined.[56]

Despite the CCA's fall, the Citizens Council fought to retain its influence. The election system's remaining at-large seats provided a "system of checks and balances," as the *Morning News* put it. The three at-large members remained "responsive to the whole."[57] In Dallas, where leaders of the Citizens Council equated business interests with the public interest, this suggested that the at-large members remained responsive to capital.[58] And as some local reporters noted, by the mid-1980s, the anticipated "overthrow" of the Dallas business "establishment" had not materialized.[59] Though the Citizens Council lost its power to mold the city council, the Council remained committed to guiding civic affairs. Business leaders found support for their objectives in the city manager form of government. As DCC executive director Alex Bickley explained, Dallas was "a big corporation" that needed "professionals to run it efficiently."[60] While the mayor's office remained accountable to voters, most executive power resided with the city manager, a technocrat hired by elected officials and often sympathetic to the DCC's rhetoric about good government and efficiency.

In the mid-1980s, Dallas business leaders devised ways to reassert their power. They established task forces and study groups to investigate city issues such as policing, infrastructure, and economic policy. City elites attempted to monopolize, or at least

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[56] Ann Melvin, "No Way to Run a City," *Dallas Morning News*, April 1, 1985.
[57] Carolyn Barta, "On Single-Member Districts," *Dallas Morning News*, March 25, 1985.
[58] Chris Kelley, "The Men Who Built Dallas," *Dallas Morning News*, November 15, 1987.
[59] Henry Tatum, "New Council, Old Talk," *Dallas Morning News*, May 5, 1985.
[60] Terry Maxon, "Changing Times Have Changed Face of City Government," *Dallas Morning News*, August 19, 1984.

shape, public debate. While the Citizens Council once focused on policies related to real estate and development, it now broadened its focus, maneuvering to establish a voice on "people issues" like affordable housing and public education.[61]

Capitalists continued to groom candidates for city leadership. Citizens Council members maintained important positions on the boards of hospitals and nonprofit organizations throughout Dallas. In 1987, business executives and former mayor Starke Taylor created an organization called the Breakfast Group to screen candidates for city commissions and the boards of nonprofits and corporations. The Breakfast Group required its seventy members, most of them corporate executives, to pay $5,000 each year to a campaign budget. By screening and supporting candidates, the Group cultivated a new group of leaders to govern the city.[62]

By the end of the 1980s, many people of color believed that the reforms in Dallas's political system had accomplished too little. In the decade following *Lipscomb*, no African American or Mexican American candidate for City Council won a race for an at-large seat.[63] In 1988, two black residents, Roy Williams and Marvin Crenshaw, filed another lawsuit against the city, alleging that the remaining at-large seats unlawfully excluded African Americans and Mexican Americans from the City Council.[64] Williams

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[61] Chris Kelley, "The Men Who Built Dallas," *Dallas Morning News*, November 15, 1987.
[62] Jim Mitchell, "Greater Diversity Among Business Leaders Foreseen," *Dallas Morning News*, January 9, 1989.
[63] Williams v. City of Dallas, 734 F. Supp. 1317 (N.D. Tex. 1990).
[64] Ibid., 1331.

ran for an at-large seat in 1987 and lost. Crenshaw mounted unsuccessful campaigns for at-large seats in 1983 and 1984, and for mayor in 1987.[65]

Conservative journalists doubted the efficacy of election reform. In the *Dallas Morning News*, one editorialist argued that single-member districts would limit the power of black and Mexican American voters. Fifty-eight percent of Dallas residents were white in 1987, but the writer suspected that figure would fall below fifty percent in coming years. In theory, this would grant nonwhite candidates an advantage in citywide elections. If the "voters in the southern half of the city get out the vote," they could control the three at-large seats.[66]

That line of argument ignored the importance of campaign funding. The wealth disparities between white, black, and Mexican-American communities presented an insurmountable barrier in at-large elections. A successful campaign for an at-large seat cost at least $100,000, and often as much as $200,000. Most donations came from wealthy, predominantly white neighborhoods of the city, primarily North Dallas. Without their support, a candidate was unlikely to win.[67] Even if the white population fell below fifty percent, the concentration of wealth among white residents would prevent black or Mexican American candidates from successfully challenging well-funded white candidates.

In 1983, for example, a group of African American attorneys and business owners organized an attempt to run a "consensus" candidate for an at-large seat. Hoping to

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[65] Ibid.
[66] Rena Pederson, "Council Format Isn't the Problem," *Dallas Morning News*, April 15, 1987.
[67] *Williams*, 734 F. Supp. at 1327.

appeal to affluent white voters, they selected Marvin Williams, a well-educated African American military veteran and business owner. Despite William's credentials, his campaign raised $16,000, mostly from black residents. His opponent, a white North Dallas resident, ran a $160,000 campaign.[68] The only Mexican American to win an at-large seat under the 8-3 system was Al Gonzalez, a candidate who received the support of Mayor Starke Taylor and white business leaders. Mayor Taylor apparently worried that the Mexican American community was preparing to sue Dallas if they could not win a seat on City Council, and concluded that Al Gonzalez would make a viable candidate. Gonzalez, a fiscal conservative who owned a successful construction company, had proved himself a capable political figure after co-chairing a campaign in 1985 for one of the largest bond referendums in Dallas's history. With Mayor Taylor endorsing Gonzalez, white business leaders fell in line to support his campaign. Gonzalez raised over $170,000 in contributions, mostly from North Dallas whites and businesses. He won an at-large seat in 1987.[69]

Drawing on this history, plaintiffs Roy Williams and Marvin Crenshaw argued that the 8-3 system violated the Section 2 of the Voting Rights Act. The law prohibited states and their subdivisions from establishing any practice or procedure that "results in a denial or abridgement" of any citizen's right to vote based on "race or color."[70] With a 1982 amendment to the law, Congress ensured that a plaintiff needed only prove that an

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[68] Ibid., 1323–24.
[69] Ibid., 1324–25; George Rodrigue, "Mayoral Candidates Raise $1.76 Million," *Dallas Morning News*, March 6, 1987; David Tarrant, "Gonzalez is Easy Winner in District 10 Council Race," *Dallas Morning News*, April 5, 1987.
[70] 42 U.S.C. § 1973 (1990).

election system had the effect of denying or infringing a citizen's vote based on race.[71] A Mexican American organization, the Ledbetter Neighborhood Association, intervened as a plaintiff in the lawsuit, arguing that the 8-3 system also resulted in discrimination against Mexican American voters.[72] The plaintiffs together claimed that by retaining three at-large seats on City Council, the election system limited the number of seats an African American or Mexican American candidate could win. They hoped to replace all at-large seats single-member districts.

The case put Judge Jerry Buchmeyer in a challenging position. Federal case law on the Voting Rights Act required him to conduct careful demographic and historical analysis of Dallas's voting system. The Supreme Court's interpretation of the Voting Rights Act required him to make three findings: that the plaintiffs represented a group that formed a majority in a single-member district, that the group was "politically cohesive," and that whites voted "sufficiently as a bloc" to "usually defeat the minority's preferred candidate."[73] The Fifth Circuit also required courts to conduct a "practical evaluation" of a city's political system by analyzing the history of "official discrimination" in a jurisdiction, the extent to which voting was "racially polarized," the frequency with which nonwhites entered office, and the "responsiveness" of a jurisdiction's government to the needs of underrepresented groups.[74]

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[71] See generally, Thomas M. Boyd and Stephen J. Markman, "The 1982 Amendments to the Voting Rights Act: A Legislative History," *Washington and Lee Law Review* 40, no. 4 (1983).
[72] *Williams*, 734 F. Supp. at 1331, 1365.
[73] Thornburg v. Gingles, 478 U.S. 30 (1986).
[74] Zimmer v. McKeithen, 485 F.2d 1297 (5th Cir. 1973).

As the parties litigated the merits of the case, the City Council proposed election reforms in hope of ending the lawsuit, though the reforms required voter approval to change the city charter. In August 1989, the City Council held a referendum on an election system that used ten single-member districts and four regional districts to elect council members, and one citywide election for mayor, called the 10-4-1 plan.

Public debates leading up to the vote demonstrated divisions between and within African American and Mexican-American organizers. Rene Martinez, a restaurant owner, vice president of the Dallas Park Board, and advocate for desegregation of the Dallas Independent School District in the 1970s, joined the Dallas Hispanic Chamber of Commerce in supporting the 10-4-1 plan, reasoning that the plan was sufficient to secure Council seats for some Mexican-American candidates and also the most expedient way to make the Council more representative. Meanwhile, Domingo Garcia, a lawyer from Oak Cliff who had run an unsuccessful campaign for the state legislature and grew up viewing Martinez as a hero, split with Martinez, denouncing the plan as certain to continue excluding blacks and Mexican-Americans from politics. Martinez accused Garcia of "using tactics of the '60s and '70s to deal with issues of the '80s and '90s." African American organizations overwhelmingly opposed the 10-4-1 plan, urging the city to adopt a system using only single-member districts for seats on the City Council, although some black businessmen offered their support.[75]

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[75] Catalina Camila, "Hispanic Divisions Resurface – Groups Hold News Conferences Supporting Rival Proposals," *Dallas Morning News*, June 27, 1989; Lawrence E. Young, "Strained Alliances – 10-4-1- Charter Issue Tests Friendships of Minority Politicians," *Dallas Morning News*, July 30, 1989; Lori Stahl, "Foes, Backers of 10-4-1 Plan Debate Merits," *Dallas Morning News*, July

The 10-4-1 plan nonetheless received approval to advance to a referendum. And while a majority ultimately voted for the plan, Judge Buchmeyer later described it as “probably the most racially divisive election in the history of the City of Dallas.” Seventy percent of Hispanic and 95 percent of black voters opposed the 10-4-1 plan; 85 percent of white voters favored the plan.[76] After voters approved the plan, the city moved to dismiss the case as moot, but Judge Buchmeyer denied the request, requiring the litigation to continue.[77]

In March 1990, following a bench trial, Judge Buchmeyer held that Dallas’s voting system violated Section 2 of the Voting Rights Act. By that time, the coalition supporting election reforms had grown unstable. Two decades of voting rights litigation undermined the possibility of class-based solidarities. The court order called for an interim election, held “as soon as possible,” to remedy the discriminatory effects of the 8-3 system and “end, once and for all, the at-large election of all City Council members.” Judge Buchmeyer had no interest in the “plan-drawing business,” and required the city to present a “legislative plan” for an interim election. If the City Council failed to produce a plan, the court would impose one. Implementation of the order scrambled alliances between nonwhite and white activists, including those opposed to the hegemony of the Citizen’s Council. Surprisingly, the Citizens Council supported the plaintiffs’ preferred single-district system. Fearing that ongoing debates over racism repelled business

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26, 1989; Catalina Camila, “Leaders of 10-4-1Camps Differ Widely In Styles,” *Dallas Morning News*, August 3, 1989.

[76] James Ragland, “Council Session on 10-4-1 Ends in Chaos: Ragsdale, Lipscomb Walk Out,” *Dallas Morning News*, December 21, 1990; Williams, 734 F. Supp. at 1326.

[77] Ed Housewright, “City Fails in Bid to End Suit: 10-4-1 Results Fail to Sway Judge,” *Dallas Morning News*, August 18, 1989.

investors, the Council wanted a plan that would put the dispute to rest.[78] As white voters and city council members resisted the order, lines of division shifted from class to race.

In August 1990, the City Council approved a new 14-1 voting plan, which used fourteen single-member districts to elect city council members, and a single at-large district for selecting the mayor. The plan required that five districts have a population that was at least sixty percent African American, and one district with a population that was at least sixty percent Hispanic. To implement the plan, the city still needed voter approval. But on December 8, with voter turnout unusually high for city charter referendum, the 14-1 plan failed by a margin of 572 votes, divided along racial lines.[79] The outcome sent the election reform debate back to Judge Buchmeyer's chambers.

In considering new voting plans, conversations focused on the racial composition of districts, not the political power of capital. The Public Affairs Luncheon Club of Dallas, a white women's civic organization, denounced the plan, describing it as an "artificial racial quota system." The Club asserted that the City Council "re-created rigid racial separation." A group called "Just Say No!" organized a campaign opposing the 14-1 referendum. The chairman of the organization, Tom Pauken, was a white Republican who served on President Reagan's transition team in 1980 before returning to Dallas to work at a venture capital firm. His organization denied having any racial motivations, but

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[78] Williams v. City of Dallas, 734 F. Supp. 1317, 1415 (N.D. Tex. 1990); James Ragland, "Strauss Urged to Help End Voting-Rights Suit: Business, Civic Leaders Meet at Mayor's Request," *Dallas Morning News*, January 5, 1991.

[79] David Jackson, "Agreement Reached on 14-1 District Plan," *Dallas Morning News*, August 11, 1990; James Ragland, "Council Oks Settlement Calling for Vote on 14-1," *Dallas Morning News*, August 16, 1990; James Ragland, 14-1 Is Defeated by 572 Votes: Supporters to Seek Recount; Raises Rejected by Big Margin," *Dallas Morning News*, December 9, 1990.

argued vaguely that district gerrymandering based on racial quotas would destroy the cohesion of neighborhoods.[80]

As the City Council weighed its options, debates focused on the racial composition of districts. After the December referendum failed, plaintiffs asked the court to force a May election under either a 14-1 or 15-0 district plan. The 15-0 plan proposed using fifteen single-member districts to elect city council members, with the council members then electing a mayor from among their ranks.[81] Meanwhile, Mayor Anette Strauss, along with a group of council members including conservatives Glen Box, whom *D Magazine* dubbed the “great right hope,” and Jim Evans, pressed forward with developing a 10-4-1 system plan to submit to the U.S. Department of Justice. Discussions quickly broke down. Al Lipscomb and Diane Ragsdale, the two African American city council members, stormed out of a meeting the council held to draw districts for the prospective 10-4-1 plan. “I maintain that this council is sitting here, consciously and deliberately violating the Voting Rights Act. To that end, I’ll be leaving y’all,” Ragsdale declared. White council member Charles Tandy feared that the plan would leave his district of Oak Cliff without a single-member district that was majority white. He refused to support the plan.[82]

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[80] James Ragland, “14-1 Proposal Jeered, Hailed: Group Callas It “Quota System”; Hispanic Leaders Praise Plan,” *Dallas Morning News*, November 20, 1990; David Jackson, “14-1 Redistricting Outcome Has Wider Implications, Foes Say,” *Dallas Morning News*, November 25, 1990.
[81] James Ragland, “City Weighs Redistricting Strategies: Council is Split on Next Election Date,” *Dallas Morning News*, December 19, 1990.
[82] Ragland, “Council Session on 10-4-1 Ends in Chaos,” December 21, 1990; Dennis Holder, “The Great Right Hope: Is Councilman Glenn Box the Conservatives’ Answer to Diane Ragsdale?” *D Magazine*, January 1991.

In May 1991 the Department of Justice brought debate over the 10-4-1 plan to a close. Based on 1990 Census data, the DOJ declared that the four regional districts in the plan were the "functional equivalent of the at-large council positions that have been found to be racially discriminatory."[83]

Soon after the DOJ's decision, the City Council agreed to consider a 14-1 settlement plan. The Council rejected a settlement plan that called for the formation of five predominantly black districts. City attorneys, however, worried that the DOJ would refuse to approve a districting plan that yielded fewer than five African American districts. While the City Council ultimately caved, agreeing to adopt a 14-1 plan with five predominantly black districts and two predominantly Mexican American districts, a white backlash quickly followed. John Evans, representative of the predominantly white district of Pleasant Grove, feared for his seat on the Council. The plan fractured his district, distributing its population among new, nonwhite neighborhoods. The other plan under consideration would have divided the Oak Cliff district. Either way, a white representative stood to lose a seat on City Council. "Well, they're going to get rid of me," Evans lamented after the City Council enacted a final districting plan to settle the litigation.[84]

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[83] David Jackson, "Justice Department Rejects 10-4-1 Plan: Backers Want Revised Map; Foes Seek Accord on 14-1," *Dallas Morning News*, May 7, 1991; David Jackson, "Talks Could Snag on Several Issues," *Dallas Morning News*, May 9, 1991.

[84] David Jackson, "City Attorneys May Seek 14-1 Changes: Council Should Reconsider Plan With 5 Black Seats, Lawyer Says," *Dallas Morning News*, June 19, 1991; David Jackson, "Dallas Adopts New 14-1 Map: Plan is Designed to Elect 5 Blacks and 2 Hispanics," *Dallas Morning News*, June 27, 1991. The DOJ warned that the initial 14-1 plan, which yielded only four predominantly black districts, might not survive preclearance. In August 1991, the DOJ approved the 14-1 plan that yielded five predominantly black districts, as well as the city's request to set an

Throughout the settlement negotiations, white members of City Council fought tooth and nail to avoid a 14-1 plan. The stakes were clear. Under a pure single-member district plan, the DOJ would require a districting plan that afforded a minimum number of districts that were majority African American and Mexican-American. Redistricting carved up white representatives' districts, vitiating the power of white politicians.

Williams transformed City Council politics. In the first election under the 14-1 system, African American and Mexican American representation reached an all-time high. Black and Hispanic candidates secured six of fourteen seats on city council. In a sad twist of fate, Marvin Crenshaw, one of the *Williams* named plaintiffs, lost in a runoff to Larry Duncan, a white computer programmer and President of the Dallas Homeowners League, in the predominantly black District 4, an outcome he considered the result of poor turnout among African Americans. Roy Williams also ran an unsuccessful campaign for city council in his West Dallas district. An African American public housing advocate, Mattie Lee Nash, won the seat. Don Hicks, an African American lawyer from District 5, unseated Evans, the former Pleasant Grove representative.[85]

Diversity of the City Council did not destroy Dallas's oligarchy. White leaders, recognizing that a white candidate would be hard pressed to win in a majority African

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election under the new system for November 5, 1991. David Jackson, "Justice Department Approves 14-1 Plan," *Dallas Morning News*, August 3, 1991.

[85] Lori Stahl, "Council to Have Record Number of Minorities: Ragsdale in Runoff; Evans is Defeated," *Dallas Morning News*, November 6, 1991; David Jackson, "Williams, Crenshaw Look Ahead: Key 14-1 Figures Say They Have No Regrets," *Dallas Morning News*, November 23, 1991; Lori Stahl, "Mayes Ousts Ragsdale after Bitter Race: Duncan, Luna, Nash Win; Minorities Hold 6 of 15 Seats," *Dallas Morning News*, November 20, 1991. On Mattie Nash, see Robert Wilonsky, "Mattie Nash, Former City Council Member and Housing Activist, Died Sunday at 87," *Dallas Observer*, December 21, 2009.

American district, endorsed black candidates whose politics most closely tracked business interests. The Dallas Breakfast Club threw its support behind Charlotte Mayes, a black candidate running against incumbent Diane Ragsdale. Ragsdale, one of Dallas's few black representatives under the 8-3 system, flouted city council conventions while in office. She questioned the city manager's recommendations; she spoke openly on race, racism, and the city's oppression of communities of color; and she pressed the city government to adopt social and economic programs to serve low-income households. Mayes, an AT&T employee and Democratic precinct chair who claimed she saw "people, and not color," campaigned on the assertion that Ragsdale's combative style left her "incompetent to lead a vast majority of different races." The *Dallas Morning News*, a subsidiary of Belo Corporation, a Dallas media conglomerate owned by one of the Breakfast Club's founders, endorsed Mayes's campaign, as did the Dallas Police Association and the Greater Dallas Board of Realtors. Mayes unseated Ragsdale in a runoff, carrying 91 percent of the vote in white precincts. After her victory, Mayes announced: "People were ready for a non-confrontational style and a more businesslike person."[86] While the city council grew more diverse, it did so on terms acceptable to white business leaders.

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[86] Royce Hanson, *Civic Culture and Urban Change: Governing Dallas* (Detroit: Wayne State University Press, 2003), 265-66; Lori Stahl, "Subdued, Unbowed: She Calls Runoff Vote 'Epitome of Polarity,'" *Dallas Morning News*, November 23, 1991; Bruce Tomaso, "Ragsdale Flier Draws 'Race-Baiting' Charge," *Dallas Morning News*, November 1, 1991; Lori Stahl, "Runoffs a Contest of Styles: Races Show Diversity of Minority Opinion," *Dallas Morning News*, November 12, 1991; Catalina Camina, "Key Whites Aid Ragsdale Effort: She Has Accused Runoff Foe Mayes of Catering to City 'Establishment,'" *Dallas Morning News*, November 15, 1991; Stahl, "Mayes Ousts Ragsdale after Bitter Races"; David Jackson, "Blacks

IV.

While Al Lipscomb, Roy Williams and Marvin Crenshaw struggled in court to increase black and Mexican American representation on the City Council, the city government did little to address its public housing crisis. In June 1985, as the public housing stock of West Dallas deteriorated, four women filed a lawsuit in federal court against the City of Mesquite and other Dallas suburbs for refusing to participate in a regional housing voucher demonstration. Debora Walker, as a recipient of Section 8 assistance, alleged that Mesquite, by refusing to participate in the DHA's Section 8 program, prevented her and other low-income individuals from living outside poor communities in Dallas. The plaintiffs soon amended their complaint to join other nearby cities, the federal government, and the Dallas Housing Authority as defendants. The suburbs quickly agreed to participate in the DHA's Section 8 program, leaving the DHA and HUD the only remaining defendants. Plaintiffs, who sued on behalf of a class of public housing tenants and Section 8 recipients in Dallas, alleged that the agencies violated the Fair Housing Act and the Equal Protection Clause by segregating Dallas's public housing.[87] The DHA, they argued, assigned black housing applicants to units in

Criticize Bartlett: He Denies Fielding Slate of Candidates," *Dallas Morning News*, September 26, 1991.

[87] *See* Consent Decree ¶ 2, Walker v. U.S. Dep't of Hous. & Urban Dev., No. 85-cv-1210 (N.D. Tex. Jan. 20, 1987) (certifying a class of "All black persons who are presently or who during the pendency of this Decree become either (a) residents of a DHA owned or managed project, or (b) participants in the DHA Section 8 Existing Housing Program . . . .").

West Dallas while sending white applicants to units throughout the city. HUD allowed those practices to persist.[88]

The litigation came before Judge Jerry Buchmeyer, and in November 1986 the plaintiffs reached a settlement agreement with the DHA. Judge Buchmeyer issued a consent decree effectuating the agreement in January 1987.[89] The decree recognized that DHA alone lacked the resources to carry out its terms, and so HUD and the city government had to make their own funds available.[90]

The settlement treated West Dallas as a place of social and environmental ruin. The West Dallas project, wrote Judge Buchmeyer, "constitutes a severe concentration of deteriorated housing." Lead contamination threatened the health of anyone living there.[91] The parties agreed there was "virtually no possibility of achieving an acceptable physical and social living environment without a massive commitment of resources."[92] Instead of rehabilitating the units, DHA agreed to submit an application to HUD to remove tenants and demolish one unit of housing for every new unit HUD provided.[93] The decree required HUD to provide 1000 replacement units: 100 units of new construction and 900 of Section 8 certificates and vouchers.[94]

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[88] Plaintiffs' allegations are summarized in John Herbers, "Breakup of Housing for Poor is Backed in Integration Move," *New York Times*, April 28, 1987.
[89] Walker v. U.S. Dep't of Hous. & Urban Dev. (*Walker I*), 734 F. Supp. 1231, 1233 (N.D. Tex. 1989).
[90] Consent Decree, *Walker*, No. 85-cv-1210.
[91] *Id.* ¶ 5A–5B.
[92] *Id.* ¶ 5D.
[93] *Id.* ¶ 7C.
[94] *Id.* ¶ 7.

The agreement sowed divisions. Members of Dallas's African American community disagreed on whether they should support the demolition of public housing in West Dallas. Some felt trapped in West Dallas and saw the settlement as a way out. One resident stated: "It would be a godsend if they gave us something that would allow us to find somewhere nice to live. It's too violent for my two children here. People are dangerous. They have no respect for the young or old." Another resident thought the community offered children "nothing but bad examples." One woman reported living out of her car to avoid moving into West Dallas, the only public housing location the DHA offered. Some West Dallas residents who later moved out of the neighborhood under the desegregation order appreciated the change in their surroundings. After moving to a suburb, one former resident marveled: "I haven't heard a gunshot since we moved in."[95]

But other West Dallas residents denounced the settlement. They distrusted the DHA and the voucher plan. The vouchers might not provide the necessary housing to relocate tenants. Federal law may have required relocation assistance, but the vouchers did not guarantee adequate replacement housing. Many black leaders considered desegregation a threat to their consolidation of political power. West Dallas resident and City Council member Mattie Nash explained, "This area was becoming a strong, viable voting district." "If the residents are scattered," she added, "there goes the political clout." She also worried that demolition of the projects would only open the land up for development serving wealthy white households. Religious leaders and business owners in West Dallas also criticized the settlement. In interviews with reporters, some residents of

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[95] H. Cong. Record 24,819, 24,856, September 22, 1987.

the West Dallas projects explained that they gained strength from their community, explaining that they "look after each other." Dispersal threatened community solidarity and black political power.[96]

Other residents simply felt comfortable living in West Dallas. In the years after the consent decree, roughly 1,000 of the 1,917 families living in West Dallas decided that they preferred to remain in West Dallas rather than relocate under the decree.[97] One woman who had lived in West Dallas public housing since 1956 stated, "I'm not going to move . . . . We have good people here."[98] The prominent civil rights leader Reverend Ralph Abernathy worked with the Southern Christian Leadership Conference to organize a public demonstration against the demolition. According to local reporters, the protest drew "several hundred public housing residents." The day before the SCLC demonstration, protesters led by Reverend Marion Barnett stormed a DHA ceremony for the completion of a $20 million renovation in West Dallas, interrupting the DHA director's speech.[99]

Local housing preservation advocates, including West Dallas councilmember Mattie Nash, opposed the demolition. As preservationists argued, the city faced an affordable housing shortage. They joined in opposing the demolition plans set out in the

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[96] "In the News: Demolition Dilemma," *Black Enterprise*, October 1987; Sherry Jacobson, "Tenants Criticize DHA Plan," *Dallas Morning News*, October 4, 1986.
[97] Walker v. U.S. Dep't of Hous. & Urban Dev., 734 F. Supp. 1272, 1281 (N.D. Tex. 1989), *rev'd,* 912 F.2d 819 (5th Cir. 1990).
[98] Jacobson, "Tenants Criticize DHA Plan," October 4, 1986.
[99] John Herbers, "Breakup of Housing for Poor is Backed in Integration Move," *New York Times*, April 28, 1987; "Abernathy to Lead Rally in W. Dallas," *Dallas Morning News*, May 15, 1987; Kathy Jackson, "Public Housing Residents Protest Planned Razing," *Dallas Morning News*, May 17, 1987; Norma Adams Wade, "Public Housing Celebration Disrupted," *Dallas Morning News*, May 16, 1987.

settlement. In hearings over the settlement, a new tenant organization called the Committee to Save Public Housing filed objections to the settlement's demolition plans. Roughly five hundred households living in West Dallas signed a petition in support of the objection.[100] John Fullinwider, the director of another local organization dedicated to improving low-income housing, Common Ground, observed, "The 2,600 units to be destroyed represent a third of all public housing in Dallas." He questioned whether demolition was necessary to "stop racial discrimination" by DHA.[101]

Those advocating demolition depicted it as a solution to the DHA's civil rights violations. DHA Executive Director Jack Herrington wrote that the West Dallas project represented "a major, inextricable element of the racially identifiable housing and substandard conditions in public housing."[102] Judge Buchmeyer sympathized with the plaintiffs' concern that rehabilitation in West Dallas would "cure only one vestige [of segregation], the unequal physical conditions of the units." It would preserve the density of low-income, African American families living in West Dallas.

For Judge Buchmeyer, true desegregation required demolition. White tenants were unlikely to move into West Dallas, even if the DHA made extensive renovations. As he reasoned, "repair of the entire project will continue to subject several thousand members of the class to the same choice of all black housing in an all black area as they

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[100] Walker v. U.S. Dep't of Hous. & Urban Dev., 734 F. Supp. 1231, 1264 (N.D. Tex. 1989) (Appendix B: Class Action Findings of Fact and Conclusions of Law Approving the Proposed Consent Decree).
[101] John Herbers, "Breakup of Housing for Poor is Backed in Integration Move," *New York Times*, April 28, 1987.
[102] Jack Herrington, Executive Director of the Dallas Housing Authority, "A New Era for Public Housing," *Dallas Morning News*, February 27, 1987.

were subjected to under *de jure* segregation." And no amount of rehabilitation would "cure the vestige of the adverse social and environmental conditions caused by the concentration of such a large number of low income housing units in this particular area."[103]

But Common Ground, along with many public housing tenants, prioritized preservation and revitalization of housing over dispersal. During the 1980s, homelessness was on the rise throughout the country. Described in local newspapers as "street people," this group of Dallas residents struggled to maintain stable housing, often resorting to sleeping in public spaces of the city. Advocates for the city's most precarious residents, including Common Ground, noticed a biting irony in the city's efforts to demolish the city's cheapest housing at a time when so many had no home at all. They staged demonstrations, calling for DHA to open abandoned units in West Dallas to those with no place to live. Facing mounting pressure, DHA executive director Alphonso Jackson allowed fifteen people to move into abandoned units. The number of formerly homeless residents rose to thirty or forty by 1990.[104]

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[103] Walker v. U.S. Dep't of Hous. & Urban Dev., 734 F. Supp. 1231, 1270 (N.D. Tex. 1989) (Appendix B, Class Action Findings of Fact and Conclusions of Law Approving the Proposed Consent Decree, Jan. 20, 1987). HUD officials suggested that they would reject the settlement if it contained no provision for the removal of public housing in West Dallas. In a fairness hearing on the settlement, a HUD attorney stated that "West Dallas costs HUD a lot of money every year. We have been paying operating subsidies for vacant units for years and years and had there not been a change in the law would continue paying that with those vacancies there." West Dallas, in his view, was not a "viable project." *Walker*, 734 F. Supp. at 1279 n.17.
[104] Frank Trejo, "Disputes Plague W. Dallas Effort to House Homeless," *Dallas Morning News*, March 16, 1990; Tracy Everbach, "Judge Oks Settlement of Housing Suit," *Dallas Morning News*, September 15, 1990.

Advocates of public housing preservation distrusted the DHA's motives. John Fullinwider, the director of Common Ground, board member of the National Coalition for the Homeless, and tireless community advocate, laid out Common Ground's position in the *Dallas Morning News*. As he speculated, the DHA and HUD used the litigation as a cynical cover for their "abdication of responsibility for the provision of public housing." HUD and the DHA, he wrote, appeared to know plaintiffs could prove their allegations in court, but would be eager to settle given their limited resources. The agencies capitalized on the opportunity: they "sought to win from the court what would surely be difficult to win through the normal political process—namely, mass demolition of low-income housing during an unprecedented housing crisis." The city faced a "low-income housing crisis"; DHA needed to repair the units and produce additional units, not demolish them. In a tight rental market, where landlords stood to earn greater returns by renting to unsubsidized tenants, vouchers failed to provide a permanent replacement for lost public housing. Fullinwider also questioned the legitimacy of court oversight. He asked: who would look over Judge Buchmeyer's shoulder and "demand something better?"[105]

A few members of Congress attempted to exercise such oversight, producing an interbranch struggle between Congress and the courts. Representative Martin Frost, a Texas Democrat, took it upon himself to stymie the West Dallas plan. He proposed an amendment to a 1987 appropriation bill that would prevent HUD from using its funding to support any demolition in West Dallas. HUD had set aside funds from the Community

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[105] John Fullinwider, "Why Bulldoze Housing?" *Dallas Morning News*, January 21, 1987.

Improvement Assistance Program to cover the costs of demolition. As Frost argued, HUD should not be permitted to destroy "public housing that could and should be remodeled and modernized in order to afford the poorest of our constituents with decent, safe, and affordable housing."[106] Representative Steve Bartlett, a Republican also from Texas who became mayor of Dallas in 1991, spoke out in opposition to the proposed amendment to the appropriation bill. He denounced the proposed "Frost Amendment" as an effort to "negate a desegregation court order." The real issue was not "demolition," but "whether to allow low-income residents the opportunity to live in standard conditions, in conditions that are livable." HUD needed to help Dallas tear down "substandard and dilapidated" units and comply with its legal obligations under the federal desegregation order.[107]

The disagreement between Representatives Frost and Bartlett stemmed from their divergent views on the lawsuit's legitimacy, the proper role of the federal judiciary, and the importance of the housing stock. Representative Frost believed that the plaintiffs did not represent public housing tenants in West Dallas or the black community more broadly. None lived in the units scheduled for demolition, and black leaders in Dallas, along with Reverend Jesse Jackson, opposed the demolition plan.[108] Representative Frost also worried that vouchers were merely a temporary remedy. As he noted, they offered five years of assistance with no guarantee that DHA would renew them.[109] Frost's views struck the *Dallas Morning News* as odd: "It is ironic that this community's more liberal

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[106] 133 Cong. Rec. 24,819 (September 22, 1987).
[107] Ibid., 24,820.
[108] Ibid., 24,820–21.
[109] Ibid., 24,831.

elected officials and political leaders fought to maintain what Dallas' conservative business leaders did decades ago."[110]

Echoing local housing advocates, Frost denounced demolition plans as acquiescence to the Reagan administration's assault on public housing. Texas Democrats in the early 1980s recognized that HUD, under Reagan's leadership, wanted to "get out of the business of public housing."[111] In discussing vacant housing units in West Dallas, one high-ranking HUD official reportedly informed Mayor Starke Taylor, "I don't care what you do with them. Blow them up if you want to." HUD's regional director had commented that the Dallas Housing Authority might want to demolish units in West Dallas. Representative John Bryant, a Texas Democrat, believed that HUD had little interest in "rehabilitating the units we already have."[112] These suspicions of federal ambivalence for public housing informed congressional discussion on the desegregation order.

The debate between Representatives Frost and Bartlett revealed surprising alliances between civil rights advocates and proponents of federal deregulation. Representative Frost argued that HUD used "the lawsuit to renege on its commitment to remodel the units [in West Dallas]." HUD, he explained, "pressured the local housing authority to seek a settlement of the entire discrimination lawsuit, with the focal point being the demolition of over 1,600 units of public housing in West Dallas." HUD

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[110] "Public Housing – Dallas May Pay Dearly for Political Rhetoric," *Dallas Morning News*, August 8, 1989.
[111] Howard Kurtz, "Dispute Flares in Dallas On Low-Income Housing," *Washington Post*, November 25, 1983 (quoting Representative John Bryant).
[112] Ibid.

conditioned funds for remodeling 900 units in West Dallas on the DHA's agreement to demolish all the others. While HUD pressed DHA to include demolition in the settlement, Frost argued, the plaintiffs "did not seek demolition of the West Dallas public housing units in their original suit . . . ."[113] As he summarized the problem, "What we have is a cynical action by the Reagan administration to eliminate one-third of the public housing units in Dallas at a time when the problem of the homeless is increasing and at a time when there is an increasing number of poor people in the seventh largest city in the United States."[114] The structure of the settlement was the product of federal coercion, not the wishes of tenants in West Dallas.

For Representative Bartlett, however, the settlement enabled tenants to exercise their "freedom of choice." Bartlett believed it allowed tenants to "vot[e] with their feet," and that they were "voting for the opportunity to live where they want to live, and under the current plan they are given that opportunity."[115] The settlement also represented a remedy for unlawful segregation. A vote for the Frost amendment, he urged, was "a vote for resegregation" that would "send people back to dilapidated, substandard conditions."[116]

Representatives in Congress ultimately voted 239 to 175 in favor of the Frost Amendment, leaving Judge Buchmeyer to respond.[117] The Amendment prevented DHA

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[113] 133 Cong. Rec. 24,853 (September 22, 1987).
[114] Ibid.
[115] Ibid., 24,857.
[116] Ibid. 24,856–57.
[117] Ibid., 24,857. The amendment was enacted through the Department of Housing and Urban Development—Independent Agencies Appropriations Act, 1988, Pub. L. No. 100-202 § 415, 101 Stat. 1329, 1329-213 (1987).

from demolishing any units in West Dallas in the first two-and-a-half years of the consent decree.[118] Facing obstruction, Judge Buchmeyer feared that all parties bound by the decree would "accuse each other of various breaches," leaving the court to decide whether to modify the decree or vacate it and set the case for trial. Rather than allow the litigation to unravel in that way, Judge Buchmeyer issued an opinion holding that Congress's direct interference with the consent decree amounted to a violation of separation of powers principles built into the U.S. Constitution. As he reasoned, by preventing HUD from funding demolition, Congress had disturbed the district court's authority to adjudicate a pending case.[119]

In holding the Frost Amendment unconstitutional, Judge Buchmeyer concluded that it posed no bar to HUD releasing funds in support of the demolition. The court also noted that DHA nonetheless needed to adhere to public housing replacement requirements set out under an "Anti-Demolition Statute" that Congress passed in 1987.

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[118] *See* Walker v. U.S. Dep't of Hous. & Urban Dev., 734 F. Supp. 1272, 1281 (N.D. Tex. 1989), *rev'd,* 912 F.2d 819 (5th Cir. 1990) (summarizing the effects of the Frost Amendment on the consent decree).

After the court approved the Consent Decree in *Walker*, a group of class members who objected to the settlement attempted to appeal the court's order approving the agreement. While the Fifth Circuit held that "a nonnamed class member of a certified class may not appeal the final judgment in a class action," the Third Circuit also noted that the nonnamed class members could file a separate suit "challenging the adequacy of class representation." Baylor v. Dep't of Hous. & Urban Dev., 734 F. Supp. 1314, 1315 (N.D. Tex. 1989), *aff'd sub nom.* Baylor v. U.S. Dep't of Hous. & Urban Dev., 913 F.2d 223 (5th Cir. 1990) (quoting the Fifth Circuit's observations in Walker v. City of Mesquite, 858 F.2d 1071 (5th Cir. 1988)). In filing a separate suit, the nonnamed class members contended that the Frost Amendment prohibited HUD and DHA from demolishing any public housing units in West Dallas. Judge Buchmeyer dismissed the action because the amendment was unconstitutional according to his decision in Walker v. U.S. Dep't of Hous. & Urban Dev., 734 F. Supp. 1272 (N.D. Tex. 1989).

[119] Ibid., 1282–85.

The Anti-Demolition Statute did not pose an obstacle to demolition; it only required the DHA and HUD to supply Section 8 vouchers to replace the lost units.[120]

HUD appealed the decision, however, and the Fifth Circuit Court of Appeals dealt yet another blow to the West Dallas plan. Before the appellate court, HUD walked back from its initial support for the demolition plans under the consent decree and urged the court to uphold the Frost Amendment. After all, the Amendment enabled HUD to avoid paying for demolition.[121] While federal officials may have been eager to watch the housing come down, they preferred for DHA or the City of Dallas to finance the effort.

According to the Court of Appeals, the Frost Amendment presented no threat to the separation of powers between the judiciary and Congress. Even if Representative Frost and other sponsors clearly meant to "derail demolitions," the court explained, "the legislation only withdraws federal appropriations." In other words, the amendment did not dictate the outcome of the *Walker* litigation. It might slow the revitalization in West

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[120] Ibid., 1289. The Anti-Demolition Statute, Pub. L. No. 100-242, 101 Stat. 1815, 1837–39 (1987), was codified at 42 U.S.C. § 1437p. The law set forth restrictions that any local housing authority needed to meet before demolishing public housing. Specifically, a local housing authority need to provide "one-for-one" replacement of housing units slated for removal with project-based assistance, meaning replacement with housing units dedicated for use as subsidized housing. A local housing authority could not use Section 8 vouchers to meet the one-for-one requirement. See 42 U.S.C. § 1437p (1988). The one-for-one requirement, set out in 42 U.S.C. § 1437p(b)(3), applied to public housing regardless of whether the demolition required the use of federal funding. 42 U.S.C. § 1437p(a) (1988).

[121] Walker v. U.S. Dep't of Hous. & Urban Dev., 912 F.2d 819, 823 (5th Cir. 1990). HUD had already been able to reduce its expenditures for West Dallas. Once a housing unit was scheduled for removal, HUD's regulations restricted its operating cost payments for the unit to the "minimum services and protection necessary to protect and preserve the units." See 24 C.F.R. 990.108(b) (1987). The consent decree called for the removal of units, meaning that HUD was obligated under its regulations to reduce operating expense payments to the DHA. After Judge Buchmeyer approved the settlement in 1987, HUD reduced its operating subsidy for DHA's vacant public housing units planned for demolition from $124.96 to $50.00 per unit each month.

Dallas, but it did not completely ban demolition. Congress had acted within its constitutional authority in limiting HUD's use of funds.[122]

In upholding the Frost Amendment, the appellate court shifted responsibility for financing redevelopment in West Dallas back to the city government. Dallas officials decided to move forward with the demolition plan, with the city agreeing to cover the $3 to $4 million project. Demolition remained contingent on HUD's approval of funds supporting replacement of all units lost. The plan the Dallas Housing Authority submitted to Judge Buchmeyer called for the demolition of 2,263 of 3,462 West Dallas units and renovation of 367 units.[123] The Dallas Housing Authority, after years of delay, also proposed a site for the 100 new units of new public housing required in the consent decree.

In committing city funds to demolishing public housing in West Dallas, the City Council joined a national trend: throughout the US, cities replaced public housing with vouchers. In Chicago, public housing tenants filed a similar lawsuit in the 1960s against HUD and the Chicago Housing Authority. In the late 1970s, the litigation ended in a settlement that required HUD and the housing authority to create avenues through which African American public housing residents could move to white neighborhoods throughout the metropolitan area. As in Dallas, the plaintiffs explored the possibility of a remedial plan involving new housing developments. But given cost limitations and the

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[122] Ibid., 829.
[123] Craig Flournoy, "DHA Calls for 2,263 W. Dallas Units to be Razed," *Dallas Morning News*, November 27, 1990.

challenges of finding viable sites for affordable housing development, plaintiffs' counsel finally decided to use vouchers.[124]

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In Dallas, as in many cities across the US, federal courts provided communities of color with venues to adjudicate grievances that electoral politics could not resolve. The Dallas city government and the Dallas Housing Authority had squeezed African Americans and Mexican Americans out of the political system, and segregated them in neighborhoods marked by environmental hazards and deteriorating conditions. Public housing tenants relied on the city to maintain their units, but public officials refused to make the necessary investments.

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[124] See Alexander Polikoff to John Jensen, Regional Counsel's Office, June 2, 1977, folder: Gautreaux – BPI, 1974–77, Box 50, Leadership Council for Metropolitan Open Communities (LCMOC) Papers, Chicago Historical Society Research Center (CHSRC). Plaintiffs' counsel, Alexander Polikoff, proposed a dual demonstration in which the defendants made five hundred existing units available to class members, but also developed five hundred *new* units. In one letter, the Leadership Council for Metropolitan Open Communities indicated that new construction projects reserved primarily for former public housing residents in Chicago would generate too much opposition from suburban communities. As the LCMOC noted, only nine percent of suburban units financed by the Illinois Housing Development Agency and Section 236 were occupied by black households, a "level of minority occupancy" that "appeared to cause little local resistance or concern." A significant change in these figures would generate resistance. Section 8 would remain acceptable to the suburbs only if "a substantial majority of the units are free of restrictions that would limit the units to Chicago residents." Even more challenging, the LCMOC noted, would be to get suburbs to accept new public housing developments. Development of public housing would require a far more involved approach: "a regionwide housing authority with (court imposed) powers to build anywhere without local override." Harry N. Gottlieb, LCMOC, to Kale Williams, Subject: Gautreaux – IDHA and Public Housing, March 14, 1977, folder: Gautreaux – Corr., 1977, Box 50, LCMOC Papers, CHSRC; Al Polikoff to Gautreaux Planning Group, January 17, 1977, folder: Gautreaux, Planning Team, 1976–77, Box 52, LCMOC Papers, CHSRC. For the litigation prompting desegregation remedies, see *Gautreaux* v. *Chicago Housing Auth.*, 296 F. Supp. 907 (1969); *Hills* v. *Gautreaux*, 415 U.S. 248 (1976).

The city's failure to provide decent, low-cost housing was but one of many hardships that poor families in Dallas endured. Their exclusion from formal avenues of political power was an injustice in itself, and it obstructed their demands for economic and social justice. Unable to break the business oligarchy's stranglehold on local politics, residents turned to the courts. The possibility of litigation raised an important question: On what terms could they secure federal intervention? Litigation required a defined injury, and a proposed remedy that could redress it.[125] But constitutional doctrine and federal statutes defined the universe of injuries that plaintiffs could litigate. Poor residents—aligned across races—might have banded together to demand that city officials develop affordable housing, perhaps advancing a novel theory about the ways municipal neglect amounted to discrimination against poor families, or offended individual economic rights shared among low-income residents. They could have joined together to assert that the electoral system deprived poor individuals of true representation on the City Council. But federal law did not support these theories. In hope of shaping municipal election and housing policy, aggrieved individuals defined their injuries as rooted in race.

African American and Mexican American plaintiffs in Dallas had remarkable success in court. They broke open the doors to City Hall. With Judge Buchmeyer's order requiring the city to adopt a redistricting plan, black and Mexican American candidates won seats on the City Council. They also secured a court order requiring the DHA,

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[125] These questions are integral to the law of standing, which, as Chapter 1 discussed, is a fundamental requirement any individual or class must satisfy before entering federal court. See, for example, City of Los Angeles v. Lyons, 461 U.S. 95 (1983).

Dallas, and HUD to redress decades of discriminatory housing policies. Modern Dallas was thus forged out of a conflict between the judiciary and ostensibly representative institutions. Judge Buchmeyer's authority marked the culmination of a decade-long reform effort led by African American residents and Dallas attorneys. Through litigation, they shifted power from the Dallas City Council to a federal judge, although Judge Buchmeyer's courtroom also served as a democratic forum in which homeowners, homeless advocates, and city officials could express their views. Civil rights plaintiffs presented Judge Buchmeyer with the opportunity to make decisions that could shape fundamental areas of city policy, and they finally held city officials accountable to a power other than the city's business oligarchy.

But the remedies achieved through litigation were limited. The complexion of City Council changed, but money remained a critical factor in any candidate's success. Political institutions became more diverse, but they nonetheless remained responsive to the interests of Dallas's business elite. And in West Dallas, local advocates disagreed on strategy. Should the city disperse West Dallas residents—a remedy most sure to undo the effects of discriminatory housing placement? Or should it improve conditions in West Dallas, and perhaps even build more low-income housing for the growing ranks of the poor and homeless? With courts reasoning in terms of race, the quantity and quality of the affordable housing stock vanished as a consideration. Federal officials, city leaders, and the *Walker* plaintiffs argued that the way to remedy racial injustice was to disperse public housing tenants and eradicate all "monuments" to segregation, to use Judge Buchmeyer's term. The future of West Dallas meanwhile became an open question.

The structure of federal civil rights law was not the only factor limiting reform. As the next two chapters argue, fiscal limitations imposed harsh checks on city leaders. As municipal tax revenue and federal aid declined over the 1980s and 90s, Dallas relied on private investment to revitalize neighborhoods and to maintain the city's tax base. Even the most enlightened politicians found themselves confined in defining policy priorities. During the 1990s, the city attempted to rebuild West Dallas on the ruins of its largest public housing complex, and this political and financial dynamic was on full display. The interests of investors took priority over those of constituents. City officials could only hope that the fruits of private investment might eventually reach individuals most in need of government assistance.

Chapter 7

The Private Redevelopment of Dallas: Municipal Bonds and Neighborhood Renewal

In 1981, *Time Magazine* marveled at the efficiency of Dallas government. It was a "city that works." While many cities were "crumbling," Dallas maintained its infrastructure "with a precision similar to that of the Dallas Cowboys on a pass pattern."[1] The Dallas Citizens Council, by urging candidates for city office to avoid divisive questions, maintained the appearance of consensus. But civil rights litigation had upended local politics. In 1990, Judge Buchmeyer rendered legal opinions that transformed the city's election system and held Dallas liable for discrimination in the development of public housing in West Dallas. The changes seemed to make municipal government harder to run. New candidates entered office and power shifted to the federal judiciary and an unruly public. The *Dallas Morning News* argued that Judge Buchmeyer's decisions had left Dallas institutions unable to "control their own destiny": "Dallas city government has been declared illegal by a federal judge, the city's school system is overseen by federal courts and state monitors, local public housing is under a federal court mandate and much of the city's real estate and many of its financial institutions are supervised by bankruptcy courts and Washington bureaucrats."[2]

While business elites had lost direct means of control over local government, they consolidated their influence over housing and development policies. As Chapter 5 explained, during the 1980s the state legislature allowed municipal bonds to finance new

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[1] "A City That Still Works," *Time*, April 27, 1981.
[2] Chris Kelley, "City, State Lose Can-Do Illusions," *Dallas Morning News*, June 23, 1991.

housing, industrial facilities, and infrastructure. Bond financing, however, required the city to satisfy investors. In the 1990s, the Dallas City Council began to look more democratic. But given the limited resources at their disposal, the city's new leaders lost control over land use and urban redevelopment.

Semi-public institutions created in the 1980s—the Dallas Housing Finance Corporation and the Dallas Industrial Development Corporation—played a central role in shaping low-income neighborhoods. But while they financed neighborhood revitalization, private investors and developers gained decisive power over policy. Developers and investors needed to turn a profit, and they regarded economic growth, not redistribution, as the best way to help poor neighborhoods. Community development projects during the 1980s and 1990s relied on municipal bonds that merely reduced the cost of loans to developers who promised to create affordable housing. But no developer would participate in a program that conditioned the loans on too steep a discount in the rent charged to residents. Dallas's housing subsidy policies therefore did little for the city's poorest residents.

Low-income people and communities of color found themselves marginalized once more in redevelopment decisions. In 1996, Roy Williams, the named plaintiff in the 1990 voting rights case, argued, "The same power that controlled the city still controls the city." Despite transformations in formal representation on city council, "[t]he mind-set of this council is pro-business, not pro-people . . . . The developers want to keep

control in this city. They've always had it, and they have it today."[3] This chapter examines the ways developers and investors maintained power despite the political and legal reforms of the late 1980s and early 1990s.

I.

City officials, downtown property owners, and business owners and executives worried for the future of Dallas's central business district. In 1974, the Dallas Central Business District Association argued that the downtown was the "only recognizable center in a highly dispersed region," and played an important role in "shaping the area's image." This image was critical to drawing "corporate relocations," which in turn generated jobs and tax revenue for the city. As the Association observed, Dallas's downtown was "fast becoming a single purpose, office only, district." Unless it drew a wider set of investors, Dallas's economy could crumble.[4]

In decades leading up to the 1980s, the suburbs surrounding Dallas grew faster than the central business district. The residential population of Dallas county increased by 696,000 from 1960 to 1974, and only 37 percent of this growth occurred in the city. While the number of jobs in suburban counties of the metropolitan area increased by 95 percent from 1960 to 1970, employment in Dallas rose only 41 percent. By 1970, 75,000 people commuted from Dallas to the suburbs for work, up from 10,000 in 1960. The number of suburban residents commuting to jobs in Dallas rose by 300 percent during the

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[3] Christopher Lee and Todd J. Gillman, "14-1 City Council Format Marks 5 Years of Change," *Dallas Morning News*, December 8, 1996.
[4] Alexander Cooper, Housing and the Future of Downtown Dallas: A Report to the Dallas Central Business District Association, Inc., March 1975, 8, Box 5, Collection 06-001 Planning Department, 1966–1990, Dallas Municipal Archives and Records Center, Office of the City Secretary (DMARC).

same period. And while retail sales in Dallas's central business district fell 25 percent from 1960 to 1970, retail sales in suburban counties tripled. The central business district's share of retail sales fell from 17 percent of sales in the metropolitan region in 1958 to a low of 4.5 percent in 1972.[5] Dallas's downtown lost its historical role, threatening the city's image as an international business center.

In search of solutions, the Association began to explore new downtown housing development. As part of a "diversification" strategy, the CBDA explained, homebuilding would "support and enhance the area's primary office function, while conserving existing investments." It could also stimulate investment in areas surrounding the central business district, revitalizing neighborhoods that had succumbed to "blight."[6]

The CBDA concluded that a market for downtown housing existed. But the city needed to make the area more attractive for residential living, providing for "amenity preferences" and addressing safety and "environmental concerns." The study suggested that public and private actors needed to transform downtown Dallas to draw renters or buyers to the area.[7]

Downtown housing development was slow to take off. By 1980, the only significant development was Bryan Place, a cluster of 440 houses and condominiums completed in 1979. The CBDA argued that the projected payoff on downtown projects

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[5] Ibid., 13–15.
[6] Ibid., 22–23.
[7] Forty percent of respondents considered the downtown area an "unsafe" lace to live, and of people who would consider living downtown, over thirty percent nonetheless considered the downtown environment "bad." A dislike for apartment life, and concerns over traffic and inadequate parking registered as less important concerns. Ibid., 40, 51.

was too thin to attract investors, and that the city needed to offer financial incentives to make housing development more lucrative.[8]

Yet Dallas officials had few resources to devote to the task. In the 1970s and 1980s, the Dallas Housing Authority received operating subsidy contributions from the federal government, which hardly covered its debt service payments, utility bills, and maintenance costs. DHA received little federal funding for new housing development. From 1974 to 1978, the DHA constructed no new public housing at all.[9] While developers had created 11,000 subsidized units using the Section 236 program from 1968 through Nixon's housing moratorium in 1973, city planners did not expect HUD to reactivate the program.[10] After 1973, Section 8 rent vouchers did little to expand the supply of affordable housing. The DHA received 2,200 vouchers, but HUD approved only 1,074 Section 8 new construction units by 1978. That allotment paled in comparison to the more than 200,000 families living near and below the poverty line in Dallas and who were eligible for Section 8 assistance. The DHA designated 738 of the new units to serve the elderly, people with disabilities, and others designated as having special needs.[11] By the mid-1980s, the Dallas Housing Finance Corporation was the only branch

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[8] Sally Giddens Stephenson, "The Downtown Intown Uptown Housing Boom is Here at Last Really," *D Magazine*, August 1995.
[9] See Department of Housing and Urban Rehabilitation, Housing Plan for the City of Dallas, September 1978, 18, folder: Housing – The Housing Plan for the City of Dallas – Department of Housing and Urban Rehabilitation – Sept. 1970, Box 39, Juanita Craft Collection, DPL.
[10] Ibid., 11–12.
[11] Ibid., 24–25. In 1979, the U.S. Census reported that, for individuals for whom poverty status was determined in Dallas County (a total of over 1.37 million individuals), 162,002 had incomes at or below the poverty level. A total of 221,241 individuals had incomes below 125% of the poverty level in 1979. A total 582,474 individuals had incomes at less than 200% of the poverty level, an income level at which a household would qualify for tenant-based or project-based

of city government capable of financing the production of new affordable housing. While it was sponsored by the city, it relied solely on private investors to raise capital for new construction.[12]

Persuaded by the CBDA, members of the City Council set out to recruit new investors for downtown housing development. In the 1970s, a ring of low-income neighborhoods, all experiencing the city's highest rates of poverty, encircled the central business district. The residents in these neighborhoods were predominantly African American, and the quality of housing stock had been declining for years.[13] Throughout

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Section 8 assistance. The poverty level, as set by the Department of Health and Human Services, was $6,565 for a family of three in 1980. U.S. Census Bureau, Poverty Thresholds, https://www.census.gov/data/tables/time-series/demo/income-poverty/historical-poverty-thresholds.html.

The statute authorizing Section 8 assistance, under definitions established through 1981 amendments to the law, defined "lower-income families" as those with income below eighty percent of the median income for an area, as determined by HUD, and "very low-income families" as those receiving fifty percent of area median income. 42 U.S.C. § 1437a(b)(2) (1982). The statute required that a Public Housing Authority reserve most Section 8 contracts—up to ninety to ninety-five percent, depending on the type of contract—for very low-income families. 42 U.S.C. § 1437n(a)–(b) (1982). Thus, at least the 162,000 families living below the poverty threshold qualified for Section 8. Because a PHA could also serve lower-income families, nearly all of the 582,000 individuals living below 200% of the poverty level would also have qualified for Section 8 assistance in 1980. The Median Family Income in Dallas County in 1980 was $21,870, meaning that a very-low-income family would have an income of less than $10,900, or roughly 168% of the poverty level, depending on the size of the family. A low-income family would have income of over $17,000, well over twice the poverty level for even a family of five in 1980. Population and income figures retrieved from Steven Manson, Jonathan Schroeder, David Van Riper, and Steven Ruggles, *IPUMS National Historical Geographic Information System: Version 13.0* [Database] (Minneapolis: University of Minnesota, 2018), http://doi.org/10.18128/D050.V13.0.

[12] George Rodrigue, "Construction Controversy: City Council to Tackle Task of Resolving Conflicts Over Low-Interest Housing Bonds," *Dallas Morning News*, March 11, 1986.

[13] Census tracts surrounding the central business district ranged from fifty to ninety percent black. About thirty percent of families in these tracts reported incomes below the poverty level, the city's concentration of poverty. U.S. Census Bureau, "Total Population: Black, 1970"; U.S. Census Bureau, "Population: Families: Below Poverty Level, 1970." High poverty concentration tracts surrounding downtown included Census Tracts 33, 30, 29, 28, 23, 22.2, 16, 17.2, 19, 101, 102, 103, 104, and 41.

the city, about a quarter of rental units fell below the minimum standards set out in the city's Urban Rehabilitation Ordinance. In a visual survey of units throughout Dallas, city officials described roughly six percent of units as "dilapidated."[14]

Something needed to be done about housing conditions and neighborhood decline in Dallas. But it was unclear whether the city's goal was to help residents living in poor neighborhoods or remove any semblance of blight from the city, even if that meant displacing low-income households.

The city government had begun exploring revitalization measures during the 1970s. In 1975, City Council established a policy called the Area-wide Redevelopment Program. The ordinance allowed the city to enter contracts with developers to assume the risks of redevelopment projects. Under the program, the city could guarantee that, in the event a project failed, the government would purchase back land that a developer acquired, capped at a predetermined price per square foot. The program covered a geographic area within two miles of the central business district. Unless a project failed, the program required no expense on behalf of the city. Thus, it served as a budget-neutral strategy for stimulating investment in economically stagnant neighborhoods.[15]

Soon after establishing the Redevelopment Program, the city sponsored research on the conditions of neighborhoods. Study areas included Los Altos, a moderate-income neighborhood situated between the central business district and West Dallas, Washington

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[14] Department of Housing and Urban Rehabilitation, Housing Plan for the City of Dallas, September 1978, 65, folder: Housing – The Housing Plan for the City of Dallas – Department of Housing and Urban Rehabilitation – Sept. 1970, Box 39, Juanita Craft Collection, DPL.

[15] Department of Planning and Development, City of Dallas, Review of the Area-Wide Redevelopment Program, November, 1982, folder: unlabeled, Box 1, Collection 06-001 Planning Department, 1966–1990, DMARC.

Avenue, a predominantly black, low-income neighborhood just north of downtown, and State-Thomas, also a predominantly black, low-income area neighboring Washington Avenue. Using a small portion of its Community Development Block Grant funding, the city studied "the concerns and objectives" of neighborhood residents, evaluated community problems, and proposed policies for community improvement. In the Washington Avenue neighborhood directly north of downtown, residents prioritized neighborhood stability. Many residents had lived in the neighborhood their entire lives, They hoped the city would preserve and rehabilitate their homes. But they had also witnessed the city displace many families to make way for two freeways and a new public housing development, Roseland Homes.

City planners made recommendations that appeared benign. The city should create new parks, fill in vacant lots with new residential or commercial property, and improve sidewalks and drainage systems. They suggested that Dallas implement a code enforcement program to improve the quality of homes and commercial buildings. For Washington Avenue, they also proposed to rehabilitate the Roseland Homes, a public housing development that occupied a quarter of the study area and housed over sixty percent of the neighborhood population. While those recommendations could improve conditions for current tenants, the planners were particularly interested in providing housing for others employed downtown.[16]

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[16] Department of Urban Planning, Los Altos: A Neighborhood Study, December, 1978, folder: Neighborhoods – Los Altos 1978, Box 41, Juanita Craft Collection, DPL; Department of Urban Planning, Washington Avenue: A Neighborhood Study, December, 1978, folder: Neighborhood – Washington Avenue – 1978, Box 41, Juanita Craft Collection, DPL.

Beyond these neighborhoods, the city began developing a comprehensive housing plan. In early 1977, the city asked the Urban Land Institute and a consulting firm, Marshall Kaplan, to study housing problems in Dallas and recommend new policies.[17] The plan they submitted to City Council in September 1978 promoted low-cost policies to encourage private housing development. It generally aimed to increase the rate of urban homeownership, rather than improve the availability of affordable housing in Dallas. The high rates of "substandard" conditions, the consultants believed, stemmed from the difficulty of enforcing housing codes with rental properties.[18] Landlords, they argued, should give way to homeowners..

The consultants presented the City Council with three recommendations. First, they proposed incentives to stimulate development of owner-occupied housing, both single family and multi-family, in Southern Dallas. These included budget-neutral adjustments to the zoning code, for example allowing flexibility in side-yard and set-back standards. The city could also encourage construction by informing developers about the advantages of building in Southern Dallas. Second, the city could expand the Area-wide Redevelopment Program to cover all of Southern Dallas to reduce the risk for developers. Third, the city could help renters become owners of the single and multifamily rental

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[17] Urban Land Institute, Marshall Kaplan, Gans and Kahn, Housing Plan for the City of Dallas, August, 1977, Box 42, Juanita Craft Collection, DPL.
[18] Department of Housing and Urban Rehabilitation, Housing Plan for the City of Dallas, September 1978, 65, folder: Housing – The Housing Plan for the City of Dallas – Department of Housing and Urban Rehabilitation – Sept. 1970, Box 39, Juanita Craft Collection, DPL.

properties where they lived. By offering them loan guarantees, the city could help tenants obtain financing to purchase their homes.[19]

Remarkably, the housing plan said almost nothing about federal programs. It recognized that a handful of federal programs operated in Dallas, but focused on actions the city could take using its own resources. By adopting the plan's proposals, the city would expand its role in local housing provision by assuming the risk involved in mortgage loans and land purchases. Recognizing the city's fiscal constraints, the consultants proposed no direct expenditures from the city. Structured this way, the proposals could help moderate-income families, but not those desperately in need of help.

These ideas anticipated the Dallas's revitalization policy that took off in the 1980s. In 1977, the City Council established an Office of Economic Development and an Economic Development Advisory Board. The first focused on recruiting corporations to Dallas. The Advisory Board, composed of representatives from business associations, advised the city on economic development policies.[20] In 1980, the City Council asked the Advisory Board for a study of Southern Dallas. The board members, who at the time included representatives from the Chamber of Commerce, the Black Chamber of Commerce, the Mexican Chamber of Commerce, the Central Business District Association, the Dallas Area Industrial Development Association, the Greater Dallas Board of Realtors, the Texas Savings and Loan League, considered ways to address the "disparity" between the northern and southern halves of the city. In the late 1970s, the

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[19] Ibid., 35–55.
[20] See Lifson, Wilson, Ferguson and Winick, Inc., Management Consultants, Final Report: Study of the Office of Economic Development, City of Dallas, September 1978, Box 42, Juanita Craft Collection, DPL.

Advisory Board observed, Northern Dallas offered 2.5 times more jobs than Southern Dallas and attracted far greater rates of housing and office construction. Working with a group of the city's largest developers and corporations—Hunt Oil Company, Trammel Crow Company, Fox and Jacobs Corporation, Coca-Cola Bottling Company—the Board set out to bring investors Southern Dallas.[21] Its plan, submitted in 1982, reiterated Marshall Kaplan's suggestion that the city expand the Area-Wide Redevelopment Program and create an information bank for developers seeking vacant land.[22] But it went further in recommending subsidized loans and tax abatements for corporations and developers.

Like the Marshall Kaplan plan, the Board gave little consideration to direct spending or federal programs, ominously noting that the Reagan administration was "closely" examining many federal grant programs.[23] Instead, it proposed to use nontaxable bonds to stimulate commercial and residential development. The Board recommended that the Council create quasi-governmental entities to finance capital investment. An Industrial Development Corporation would stimulate the development of commercial and industrial facilities in Southern Dallas, and a Housing Finance

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[21] As the Advisory Board reported, for example, Northern Dallas outpaced Southern Dallas in the issuance of new housing permits by a rate of 5000 percent, and in the issuance of new residential construction permits by 500 percent. The value of Northern Dallas residential construction exceeded Southern Dallas by 1250 percent. Economic Development Advisory Board, Encouraging Economic Development in Southern Dallas, May 1981, 3, 12 (Executive Summary), Box 2, Collection 06-001 Planning Department, 1966–1990, DMARC.
[22] Ibid., 6 (Executive Summary).
[23] Ibid., 2.

Corporation would encourage developers to build and rehabilitate single family homes by issuing cheap loans.[24]

The plan also called for the city to take advantage of the state's first iteration of a Tax Increment Financing law, which the legislature passed in 1979. The Board was optimistic that the state would secure a constitutional amendment enabling the use of TIF, and hoped the city could use TIF bonds to finance street, sidewalk, and utility improvements. The Advisory Board urged some caution that there was "no guarantee" that a renewal plan using TIF would "generate the anticipated new private investment," which could mean that the "tax increment will not be realized." The city could avoid liability for lost revenue, the Board suggested, by requiring participating developers to "guarantee" the increased tax revenue. In other words, the city could require a developer to commit to covering the city's loss in tax revenue if the project left property values stagnant.[25]

The final plan became a blueprint that guided the city's economic development agenda for the next decade. In 1982, the City Council voted to adopt with only a few minor modifications. The Council voted 8–2 in favor of creating an industrial development corporation, and 7–3 in favor of extending the Area-wide Redevelopment Plan to Southern Dallas. One City Council member, Max Goldblat, accused the Council of compromising the city's free-market economy by adopting these incentive packages. He quipped: "Karl Marx would be proud of us today." The plan nonetheless received

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[24] Ibid., 6–9.
[25] Ibid., 35.

widespread support from city officials and Council members, who believed the program would attract developers and business owners to Southern Dallas.[26]

It was not clear that the plan would benefit Southern Dallas's poorest residents, however. City Council members representing districts in South Dallas had not been allowed to appoint members to the Economic Development Advisory Board. Elsie Heggins, a black civil rights activist who won a seat on City Council in 1981, found it troubling that their constituents had no voice in the plan's design. Representing a different interest, Goldblatt also charged that some Dallas capitalists were excluded from the process. Members of the Southeast Dallas Chamber of Commerce, he argued, did not learn of the plan until the Board formally presented it to City Council.[27]

While the Advisory Board held community meetings in Southern Dallas, the final plan did little to address residents' concerns. In meetings, residents demanded low-income and moderate-income housing development, as well as renovations to existing

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[26] Henry Tatum, "Growth Plan OK'd for Southern Dallas," *Dallas Morning News*, January 28, 1982. The resolution expanding the Area-wide Redevelopment Program did so on a provisional basis. The Council directed the City Manager to review the ARP and present the Council with recommendations on how to revise the program's scope by the end of the fiscal year. While reviewing the program, the City Manager accept ARP applications, though only for the acquisition of vacant plots of land. Approval would occur on a case-by-case basis, and only with a majority vote from members of City Council. The resolution expanding the Area-wide Redevelopment Program is printed in Department of Planning and Development, City of Dallas, Review of the Area-Wide Redevelopment Program, November, 1982, folder: unlabeled, Box 1, Collection 06-001 Planning Department, 1966–1990, DMARC.

[27] Henry Tatum, "Dallas Considers Backing Industry in South Sector," *Dallas Morning News*, March 28, 1981; Max Goldblatt to Honorable Mayor and Members of the City Council, subject: EDAB, June 1, 1981, folder: Memos to City Council—Mayor Etc., June–July–1981, Box 8, Max Goldblatt Collection, DML.

public housing.[28] The final plan sidelined these voices and focused instead on attracting commercial and industrial development. The plan proposed a housing finance corporation for subsidizing home mortgages for moderate income households, a program incapable of serving low-income households. As for affordable housing development, it merely urged the city to create a "joint task force of development interests, financial institutions, architects and engineers, manufactured housing industry, and city staff" to "evaluate the feasibility" of creating affordable housing. Two years later, the City Council finally establishing a task force, which solely concerned itself with helping the Dallas Housing Authority avoid bankruptcy.[29]

Southern Dallas residents knew that revitalization could mean displacement. The Area Redevelopment Program of the 1970s had taught them as much. One of the city's most important initiatives under that program was a buyback contract with Fox & Jacobs, the developer of a housing complex called Bryan Place. The city promised to purchase the land if the project failed, and Fox & Jacobs then bought up sixty acres of property northeast of the central business district. While the city intimated that the new development would serve low-income households, Fox & Jacobs built expensive condominiums. The Bois d'Arc Patriots, a neighborhood organization of white working-class people from East Dallas that operated a food co-op, legal clinic, and emergency clothing program, called the project "an affluent enclave of high-priced housing in the

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[28] See for example Economic Development Advisory Board, Encouraging Economic Development in Southern Dallas, May 1981, 18c, 20c, Box 2, Collection 06-001 Planning Department, 1966–1990, DMARC.
[29] Ibid., 43–44; City of Dallas, Report of the Task Force on Public Housing, January 1983, folder: Report of the Task Force on Public Housing, January 1983, Box 30, Collection 95-011, DMARC.

inner-city." The developer cleared about three hundred structures on the land, driving out over forty percent of residents living in the project area.[30]

Neighborhood organizations in East Dallas and South Dallas worried that the city's revitalization efforts would have a similar effect on them. A local chapter of the Texas Committee on Natural Resources, a statewide environmental advocacy group, argued that the city had failed to deliver on its promise to create low-income housing in Bryan Place.[31] The Bois d'Arc Patriots, which over the past decade had fought against displacement of poor families in East Dallas, saw the Bryan Place injustices replicated on a "much larger scale" in an area east of the central business district known as South Dallas / Fair Park. A new thoroughfare and entertainment facilities required the demolition of 2000 units of housing, displacing over 20,000 residents. Similarly, new industrial facilities in West Dallas displaced about 7,000 residents. The Bois d'Arc Patriots concluded: "Clearly, the low and moderate-income citizens of these areas have gained nothing (and in many cases lost everything) as a result of public and private redevelopment trends."[32] Charles Hunter, Director of the Urban Affairs Center at Bishop College in Dallas, argued that the city needed to revise its economic development

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[30] Bois d'Arc Patriots to Max Goldblatt, January 19, 1982, folder: Economic Development S. Dallas, Box 4, Max Goldblatt Collection, DPL; "Urban Pioneers become Urban Gentry," *Texas Monthly*, June 1986: 200.
[31] Robin Gelston-Walls, Population and Growth Taskforce of the Texas Committee on Natural Resources, to Mayor Jack Evans and Councilpersons, January 17, 1983, folder: Economic Development S. Dallas, Box 4, Max Goldblatt Collection, Dallas Public Library (DPL).
[32] Bois d'Arc Patriots to Max Goldblatt, January 19, 1982, folder: Economic Development S. Dallas, Box 4, Max Goldblatt Collection, DPL.

program to protect residents of Southern Dallas "from indiscriminate displacement by projects in which they themselves cannot participate."[33]

Residents fought expansion of the Area Redevelopment Program to include Southern Dallas. The Concerned Citizens Coalition for Southern Dallas and the East Dallas Neighborhood Association protested. The Association wrote that the program drove residents of the Bryan Place neighborhood out of their homes, and "a home, in whatever condition and of whatever size, is a precious local resource."[34] They charged that the program gave developers too much leeway. No program rules or restrictions guided the developers' use of the property. The city seemed unconcerned with the type of housing produced.

Dallas residents also worried about the accountability of semi-governmental entities. In a 1982 letter to Mayor Jack Evans and members of city council, the East Dallas Neighborhood Association urged the city to subject the Dallas Industrial Development Corporation, to open meetings and records legislation. They mistrusted the interlacing of private investment with public development aims, and demanded transparency to ensure that the Corporation served the interests of residents. The Association urged the Mayor to require that the Corporation include residents of Southern Dallas on its board.[35] The Mayor and City Council members had only appointed industry experts. Neighborhood organizations were right to doubt that these entities would

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[33] Charles A. Hunter to Members of City Council, January 21, 1982, folder: Economic Development S. Dallas, Box 4, Max Goldblatt Collection, DPL.
[34] Karen S. Roberts, Co-Chairperson of the East Dallas Neighborhood Association, to Mayor Jack Evans and Members of the Dallas City Council, January 21, 1982, folder: Economic Development S. Dallas, Box 4, Max Goldblatt Collection, DPL.
[35] Ibid.

prioritize neighborhood needs. But despite their concerns, city officials pressed on, allowing semi-public entities to become creatures of private investors.

II.

Amid debate over the Economic Development Advisory Board's proposal, Mayor Starke Taylor in 1983 appointed a Task Force on Housing and Economic Development in Southern Dallas to form a strategy for affordable housing and economic development.[36] A year later, the Task Force released a detailed proposal for the formation of a Housing Finance Corporation, a project that became central to the city's housing policy during the 1980s. As soon became clear, however, the financial structure of Dallas's housing assistance programs confined the city's ability to help low-income families. After operating for only two years, the Housing Finance Corporation proved itself unable to bring affordable housing units to Dallas.

The Task Force on Housing envisioned the city using an economic development corporation to bring affordable housing and other revitalization projects to Southern Dallas. A development corporation, the Task Force suggested, could "serve as a catalyst for housing and economic development." As an "independent entity," rather than an "extension of city government," the report imagined that the corporation could "serve the mutual interests of the public and private sectors."[37] The City Council could structure the corporation such that it could benefit from recent state laws enabling housing finance corporations to issue tax-exempt revenue bonds. The Task Force imagined the

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[36] Mayor's Task Force on Housing and Economic Development in Southern Dallas, February 1984, 1-4, folder: Task Force – Housing & Economic Development in South Dallas, Box 2, Collection 91-022 Housing, 1938-1993, DMARC.
[37] Ibid., 99–100.

corporation as a nimble entity, capable of handling all phases of development projects, to contract with public and private entities, and even form its own subsidiaries.[38] The Task Force also recommended the formation of a housing finance corporation, though it was unclear what separate purposes the two entities would serve.[39]

The goals of the housing corporation and development corporation were rife with contradictions. The report implied that the development corporation should choose projects that expanded the city's tax base, benefit the surrounding neighborhood, create jobs, and aesthetically mesh with the surrounding environment.[40] A Task Force committee hoped for the housing corporation to attract a new class of downtown professionals, "the owners, professionals, and technicians of industry and commerce." "Otherwise, every day at 5 p.m. and on weekends," the committee chairperson explained, "the upper-income citizens with their consumer and tax dollars will be going north on the freeways to their residences." As the committee concluded: "Fancy studies need not be made to prove that if a predominance of high-income, politically-aware families live in a community, everything else pretty much falls in place." The committee recommended increasing the income of residents by "protecting very stable neighborhoods from decline" and by attracting wealthier households.[41]

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[38] Ibid., 101–2.
[39] Ibid., 117.
[40] Ibid., 100–1.
[41] Memorandum from Billie Richards, Chairperson of the South Central Subdistrict Committee on Housing to The Mayor's Task Force on Housing and Development in South Dallas, Steering and Development Committee, December 13, 1983, folder: South Dallas – 1984, Box 4, Max Goldblatt Collection, DPL.

Some proponents of a housing finance corporation hoped to build affordable housing for low-income households. But the deeper the subsidy, the lower the tax revenue a project might generate. Thus, if the corporation aimed to help raise property values in Southern Dallas, or produce housing that generated new tax revenue, it would have to favor developments for wealthier homebuyers or tenants. The Task Force also envisioned a board of directors that, while providing a few seats for representatives of the Southern Dallas community, the Black Chamber of Commerce, and the Hispanic Chamber of Commerce, allowed organizations representing white capitalists, including the Dallas Citizens Council, to name nine of fifteen directors. The report limited broader community involvement to a "Neighborhood Advisory Board" with no specified leverage over the board.[42]

Two months after publication of the Task Force report, the City Council established the Housing Finance Corporation, as recommended in the report, in an 8–1 vote. The Council authorized the Corporation to use municipal bonds to subsidize loans for homebuyers. It could provide loans to developers building multifamily apartments on the condition that they set aside some units for low and moderate-income households. The Council restricted the Corporation's lending to Southern Dallas. Some Council members worried that the Corporation would serve well-off households. Council Member

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[42] Mayor's Task Force on Housing and Economic Development in Southern Dallas, February 1984, 102-03, folder: Task Force – Housing & Economic Development in South Dallas, Box 2, Collection 91-022 Housing, 1938-1993, DMARC.

Jim Richards, despite voting for the resolution, stated: "We've got to admit we're not necessarily doing all of it to help low-income people."[43]

The new board did ultimately finance housing for wealthier households. During its first two years in existence, the Corporation's board avoided imposing any rent cap for developments that received subsidized loans. Developers had to set aside some units for low-income renters, but the Corporation never demanded that rents actually be affordable to tenants. One member of the Corporation's board rejected any rent limitations on landlords, arguing that this was a form of rent control that could deter investors. Their interests clearly came first for an agency that had to sell municipal bonds. Mayor Starke Taylor explained that the Corporation existed to jumpstart Southern Dallas's real estate market, not produce low-income housing. The Corporation sold just over $61 million in bonds to finance six multifamily housing developments in its first two years. The board

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[43] In the same meeting, the Council also approved the formation of the Health Facilities Development Corporation, which could use municipal bonds to subsidize the development of hospitals and other health facilities in Southern Dallas. Terry Maxon, "City Oks Corporations to Issue Bonds to Build Homes, Hospitals," *Dallas Morning News*, April 26, 1984; Jim Reid, Assistant City Manager to Honorable Mayor and Members of the City Council, April 19, 1984, folder: Community Development Committee, Box 2, James Hart, Dallas City Council Papers, DPL; Department of Housing and Neighborhood Services, Housing Finance Corporation Briefing Materials, April 11, 1984, folder: Housing Finance Corporation, Box 3, James Hart, Dallas City Council Papers, DPL. Draft bylaws for the Housing Finance Corporation suggested that business leaders would not have a right to sit on the board, but neither would representatives of Southern Dallas residents. The bylaws provided that the board would consist of eleven members, all appointed by the City Council, serving two-year terms. Bylaws of City of Dallas Housing Finance Corporation, folder: Housing Finance Corporation, n.d., Box 3, James Hart, Dallas City Council Papers, DPL.

The City Council never established the development corporation envisioned by the Task Force. The project depended the private businesses committing funding to support the corporation. The city failed to garner enough private support to implement the proposal. Gayle Reaves, "Task Forces Have Produced Plenty of Paper but Few Results," *Dallas Morning News*, May 18, 1988.

never asked developers to demonstrate compliance with its minimal set-aside requirements for low-income households.[44]

The Housing Finance Corporation directed its resources towards rich homebuyers. Of the Corporation's $140 million in bond sales, $78.9 million went to single-family home mortgages. The *Dallas Morning News* found that lenders extended nearly forty percent of home loan money to upper-income families, defined as families earning at least 120 percent of the area median income. The Corporation helped multiple families purchase $113,000 to $126,000 homes and condominiums at Bryan Place, the new development east of the central business district that displaced low-income residents. The City's Housing Action Plan for the 1984-85 fiscal year anticipated that only twenty percent of 1000 units to receive assistance from the Corporation would serve "lower income households," likely an ambitious number. Examining loans issued by the Texas Housing Agency, as well as the Housing Finance Corporation, the *Morning News* also found that only four percent of $193.8 million loans issued in Dallas County financed mortgages in "target neighborhoods," where over 70 percent of families earned incomes

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[44] George Rodrigue, "Construction Controversy—City Council to Tackle Task of Resolving Conflicts Over Low-Interest Housing Bonds," *Dallas Morning News*, March 11, 1986; Ed Housewright, "Housing Aid Agency's Record-Keeping Faulted," *Dallas Morning News*, May 18, 1988.

Reflecting similar pressures, Dallas County commissioners in 1990 revised the rules for a similar housing program. The Dallas County Housing Finance Corporation, after having difficulty securing bond purchase commitments from private lenders, loosened its rules to allow moderate-income families—a family of four earning up to $43,000 per year in 1990 dollars—to receive assistance. Lenders considered low-income households in neighborhoods served by the County Housing Finance Corporation too risky. See Lawrence Young, "County Eases Rules on Home-Buying Program," *Dallas Morning News*, March 21, 1990.

at or below 80 percent of the area median income. The state and municipal housing finance programs funding away from poor neighborhoods.[45]

With state and city officials exercising little oversight, the private banks that underwrote and issued loans were free to choose where and to whom they lent municipal bond revenue. Mortgage lenders denied that they engaged in redlining, but reporters uncovered strategies they used to deny loans in poor neighborhoods. Many banks, for example, dragged their feet in allocating funds earmarked for target neighborhoods. Once the restriction on the funds expired, the banks would begin issuing loans in wealthier neighborhoods. Mike Daniel, a former member of the Housing Finance Corporation Board, conducted a test, calling fifteen of Dallas's seventeen mortgage lenders to inquire about possible loans in target neighborhoods. While the lenders had uncommitted low-interest loan funds, they informed Daniel that they had run out. Two lenders admitted they had funds available, but "discouraged" Daniel from borrowing in target neighborhoods. Additionally, because banks historically avoided setting up branches in Southern Dallas, they had little infrastructure to support lending in the area. As Daniel observed, "Realistically, if you don't have an office in an area and you don't deal with the real estate brokers that work in an area, you've probably insulated yourself from any applicant in an area."[46]

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[45] Housewright, "Housing Aid Agency's Record-Keeping Faulted," May 18, 1988; Craig Flournoy, "Subsidized Mortgages Diverted from Target Areas – Loan Program Benefits Few Low Income Buyers, Investigation Finds," *Dallas Morning News*, October 8, 1985; Annual Housing Action Plan for the City of Dallas: Fiscal Year 1984-85, September 14, 1984, 4, folder: Housing and Human Development, September 1984, Box 4, James Hart, Dallas City Council Papers, DPL.
[46] Flournoy, "Subsidized Mortgages Diverted from Target Areas," October 8, 1985.

The Corporation did little to intervene. Its hired administrator and auditor for the program, Lomas & Nettleton, was a lending institution that also issued loans through the city's housing finance program. The company dragged its feet in responding to Daniel's findings. "I deal with this stuff every day so I don't get as excited about it anymore," explained the company's liaison to the city. He eventually addressed the problem by issuing a "blanket memo" to the seventeen lenders rather than directly investigating their practices. The memo served as a reminder, rather than an ultimatum, informing lenders that they had an obligation to provide "information regarding the availability and location of targeted area funds" and to "exercise reasonable diligence" in extending loans to those neighborhoods.[47]

The insurance policies on municipal bonds may have explained the Corporation's failure to regulate banks. According to the *Morning News*, an unidentified mortgage executive told employees of a major bond insurance association that extending loans in Southern Dallas "would be like lending money in the South Bronx." The comment prompted the insurer to consider cutting the authorized coverage in half, from $90 million to $45 million for the Corporation's first bond sale.[48] The incident illustrated the close connection between lenders' and insurers' perception of risk and the offerings of a public

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[47] Ibid. Lomas & Nettleton made national headlines in 1987 when the Pennsylvania Attorney General charged the company with consumer fraud for charging home buyers in Philadelphia interest rates deceptively higher than the rates initially offered. See "Lomas & Nettleton Charged with Consumer Fraud," *Los Angeles Times*, May 18, 1987; Richard Burke, "Mortgage Firm Sued for Fraud," *The Philadelphia Inquirer*, May 15, 1987. In response to a downturn in the housing market, Lomas later laid off twenty percent of its employees and filed for one bankruptcy. Thomas Hayes, "Charges and Cuts Seen at Lomas & Nettleton," *New York Times*, February 18, 1988; Thomas Hayes, "Bankruptcy Filing by Lomas: Debt Talks Cut Off," *New York Times,* September 25, 1989.

[48] Flournoy, "Subsidized Mortgages Diverted from Target Areas," October 8, 1985.

housing finance program. A program designed to strictly require lending in target neighborhoods may have deterred the insurer altogether and scuttled the sale.

Some of the Board's own members attacked the Corporation for its failures. The City Council had appointed John Fullinwider, the housing advocate who urged preservation of public housing in West Dallas during the *Walker* litigation, to the Corporation's board. He argued that the Corporation neglected low-income people. He reported meeting "half a dozen people recently who told me with sort of a sheepish grin they bought their homes under the program; and these are professional people, they're not low- and moderate-income people who are struggling for a place to live."[49] Corporation President Anthony Jackson also found its mortgage lending practices troubling.[50]

The Corporation's failure to monitor banks raised urgent questions about its purpose and capabilities. As board members Fullinwider and Linda Anderson charged, the Corporation's board had become dominated by appointees who answered to developers. Many of the board members were developers themselves. Board member and developer George Boehme defended the Corporation's decisions, arguing that it had no other choice. The subsidies available under the mortgage revenue bond program were incapable of reducing the cost of homes, condominiums, and rental units such that the housing would be affordable to low-income households. The Corporation, he argued, should focus not on financing low-cost housing, but rather creating new jobs and

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[49] Ibid.; George Rodrige, "Council Oks Final Panel Posts," *Dallas Morning News*, August 29, 1985. The members the Council appointed to the Corporation board in 1985 were Roland Freeman; Linda Anderson; Anthony O. Jackson; Cal Chaney; Mary Ann Aguilar; Pat Wright; Michael Tabor; John Fullinwider; George F. Boehme; Arthur M. Jeffrey, Jr.; Don R. Averitt.
[50] George Rodrigue, "Low-Interest Bonds to be Reviewed," *Dallas Morning News*, October 9, 1985.

rejuvenating neighborhoods by helping wealthier people buy homes. Boehme and other developers on the board maintained this position despite federal tax laws required local governments to use mortgage revenue bonds "to the greatest extent feasible . . . to assist lower income families before assisting higher income families." State laws required housing finance corporations to "assist persons of low and moderate income."[51] While lawmakers intended for the bond subsidy to serve low-income households, they imposed no clear, enforceable standards.

Amid controversy over its failure to aid low-income households, the Dallas City Council imposed a freeze on the Corporation's activities in late 1985. In early 1986, the Corporation's board announced that the city government needed to give the Corporation more funding before it could serve low-income households. The board president believed that the Corporation needed "some kind of deep subsidy" before it could stimulate development in Southern Dallas. Board member John Fullinwider contended that other housing finance corporations throughout the country managed to help low-income households, implying that the Corporation simply was not trying hard enough.[52] The City Council reactivated the housing program early in 1986, first permitting the Corporation to

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[51] "City Puts Housing-Bond Program on Hold," *Dallas Morning News*, December 19, 1985; George Rodrigue, "Construction Controversy: City Council to Tackle Task of Resolving Conflicts Over Low-Interest Housing Bonds," *Dallas Morning News*, March 11, 1986; 26 C.F.R. § 6a.103A-1 (l)(3)(i)(C) (1985).

[52] Sherry Jacobson, "Housing Panelists See Need for More City Aid," *Dallas Morning News*, February 23, 1986; Sherry Jacobson, "Housing Board Divided – Council to Decide City Agency's Fate," *Dallas Morning News*, February 25, 1986.

finance projects that it had already approved, and in 1987 allowing the Corporation to sell a new series of bonds, all without requiring it to serve poor families.[53]

Although the Corporation occasionally attempted to build affordable housing in poor neighborhoods, prospective lenders considered target neighborhoods too risky. In 1990, the Corporation tried to sell $30 million in mortgage revenue bonds, but its primary underwriter convinced local lenders to back only $8 million. Lenders' ambivalence put the corporation in a difficult position. The City Council could help the Corporation by covering the lenders' participation fees, totaling $450,000, to make participation more attractive. Alternatively, the Council could alleviate lenders' concerns by relaxing program restrictions, allowing the bond revenue to finance mortgages outside Southern Dallas. As one Housing Finance Corporation board member put it, the lenders were "taking a risk and they would be more attracted to programs that would give them more flexibility." Deputy Mayor Pro Tem Diane Ragsdale believed officials should terminate the program rather than expand guidelines. By lending in more affluent census tracts, she warned, the program would "become strictly a North Dallas program." It would fail to serve "the people who need it most."[54]

But the City Council decided to relax the Corporation's restrictions. In 1990, it authorized the Corporation to issue mortgages across the city, not just in Southern Dallas.

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[53] See, for example, George Rodrigue, "Dallas Relaxes Moratorium on Low-Interest Housing Bonds," *Dallas Morning News*, January 16, 1986; Sherry Jacobson, "Council Members Assail Mortgage Plan," *Dallas Morning News*, May 14, 1987; Lawrence Young, "$12.6 million Available to Aid Home Purchases," *Dallas Morning News*, August 15, 1987.

[54] David Jackson, "Mortgage Program Troubled – Poor Areas Viewed as Risk, Official Says," *Dallas Morning News*, March 8, 1990; David Jackson, "Mortgages for Poor Endorsed – City Council Backs $30 Million Lending Program," *Dallas Morning News*, March 22, 1990.

Council members also voted to ease income restrictions to include households with incomes up to $39,700 for a family of two, and $45,655 for a family of three, approximately $76,000 and $87,702 respectively in 2017 dollars. While the original program required the Corporation to reserve thirty percent of bond proceeds for low-income households, the Council removed the restriction. Some Council members who initially opposed the program expansion eventually acquiesced, reasoning that without expanding the program, the Corporation would have insufficient capital to lend anywhere in the city. Banks simply would not buy bonds for low-income development. The only way to finance housing in Southern Dallas was to open the program to lending in the northern, more affluent, half of the city. In 1990, under the new rules, the Corporation ultimately raised $20.5 million, reserving half of the revenue for Southern Dallas.[55]

The Housing Finance Corporation, Dallas's sole mechanism for stimulating affordable housing development, did little to solve the city's low-income housing shortage. As conditions in public housing complexes and low-income neighborhoods deteriorated, the Corporation helped wealthier households become homeowners. Rather than build in struggling neighborhoods, the Corporation financed construction and purchases in higher-income areas of Southern Dallas, and later in Northern Dallas. Some Council members believed that by allowing the Corporation to operate in Northern Dallas, it could help low-income residents move into wealthier neighborhoods, deconcentrating poverty in Southern Dallas. But considering the Corporation's preference for moderate income development, that was an unlikely outcome.

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[55] Jackson, "Mortgages for Poor Endorsed," March 22, 1990; Craig Flournoy, "$20.5 Million Dallas Program Offers Low-Interest Mortgages," *Dallas Morning News*, April 26, 1990.

Arguably, the Corporation could do little else. Local banks would not back loans that appeared risky. Developers had little interest in loans that came with stringent regulations on rent and occupancy. Bond investors hesitated to purchase municipal bonds financing projects that seemed likely to default. The housing program's success hinged on the cooperation of investors, developers, and lenders. City Council members, who appointed the Housing Finance Corporation board, recognized that the Corporation would benefit from leaders enmeshed in real estate finance and development. Some Council members appointed individuals who were strong advocates for Dallas's low-income residents, for example John Fullinwider. Yet, the voices of local developers dominated the board. Their vision for the board favored low-cost financing for safe projects. They favored lax oversight of lenders and developers who benefitted from the Corporation's bonds.

By the end of the 1980s, the Corporation had transformed the city's housing program. Under the leadership of Dallas developers, the Corporation focused its resources on helping young professionals and other moderate-income families purchase their first homes. The City never seriously considered using general revenue to deepen the Corporation's subsidy. Low-income residents never benefitted from the City Council's intervention in Dallas's housing market.

III.

In the late 1980s, Dallas business executives, the mayor, and some members of City Council remained worried about retaining downtown corporations. The *Dallas Morning News* in 1988 announced the possible loss of "[t]wo more major office tenants,"

extending "a trend that has left downtown Dallas with a shrinking stable of major corporate employees." Earlier that year, one of the largest insurance companies in Texas, Southland Life, had moved its offices to Plano, a bedroom community north of Dallas. Proponents of downtown growth insisted that the central business district would continue losing tenants unless developers began producing more housing downtown. Since the 1970s, a small cohort of developers had begun acquiring property in neighborhoods just north of the central business district. In the late 1980s, the Trammell Crow Company considered developing downtown housing, but wondered whether downtown development would prove sufficiently lucrative to justify the investment.[56] Playing on the anxieties of city leaders, developers began pressing the City Council to adopt a redevelopment plan that could reduce the cost and risk of private development projects.

By the late 1980s, the federal urban renewal program no longer existed. And Dallas's allocation of federal urban development funding, namely through the Community Development Block Grant, hardly kept pace with the city's growing needs.[57] If Dallas was to help revitalize neighborhoods surrounding the central business district, the government would need to draw on its own resources. Tax Increment Financing (TIF) became an essential mechanism for financing redevelopment. The City designated TIF districts in neighborhoods surrounding downtown, as well as the central business district

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[56] Steve Brown, "The Flight From Downtown Continues," *Dallas Morning News*, January 1, 1099.

[57] The city's award under the Community Development Block Grant Program fell from an annual award of $13.276 million from 1980 through 1986, to $10 million in 1987, and rose to $15.6 million 1990. City of Dallas, Annual Budget, Grants and Trusts Budget for the Fiscal year 1990–91, 21, Box 18, Collection 91-062, Budgets and Financial Reports, RG 11, DMARC. As discussed in Chapter 8, municipal revenue from federal transfers fell throughout this period.

itself. The City's downtown redevelopment strategy brought new life to the central business district. But it came at a cost to low-income residents, most of whom were African American, who populated downtown neighborhoods. During the 1990s, Dallas's poured future city tax revenue into neighborhoods that quickly became enclaves of white, high-income professionals.

The City Council initially attempted to use TIF to finance a complex, $250 million infrastructure project to turn a waterway dividing West Dallas and the Central Business District into an artificial lake. After more than a year of debates and hiring consultants to produce multiple studies, city officials ultimately scuttled the project because its payoff was too uncertain. For TIF-driven investment to work, the investment needed to drive up property values, and the connection between waterway improvements and increased tax revenue was unclear. Land values might rise as surrounding neighborhoods became more attractive, but this result was far too speculative to sustain the project. Despite their belief that the lake project was essential to a downtown transformation, council members ultimately rejected the project.[58]

The relationship between investment and future tax revenue was more apparent with neighborhood redevelopment projects. In evaluating other options for reviving the

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[58] "Man-Made Lakes Fulfill Recreation, Water Needs," *Dallas Morning News*, August 25, 1984; "Tax Increment Financing Flashes Danger Signs for City," *Dallas Morning News*, May 27, 1982; George Rodrigue, "Town Lake Project Divides New City Council," *Dallas Morning News*, September 5, 1983. For economic analysis supporting the failed 1978 bond issue, see Economics Research Associates, Economic Impacts of the Proposed Dallas Town Lake, March 1978, folder: Town Lake, 2, Box 5, Max Goldblatt Collection, DPL; Terry Maxon, "Town Lake Would be Costly, Study Finds," *Dallas Morning News*, October 11, 1984; Terry Maxon, "Dallas Abandons Town Lake," *Dallas Morning News*, February 7, 1985; Espey, Huston & Associates, Inc., Executive Summary: Evaluation of Town Lake Alternatives, December 1984, 32, Box 5, James Hart, Dallas City Council Papers, DPL.

central business district during 1980s, city planners, consultants, and Council members theorized that the city could make the downtown a more desirable and symbolically meaningful place by surrounding it with pleasant neighborhoods. The important question, of course, was what the city could do to usher in this type of development. Again, Tax Increment Financing looked like an attractive option.

As soon became clear to city officials, a neighborhood revitalization program could benefit from drawing on a mix of private and public investment. The city could made strategic investments to persuade developers to build new housing and commercial property, eventually spurring a neighborhood transformation. In the 1970s and 80s, developers and land speculators had begun acquiring property surrounding the central business district. But despite accruing large swaths of land, they hesitated to begin building. Developers urged the city to consider using TIF to fund new infrastructure, parks, and other facilities. Following the trail of private land speculators, city leaders trained their attention on the State-Thomas district, a historically African American community located immediately north of the central business district.

The area, known as Freedman's Town, was Dallas's oldest residential community, settled by emancipated African Americans after the Civil War. The first residents were mostly farmers who saved money and bought land. By the late nineteenth century, they had built their own homes on properties surrounding an African American cemetery. Some of the wealthier families built Victorian-style houses, while poorer

families constructed simple, wood-frame shotgun houses.[59] The State-Thomas community remained predominantly black through the 1980s, but speculative investment and a declining population destabilized the neighborhood. While over 6,300 residents lived in State-Thomas in 1960, the population fell to roughly 3,300 in 1970, and 1,850 in 1980.[60] Some residents owned homes built in the late nineteenth century, but by 1950 over eighty percent of residents were renters.[61] Meanwhile, the vacancy rate of rental units rose to a high of 33 percent in 1980, up from 11 percent in 1970.[62]

The *Dallas Morning News* offered one explanation for the rapid loss of population and abandonment of property: federal civil rights legislation had simply enabled residents to move elsewhere.[63] That analysis was hardly convincing. In practice, federal laws did little to change the racial composition of other predominantly black neighborhoods throughout Dallas. And while civil rights laws in theory prevented landlords from denying housing to black families, landlords devised subtle ways to discriminate while avoiding liability. The cost and delays to litigation also prevented many aggrieved

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[59] Doug Bedell, "Developers Take Block of History – Historic Feedman's Town is Being Reshaped," *Dallas Morning News*, February 10, 1985.

[60] In 1960, 91.4 percent of residents living in the census tract encompassing State-Thomas were black. In 1970, 90 percent of residents were black, though by 1980 the neighborhood was 83 percent black. U.S. Census Bureau, "Total Population: Black, 1960"; U.S. Census Bureau, "Total Population: Black, 1970"; U.S. Census Bureau, "Total Population: Black, 1980."

[61] U.S. Census Bureau, "Housing: Tenure, Occupied Housing Units, Renter Occupied, 1950"; U.S. Census Bureau, "Housing: Tenure, Total Occupied Units, Renter Occupied, 1960"; U.S. Census Bureau, "Housing: Tenure, Total Occupied, Renter Occupied, 1970."

[62] U.S. Census Bureau, "Housing: Occupancy Status, Total Housing Units, Vacant, 1970"; U.S. Census Bureau, "Housing: Vacancy Status, Vacant Housing Units, For Rent, 1980."

[63] Bedell, "Developers Take Block of History," February 10, 1985; Enrique Rangel, "Something Old, Something New – Residents Seek to Preserve State-Thomas' Spirit, Restore Aging Homes," *Dallas Morning News*, February 24, 1992; Philip Seib, "State-Thomas Future Plan," *Dallas Morning News*, June 19, 1985.

individuals from pressing Fair Housing claims. In short, federal civil rights laws did not establish a strong, immediate deterrent to discriminatory activity.

More likely, developers and speculators encouraged landlords to sell property. In 1970, the average annual family income in State-Thomas was $5,848, one of the lower census tract averages in Dallas and 46 percent of the average family income for the whole county. Residents received public assistance at one of the highest rates in the city outside West Dallas.[64] Meanwhile, the neighborhood struck investors as a prime site for housing complexes serving downtown professionals. The value of land plummeted, allowing speculators to buy property at a price of $1to $4 per square foot in the 1970s, inspiring speculators to begin contemplating acquisitions. By the mid-1980s, investors closed on more property and drove land prices up to $22 per square foot. Local landlords faced a choice: either maintaining their property for households struggling to pay rent, or sell to eager investors. It was an easy choice.[65] Prospective buyers also threatened and harassed homeowners in State-Thomas, pressuring them to sell. While a few residents resisted the pressure, or at least held out, hoping to eventually negotiate a higher sale price, many long-time residents parted with their homes.[66]

The Dallas government may have played a role in driving out residents. In the mid-1970s, the city launched a building code enforcement campaign, inspired in part by a

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[64] The average family income for Dallas County was $12,668 in 1970. U.S. Census Bureau, "Income: Average Family Income, 1970." Thirty-three percent of residents in census tracts surrounding public housing units in West Dallas received welfare assistance; 21 percent of State-Thomas families received welfare. U.S. Census Bureau, "Income: Type of Income for Families, Count of Families with Income, Public Assistance or Welfare Payments, 1970."
[65] Seib, "State-Thomas Future Plan," June 19, 1985.
[66] Glenna Whitley, "The Deal Maker," *Dallas Morning News*, July 12, 1987.

1972 study of State-Thomas and the surrounding community of Oak Lawn. The study argued that enforcing the housing code would remedy “blight” in State-Thomas. The study noted, “This area still strongly identifies with its original East Dallas neighborhood across Central Expressway,” referring to another predominantly African American, low-income neighborhood that was merely an extension of State-Thomas until the city bifurcated the community with the development of the thoroughfare. The coded language suggested that city planners viewed the residential neighborhood as an insular unit, one incompatible with a revitalized downtown.[67]

From 1975 to 1978, the city issued more than 2000 citations for code violations. Fred Vaughn, a car mechanic and homeowner in State-Thomas, explained in an interview, “One day the building inspector is saying you got to make $1,000 worth of repairs. The next day some real estate man comes around and tells you he’ll take the place off your hands for five maybe ten thousand dollars tops.” Vaugn organized State-Thomas residents in opposition to the city’s code-enforcement policy, and convinced an attorney at Akin, Gump, Hauer and Feld to take up a pro bono case against the city. The firm never filed suit against the city, but negotiated an agreement. The city promised to notify the lead attorney, Richard Levin, when it issued a code violation against a neighborhood property owner. The city also promised to study methods for preserving

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[67] Joseph Powell Barentine, III, State-Thomas Special Purpose District: Its Evolution from the Freedman’s Town of North Dallas (circa 1891) and the Thomas-Colby Neighborhood (circa 1880) through the passage of the Ordinance March 19, 1986, and Some Subsequent Events, Directed Research Term Paper, Southern Methodist University School of Law, Fall 1986, 24, on file at the Dallas Public Library.

the neighborhood's residential areas.[68] Despite this agreement, the city's long record of citations likely encouraged residents and landlords to sell.

Developers prepared the way for high-density development. To preserve the neighborhood's marketable characteristics, the city in 1986 designated a small section of State-Thomas a historical district, safeguarding a small cluster of Victorian homes against demolition.[69] But State-Thomas had far more units worth preserving. City planners found that 42 percent of structures in 1980 were in good to excellent condition, and 35 percent required only "minor repairs." Only 23 percent required "major repairs," or had deteriorated to the point that any repair was "economically unfeasible."[70] Speculators nonetheless began evicting tenants and demolishing properties in the neighborhoods surrounding the historical district. As the *Dallas Morning News* reported in 1985, "Speculators now believe the area is ripe for transformation into a mixed-use

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[68] Ibid., 13-14, 24. Code enforcement surfaced again as a controversial policy in recent years. Enforcement efforts in West Dallas have resulted in the displacement of low-income households, both renters and homeowners. West Dallas has become a site for speculative land investment, and commentators suspect that developers see the area as ripe for lucrative development projects. The city's increasingly stringent code enforcement efforts appear to be making room for new development. See Jim Schutze, "Another West Dallas Hearing, Another Week Closer to the Cliff for Poor Tenants," *Dallas Observer*, May 8, 2017, available at http://www.dallasobserver.com/news/west-dallas-tenants-no-farther-from-eviction-after-court-hearing-9439482; Jim Schutze, "City, Not Landlord, Wants Judge to End Protection for West Dallas Families," *Dallas Observer*, May 3, 2017, available at http://www.dallasobserver.com/news/dallas-opposes-extension-of-protective-order-for-west-side-tenants-9429045; Jim Schutze, "High Noon in West Dallas, and It's the Landlords and the Mayor, Slapping Leather," *Dallas Observer*, December 7, 2016, available at http://www.dallasobserver.com/news/high-noon-in-west-dallas-and-its-the-landlords-and-the-mayor-slapping-leather-8969378.

[69] Marsha Prior and Robert V. Kemper, "From Freedman's Town to Uptown: Community Transformation and Gentrification in Dallas, Texas," *Urban Anthropology* 34, no. 2/3 (2005): 204-05.

[70] Department of Urban Planning, State-Thomas: A Neighborhood Study, January 1979, 9-10, folder: State Thomas Paper 1, Box 1, J.B. Barentine III, Manuscript Collection, DPL.

development zone with extremely high commercial value." Miley Drone, a State-Thomas resident of fifteen years, woke up one morning in 1985 to the sound of a bulldozer ripping the back porch off the house where he lived. He fled before the bulldozer consumed the rest of it. As the properties surrounding his old home also fell, the neighborhood population plummeted to a low of 433 people in 1990. African Americans represented only 33 percent of the remaining population.[71]

Wrecking crews reduced Freedman's Town to a memory, but the future of State-Thomas remained uncertain. On one hand, the land in State-Thomas had fallen largely within the control of private investors, leaving the community's future in their hands. In 1979, the Dallas Department of Urban Planning reported that 45 of 501 parcels—encompassing over twenty percent of the acreage— belonged to individuals or corporations that held multiple properties in the area. As the Department observed, in some locations "an individual owner controls enough property to essentially determine the future of a block or block face."[72] By the mid-1980s, a handful of investors had acquired most of the land in State-Thomas. Thomas Lardner, the executive vice president of the Lehndorff Group, alone purchased thirty acres, or about twenty percent of the land in State-Thomas. Other major landholders included the Commodore Savings Association,

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[71] Bedell, "Developers Take Block of History," February 10, 1985; U.S. Census Bureau, "Total Population: Black, 1990."

[72] Department of Urban Planning, State-Thomas: A Neighborhood Study, January 1979, 9, folder: State Thomas Paper 1, Box 1, J.B. Barentine III, Manuscript Collection, DPL. The Department reported that the State-Thomas boundaries encompassed 146.91 acres of land, though 48 acres consisted of public and semi-public land, including cemeteries and parks.

a thrift institution from Oak Lawn, and Gerald Stool, a local investor and largest shareholder of Commerce Savings Association.[73]

By acquiring large tracts of land, investors gained the power to decide for themselves what sort of neighborhood State-Thomas would become. But in fear of a downturn in the real estate market, they hesitated to begin developing the land. In 1985, the landowners hired an architecture firm, RTKL Inc., to develop a coordinated plan for developing a new residential community for 15,000 or 20,000 people, as well as restaurants, offices, and parks.[74] But they were constrained by the costs of development, and were unsure whether they could attract white professionals who had never lived downtown.[75] They needed to lay new streets, build parks, and install street lighting, all of which would cost $14 million. As projected costs escalated, investors worried that homebuyers and renters would not pay the prices necessary to cover the cost of development.[76] Meanwhile, the savings and loan crisis of the 1980s also triggered the collapse of local real estate markets. In 1987, real estate market analysts projected that the volume of new housing sales in Dallas would fall by 25 percent, decreasing demand for any new housing in State-Thomas. The economic downturn compounded these

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[73] Steve Brown, "State-Thomas Owners Plan Residential Units –Development Idea Gets Good Reception," *Dallas Morning News*, October 9, 1985; Steve Brown, "Partnership Buys More than 5 Acres Near Downtown," *Dallas Morning News*, November 7, 1984; Allen Pusey, "Vernon Sues Dallas Developers, San Antonio Thrift," *Dallas Morning News*, July 14, 1987.
[74] Brown, "State-Thomas Owners Plan Residential Units"; "Partnership Buys More than 5 Acres Near Downtown."
[75] See, for example, Alexander Cooper, Housing and the Future of Downtown Dallas: A Report to the Dallas Central Business District Association, Inc., March 1975, Box 5, Collection 06-001 Planning Department, 1966–1990, DMARC.
[76] Henry Tatum, "Testing Dallas' Housing Goals," *Dallas Morning News*, May 21, 1987; Maggie Rivas, "Economist Says Area Still Awaiting Upturn," *Dallas Morning News*, November 11, 1987.

challenges. As the *Dallas Morning News* reported, "[T]he ambitious development project may have to remain on the shelf during these tough economic times." But, as the reporter also noted, the project might survive if "city officials are willing to provide assistance through tax incentives."[77]

To turn a profit, investors needed the city's help. In effect, the economic downturn of the late 1980s shifted authority from private investors to city officials. While the city maintained some influence over neighborhood development through its zoning code and development approvals process, investors could design the community as they wished.[78] Once investors realized that they could not execute their vision, the city had an opportunity to extract concessions from developers in exchange for financial assistance.

City leaders wanted to build residential communities near the central business district to support an expanded retail sector, new entertainment venues, and restaurants. New cultural and consumer ventures would survive only if a large, affluent population lived nearby.[79] Yet, by forming the Housing Finance Corporation, as well as commissioning studies on Dallas's public housing, city officials also evinced some concern for the shortage of low-income housing. In State-Thomas, the city could require that developers include low-income housing, a measure that would perhaps allow some displaced residents to return to their neighborhood. The city had an opportunity to remedy the displacement of Dallas's oldest African American community, but it failed to

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[77] Tatum, "Testing Dallas' Housing Goals"; Rivas, "Economist Says Area Still Awaiting Upturn."
[78] On the city's policies for reviewing and approving proposals for development projects, see Dallas Office of Development Coordination, Dallas Development Guide, 1988, folder: Dallas Development Guide 1988, Box 96-010 to 96-015, Collection 96-014, DMARC.
[79] Tatum, "Testing Dallas' Housing Goals," May 21, 1987.

act. Property owners in State-Thomas, as well as central business district boosters, urged the city to support the area's redevelopment, and the City Council caved, approving a tax increment financing plan that imposed few restrictions on developers.

The idea for using TIF in State-Thomas originated with a local land-use attorney, Susan Mead. Mead had begun her legal career as a preservationist. She successfully represented neighborhood organizations in the late 1970s in their efforts to block the city's development of a parkway that threatened downtown neighborhoods. Her success soon attracted corporate clients, and by the 1980s Mead shifted her practice to represent developers, though she still dedicated some of her pro bono work to representing neighborhood organizations. She had played an instrumental role in convincing the city to establish the State-Thomas historical district. In the mid-1980s, property owners in State-Thomas hired Mead's firm to develop financial strategies to support their redevelopment plans, which included a new light-rail transit station. Mead became convinced that the redevelopment plan required a large, comprehensive TIF package, and worked with city officials to create it.[80]

The developers had powerful allies. The *Dallas Morning News* ran editorials trumpeting the virtues of TIF. The policy would not work like other "giveaway programs," the *News* asserted. The investment would pay for itself: it was "set up to

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[80] Whitley, "The Deal Maker," July 12, 1987; Uptown Transit, Public Improvement Districts, Reinvestment Increment Financing Districts, Submitted by Property owners in Uptown and State-Thomas, Prepared by Susan Mead and Connie J. Miller, Draft July 18, 1985, folder: State Thomas Paper 2, Box 1, J.B. Barentine III, Manuscript Collection, DPL.

assure repayment for the municipal government's investment."[81] In 1988, the largest landholder in the area, Lehrnoff Group's Thomas Lardner, worked with the Central Dallas Association to commission yet another study on downtown housing. The report, paid for by Lehrnoff Group and other State-Thomas investors, showed that over 15,000 employees in the central business district wanted to live closer to work. But only 453 were willing to pay rent over $1.15 per foot, the rate developers needed to cover the costs. The report suggested that this might prevent developers from turning a profit. As Lardner concluded, the city would need to shoulder some of the investment risk for developers to proceed. Meanwhile, the $1.15 per foot rent threshold suggested that the developers had no intention of serving low-income households without deep government subsidies.[82]

In 1989, after approving a preliminary plan for a TIF district, the City Council appointed a board of directors for the State Thomas Tax Increment Financing District. The director, Mark Sinclair, had served as vice chairman of the Economic Development Advisory Board.[83] The State Thomas TIF Board of Directors called for a $20 million improvement plan, which included $14.4 million in tax increment funds. The District covered upfront development expenses using multiple sources. First, to cover initial

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[81] "State-Thomas Plan – Tax-Increment Financing Could Revitalize Area," *Dallas Morning News*, December 11, 1988; "State Thomas Plan – Tax Incentives Will Reap Big Dividends," *Dallas Morning News*, December 18, 1988.

[82] Sally Giddens Stephenson, "The Downtown Intown Uptown Housing Boom is Here at Last Really," *D Magazine*, August 1995; David Dillon, "The State of State-Thomas," *Dallas Morning News*, December 25, 1988. The $1.15 per square foot rent threshold in 1988 is approximately equivalent to $1,700 per month for a 700 square foot unit or $1,200 per month for a 500 square foot unit in current dollars.

[83] George Rodrigue, "Council Makes Appointments to City Panels," *Dallas Morning News*, August 15, 1985.

improvements, the Dallas Public/Private Partnership Fund would extend a "bridge loan" to the TIF District, a balance the district would repay as the city drew in tax increment revenue. The City Council established the Public/Private Partnership Program in the same meeting that it created the TIF District. The Program allowed city agencies to fund projects that resulted in "residential development of an urban character" in neighborhoods surrounding the central business district. Second, because city planners anticipated that it would take four years for the district to generate any tax increment revenue, the City financed all additional improvements using revenue bonds or other debt instruments.[84]

The TIF plan reserved the central blocks of State-Thomas for development of a mixture of low, mid, and high-rise residential buildings. It estimated that the influx of 4,000 new households would create a demand for roughly 93,000 to over 140,000 square feet of "convenience and specialty retail."[85] Planners dedicated the eastern fringe of the district, lining the Woodall Rogers Freeway, a major thoroughfare that carried traffic into the central business district, for the development of mid to high-rise office and commercial buildings, as well as a large park. The commercial and retail developments would serve as a buffer between the residential developments and freeway traffic.[86]

In its market assessment, the Board of Directors recognized that "a large segment" of households interested in living near downtown "usually cannot afford the

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[84] State-Thomas Tax Increment Financing District: Project and Financing Plan, 1989, v, 3, folder: State Thomas Tax Increment Financing District 1989, Box 1991-127, Collection 1991-127 Housing and Neighborhoods, DMARC.
[85] Ibid., 18–19.
[86] Ibid., 13.

rental rates of new downtown/intown residential units." The Board regarded TIF as an intervention that would help developers begin building in the area. The plan was silent on the cost of new housing. A zoning scheme offered a "bonus" for higher density projects to encourage the construction of low and moderate-income housing, but the Board never set standards for low-cost units.[87]

The Board wanted to attract wealthy residents to State-Thomas. If the new commercial developments were to survive, the new residents needed to have the means to not only afford the cost of rent, but also to spend on local retail. The Board believed that the market for housing in State-Thomas consisted of young professionals, mid-aged single adults, and empty nesters. Planners imagined a new type of neighborhood, inhabited by professionals who had no immediate plans of raising families, or whose parenting days were already behind them. While marketing studies suggested that most interest in the neighborhood would come from downtown employees, they believed that, factoring in income qualifications, demand for the new housing would amount to only five to seven percent of this group. Planners envisioned State-Thomas as a home for a wealthy segment of Dallas's downtown workforce. The neighborhood's current and former residents figured nowhere in the Board's analysis.[88]

The city's plan for financing TIF bonds hinged on the assumption that new development would increase land value. The Board based its projections on market analysis provided by a consulting firm, Robert J. Harmon & Associates, and the largest investor in State-Thomas, the Lehndorff Group. Based on a draft development schedule

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[87] Ibid., 11, 18.
[88] Ibid.

that assumed a minimum volume of residential and commercial construction, the Board expected land values to appreciate by twelve percent each year following the initial five-year phase of the development plan. Phase I, called for private developers to produce 688 residential units and 10,808 square feet of retail space. The city planned to use bridge loan funding to help developers improve water and sewer systems, bury utility lines, expand streets, and lay new sidewalks. Planners anticipated that after Phase I, land value appreciation would fall to an annual rate of eight percent, and fall again to four percent for the last five years of the TIF. The Board expected taxable property value to increase by $722 million during the 20-year program. In addition to the city's bridge loan, city officials funded the infrastructure investments by selling municipal bonds, and committing the district's increased land value to service the bonds.[89]

The City could not develop an inclusive community using its financing plan. To minimize risk, it needed developers to produce commercial and residential properties that increased property value. With the State-Thomas plan being Dallas's first use of TIF, city officials were afraid to impose restrictions that would deter investors. Without private development, land values would remain stagnant, and the city would realize no tax increment revenue to cover the costs of its bridge loan and TIF bonds. City officials would then need to either default on its bonds or divert general tax revenue to pay off its debts. The city thus gave investors what they wanted and imposed no requirement for affordable housing development.

[89] Ibid., 33-36, 39–40.

Following on the heels of State-Thomas, the City Council approved a second TIF district for an adjoining neighborhood, known as Cityplace, in 1993. In the 1980s, the neighborhood largely fell under the control of a private investor, Southland Corporation, which was the parent company to the nationwide convenience store chain 7-Eleven. In the 1970s and 1980s, Southland acquired over 1,000 parcels which spanned over 238 acres. The corporation purchased the property with plans to build a high-rise office building to serve as a new corporate headquarters, and develop a residential and commercial enclave on the land surrounding its office complex. In the late 1980s, however, the economic downturn that stalled development in State-Thomas, along with a leveraged buyout of shareholders that left the corporation saddled with an unmanageable debt burden, brought Southland's plans to a halt. Southland completed construction of its offices, and cleared most of surrounding land, but soon entered bankruptcy. As part of its restructuring, Southland sold most of the property surrounding its office to Oak Creek Partners.[90]

The Cityplace TIF served a similar purpose as the State-Thomas TIF. The Cityplace Board recognized that Dallas faced declining land values and taxes, but also increased demand for city services. The revitalization of the Cityplace neighborhood would "create additional employment opportunities in this ethnically and economically diverse area," bring "much needed residential and retail services to this inner city

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[90] Henry Tatum, "A Different Kind of War Zone," *Dallas Morning News*, August 23, 1987; Steve Brown, "Southland to Sell Off Much of Cityplace, Rent Tower Space," *Dallas Morning News*, August 15, 1987; Gary Jacobson, "Private Lessons: Southland Chief Bemoans Buyout Process But Envisions Renewed Growth for Firm," *Dallas Morning News*, June 11, 1989; Cityplace Area Tax Increment Financing District: Project & Financing Plan, July 14, 1993, 9, folder: Cityplace 1993, Box 1996-007, Collection 1996-007 Housing and Neighborhoods, DMARC.

neighborhood," and "enhance the growth of the Central Business District and the City's core." New housing was critical to this revitalization, the Board believed that a TIF subsidy would attract investors.[91]

As in State-Thomas, the city's financial assistance plan did little to support low income households. In assessing demand for housing in Cityplace, the market research firm M/PF Research focused largely on whether high-income households living throughout Dallas County, and professionals working downtown, were interested in living near downtown. The study, according to the Cityplace TIF Board, "reveal[ed] a large volume of potential renters for downtown apartments with substantial rents." But according to M/PF's analysis, new construction of any type would hardly be feasible for households earning less than $40,000 per year. The greatest area of demand for downtown apartments came from households earning under $40,000, with most demand from households earning less than $30,000. Yet, analysts believed that developers could not realize a profit by designing housing affordable in that income range.[92] To enable developers to construct housing for affluent families, retail centers, and new office

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[91] Sherry Jacobson, "Phase 2 of Cityplace Planned," *Dallas Morning News*, February 7, 1987; Cityplace Area Tax Increment Financing District: Project & Financing Plan, July 14, 1993, 8–9, folder: Cityplace 1993, Box 1996-007, Collection 1996-007, Housing and Neighborhoods, DMARC.

[92] Cityplace Area Tax Increment Financing District: Project & Financing Plan, July 14, 1993, 26; M/PF Research Study, 3–5, Appendix 3 to Cityplace Area Tax Increment Financing District: Project & Financing Plan, July 14, 1993, folder: Cityplace 1993, Box 1996-007, Collection 1996-007, Housing and Neighborhoods, DMARC. M/PF projected a demand, based on households' reported "preferred product." Of households earning under $30,000, M/PF estimated demand of 4,100 households for loft style apartments, 2,600 for garden style homes, 700 for mid-rise apartments, and 1,800 for high-rise apartments. For households with income between $30,000 and $39,999, M/PF estimated demand of 2,700, 1,500, 700, and 500 for each respective type of unit. For households earning $40,000 to $59,999, demand fell to 2,700, 1,300, 1,500, and 1,000 households for each respective type of unit. Estimated demand continued to fall or each type of unit as household incomes increased.

buildings, the city agreed to fund $23.4 million in infrastructure improvements using projected tax increment revenue.[93] Despite the Board's rhetoric suggesting that the TIF plan would bring employment and housing to sustain a "diverse" community, the plan presented no formal controls to ensure either the hiring of community members or the production of a meaningful number of affordable units. As African American residents in *Walker* litigated the government's discriminatory public housing program, the city was helping developers construct a downtown housing market for wealthy white households.

IV.

Dallas's housing investment policies also shaped redevelopment in West Dallas. In the *Walker* lawsuit, as Chapter 6 explained, African American plaintiffs asserted in a class action that the city and the DHA had violated the Fair Housing Act by developing public housing primarily in predominantly black areas of the city. The litigation concerned the geography of Dallas's public housing program, and at the outset sought to deconcentrate low-income housing by creating opportunities for African American households in West Dallas to live in other areas of the city. Over the life of the case, however, the core legal questions shifted from liability—whether, for example, the city of Dallas was responsible for the DHA's violations of the Fair Housing Act—to remedies.

In 1990, Judge Buchmeyer held the City of Dallas liable for the DHA's discriminatory housing development policies. As Judge Buchmeyer and the parties

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[93] Ibid., 32; Memorandum from Dennis B. Martinez, Director, Economic Development Department, to Members of Cityplace Area TIF District Board, July 14, 1993, printed in Cityplace Area Tax Increment Financing District: Project & Financing Plan, July 14, 1993, folder: Cityplace 1993, Box 1996-007, Collection 1996-007 Housing and Neighborhoods, DMARC.

attempted to frame a remedial plan, the lawsuit turned into a referendum on the revitalization of West Dallas. The plaintiffs hoped to deconcentrate public housing. They proposed a settlement that called for the city to demolish the 3,500 units of public housing, which the court ultimately approved. The settlement raised important questions about the future of West Dallas. Alphonso Jackson, executive director for the DHA in 1989, believed the fate of the housing development was settled: "demolition and replacement." What would happen after demolition, however, was less certain. As he added, "The issue is: Where do we go from here?"[94]

Well before the *Walker* litigation began, city officials had begun considering redevelopment options in West Dallas. In 1983, a city task force on housing suggested that the neighborhood's deteriorating housing stock strained the Dallas Housing Authority's operations and recommended that Dallas apply for a HUD Urban Development Action Grant for new development. The HUD program, reserved for distressed neighborhoods, provided grants for activities designed to draw private investment. The committee also recommended tax increment financing "as a mechanism for improving the infrastructure associated with West Dallas projects."[95]

A year later, real estate consultants hired by the housing authority argued that West Dallas was ripe with opportunity for new investment. They borrowed from architect and city planner Oscar Newman, whose 1972 landmark study *Defensible Space* reasoned

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[94] Craig Flournoy, "Complex Negotiations: Officials Try to Resolve Future of West Dallas Public Housing," *Dallas Morning News*, October 29, 1989.
[95] City of Dallas, Report of the Task Force on Public Housing, January 1983, 29–32, folder: Report on the Task Force on Public Housing, Box 95-011, Collection 95-011, Dallas Municipal Archives and Records Center, Office of the City Secretary (DMARC).

that architectural design could deter crime by providing residents with a sense of ownership of place. The DHA's consultants found that the "design" of West Dallas housing developments contributed to the DHA's management problems. Configured in "unbroken domino like rows" along a north-south axis, the units created a sense of isolation. The arrangement "provides no defensible space, heightens the residents['] perception of 'no mans land,' and reduces resident care for the exterior space of the projects," the consultants argued. They added:

> The building facades are monotonous, making spatial orientation difficult. The facades do not suggest residences, but rather some institutional use. Fifty percent of the roofs are flat and typical of institutional buildings. . . . The ends of the buildings, which are the only parts which face streets, are windowless and blank. There are no porches to distinguish clearly between back yards and front yards.[96]

By redesigning the physical environment, planners hoped to reduce crime rates, and attract higher-incomes households to West Dallas.

The DHA needed to make housing units "look and function more like private-sector, moderate-income apartments in the Dallas area," and "integrate small, single-family houses typical to West Dallas among the multi-family units." New multifamily housing would involve a mixture of short, long, and L-shaped block housing, with courtyards providing a stronger sense of place. The consultants advised that the city establish a "Town Center" featuring "all the civic and commercial uses of a traditional

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[96] Carter & Burgess, Inc., Peterson Littenberg Architects, Real Estate Research Corporation, Selzer Associates / Selzer-Volk-Borne, Dallas Housing Authority, A Plan for the Rebuilding of the West Dallas Housing Projects, 1984, 16, Box 6, James Hart, Dallas City Council Papers, DPL. On defensible space theory, see Oscar Newman, *Defensible Space: Crime Prevention Through Urban Design* (New York: Macmillan, 1972); Oscar Newman, *Design Guidelines for Creating Defensible Space* (Washington, D.C.: U.S. Department of Justice, 1976).

small downtown or suburban shopping center."[97] They advised improvements to a nearby body of water known as Fishtrap Lake, to establish a recreational space, "visual amenity," and a drainage site.

These proposals would be costly, and as a result, the plan left little room for preserving public housing. Rather, it called for the DHA and the city to demolish and rebuild housing in West Dallas. The plan unrealistically assumed that HUD would cover rehabilitation costs of what little public housing would be preserved. Tax-exempt municipal bond financing would support new housing, which suggested that it would serve moderate and high-income families. Tax-increment financing would fund most other aspects of the plan.[98]

A year after the DHA's consultants issued the plan for West Dallas, public housing tenants initiated the *Walker* lawsuit. In reaching a settlement with the *Walker* plaintiffs, the city and the DHA adopted many of the consultants' recommendations. It also turned to revitalization programs that City Council approved in 1982 following the Economic Development Advisory Board's study. Fiscal austerity left the city and plaintiffs little choice but to accede to a plan that hinged on private redevelopment of public housing sites in West Dallas. The *Walker* settlement relied on privately funded bonds and the independent work of local developers. Decades of redevelopment activity financed through private spending had normalized those practices in community revitalization projects.

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[97] A Plan for the Rebuilding of the West Dallas Housing Projects, 31, 38, 55–57.
[98] Ibid., 78–79, 87–88.

City and DHA officials negotiated the *Walker* settlement in a resource-scarce environment. Even where the authority of a federal judge had potential to override political pressures, litigation over public housing in Dallas indicated that shifts in federal urban policy had in some respects curtailed the power of the judiciary. A settlement—or even a remedial order from the court—could be effective only to the extent that it could be implemented. Judge Buchmeyer and the *Walker* plaintiffs had to respect the fiscal limitations of local government and shape remedies within the confines of existing federal and local programs.

The DHA had earlier entered a consent decree with the *Walker* plaintiffs. With the court in 1990 holding the city liable for the *Walker* plaintiffs' alleged injuries, Dallas officials negotiated a separate settlement with the plaintiffs.[99] The final agreement required the city to fund public housing demolition and neighborhood redevelopment. In total, the city agreed to commit up to $118.7 million for improvements in and around public housing sites. For West Dallas, the city's primary obligation was to establish a $3 million contingency fund in case federal law prevented HUD from paying for the demolition of public housing.[100] More generally, the city agreed to improve the conditions of preserved public housing developments and nearby neighborhoods in West Dallas. The city promised to provide on-site policing in public housing communities, job

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[99] Consent Decree, Walker v. U.S. Dep't of Hous. & Urban Dev., CA 3-85-1210-R, 3-8 (N.D. Tex. Sept. 24, 1990), Box 10, Collection 2016-007, DMARC.
[100] Consent Decree, Walker v. U.S. Dep't of Hous. & Urban Dev., 85-cv-1210, 17 (N.D. Tex. Sept. 24, 1990), Box 10, Collection 2016-007, DMARC; Jan Hart, City Manager, to Officials, Employees, Boards and Commissions Involved in Housing and Community Development Activities, October 25, 1990, printed in Consent Decree, Walker v. U.S. Dep't of Hous. & Urban Dev., 85-cv-1210, 17 (N.D. Tex. Sept. 24, 1990), Box 10, Collection 2016-007, DMARC.; .

training and placement services, support for new retail developments, and new recreation facilities. It agreed to allocate over $2 million to improve sidewalks and finance home improvements and repairs in West Dallas.[101] As City Housing Compliance Director Harry Jones wrote, the agreement afforded the city "an opportunity to demonstrate that coordinated government action can make a difference in addressing housing and neighborhood needs."[102]

The consent decree also facilitated the growth of private enterprise near public housing throughout Dallas. The city agreed to direct the resources of the Southern Dallas Development Corporation to neighborhoods surrounding predominantly African American public housing developments in South Dallas.[103] The commitment did not call for the Corporation to do much more than continue its efforts to extend loans and technical assistance to small businesses.[104] It imposed general requirements on the city to enact zoning legislation and adopt other incentives to encourage "the private sector" to develop housing in "non-minority concentrated areas" that would be affordable to public housing tenants.[105] The city also promised provide tax abatements, tax increment

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[101] Ibid., 16 (§ 5.13), 29–30, 43–44. On the Dallas Target Neighborhood Program, see Kevin Caston, "Residents Seek to Get Involved," *Dallas Morning News*, June 29, 1993.
[102] Harry L. Jones, City Housing Compliance Director, to Employees and Members of the City Boards, Commissions and Committees, October 24, 1990, printed in *Walker* Consent Decree, Box 10, Collection 2016-007, DMARC.
[103] Consent Decree 11–12, Walker v. U.S. Dep't of Hous. & Urban Dev., 85-cv-1210 (N.D. Tex. Sept. 24, 1990), Box 10, Collection 2016-007, DMARC.
[104] Ibid., 23–24.
[105] Ibid., 5–6 (§ 3.5).

financing, and infrastructure assistance for Southern Dallas businesses, which city planners believed would create up to two hundred new jobs in the area.[106]

The city's consent decree resembled the redevelopment model the DHA's consultants proposed for West Dallas in 1984. For example, it required the city to improve Fish Trap Lake, installing a drainage channel and numerous "artistic enhancements": a footbridge, observation deck, an "island with a picnic area in the lagoon," hike and bike trails, sculptures, landscaping, and a "dance pavilion and fishing pier on the north shore."[107] The plan's centerpiece was housing demolition, paired with cosmetic improvements to surrounding properties. The decree left open the possibility that DHA and the city could retain 1,200 or more units in West Dallas if HUD provided adequate modernization funding.[108] But HUD's tentative plans to build 2,000 new units in West Dallas cratered in the early 1990s, sunk by allegations that the project would reproduce civil rights violations.[109]

Instead of systematically developing new affordable housing, the city dispersed West Dallas tenants using Section 8 vouchers. In 1994, the DHA began tearing down public housing in West Dallas. HUD Secretary Henry Cisneros participated in the symbolic moment, traveling to the city and taking a crowbar to one of the complex's brick walls. DHA ultimately demolished all the units. Not until 1998 did the city open

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[106] Ibid., 27–28.
[107] Ibid., 38.
[108] Ibid., 12–15 (§§ 5.1–5.3)
[109] See Craig Flournoy, "Public Housing, Private Dealing: Plan for W. Dallas Project Involved Secrecy," *Dallas Morning News*, May 10, 1993; Randy Lee Loftis, "New Project, Old Problems: Segregation, Lead Taint $67 Million Housing Plan, but Backers Defend Project as Good for Dallas," *Dallas Morning News*, May 9, 1993.

new affordable housing units on the land left vacant. The new housing amounted to 750 units of public housing apartments and townhouses, and 200 privately owned single-family homes. The volume of new development paled in comparison to the 3,500 units lost to demolition, and to the number of vouchers DHA issued to relocate households. The population of the census tract surrounding the demolished project fell by forty-three percent during the 1990s.[110]

The settlement prioritized cosmetic improvements to West Dallas that were designed to attract private investment. By 1994, the city had spent $55 million under the *Walker* Consent Decree. $15 million of that sum came from the city's budget of current funds, which the city placed in a consent decree trust fund. $23.7 million came from its Capital Improvement Program funds. The remaining $17 million came from Dallas's Community Development Block Grant award, in effect rerouting federal aid from general community development activities towards implementation of the *Walker* settlement.

The city directed the bulk of these funds towards community policing and capital improvements. City officials spent roughly half of the $15 million trust fund on expanding police services at neighborhood assistance centers, and just $2 million of it on housing development. Infrastructure spending also outweighed investment on affordable housing. From its capital improvement program, a fund financed largely with general obligation debt, the city invested bond revenue in infrastructure improvements, including

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[110] See Walker, et al vs. HUD, et al Quarterly Report No. 48, July 1 2002 thru September 30, 2002, 9–10, Box QR # 42–4, Collection 2016-007, DMARC; Craig Flournoy, "Demolition Begins at W. Dallas Project: Cisneros Callas Plan a National Model," *Dallas Morning News*, July 14, 1994; Craig Flournoy, "New Homes Taking Root in Old W. Dallas Project," *Dallas Morning News*, July 17, 1998; Sherry Jackson, "Quiet Success: Amid Public Housing Wars, Vouchers Give Families Fresh Start in Middle-Class Areas," *Dallas Morning News*, May 17, 1998.

$2.5 million for improvements to the Fishtrap Lake drainage system, $3.2 million towards street reconstruction, $8.5 million for improvements to the Rochester Area Levee, $4 million for curb, gutter, and sidewalk improvements.[111]

As the DHA constructed a few hundred public housing units throughout the decade, developers wiped away the neighborhood's history, just as they did in State-Thomas. The *Dallas Morning News* noted that "buildings of the past had names such as Edgar Ward Place, in honor of a black physician." The new developments bore "names such as The Hamptons at Lakewest and Lakeview Townhomes," connoting "upscale living." By renaming residential spaces, planners erased the neighborhood's history, and simultaneously pointed a new way forward for West Dallas—towards a space that adhered to standards of white middle-class comfort.[112] West Dallas, a neighborhood located close to the city's central business district, shed markers of its African American past, and what planners considered symbols that detracted from its image.

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Soon after the City Council approved the State-Thomas and Cityplace TIF districts, investors launched residential projects that set the tone for future redevelopment

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[111] City of Dallas, 1993–94 Annual Budget, 47–54, August 9, 1993, Box 4c523b, Bartlett (Steve) Papers, BCAH. As the city reported in 1994, ninety-one percent of its capital budget derived from general obligation bond funds, with the remaining nine percent derived from an equal division of capital equipment funds, interest, and capital construction funds. See City of Dallas, Capital Budget for the Fiscal Year 1993–94, August 9, 1993, i, Box 4c523b, Bartlett (Steve) Papers, BCAH.

[112] Kim Horner, "A New Way of Life: Residents Welcome Update of West Dallas Public Housing," *Dallas Morning News*, August 30, 2001. For a study documenting similar practices adopted in Chicago, see Deirdre Pfeiffer, "Displacement Through Discourse: Implementing and Contesting Public Housing Redevelopment in Cabrini Green," *Urban Anthropology and Studies of Cultural Systems and World Economic Development*, 35, no. 1 (2006), 49–57.

in these districts. After sitting on vacant property for over a decade, the Lehndorff Group completed its first project, called the Meridian, in April 1991. The Lehndorff Group partnered with a Dallas developer, Memphis Real Estate Inc., and the subsidiary of a Japanese construction company, Sumitomo Construction Co., to complete the project. The Meridian was a four-story building, with 130 apartments, conceived as a test run to see if rental units would sell. With rents of $600 to $1,250 per month, the developers pre-leased ninety percent of all units before its opening, and quickly reached full occupancy. A few months later, the same partners broke ground on an eight-story apartment complex with 399 units. A partner at Memphis Real Estate hoped to establish a "critical mass" of new State-Thomas residents, which he believed made the neighborhood more attractive, thus increasing demand for new units. To accompany the Meridian, the Lehndorff Group also planned a 250-unit complex on a neighboring lot.[113]

The Meridian's promotional material captured the type of tenants developers hoped to attract. According to a press release, "The typical resident wants to have a measurable impact on the cultural and social life in his or her community." This resident was "someone who seeks an urban rather than a suburban lifestyle—a young professional in his or her early thirties who works downtown and whose annual income exceeds $60,000"—a salary of over $109,000 in 2017 dollars. To draw this crowd, the Meridian invoked "a classic European urbanism," though of a walled-off, insular design. An architectural critic depicted the building's façade as "post-card pleasant, with a bit of

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[113] "Downtown Housing: State-Thomas Project Offers Bright Promise," *Dallas Morning News*, April 16, 1991; Steve Brown, "State-Thomas Expansion Set: Strong Apartment Demand Cited," *Dallas Morning News*, April 16, 1991; Steve Brown, "Memphis, Japanese Team Up on State-Thomas Apartments," *Dallas Morning News*, July 2, 1991.

Paris here, a touch of Vienna or London there, and nothing to startle or confuse prospective residents, for whom moving into State-Thomas may already seem like an interplanetary expedition."[114]

More adventurous architecture soon followed. Memphis Real Estate's second project in State-Thomas, according to a critic, had greater "ambition." Rather than looking inward, the Worthington had a more urban feel. The building abutted the sidewalk, rather than being set back and walled off from the street, and offered space for retail businesses. Residents could enjoy an interior courtyard and a large swimming pool.[115] In 1993 the developer Trammel Crow designed a 112-unit project with rents starting at $820 per month. The units were "very comparable in size and quality to a single-family home."[116] At the close of the 1990s, a Florida real estate investment trust, Gables Residential Trust, acquired a twenty-acre swath of State-Thomas and broke ground on a development of 177 townhomes spanning five blocks. Gables priced the units at $2,000 per month. The design, explained the trust's regional vice president, "mimick[ed] high-end single-family homes." Gables was worried about overbuilding in the area. By offering an apartment design "unlike others in the neighborhood," they hoped to ensure a market for their new development.[117]

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[114] David Dillon, "State-Thomas Renewal: New Project Creates Potential For Urban Area," *Dallas Morning News*, April 28, 1991.
[115] David Dillon, "A Bright Spot in State-Thomas: The Worthington is Refreshingly Urban," *Dallas Morning News*, November 29, 1992.
[116] Steve Brown, "Crow Group to Build 400 Rental Units," *Dallas Morning News*, May 31, 1993.
[117] Steve Brown, "Gables Building Uptown Luxury Units," *Dallas Morning News*, February 4, 2000.

As residential projects filled up vacant lots, the population in State-Thomas grew and changed. The 1990 Census recorded a population of 433 in State-Thomas, only 143 of whom were African American. By 2000, the population rose to 1,870, and just 125 residents were African American. Eighty-seven percent of residents were white. Median household income, a figure that captures unmarried adults living alone, reached $57,000. Families, who represented only fifteen percent of the new population, earned a median income of over $100,000.[118]

While developers and city officials celebrated the transformation of State-Thomas, others lamented it. Journalist Bill Minutaglio noted the city's role in enabling the neighborhood's decline through the 1980s. The city had "let modest State-Thomas wither till it was ready for plucking by the developers." For all their accomplishments, the TIF district and the new apartment complexes were "small comfort for the poor who used to live in State-Thomas." The writer asked: "But where were the city and private money when the original residents of State-Thomas—the descendants of freed slaves—wanted street signs, sewer systems and newly planted trees around their simple homes?" The city's investment in sewers, landscaping, and signage served a different class of residents. Despite the formation of a historic district, "The true spirit of old State-Thomas was not preserved."[119]

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[118] U.S. Census Bureau, "Total Population: Black, 1990"; U.S. Census Bureau, "Total Population: Black, 2000"; U.S. Census Bureau, "Total Population: White, 2000"; U.S. Census Bureau, "Income: Median Family Income, 2000"; U.S. Census Bureau, "Income: Median Household Income, 2000." Individuals living alone, or with nonrelatives, composed about 85 percent of the State-Thomas population in 2000. U.S. Census Bureau, "Family Structure: Households, Nonfamily Households, 2000."
[119] Bill Minutaglio, "The Big Fix-Up," *Dallas Morning News*, June 23, 1991.

The apartment projects in State-Thomas lent credibility to the idea that the city could rejuvenate the downtown by subsidizing private developers and investors. As the *Dallas Morning News* argued in its editorial pages, "The success of State-Thomas should be an incentive for city officials to keep pursuing other ways to encourage residential and retail development in the downtown area. Consultants already have identified the West End Historic District, the Farmers Market, and Deep Ellum as potential areas for downtown housing."[120] As the City Council mulled over the possibility of establishing the Cityplace TIF district in 1992, the *News* noted that TIF enabled the "resurgence" of State-Thomas. TIF, the paper argued, could bring "even more positive results in Cityplace," a project that offered "a critical link to inner-city revitalization."[121]

Tax increment financing became integral to Dallas's revitalization strategy. By the early 2000s, large swaths of the city, including the central business district, fell within the boundaries of TIF districts. Those districts replaced federal funding without remedying the injustices of urban renewal and public housing. They opened new neighborhoods to affluent households at great cost to the people who lived there in the 1970s. Through TIF districts and the Housing Finance Corporation, the city subsidized speculative revitalization projects. It provided aid to private developers and investors while doing little to help poor families.

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[120] "Downtown Housing: State-Thomas Project Offers Bright Promise," *Dallas Morning News*, April 16, 1991.
[121] "Cityplace: Best Financial Path is Tax District," *Dallas Morning News*, September 9, 1992.

Chapter 8

Marketing Dallas: Law-and-Order Governance, Economic Development, and the Symbolic Economy

As the 1970s drew to a close, a growing number of Americans spent their nights on sidewalks, in parks, and under highway overpasses.[1] The rise in homelessness in Dallas presented city officials with difficult political choices. Members of City Council seemed never to have met in person with any members of Dallas's homeless population, and had never visited any of the encampments that grew throughout the 1980s. Just one reporter for the *Dallas Morning News*, Jonathan Eig, bothered to visit an encampment located beneath the onramps to highway I-45 on the eastern edge of the downtown. Mr. Eig observed that "the city officials, business leaders and motorists who view the shantytown from a safe distance don't see some of the secrets that reside beneath the steel and concrete and constant pounding of tires." This was a "place of unexpected order, a place where clothes and food are neatly stacked on shelves, where the residents say theft is virtually unheard of and where residents have forged their own sets of rules for survival." Eig described a community in which people took turns standing guard, and helped one another find food and other necessities. As one man told Eig, "Out here,

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[1] For studies examining potential causes of homelessness published in the late 1980s and early 1990s, see Peter H. Rossi, *Down and Out in America: The Origins of Homelessness* (Chicago: The University of Chicago Press, 1989), 181–211; Martha R. Burt, *Over the Edge: The Growth of Homelessness in the 1980s* (Washington, D.C.: The Urban Institute Press, 1992), 162–198; Brendan O'Flaherty, *Making Room: The Economics of Homelessness* (Cambridge: Harvard University Press, 1996); Christopher Jenks, *The Homeless* (Cambridge: Harvard University Press, 1994).

people look out for me, ask me if I got something to eat, save me a plate if I miss dinner." The village even adopted "makeshift zoning regulations": the inhabitants had established discrete "neighborhoods," with separate gathering places for those who drank, others who used drugs, individuals who abstained and rose early for work, elderly people, and people with mental disabilities.[2]

City officials missed this. Many equated homelessness with crime and social disorder. Council member Dr. Charles Tandy described driving to church one Sunday when he passed a large encampment near downtown, which, in his words, looked "like a Third World country." He saw that "a guy was standing outside his shack urinating in front of God and everybody." Disturbed, Dr. Tandy decided that something needed to be done. He asked his colleagues to pass a law ordering the removal of downtown encampments, and the Council agreed. For those living under downtown onramps and overpasses, the city's decision to drive them out came as no surprise. When Jonathan Eig visited the I-45 encampment, one man offered the reporter a succinct analysis of the political dynamic at play: "I hear they want to move the homeless away because we're making it look bad."[3]

I.

City officials worried more about Dallas's image than about homeless people themselves. Rather than fund shelters, affordable housing, or supportive services, they

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[2] Jonathan Eig, "Homeless Forge Fellowship Under Interstate 45 Bridge: Many Facing Eviction by City Don't Want to Leave," *Dallas Morning News*, May 16, 1993.

[3] Sherry Jacobson, "Homeless Enclaves Targeted: City to Remove Encampments," *Dallas Morning News*, April 16, 1993; Jonathan Eig, "Storm over Shelters: Homeless Problem Frustrates City, Providers--and Homeless Themselves," *Dallas Morning News*, November 16, 1993; Eig, "Homeless Forge Fellowship Under Interstate 45 Bridge," May 16, 1993.

criminalized the act of sleeping in public. Members of the City Council and downtown business owners alike wanted to make homelessness less visible, especially in commercial districts. The city council's aggressive action raises the question: why were city leaders so concerned that pockets of downtown Dallas might look "bad"?

Dallas's response to homelessness was just one piece of a larger effort to preserve the city's image as a business center. During the 1990s, the city adopted a broad set of policies designed to attract business investment from across the U.S. The Dallas Police Department, flush with new city funding, adopted more aggressive law enforcement tactics, especially in downtown districts. The city also invested in entertainment venues, parks, public art displays, and neighborhood revitalization projects. These shared a common motive. Facing reductions in federal aid, and unwilling to increase local tax rates, the city needed new sources of revenue. To expand the local tax base without hiking up tax rates, the city worked to convince businesses across the U.S. to relocate their managerial offices in Dallas's central business district. That meant ensuring that Dallas's downtown looked the part. As this chapter argues, city officials attempted to rehabilitate Dallas's flagging image by eradicating indices of disorder—homelessness, crime, poverty. Economic development in the 1990s hinged on the city's efforts to reclaim public spaces from extremely poor people.

Urban sociologists and historians have studied the political economy of cities under a "neoliberal" political order. However the term "neoliberal" has been defined, scholars have shown how the rise of neoliberal governance has produced a legal and political culture that germinated new architectural and planning schemes that favored

symbolism over function, inspired the privatization of public goods, eroded welfare systems, and invited increased levels of surveillance and incarceration as a means for managing burgeoning communities of poor Americans.[4] These studies, despite their insights, have not shown why "neoliberal" urban policies took hold when they did, and have not analyzed city leaders' motivations.[5] This chapter closes this gap by connecting changing modes of urban governance in the 1990s to shifts in federal policy and local economic conditions. City leaders' policies on law enforcement, social policy, and urban revitalization in the 1990s was in large part a response to municipal fiscal distress.

Cities did not pursue increasingly stringent policing tactics simply to reduce crime for its own sake, or to assert control over urban spaces to assuage generalized class-based anxieties. Rather, local leaders did so to stamp out activity in cities that they perceived as threats to the marketability of neighborhoods to commercial office tenants and urban

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[4] Jason Hackworth, *The Neoliberal City: Governance, Ideology, and Development in American Urbanism* (Ithaca: Cornell University Press, 2007); Daniel Stedman Jones, *Masters of the Universe: Hayek, Friedman, and the Birth of Neoliberal Politics* (Princeton: Princeton University Press, 2012); Mike Davis, *City of Quartz: Excavating the Future in Los Angeles* (Verso: New York, 1990); Sharon Zukin, *Landscapes of Power: From Detroit to Disney World* (Berkeley: University of California Press, 1991); Sharon Zukin, *The Cultures of Cities* (Malden: Blackwell Publishers Inc., 1995); Loïc Wacquant, *Punishing the Poor: The Neoliberal Government of Social Insecurity* (Durham: Duke University Press, 2009).

[5] The policies that Dallas officials adopted mirrored those used across the U.S. to revitalize urban centers during the 1970s and 80s. As Mike Davis has shown, Los Angeles attempted to wrest control of parks from homeless people by installing benches that could not be used for sleeping and activating sprinklers at night. Los Angeles expanded its police force and adopted more aggressive surveillance tactics. For Davis, these policies represented a "defense of luxury lifestyles." Davis, *City of Quartz*, 223. In other accounts, they represented efforts to expand tourism as a substitute for manufacturing. In Sharon Zukin's analysis of urban "symbolic economies," municipal investments in a city's aesthetic features operate largely as a function of class conflict, or "ethnic competition," in which a city's economic elite deploy symbolism to assert claims over public space. Zukin, *The Cultures of Cities,* 8–11, 265. But Davis's account falls short of explaining how an affluent minority had so much success forming consensus with political representatives who served a broader constituency. And Dallas's leaders never saw the city primarily as a center for tourism.

professionals, and to prove that they took public safety seriously. Law-and-order governance was an integral component to local urban renewal strategies designed to broaden withering municipal tax bases.[6] In analyzing the ways Dallas leaders attempted to mold the city's symbolic economy, this chapter seeks to answer two critical questions in the historiography of mass incarceration in America: why did cities become so interested in the growth of the carceral state, and why did their commitment to law-and-order governance deepen during the 1980s and 90s?

Indeed, Dallas's history presents a puzzle. City officials built a regime of punitive governance during a period when the government had fallen under the supervision of federal courts, which had specifically called for the city to remedy a half-century's worth of injustices directed at poor African Americans living in Dallas. The City Council had

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[6] Historians and sociologists have attributed the rapid expansion of the American carceral state to a range of possible factors, including the rise of a vocal and well-supported victims' rights movement during the 1970s, a growing "culture of fear" that captured the imaginations of Americans during the same period, the unique institutional features of local prosecutors' offices, which afforded prosecutors broad autonomy and discretion in charging as compared to prosecutors in other countries, and racial prejudices—and unvarnished racism—that shaped the contours of federal and state sentencing laws that targeted African Americans and other people of color. On the independence of prosecutors and connections between the victims-rights movement and feminist politics, see Marie Gottshalk, *The Prison and the Gallows: The Politics of Mass Incarceration in America* (Cambridge: Cambridge University Press, 2006). For cultural analysis of fear in American politics and its role in mass incarceration, see Roger N. Lancaster, "State of Panic," in *New Landscapes of Inequality: Neoliberalism and the Erosion of Democracy in America,* ed. Jane L. Collins, Michaela di Leonardo, and Brett Williams (Santa Fe: School for Advanced Research Press, 2008). Some scholars offer an inverted order of causation, presenting a rising "culture of fear" as a product of the war on crime. See Jonathan Simon, *Governing through Crime: How the War on Crime Transformed American Democracy and Created a Culture of Fear* (New York: Oxford University Press, 2009). On the role of federal policy in expanding the policing capacities of local governments, see Elizabeth Hinton, *From the War on Poverty to the War on Crime: The Making of Mass Incarceration in America* (Cambridge, MA: Harvard University Press, 2016). On race and incarceration, see Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (New York: The New Press, 2012). Notably, these studies have not focused on the possible relationships between urban political economy and incarceration, policing, sentencing, and the punitive turn in American governance.

also come under the control of a more racially diverse cohort of representatives. But the city's poorest citizens fared no better. The city's revitalization policies in many ways tracked the platform of the Dallas Citizens Council, which many thought had lost its political authority by the 1980s. As city officials struggled to balance two priorities—economic development and civil rights reform—they had limited financial resources to work with, and chose strategies that could attract capital. Government grew increasingly punitive, and inequalities more extreme.

II.

At the beginning of the 1990s, the Dallas Citizens Council argued: "[T]he health of the City's tax base and public perception of Dallas depend largely upon the quality of the City's physical environment." Over previous decades when Dallas experienced rapid economic growth, the Citizens Council explained, the city did not have to do much to encourage private sector growth. But with economic conditions and the city's "demographics" changing, Dallas needed to "use public planning" to stimulate private investment. The Citizens Council urged city officials to improve the "physical appearance" of the center city. Echoing arguments that city planners and consultants had advanced since the 1970s, the Citizens Council argued for "new neighborhoods in the center city" to attract and retain businesses.[7] The Citizens Council may have lost its former levers of influence over the last two decades, but this simple prescription for the

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[7] "Report of Dallas Citizens Council Committee on Public Planning Policy and Capital Spending," n.d., Box 4c523b, Bartlett (Steve) Papers, Briscoe Center for American History, University of Texas at Austin (BCAH).

city served as a guiding model as the city government fought against economic stagnation throughout the 1990s.

Following a 1980s construction boom, Dallas's downtown had begun to unravel. By the end of the 1980s, new business tenants had stopped moving to the area, and many had relocated to the suburbs. Comparing the business climate of 1991 to the 1980s, real estate consultant Michael Young observed, "What's different now from then is the central business district was the center of commerce, relationships and decision-makers." In the late 1970s and early 1980s, energy, insurance, real estate and banking companies congregated downtown, filling the swiftly expanding stock of commercial real estate. With this concentration of industries, he explained, "you could name the head of every major company in Dallas and probably see them every day at lunch in the various downtown clubs and restaurants." These daily interactions generated business, which attracted companies to downtown offices.[8]

During the economic downturn of the 1980s, Dallas's older, local businesses struggled to survive. National firms moved into vacant downtown buildings. As Young explained, the "national firms began to play a bigger role" in Dallas's economy, and "being downtown became less and less important." These firms had less to gain from the local business culture. They operated on a national scale, and their executives built relations in New York and other international business centers. Young concluded, Dallas's downtown had "lost its reason for being."[9]

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[8] Steve Brown, "Fading Pulse: Experts Urge Action to Halt Deterioration of Downtown," *Dallas Morning News*, December 8, 1991.
[9] Ibid.

In 1991, Republican congressman Steven Bartlett decided to run for Dallas mayor, promising to reverse this trend. Bartlett was elected to Congress in 1983 to represent a district that encompassed North Dallas and Plano, a wealthy suburb north of Dallas. Bartlett established a conservative record, voting in favor of military spending and against federal regulations. He proposed legislation calling for sharp cuts in federal social service programs, including school lunch subsidies. He orchestrated maneuvers to scuttle civil rights legislation intended to cut federal aid to colleges that discriminated based on race, sex, disability, or age. He opposed increases in federal tuition aid for low-income college students. His closest supporters worried that he would struggle as a mayoral candidate. The city had changed since he left for Washington. Candidates for city offices, they counseled, could no longer win by appealing solely to white businessmen. He needed a broader coalition.

In hope of winning votes from across the city, he ran a campaign on two tracks. Bartlett sought popular support from voters in West Dallas and South Dallas, but also the backing of his core supporters: business executives from North Dallas. Bartlett's campaign foregrounded four priorities: "less crime," "more jobs," "better education," and "peaceful neighborhoods." He campaigned in part on the suggestion that he could restore civility to the city council after redistricting litigation in the 1980s brought new ideas and sharper disagreements to meetings.[10] But Bartlett sensed that other issues, including crime, would capture voters.

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[10] Chris Tucker, "Mr. Bartlett Goes to Washington," *D Magazine*, March 1983; Ruth Miller Fitzgibbons, "The Making of the Mayor," *D Magazine*, December 1991; "In Congress," *The Washington Post*, September 22, 1983; "$121 Million For Nutrition Voted by House," *The*

He promised a “safer Dallas.” The city’s government was “paralyzed” on many issues, his campaign argued, but “our inability to curb the growing number of violent crimes in Dallas is most terrifying.” The campaign cited high-profile crimes, particularly involving sexual violence, that had occurred in the city, tapping into voters’ fears for over their own security and the safety of their children. The local news, the campaign explained, was awash in disturbing stories: a four-year-old was “raped by a recent parolee,” a youth counselor had sexually assaulted forty children in East Dallas, and a serial rapist in East Dallas had “terrorized at least 12 Dallas women.” The campaign decried a hiring freeze over the past year that had cut the police force’s numbers. Dallas’s Police Chief, the campaign noted, had joined the fray in criticizing the City Council for leaving Dallas with a weakened law-enforcement apparatus.[11]

Bartlett proposed to strengthen the police force and use harsher criminal penalties to deter crime. He intended to increase police hiring to bring the force from 2,744 offers to over 3,000 officers by 1993. And by restoring “pride” among police officers, Bartlett explained, the city could help improve performance. This required the city to provide officers with “quality cars and crime-fighting tools,” to give the Chief of Police access to City Council to have “direct policy input,” and authorize the Police Department, rather than the city’s Purchasing Department, to execute decisions on purchasing law-

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Washington Post, September 19, 1985; “Amended Bill on Civil Rights Passes,” *Atlanta Daily World*, June 29, 1984; “House Votes Bill on Student Loans,” *New York Times*, December 5, 1985; The New ‘Open Book’: Steve Bartlett’s Proposals for a Better Dallas, n.d., folder: untitled, Box 4c523b, Bartlett Papers, BCAH. On the Bartlett campaigns proposals for reforming City Council, see The Bartlett Peace Plan for City Hall, folder: I Believe in Bartlett envelope, Box 4c534[b], Bartlett Papers, BCAH.

[11] Making Dallas Safer: A Crime-Fighting Plan from Steve Bartlett, July 29, 1991, folder: Bartlett, Box 4c534[b], Bartlett Papers, BCAH.

enforcement equipment. In addition to expanding the political authority and independence of the Police Department, Bartlett proposed to "enact tough measures to protect citizens from violent juveniles who have already chosen a life of crime," and to "[s]top the revolving door" of the prison system, which seemed to allow the "same dangerous criminals" to easily exit prison systems, only to re-offend. "We cannot afford to say the lack of jail space is not a city problem," the campaign announced. The Mayor's Office needed to "lobby for more prison beds to accommodate dangerous criminals," work with other cities to lobby the state for more stringent parole eligibility criteria, and to coordinate with federal officials to pursue more severe sentencing outcomes.[12]

Separately, Bartlett promised more jobs for Dallas. He envisioned a mayor's office that worked tirelessly to "sell Dallas" by providing "red-carpet treatment" to businesses considering relocation. In addition to personally calling prospective businesses and visiting executives, Bartlett proposed a "business 'SWAT' team, made up of national and international leaders who live in Dallas, to visit and sell major prospects on locating in Dallas." The campaign also proposed to "aggressively market downtown" by highlighting events at downtown venues, and encouraging private investors to "create beautiful, unique and inviting attractions to draw people downtown."[13] While these campaign promises appeared as stand-alone objectives, Bartlett's public safety and business recruitment proposals became tightly intertwined.

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[12] Ibid.
[13] The Bartlett Plan for Economic Development in Dallas: More Jobs, n.d., folder: I Believe in Bartlett envelope, Box 4c534[b], Bartlett Papers, BCAH.

In November 1991, Bartlett won the mayoral election thanks to votes from his base in North Dallas. His campaign raised far more funds than any other candidate. With high turnout among white voters, and lower participation among African American and Hispanic voters, Bartlett captured fifty-four percent of the vote. He was most successful among North Dallas voters, who largely consisted of wealthy whites. But he also won 49 percent of votes among Hispanics. He invested heavily in Spanish-language ads with his $1 million campaign fund and elevated Hispanic businessmen to important roles within his campaign. African American voters, in contrast, overwhelmingly rejected the candidate. Many believed that his main opponent, Kathryn Cain, cared more sincerely about African Americans. Only ten percent of blacks voted for Bartlett, while over 60 percent voted for Cain.[14]

Bartlett's government breathed new life in to the city's core business districts, using strategies developed since the 1970s. As the city attempted to sell downtown Dallas to prospective office tenants, city officials invoked the growth of new downtown residential neighborhoods, and the city's blossoming arts and entertainment culture. But its marketing efforts also relied on vigorous efforts to crack down on crime, from homicide to low-level public disturbances. Neighborhood renewal and law-and-order governance became central components of the city's growth strategy.

III.

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[14] Lawrence Young, "Front-Runner Bartlett's Race Never Stumbled," *Dallas Morning News*, November 6, 1991; David Jackson, "A Big Win for Bartlett," *Dallas Morning News*, November 6, 1991; Lawrence Young, "Hispanic Vote Called Big Factor in Bartlett Win," *Dallas Morning News*, November 7, 1991. Local reporting on election results focused on voting patterns based on race and ethnicity, and did not report election results based on the income level of voters.

Once in office, the Bartlett government launched a campaign to attract businesses to the central business district. The city did not target any specific industry, but instead hoped to make Dallas a general hub for a wide array of businesses, from the food services industry to publishing companies. The revitalization of State-Thomas, the heavy-handed policing of the central business district, and capital investments in downtown infrastructure all became part of the city's marketing campaign.

During his first year in office, Bartlett's staff enlisted local marketing professionals to create a campaign called "Marketing Dallas: The Mayor's Task Force." The idea for the campaign surfaced during the mayor's meetings the mayor held with the Dallas Advertising League, a professional association that local industry leaders had organized to improve integrity in advertising. The initiative placed the official imprimatur of the city on the Advertising League's work. James Cole, the incoming president of the Advertising League, chaired the campaign, and the city used the League to execute the campaign on a pro bono basis.[15] The task force had two roles. The first was to formulate a "consistent theme or 'rallying cry' for Dallas and its marketing efforts," a unified messaging framework that the city's disparate organizations could use while "working on their own agendas." Second, the Task Force took on an "advisory role," providing marketing assistance to groups working throughout Dallas. The city envisioned the Task

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[15] City of Dallas, News Release, June 17, 1992, folder: Economic Development, Box 4c533b, Bartlett Papers, BCAH. The city also recruited fourteen executives to form a "Business Leaders Council," which he tasked with helping the city figure out how to attract new business. David Jackson, "Dallas Enlists 14 Execs to Help Rebuild Tax Base," *Dallas Morning News*, July 20, 1991.

Force helping downtown corporations or business associations to promote the city's central business district.[16]

Dallas's advertising endeavor paralleled outreach efforts in other cities, most famously the "I Love New York" campaign. But unlike in other cities, Dallas relied on volunteer efforts of advertising professionals in the city. Los Angeles had also initiated a significant advertising campaign to resuscitate the city's image after police officers violently assaulted Rodney King, triggering a citywide uprising. Before the uprising, Los Angeles's Convention & Visitors Bureau, which had a $6.9 million annual budget, spent only $350,000 on advertising in 1991. Afterwards, the city began raising funds for a marketing campaign, with the hope of pulling together up to $30 million. In Dallas, despite the lack of public investment, James Cole nonetheless wagered that the Marketing Dallas branding efforts would become even more successful than New York's.[17]

The campaign attempted to reframe public discourse by depicting Dallas as an inclusive, diverse city. But in June 1992, just as the Bartlett administration announced the Marketing Dallas campaign, members of City Council noticed that the executive committee had no Hispanic members. Six of the eight Marketing Dallas executive committee members were white, and two were African American. Council member Chris Luna announced: "To have no Hispanics is absolutely offensive." He added: "Call me and I'll give you 20, 30, 40, 50 people who are Hispanic and who have degrees in

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[16] Mayor's Task Force on Marketing Dallas, Charter, n.d., folder: Economic Development, Box 4c533b, Bartlett Papers, BCAH.
[17] Pat Baldwin, "Task Force Creating Marketing Campaign for City of Dallas," *Dallas Morning News*, July 3, 1992; Pat Baldwin, "A New Pitch for Dallas: Ad Campaign Designed to Burnish City's Image," *Dallas Morning News*, December 13, 1992.

advertising or public relations or marketing and who would love to serve." James Cole apologized for the omission, promised to correct the mistake, and eventually expanded the executive committee's membership to involve two Hispanic advertising professionals. The campaign pressed on.[18]

By December, the campaign began to release its advertising material. The proposed television ads featured a mélange of musical styles, from "a pop ballad to Tex-Mex rock to country-Western to gospel." The campaign logo showed a figure reaching for a star, in the shape of an "X," with the line "Dallas Texas USA" surrounding the star. Further, as the *Morning News* noted, "At the close of the commercials, the logo figure will change from black to yellow to red to white to brown, representing the city's racial makeup."[19] The campaign's message capitalized on the city's communities of color while doing nothing to resolve racial inequality. Indeed, it papered over existing debates on division and injustice.

Marketing Dallas highlighted "the positive aspects of the city," while acknowledging some of the city's challenges. Marketing officials considered it unwise to hide completely from Dallas's shortcomings. One radio bit featured commentary from a Dallas resident:

> Every morning I read the paper and listen to the news, and I'm disgusted by what's going on in our city. Then I brace myself and go out into it. Know what? Of my hundreds of daily encounters with the people who live here, almost all of them turn out to be pleasant. Dallas is filled with good people. And good people can solve our problems. Maybe someday we'll

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[18] Ed Housewright, "Friction Mars Unveiling of City Ad Team: Effort to Boost Dallas Image Has No Hispanics," *Dallas Morning News*, June 18, 1992.
[19] Baldwin, "A New Pitch for Dallas," December 13, 1992.

> even learn to love each other. Meanwhile, a realistic start is to love where we're from.[20]

This rousing endorsement of Dallas life was directed at Dallas residents themselves, primarily business executive. As a marketing professor observed, the message was a classic exercise in "refutational" advertising: "You admit your (image) problem and then say how to fix it. It's proven very effective." The co-chairman of Marketing Dallas hoped to develop the "credibility" of Dallas's brand at home first, but hoped that once the local effort was underway, local corporations would contribute funding to advertising in other states once they came to recognize the value of a nationwide campaign.

The city soon shifted its marketing work outward. In addition to its advertising campaign, the city brought its messaging directly to business executives operating out of other cities. Mayor Bartlett himself boarded private jets, accompanied by local business leaders, traveling across the country to meet with executives of fortune 500 companies. Working with leaders of Dallas's private sector, he hoped to sell American businesses on Dallas's central business district.

IV.

The city's marketing strategy may have begun with a "refutational platform" that confronted some of the city's challenges. But to eventually attract new businesses, Dallas's leadership wanted to project a polished image to corporate executives considering relocation. As Bartlett made clear even before he entered office, the city's crime statistics and its response to crime and activity perceived as contributing to crime was integral to its image. His administration increased the police presence in Dallas,

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[20] Ibid.

especially in the central business district, and highlighted that fact in its marketing campaign. The city used law-and-order policies to sell itself to potential investors. Policing became integral to attracting new businesses to the central business district and safeguarding its increasingly unstable tax base.

The Bartlett administration's focus on crime was not entirely new. In 1985, Mayor Starke Taylor responded to rising violent crime rates by establishing a Criminal Justice Taskforce. Its volunteer members came from the law enforcement, business, and legal communities. Hoping to "channel people's outrage, frustration, and fear about crime into a positive force," he called for the group to draft "a comprehensive anti-crime battle plan."[21] The following year, the Task Force proposed a legislative package for state lawmakers. "We see the law enforcement function of government as government's top and most basic priority," it declared. "We would urge that the proper funding of this function at the state and local levels of government come first before all other government spending programs." Only once law enforcement needs were properly funded should public resources "be distributed to other appropriate programs and services." The committee's priority was the state's prison system. The state, they argued, needed to build more prison cells to accommodate growing arrest rates and more stringent sentencing. The legislative package also included procedural recommendations, many of doubtful constitutionality. They called for new laws sidestepping due process

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[21] Letter from Mayor Starke Taylor, September 25, 1986, printed in The Mayor's Criminal Justice Task Force, First Annual Report, Fall 1986, folder: Annual Report, 1986, Box 2, Collection 91-918, DMARC.

safeguards like the right to a speedy trial, arguing that these protections let defendants "avoid prosecution" based on supposed technicalities.[22]

The Bartlett administration was far more aggressive. It focused on municipal policy tied to business recruitment rather than state legislation. Dallas's political class increasingly attributed economic stagnation to downtown crime. As the *Dallas Morning News* argued in its editorial pages, Dallas's downtown struggled to shake its image as a dangerous place to visit. "The city needs to protect its investment" in downtown revitalization, the *News* argued, "with a campaign that responds to the doubts that people have about downtown Dallas." In 1993, a Dallas businessman was kidnapped and murdered, a tragedy that created a "perception of downtown as a crime-ridden area." In 1995, the *News* described a recent flurry of robberies in the city's West End Historic District as yet another impediment to the city's revitalization plans. Indeed, while crime rates had in fact fallen since the beginning of the Bartlett administration, the editorial board demanded increased vigilance. "Left unchallenged," the *News* argued, "these isolated robberies won't simply be stealing cash. They will be stealing the heart out of the downtown revitalization movement."[23]

For Mayor Bartlett, vigorous policing of public drinking, loitering, and violent crime was integral to his vision for a downtown rejuvenation.[24] He expanded the police

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[22] See Mayor's Criminal Justice Task Force, The Texas War on Crime: A Legislative Package, Fall 1986, 10–21, folder: Annual Report, 1986, Box 2, Collection 91-918, DMARC.
[23] Henry Tatum, "Downtown Can't Shake its Image Despite Drop in Crime," *Dallas Morning News*, February 8, 1995.
[24] Lori Stahl, "How's He Doing? Getting Elected Was the Easy Part. Now Mayor Bartlett Has to Lead," *Dallas Morning News*, April 19, 1992; Ed Housewright, "Mayoral Candidates Stress

force, and directed policing towards the central business district, flooding downtown with new officers patrolling on foot and bicycle. Downtown business owners contributed money to help the Police Department purchase bicycles, radios, and even a police van.[25] The city also attempted to act more strategically in targeting sources of crime. Police Chief Bill Rathburn, formerly deputy police chief for the Los Angeles Police Department, demanded increased penalties for purchasing narcotics, hoping that harsher punishment would cut off revenue to dealers. He outlined the department's new strategy: "We're going to be arresting buyers. . . . We're going to be seizing their cars. We're going to do everything we can to make them afraid to buy drugs."[26] The city also funded a "violent crime task force" within the Police Department to "identify and arrest violent criminals at the locations of worst crime patterns."[27]

The administration targeted both serious and low-level crime in Dallas's downtown. Jeff Cotner, supervisor of the Dallas Police Department's Central Operations Division, described the new policing tactics as "basic order maintenance." Responding to lobbying efforts of the Central Dallas Association, the City Council passed ordinances that restricted "panhandling," sleeping on public property, and drinking alcohol in public. The city repaired broken windows and removed graffiti and trash. With the city's broader

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Developmet," *Dallas Morning News*, May 16, 1991; David Jackson, "Bartlett Outlines his Agenda: Mayor-Elect to Focus on Safety, Prosperity," *Dallas Morning News*, November 7, 1991.
[25] D Magazine, Special Edition: Downtown Dallas, November–December 1996, 94, folder: 5 (Various Publications on Dallas), Box 5, Woodbine Development Corporation Papers, MA13-10, DML.
[26] "Downtown Can't Shake its Image Despite Drop in Crime," February 8, 1995; Chris Kelley, "New Chief Keeps Close to the Streets: Rathburn Recruit Public as Police Allies," *Dallas Morning News*, January 27, 1991; David Jackson, "Police Shifting Drug Strategy to Target Users," *Dallas Morning News*, December 19, 1991.
[27] Annual State of the City, December 9, 1992, 5, Box 4c523b, BCAH.

law-enforcement strategy designed to reduce violent crime in Dallas, it was unclear how its decision to address low-level crime furthered this larger goal. City officials did not explicitly connect the two interventions. But the tactic resembled strategies that emerged across the U.S. during the 1980s and 1990s in response to “broken windows” theory of crime control. As social scientists James Q. Wilson and George Kelling argued in an influential 1982 article in *The Atlantic*, signs of physical and social decay—"broken windows”—deterred law-abiding citizens from public spaces, in turn inviting more serious crime. By cracking down on low-level crime in downtown areas, public officials likely believed that they were targeting behaviors they perceived as conducive to more significant criminal activity. On the other hand, the intervention likely had a more simple objective: to use criminal sanctions to eradicate activity that detracted from the image of the central business district.[28]

Police officers asserted control over popular gathering spots. One “trouble spot” was a downtown intersection with a busy bus stop and a McDonald’s. As the local periodical *D Magazine* reported, “Truants often gathered there during the day, milling around and harassing pedestrians.” The *Magazine* also believed the gathering spot to be a “‘staging’ area for local gang induction rites.” Cottner, of the police department, described it as a “training ground for robbers, an initiation ground.” Police began patrolling the area. Cooperating with the police department, the McDonald’s manager

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[28] D Magazine, Special Edition: Downtown Dallas, November–December 1996, 92–96, folder: 5 (Various Publications on Dallas), Box 5, Woodbine Development Corporation Papers, MA13-10, DML; Annual State of the City, December 9, 1992, 5, Box 4c523b, BCAH. On “broken windows” policing, see George L. Kelling and James Q. Wilson, “Broken Windows: The Police and Neighborhood Safety,” *The Atlantic*, March 1982.

began playing classical music over the indoor and outdoor loudspeakers. "Apparently," the *Magazine* surmised, "gang members and other troublemakers hate Bach, Beethoven and Bartok."[29] The *Magazine*'s observation was telling: it suggested that the police interventions were as much about class as about crime. Dallas's downtown, in the eyes of business leaders and city officials who sought to reclaim public spaces, was a place for those sophisticated enough to appreciate the fine arts. For the writers at *D Magazine*, the people who "loitered" in public areas downtown were too crass, too crude, and too criminal to belong.

Local law-and-order initiatives benefited from new federal funding for police and prisons. While local governments across the U.S. weathered cutbacks in federal social spending, the 1990s brought cities a windfall to support the local carceral state. In 1994, Congress passed the Violent Crime Control and Law Enforcement Act, which authorized Congress to appropriate up to $30 billion over five years for local law enforcement and crime prevention activities. Congress prioritized the growth of local police forces. Of a total $2.4 billion appropriated for Fiscal Year 1995, lawmakers dedicated $1.3 billion to help local governments hire or rehire police officers, funding which was authorized under the Violent Crime Control Act's "Cops on the Beat Program." The law required local governments to spend at least eighty percent of the money on hiring new officers. By

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[29] D Magazine, Special Edition: Downtown Dallas, November–December 1996, 92–96, folder: 5 (Various Publications on Dallas), Box 5, Woodbine Development Corporation Papers, MA13-10, DML.

contrast, Congress appropriated only $37 million for school programs related to crime prevention, such as tutoring or extracurricular activities.[30]

Dallas officials were well aware that they stood to gain from the federal Violent Crime Control Act. Assistant City Manager Mary Suhm outlined provisions "of particular interest to the City of Dallas," and emphasized that the Cops on the Beat Program could increase the "number of police officers on the street."[31] The total volume of funding Dallas received from the federal government had receded over recent decades. From a peak of $50.8 million in 1981, federal transfers to Dallas over the 1980s had fallen to $28.4 million in 1986, and rose to only $41.7 million in 1991. Despite reductions in federal aid, and in general a stagnant tax base, Dallas managed to increase spending for police services from $70 million in 1981 to $114.6 million in 1986, $168 million in 1991, and $187 million in 1996. By the 1995–96 fiscal year, grants for police protection represented the city's single largest source of revenue from the state and federal government. The city estimated that the Police Department would spend up to $10 million in grant revenue that year, a figure that far exceeded the city's anticipated spending under any other category of grants. For "environmental health services," a broad category that included funding for substance abuse interventions, homelessness assistance, asbestos abatement, and environmental cleanup, the city expected to spend a

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[30] See Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, 108 Stat. 1796; David Teasley, Congressional Research Service, *Violent Crime Control Act of 1994: Crime Prevention Funding With FY1995 Appropriations* (November 10, 1994), 5, 26; Elizabeth Bazan et al., Congressional Research Service, *Crime Control: Summary of the Violent Crime Control and Law Enforcement Act of 1994* (November 11, 1994).

[31] Memorandum, Mary K. Suhm to Honorable Mayor and Members of the City Council, September 9, 1994, folder: Economic Development, Box 4c533b, Bartlett Papers, BCAH.

comparatively modest $2.9 million. Dallas had prioritized spending tax dollars on policing, and federal appropriations encouraged that shift.[32]

During the 1990s, the city government also lobbied the state government to support its law enforcement objectives. City Council member Chris Luna proposed that the legislature increase criminal sanctions, including penalties for juvenile offenders. He called for the state to apply determinant sentencing to juvenile offenders, a practice that set a fixed term of incarceration rather than allowing eligibility for parole after a certain period of time, a policy shift likely to cause longer sentences. And while determinate sentencing applied to some violent offenses, Luna thought it should apply to all violent crime. He also suggested that the city lobby for the state to allow minors fifteen years and older to be tried as adults for violent offenses.[33]

In 1995, Mayor Bartlett adopted similarly stringent treatment of youth offenders. He proposed to allow juveniles to be arrested, fingerprinted, and photographed for any offense, and suggested collecting juvenile records in a statewide system. His administration called for mandatory minimum sentences for “violent gang offenses,” and harsher penalties for minors found in the possession of weapons. The administration

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[32] Bureau of the Census, 1982 Census of Governments, Finances of Municipal and Township Governments (Washington, D.C.: U.S. G.P.O., 1984), 220–21; Bureau of the Census, 1987 Census of Governments, Finances of Municipal and Township Governments (Washington, D.C.: U.S. G.P.O., 1988), 210–11; Bureau of the Census, City Government Finances: 1991–92 (Washington, D.C.: U.S. G.P.O., 1996), 100–01; Bureau of the Census, 1997 Census of Governments, Finances of Municipal and Township Governments (Washington, D.C.: U.S. G.P.O., 2000), 199–200; John L. Ware, City Manager, to the Honorable Mayor and Members of City Council, Manager’s Message, August 14, 1995, folder: untitled, Box 29, Collection 91-062 Budgets and Financial Reports, RG 11, DMARC; City of Dallas, 1995–96 Annual Budget, Volume 2, August 14, 1995, 779, 808–846, Box 29, Record Group: 11, Series 91-062, Budgets and Financial Reports, DMARC..

[33] Memorandum, Chris Luna to Charlotte Mayes, subject: 1995 State Legislative Agenda, March 29, 1994, folder: Legislative Initiatives, Box 4c533b, Bartlett Papers, BCAH.

finally asked the legislature to repeal overtime restrictions for police officers, which would allow the city to have more police on the street throughout the day.[34]

While Bartlett's police overtime policies did not find support among state lawmakers, his juvenile justice proposals did. In 1995, the state legislature enacted a landmark bill overhauling the state's juvenile justice system. Advocates for the bill dismissed the existing system as suitable for "truants, runaways and offenders who committed petty crimes," not the "violent offenders of today."[35] The new law expanded determinate sentencing, removing discretion over the length of sentences from the Texas Youth Commission. The state had previously imposed determinate sentencing for a small category of violent crimes: capital murder, murder, aggravated kidnapping, aggravated sexual assault, attempted capital murder, and deadly assault of law enforcement officers. The 1995 law expanded the application of determinate sentencing to include aggravated robbery, violations of the Controlled Substance Act that constituted first-degree felonies and aggravated felonies, manslaughter, and other violent crimes. For juveniles convicted of certain violent crimes, the legislature required a sentencing in juvenile court for a determinate period, which could include a transfer to adult prison when the individual turned eighteen. As the bill's proponents argued, these changes would ensure "harsh

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[34] Mayor's Priorities for 1995 State Legislative Package, folder: Legislative Initiatives, Box 4c533b, Bartlett Papers, BCAH.
[35] House Research Organization, *Bill Analysis: Juvenile Justice System Revision, H.B. No. 327* (1995), 3.

punishment for violent offenses," while affording a youth offender a "second chance": a hearing before being transferred to the adult system at eighteen.[36]

The city's response to crime was as much about creating a perception of orderliness in the business district as it was a response to genuine concern with violent crime. As part of its "business recruitment" campaign, the administration produced flashy brochures highlighting the city's cultural attractions and the various conveniences the city had to offer to a company's executive officers and workforce. The briefing materials were also revealing in the extent to which they assured company directors that the downtown was a safe place to work. Downtown Dallas, the city argued in one briefing book, "is safer than most [central business districts] of comparable size."

Between 1991 and 1992, the administration boasted, crime fell thirty-three percent, and non-violent crime fell thirty-two percent. The city had a seventy-four member "task force" operating in Dallas's downtown, consisting of foot-patrol officers, bicycle patrols, mounted horse patrols, and plainclothes officers. Under the city's alcoholic beverage ordinance, downtown patrols had made 1,175 arrests for public consumption. The briefing materials also referenced the city's panhandling ordinance passed in August 1991. In a presentation to the international publishing company Thomas Nelson, the city emphasized the drop in crime that had occurred near the central business district since Bartlett entered office. Another briefing document listed Dallas's upcoming

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[36] See Act Relating to the Juvenile Justice System, 74th Leg., R.S., ch. 262, 1995 Tex. Gen. Laws. 2517 (1995) (Tex. H.B. No. 327)**;** House Research Organization, *Bill Analysis: Juvenile Justice System Revision, H.B. No. 327* (1995), 3–4.

initiatives for 1993–1994, including "weekly sweeps of truants in conjunction with a citywide truancy enforcement plan."[37]

When Mobil Oil Corporation, one of Dallas's most important downtown tenants, threatened to relocate, the city highlighted its policing measures. Presenting a retention plan to the company, Dallas offered $8.4 million in new incentives and promised to expand downtown policing. The city described its vigilant downtown policing as proof of its "ongoing commitment" to the central business district.[38]

Dallas's response to crime did not merely ensure safety for company employees; it signified that the city had become serious about rehabilitating the downtown environment, creating an attractive space in which the city's professional class could thrive. In a letter to his peers at Mobil Oil, one executive from the accounting firm Arthur Anderson emphasized his "respect and appreciation for how important a vital downtown Dallas is to our Metroplex economy, image, and spirit." He praised the city's law-and-order policies. Its "progress in the area of security and safety (more policemen, less panhandlers), improved appearance (cleaner streets, more trees) and an overall commitment to make things better . . ." inspired confidence.[39] If Dallas was to secure new

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[37] See, for example, City of Dallas, Economic Development Department, Headquarters Relocation Proposal to Taco Bell, November 5, 1993, Box 4c522b, Bartlett (Steve) Papers, BCAH; Economic Development Department, Executive Briefing Book for the City of Dallas Presentation to Thomas Nelson, Inc., May 28, 1993, Box 4c522b, Bartlett (Steve) Papers, BCAH; Economic Development Department, City of Dallas Proposal to Continental Insurance, December 1993, Box 4c522b, Bartlett (Steve) Papers, BCAH; City of Dallas.
[38] Proposal Update to Mobil Corporation, August 14, 1992, 17, Box 4c523b, Bartlett (Steve) Papers, BCAH; Lori Stahl, "City Offers Incentives to Mobil: $8.4 Million Plan Seeks to Keep Firm Downtown," *Dallas Morning News*, March 12, 1992.
[39] Richard Howell, CCE, Arthur Anderson & Co., to Mobil Oil Company, July 21, 1992, Box 4c523b, Bartlett (Steve) Papers, BCAH.

office tenants, it needed to reduce crime, and eradicate activity that signified disorder. Harsher policing could make that happen.

V.

Downtown business owners and city officials also regarded homeless people as a threat to the downtown economy. In the 1990s, the city government intervened to reduce their visibility. The city's rising homeless population undermined the narrative city official hoped to present to business leaders. Public officials also equated extreme poverty and crime. Reducing downtown homelessness, they believed, would further the Bartlett administration's response to crime.

The Bartlett administration tried to remove all evidence of Dallas's growing homeless population from the central business district. In 1991, the City Council voted to amend Dallas's zoning code to prohibit any organization from opening a shelter within the downtown area. Having already outlawed "panhandling," the City Council also passed an ordinance that imposed criminal sanctions for "sleeping or dozing in a street, alley, park, or other public place." In enforcing the ordinance, the city leveled numerous informal "villages" that arose during the 1980s and early 90s. It discarded the residents' personal possessions. The Dallas Police issued 1,285 tickets for sleeping in public in 1992, with each citation carrying a fine of $85. And as the *Dallas Morning News* noted, once any individual accumulated multiple tickets for sleeping in public, they would face jail time.[40]

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[40] Jonathan Eig, "Homeless Say They'll Rest Easier: Police Stop Arrests for Sleeping in Public," *Dallas Morning News*, December 29, 1992; Jonathan Eig, "Homeless, Advocates Ruling Offers Hope: Miami Told to Create No-Arrest Zones," *Dallas Morning News*, December 6, 1992; Sherry

City's harsh approach to public sleeping pushed constitutional limits. In fact, the police department stopped enforcing the ordinance in December 1992 after a federal judge in Florida held that a similar law was unconstitutional. Invoking legal theories the Florida judge endorsed, local ACLU lawyers threatened to sue the city if it continued to make arrests pursuant to the ordinance. But in April 1993, in a decision that amounted to a direct challenge to the Florida court's constitutional theory, the City Council voted to order the Dallas Police Department to remove all encampments, primarily those located under downtown overpasses. When asked where the city's growing homeless population would live after the government stamped out the encampments, one member of the City Council suggested that the city provide bus tickets to Fort Worth. He made sure to clarify that this idea was not a joke.[41]

After the City Council decided to eradicate the downtown encampments, homeless people filed a class action lawsuit against the city. The plaintiffs challenged both the city ordinance prohibiting public sleeping, and the proposed eviction of the most prominent downtown encampment. As they argued, the city's policies stood in violation of the Eighth Amendment's prohibition against cruel and unusual punishment. On this point, Judge Kendall of the Northern District of Texas agreed. First, he found that the plaintiffs had proven that "at any given time there are persons in Dallas who have no place to go, who could not find shelter even if they wanted to . . . ." Many wanted shelter, he explained, but were "turned away" for many reasons: "There are not enough beds

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Jacobson, "Homeless Enclaves Targeted: City to Remove Encampments," *Dallas Morning News*, April 16, 1993; Jonathan Eig, "Homeless Eviction May Take Effect Soon; City Unsure Where to Send up to 200," *Dallas Morning News*, May 11, 1993.

[41] Jacobson, "Homeless Enclaves Targeted"; Eig, "Homeless Eviction May Take Effect Soon."

available at the area shelters to accommodate the demand. Some persons do not meet particular shelter's eligibility requirements." Considering these limitations, the judge concluded that "[f]or many of those homeless in Dallas, the unavailability of shelter is not a function of choice; it is not an issue of choosing to remain outdoors rather than sleep on a shelter's floor because the shelter could not provide a bed that one found suitable enough." Rather, the judge concluded, "The evidence demonstrates that for a number of Dallas homeless at this time homelessness is involuntary and irremediable. They have no place to go other than the public lands they live on."[42] The city could not constitutionally criminalize this act.[43] The court issued an injunction preventing the city from enforcing its prohibition on public sleeping.

Local organizations rallied in support of the city's policy. The Central Dallas Association, the Farmers Market, the Cedars Neighborhood Association, the State-Thomas Homeowners Association joined in filing an amicus brief supporting the position. They urged the judge to recognize that the city needed an attractive downtown.

The court eventually allowed the city to move forward with its other policies. The City Council's decision to remove the encampments did not require the police to mete out criminal sanctions to those displaced, and thus did not raise any Eighth Amendment problems. Free to act, the city proceeded to dismantle camps, displacing around 360 people from their dwellings.[44] The city had also imposed trespassing restrictions on the

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[42] Johnson v City of Dallas, 860 F. Supp. 344, 350 (N.D. Tex 1994).
[43] Ibid., 351.
[44] Jonathan Eig, "No Trespassing Signs Posted: City Denies Homeless are Being Targeted," *Dallas Morning News*, July 8, 1994; Jonathan Eig, "Programs for Homeless Show Some Success:

central business district that, in effect, outlawed public sleeping without explicitly targeting the homeless population. In July 1994, the city adopted an ordinance prohibiting individuals from occupying specific public spaces downtown between midnight and 5:00 a.m. The law singled out locations commonly used for sleeping at night, including the front of City Hall, the public library, and the recently-completed convention center. While the district court had initially enjoined the city from enforcing its criminal ordinance and from disbanding the encampments, the court ultimately dissolved the portion of the temporary restraining order that applied to the city's enforcement of the criminal trespass regulations.[45] So long as the city did not extend the trespassing law to all city property, the court reasoned, the ordinance did not offend constitutional principles. City Attorney Sam Lindsay warranted that the trespassing signs were not directed solely at homeless individuals: "The signs apply to anybody, all individuals who can read the sign."[46]

The court's preliminary injunction against enforcement of the public sleeping ordinance did not last long. The city appealed the decision, arguing that, because the named plaintiffs in the class action had not been arrested or ticketed, and could not prove they were in imminent risk of being sanctioned, they lacked standing to challenge the law. The Fifth Circuit Court of Appeals agreed, and vacated the order with instructions to dismiss the plaintiffs' Eighth Amendment challenge. By the end of 1995, the city was

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Street People Better Off Since Shantytown Razed, Many Say," *Dallas Morning News*, November 3, 1994.

[45] The district court's orders were summarized in *Johnson v. City of Dallas*, 61 F.3d 442 (5th Cir. 1995).

[46] Jonathan Eig, "No Trespassing Signs Posted: City Denies Homeless are Being Targeted," *Dallas Morning News*, July 8, 1994.

once again enforcing the ordinance criminalizing sleeping in public. Reporters observed that "homeless people have been less visible." But less visibility hardly meant that the ordinance had put the homeless in conventional housing or shelters. One homeless person, Jerry Lollar, explained: "We're still on the streets, just out of sight."[47]

The city's efforts to displace homeless individuals from downtown areas were integral to its campaign to cultivate Dallas's symbolic economy, and to market the city to the world. Most obviously, the visibility of a downtown homeless population undermined the city's marketing narrative. Removal of downtown encampments also furthered the city's policies on crime, which city officials in turn relied on in marketing the city.

City leaders equated homelessness with criminality. Their thinking reflected debates on poverty and social disorder that had unfolded in academic and popular writing since the late 1970s, a public conversation known generally as the "underclass" debates. Beginning in the late 1970s, journalists and social scientists had begun to describe a growing population of poor Americans as the nation's "underclass," inspiring breathless discussions about poverty, juvenile delinquency, and crime that lasted throughout the 1980s and 90s. Although they struggled to agree on a definition for the term "underclass," their accounts invoked similar imagery. The American "underclass," they cautioned, was a monolithic, isolated, entrenched, and potentially permanent class of individuals in U.S. cities. Academics and journalists used the term to describe a cohort of "able-bodied" individuals, largely African American, who lived in impoverished, "crime-

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[47] Ibid., 445; Laura Griffin, "Homeless Advocate Protests Public-Sleeping Ban," *Dallas Morning News*, December 19, 1995; Laura Griffin, "Reprieve Sought for Homeless: City Enforcing Ban on Public Sleeping," *Dallas Morning News*, November 23, 1995.

ridden" neighborhoods. In attempting to make sense of growing rates of poverty and unemployment, studies and reporting on the "underclass" drew associations between extreme poverty and crime. The president of the Rockefeller Foundation, a primary funder for "underclass" research, believed that members of the "underclass" had contact with the outside world only through the criminal justice system.[48]

Dallas city leaders mobilized these ideas in framing urban policy. Equating crime and poverty, they argued that downtown revitalization required cleaning out the homeless. As city council member Glenn Box wrote, "Not only have individuals been aggressively panhandeled, but individuals and businesses in the area have been victims of robberies, burglaries, rapes, and shootings, all of which can be directly attributed to [the homeless] residing under the bridges."[49] Police sweeps intensified around highly-publicized events such as the 1984 Republican National Convention and the 1994 World Cup, both in Dallas. Public sleeping in general did not seem to roil city officials—rather, they were most bothered by the signs of homelessness downtown, where it undermined

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[48] "The American Underclass," *Time Magazine*, August 29, 1977; Ken Auletta, *The Underclass* (New York: Random House, 1982); William J. Willson, *The Truly Disadvantaged: The Inner City, The Underclass, and Public Policy* (Chicago: Chicago University Press, 1987); Sheila Rule, "The Battle to Stem School Dropouts," *New York Times*, June 11, 1981; Charles Peters, "Class and Welfare in the United States," *New York Times*, June 27, 1982; Timothy McNulty, "Lost Society Infects Cities: Permanent Underclass May be Developing," *Chicago Tribune*, September 15, 1985; Timothy McNulty and Hanke Gratteau, "The American Millstone: In a Nation of Riches, A Permanent Underclass," *Chicago Tribune*, December 1, 1985; Isabel Wilkerson, "New Studies Zeroing in on Poorest of the Poor," *New York Times*, December 20, 1978; Richard P. Nathan, "Is the Underclass Beyond Help?" *New York Times*, January 6, 1989; Patricia McCormack, "America's Time Bomb: Researchers Fear Permanent 'Underclass' of Street Criminals," *New Pittsburgh Courier*, February 18, 1989. For an insightful overview of the "underclass" debates, see Michael B. Katz, ed., *The "Underclass" Debate: Views from History* (Princeton: Princeton University Press, 1993).

[49] Letter from Council Member Box quoted in Maria Foscarinis, "Downward Spiral: Homelessness and Its Criminalization," *Yale Law and Policy Review* 14, no. 1 (1996), 23.

the image of prosperity and urbane sophistication the city hoped to display. When it enjoined the city from enforcing its prohibition on public sleeping, the court noted that the city could remedy the constitutional violation by providing homeless people "some place to be other than in public."[50] The City Council briefly considered erecting open-air pavilions outside the downtown area. This would afford homeless people the option of choosing not to sleep in public, and under the court's legal theory, allow the city to continue rounding up the homeless downtown. The city ultimately did not pass the ordinance, but it vividly illustrated their priorities. Downtown was an area to sell to national and international capital.[51]

By 1996, Mayor Ronald Kirk declared in *D Magazine* that "Downtown is back in business." It had drawn new office tenants, and became more residential. Downtown Dallas had become more than a "maze of office buildings and skyscrapers": it was an entertainment center, a hub for the arts, and a place to live.[52] But a "successful downtown," *D Magazine* explained, "is hardly something an urban resident can take for granted." Many cities across the U.S. had turned over their downtowns "to the down-and-out: street people, drunks, the homeless." Faced with "overflowing or overturned" dumpsters, "[a]ggressive beggars" blocking store entrances, and street corners "occupied by sprawled-out drunks, sleeping or oblivious," many cities "have almost given up on their downtowns." The magazine jeered: "How many of Houston's leading hotels are

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[50] Johnson v City of Dallas, 860 F. Supp. 344, 350–351 (N.D. Tex. 1994).
[51] Foscarinis, "Downward Spiral: Homelessness and Its Criminalization," *Yale Law and Policy Review* 14(1) (1996), 48
[52] D Magazine, Special Edition: Downtown Dallas, November–December 1996, 4, folder: 5 (Various Publications on Dallas), Box 5, Woodbine Development Corporation Papers, MA13-10, Dallas Municipal Library (DML).

downtown? See any profitable department stores in downtown Miami? In Atlanta, the Federal Reserve Bank recently announced that it was moving out of the city's downtown, after countless complaints from its employees about being panhandled and otherwise accosted on nearby streets." While this "could have happened in Dallas," the community "was willing to take a stand four years ago when it counted the most—when a homeless encampment developed underneath Interstate 30" at a location "within a mile of downtown's gleaming towers."[53]

Dallas's legal victory over the class of homeless plaintiffs in 1995 struck the magazine as a pivotal moment in the downtown revitalization. It painted a grim picture of the "I-30 shantytown": "Grass did not grow, while fires burned day and night for heating, cooking and drug preparation." The encampment was littered with "cardboard boxes and makeshift structures," along with "broken bottles, human waste and used condoms and needles." The magazine called the highly-ordered community a "law-free zone," that drew "fringe elements from all over the area." During the day, inhabitants would fan out into the neighboring community, mainly Deep Ellum, to form an "obstacle course of harassing beggars and drunks."[54]

In the magazine's telling, the City Council had rescued the downtown with its offensive against the encampment and the "litigious naysayers from the American Civil Liberties Union." The magazine celebrated the district court's decision: "The I-30 shantytown problem was successfully addressed before it grew out of control, before the

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[53] D Magazine, Special Edition: Downtown Dallas, November–December 1996, 37–38, folder: 5 (Various Publications on Dallas), Box 5, Woodbine Development Corporation Papers, MA13-10, DML.
[54] Ibid., 38.

downtown streets were overrun, before the social-services burden became too large, and before the housing market in the nearby neighborhoods collapsed." Never considering the fate of the inhabitants, the magazine applauded the government's "commitment to its downtown."[55]

VI.

The Bartlett administration broadcast the revitalization of downtown Dallas to corporate executives. In selling business executives on relocation, the Bartlett administration highlighted the transformation of State-Thomas and the new housing developments in the downtown itself. Throughout the 1990s, the city continued to further remake the image of Dallas's downtown and its surroundings. As Chapter 7 argued, the City used the settlement to the *Walker* litigation, in which public housing tenants challenged segregation in West Dallas's public housing, to turn areas of West Dallas and South Dallas into attractive bedroom communities for professionals. The city purged its downtown of public housing and low-cost homes. Meanwhile, the city's economic development office may have played an active role in deflecting proposals for affordable housing conversions downtown.

The city's business outreach pamphlets showcased the new, attractive residential neighborhoods near Dallas's downtown. Downtown Dallas was, among many things, a "residential center." In the "McKinney Avenue/Uptown area," part of the State-Thomas TIF District, housing had "become quite significant." In addition to two large complexes already developed in the area, city officials explained, the firm Memphis Development

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[55] Ibid., 39.

was planning yet another project consisting of 160 garden style apartment units. McKinney Avenue / Uptown bustled with 24 antique shops, 23 art galleries, 44 retail shops, four nightclubs, and 48 restaurants.[56]

Housing development was also on the rise in the central business district itself. Within the inner freeway loop, the city was involved in at least six "residential conversion projects," many of which reflected an "adaptive reuse" of Dallas's important historical buildings, including the iconic Cotton Exchange Building. Bartlett's marketing team noted that the city had "been instrumental in this project."[57] When outlining its urban development strategies in presentations to HUD, the city explained that "[e]conomic revival cannot occur without a significant increase in the availability and occupancy of housing in and near downtown for households of all income levels." The city planned to invest in infrastructure, provide tax incentives, and extend low-interest loans to developers with the aim of producing 1,350 units in the central business district and up to 4,000 units in the one-mile radius around it.[58]

As the city invited attractive housing developments downtown, it purged existing units that did not fit its vision. Affordable housing had no place in the city's plans. City officials' treatment of West Dallas fit a broader pattern of neighborhood transformation. In the late 1990s, the city began replacing Roseland Homes, a 611-unit public housing development, with housing for wealthier people. The decision was remarkable

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[56] Proposal Update to Mobil Corporation, August 14, 1992, 27, 38–39, Box 4c523b, Bartlett (Steve) Papers, BCAH.
[57] Ibid., 38–39.
[58] Briefing Book for Meeting with Henry G. Cisneros, Secretary of U.S. Department of Housing and Urban Development, January 28, 1994, Tab 2, folder: City of Dallas (binder), Box 4c523b, Bartlett (Steve) Papers, BCAH.

considering the well-kept conditions of the housing complex. As one resident observed, "This is the best-built project in Dallas." Roseland Homes lay close to Dallas's central business district, giving it one of the most attractive locations of any public housing project in Dallas. Mike Daniel, an attorney representing the *Walker* plaintiffs, decried the plans as an attempt to "turn Roseland Homes into housing for higher-income whites at the expense of the victims of the Dallas Housing Authority's long history of racial segregation . . . ." Another resident, Starla Patrick, suspected that new developments would merely provide housing for "people who work downtown."[59]

As in State-Thomas a decade earlier, Dallas officials began enforcing the housing code more stringently in areas near downtown. The city had unused Community Development Block Grant funding available to help residents cover rehabilitation costs, but city code enforcers instead favored demolition. From 1991 through 1995, the city increased its spending on demolition from less than $500,000 per year to over $3.7 million. In cracking down on code violations, the city eliminated over 1,000 homes in low-income communities of color, including those occupied by owners and renters alike. Many homeowners, faced with compliance costs they could not pay, were forced out of their residences before they could obtain a loan.[60]

During the 1990s, developers produced no housing whatsoever through the Low-Income Housing Tax Credit program in the central business district. While it was unclear that the city played much a role in selecting the sites of LIHTC programs—after all, the

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[59] Craig Flournoy, "DHA Plans to Replace Housing," *Dallas Morning News*, August 20, 1998.
[60] Craig Flournoy, "City's Demolitions Called Unfair to Poor Minorities," *Dallas Morning News*, February 12, 1995.

state government approved tax credit properties—a discernable pattern emerged. During the 1990s, developers produced 56 multi-family housing projects in Dallas, including over 8,500 LIHTC units. The only LIHTC housing that developers produced anywhere near downtown was one project located roughly two miles northeast of the central business district—just north of Bryan Place, and another development in a predominantly African American neighborhood over two miles southeast of downtown. Most units developed in the 1990s were in more remote areas of Southern Dallas, a historically poor and predominantly African American area of the city.[61]

Some affordable housing developers believed that the city had deliberately steered affordable housing away from the central business district. In the early 2000s, developers Curtis Lockey and Craig MacKenzie considered converting an abandoned office building downtown into an affordable housing project. To make the housing available to poor families, they planned to link Section 8 vouchers to many of the units. By that time, the downtown revitalization plans of the Bartlett administration had blossomed into a comprehensive redevelopment strategy. The city council had established the Center City Tax Increment Financing District in 1996, which financed infrastructure improvements to support private investment in downtown housing and retail. Hoping to secure city financing for their plans, the developers met with the Dallas Office of Economic

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[61] See Texas Department of Housing and Community Affairs, HTC Property Inventory as of July 26, 2018 Board Meeting, available at https://www.tdhca.state.tx.us/multifamily/htc/docs/HTCProperty Inventory.xlsx. Figures on the number of projects and units produced during the 1990s have been computed using TDHCA's property inventory, which specifies the year in which each development was completed, the address, zip code, and census tract of each development, and the number of units included in each development.

Development. As the developers later reported, the city's Director of Economic Development, Karl Zavitkovsky, expressed concerns about the proposal, explaining that low-income housing was "not part of the vision for Downtown Dallas." Zavitkovsky denied using those precise words, but acknowledged he and the Director of the Dallas Housing and Community Services Department believed that Section 8 funding would not be a "good fit" for the project.[62]

Following this exchange, city officials appeared to undermine the developers' efforts. Lockey and MacKenzie applied to the Office of Economic Development for Tax Increment Financing bonds. In response to their application, the city imposed seemingly arbitrary and unrealistic filing deadlines for supplemental submissions that the developers struggled to meet. In a request the developers called "unprecedented," the city asked for proof of general financing for the project before issuing certifications supporting a TIF grant for the project. The Dallas Housing Finance Corporation also imposed a deadline on itself for seeking approval from the Texas Bond Review Board to issue bonds under the Housing and Economic Recovery Act. The board required additional paperwork from Lockey and MacKenzie before its self-imposed deadline, which they could not feasibly

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[62] Karl Zavitkovsky to Curtis Lockey, Relators' Declaration, Exhibit B, *Lockey v. City of Dallas*, No. 11-cv-354 (N.D. Tex. October 15, 2008), ECF No. 53-2. On the Center City TIF, see Newsclipping, "City Center TIF OKs Two Projects," *Downtown This Week*, June 18, 1999, folder: 3 (Woodbine Materials, Downtown Dallas Improvement Papers, 1995, 1999, Box 5, Woodbine Development Corporation Papers, MA13-10, DML; City Center Tax Increment Financing District, City Council Briefing, November 15, 1995, folder: Downtown/Dallas, Box 16, Woodbine Development Corporation Papers, MA13-10 (2001 materials); Charles Ornstein, "Council Creates Downtown Tax District," *Dallas Morning News*, June 27, 1996. In 1999, for example, the City Center TIF board approved financing for a streetscape improvement, a study on downtown parking needs, and a contribution to restorations of the iconic "Pegasus" statue situated on top of the downtown Magnolia Building.

meet. The day of the deadline, the board voted to rescind the bond allocation it had made for the project.[63]

City officials also pressed Lockey and MacKenzie to reduce the amount of affordable housing in their development proposal. Their plan reserved up to fifty percent of the units for affordable housing. But as a condition for TIF funding, the city's Office of Economic Development asked the developers to cut the allocation to forty percent.[64]

The developers eventually brought a lawsuit against Dallas in 2011, alleging that the city "was opposed to the development of racially-integrated low-income housing in Downtown Dallas." As they argued, city council members, the Housing Finance Corporation Board, as well as city staff, were concerned that the LTV Tower conversion would result in an overconcentration of affordable housing in the downtown area. They claimed that a member of the TIF Board compared their project to "post-war tenement public housing projects." That accusation was hardly accurate considering that half of the units would not be low-income.[65] Another member of the TIF Board, a manager of the downtown Nieman Marcus, allegedly stated: "We don't want those kind of people in Downtown Dallas because they cannot shop at my store."[66] Lockey and MacKenzie concluded that the City of Dallas "was actively discouraging the development of low-

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[63] Joint Declaration of Curtis Lockey and Craig Mackenzie ¶¶ 11–15, *Lockey v. City of Dallas*, No. 11-cv-354 (N.D. Tex. April 25, 2012), ECF No. 53-2.
[64] Ibid. ¶ 23.
[65] Ibid. ¶ 22.
[66] Ibid.

income housing available for people of color outside of the Southern Sector, and in particular that the City did not want such housing to be in Downtown Dallas."[67]

The city's policies governing the downtown TIF supported these allegations. Within the Downtown Connection TIF District, the city allowed funding recipients to reserve only thirty percent of units for affordable housing. This policy flew in the face of HUD's national objective of making 51 percent of urban residential units affordable low and moderate-income households. Strikingly, the city's thirty percent limitation applied only downtown. In TIF districts located in Southern Dallas, the city did not impose any similar restrictions on the volume of affordable housing that developers could produce with TIF financing.[68]

Affordable housing had no place in Dallas's vision for downtown revitalization. The Bartlett administration hoped to bring corporate headquarters and offices to downtown Dallas. City officials hoped to use Dallas's revitalized downtown neighborhoods to entice corporate executives. To market the city, Dallas's leaders invested city resources—largely housing finance bonds and TIF bonds—into housing development for a budding class of downtown professionals. The city directed funding for affordable housing elsewhere.

VII.

To compete with other major cities and draw businesses to Dallas, it was not enough for the city to build attractive housing and get tough on crime. City officials and

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[67] Ibid. ¶ 25.
[68] Complaint ¶ 132, *Lockey v. City of Dallas*, No. 11-cv-354 (N.D. Tex. February 22, 2011), ECF No. 2.

downtown boosters believed Dallas needed to also demonstrate its cultural sophistication. Investment in art and entertainment, from public sculptures to museums, also reinforced the city's efforts to control its public spaces. Having bulldozed downtown encampments where homeless people lived, the city filled the void with imagery that claimed downtown Dallas for educated professionals.

Kenneth Russo, the vice president of J.C. Penny and President of the Dallas Business Committee for the Arts, considered public and private investment in art integral to economic development. The Committee for the Arts was a nonprofit connected to the national organization that David Rockefeller founded in New York in 1967. The national and local organizations encouraged businesses to donate money to arts organizations, helped organizations connect with donors, and lobbied local governments for public investment, in part by hiring consultants to demonstrate that art generated economic growth. Russo joined the Dallas Business Committee for the Arts after J.C. Penny relocated its corporate headquarters from New York City to Plano, Texas in 1988. During this move, he had a front row view of the company's deliberations. From what he saw, culture clearly mattered.

Business managers looked for housing, airport access, and schools. But during J.C. Penny's relocation, Russo found that the company was particularly interested in finding a home that offered "a strong, vigorous arts and cultural environment." The reason, he explained, was that arts and culture were "vital to a successful business environment." The connection between business owners and the arts was "no accident." Art was an economic driver. In a 1994 local study that consulting firm Deloitte & Touche

produced for the Dallas Business Committee for the Arts, Deloitte found that the "arts industry was a $472.3 million contributor to the economy." As Russo explained, "these bottom-line executives are seeing a definite return on their investments in this area or they could not continue to give." Reflecting this point, across the U.S. corporate donations to arts organizations rose from a low of $10 million in 1966 to $506 million in 1982.

But it was not just tourism, gift shop purchases, or gallery sales that company executives valued. Cultural institutions communicated the values of a community to the outside world. A vibrant art scene informed corporate executives that if they came to Dallas, they would find like-minded peers. The Dallas Business Committee for the Arts in the late 1980s and 1990s advised City Council that public support for art would encourage corporate relocations. City business leaders in the early 1990s urged the city to include plans for expanding the Dallas Arts District in the Dallas Plan, a master planning document the city developed during the Bartlett administration. As one law firm partner wrote in the *Dallas Morning News*, a multi-purpose performing arts facility could "bring new life to our downtown area," noting that a community's "commitment to the arts is at least one measure of its character." According to Pat Porter, executive director of the Dallas Business Committee for the Arts before Russo, a busy arts scene created an environment that enabled corporations "to hold their senior executives here." As Russo

put it, "Dallas will never be a truly great business city without a parallel development in the arts and cultural community."[69]

The city of Dallas took these words as gospel. Having lacked the political will to invest resources in affordable housing, the City Council steered bond revenue and public funds into museums, entertainment venues, and public art. Throughout the 1990s, the city budget included an annual $9 million to cover operation costs for the Myerson Symphony, the Dallas Museum of Art, a theater, and two cultural centers. In 1992, the city provided $30 million to fund an expansion of the Dallas Museum of Art. The City Council also invested heavily in entertainment venues near downtown, spending $9.7 million to refurbish the Cotton Bowl stadium, $6.4 million on the Dallas Zoo, $8.4 million for Fair Park , and nearly $9 million to repair an arboretum and build a park for historical sites immediately south of downtown.[70] In 1998, with plans to develop performing arts center for the Dallas Opera and the Dallas Theater Center in the downtown Arts District, the City Council adopted a $10.5 million bond program.[71] City planners hoped these venues would draw people—tourists, suburbanites, and downtown

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[69] Robert Miller, "The Art of Business," *Dallas Morning News*, September 3, 1995; Zan Dubin, "Panel to Study How the Arts Pump Up County's Economy," *Los Angeles Times*, January 31, 1990; Miles Smith, "Committee Bridges Business, Art Gap," *Los Angeles Times*, September 6, 1968; "U.S. Firms Gave $506 million to the Arts in '82, Report Says," *The Atlanta Constitution*, November 11, 1983; Ed Housewright, "Council Adopts Plan for Art in Public Buildings," *Dallas Morning News*, September 15, 1988; "Arts Impact: Cultural Business is a Win-Win Deal for Dallas," *Dallas Morning News*, March 29, 1995; Robert Jordan, "Put the Arts District in the Dallas Plan," *Dallas Morning News*, November 13, 1993; Shermakaye Bass, "Businesses Dig Deeper for Arts Funding," *Dallas Morning News*, October 25, 1992.
[70] "Hart Says Council-Manager System Survived Enlarged Council," *Dallas Morning News*, February 23, 1992.
[71] "Downtown's Future," *Dallas Morning News*, April 26, 1998; "Stadium Bonds Approved," *Dallas Morning News*, June 11, 1992; Anne Belli Gesalman, "City Council Oks Larger Bond Package," *Dallas Morning News*, March 2, 1995.

dwellers themselves—into the streets of the central business district, presenting the city as a vibrant place to live and work.

The city also invested in public displays. In the 1994 Dallas Plan, city planners worried that downtown parks and open spaces were "uninviting." They suggested that the city needed to transform these spaces to "create a feeling of warmth and a place of respite for the user." "Businesses and customers will be attracted to areas that are visually appealing," they advised.[72]

Following this theory, the city spent money on improvements along Main Street, a downtown thoroughfare that over prior decades had become desolate. In 1993, it spent $30 million in what it called the "Dallas City Center Project." The plan involved sidewalk repairs and widening, decorative lighting, landscaping and other improvements intended to attract retail downtown. Where people walked the streets, the theory went, retail would follow. The upscale clothing store Nieman Marcus was one of the last major downtown retailers, and its managers had been thinking about shutting the store. As city planners admitted, the City Center Project was largely a response to this threat.[73]

The city also spent $750,000 on a new park along Main Street. Playing off the large Pegasus statue sitting on top of the downtown Magnolia Building, the lead planner, artist Brad Goldberg, designed the plaza to reflect Greek mythology. The plaza included nine granite boulders distributed throughout the space, representing the nine Muses. Goldberg viewed his project as "trying to heal the city." To this end, he included what he

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[72] The City of Dallas, The Dallas Plan, adopted December 14, 1994, 8–13, folder: Dallas Plan, Box 39, Series 96-035 (Dallas Plan 1994), DMARC.
[73] "Main Street: Don't Let Cure Kill the Patient," *Dallas Morning News*, May 30, 1993; "Comeback City," *Dallas Morning News*, March 7, 1993.

described as pagan symbols of healing, including a well, a stream, a grove of bald cypresses, and a 4,000 pound quartz crystal.[74]

In 1994, the city donated land to redevelop another downtown park, the Pioneer Plaza. The City Council promised an annual maintenance budget of $200,000. The project, which cost $9 million, included a bronze sculpture depiction of a cattle drive, featuring 70 steers, each standing six feet tall, and three cowboys. The city donated land for the project, which accounted for $5 million of its cost. The idea originated with local real estate developer Trammell Crow, who suggested the statues would one day be Dallas's equivalent of the Eifel Tower, bringing international fame to the city.

Some residents found the city's investment inequitable. As one woman erupted during a City Council meeting, "You're going to spend $200,000 on some cows. What about all those people out there on the streets who are hungry?"

Others questioned its historical accuracy. A coalition of local artists filed a lawsuit in state court to obstruct the project. They argued that the monument misrepresented Dallas's history. Fort Worth may have been a thoroughfare for cattle, but Dallas never was. Dallas had been a cotton town. A better representation, one artist suggested, would be a "heard of lawyers, bankers and insurance men stampeding through town." One critic satirized the park, quoting Mark Twain: "The heck with Art, the heck with Truth. We're selling postcards!" Just imagine the "many tourists, cameras around their necks, money in their pockets and not much background in history," he wrote. They

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[74] David Flick, "Downtown's Newest Park Nearly Ready," *Dallas Morning News*, October 18, 1994; David Dillon, "Is a New Plaza Enough to Rescue Downtown?" *Dallas Morning News*, December 29, 1991.

are "out there for us to harvest." But this was exactly the argument that the park's proponents offered. Cows might not have been part of Dallas's history, but the spectacle would draw people downtown.

Seeing something to this logic, the City Council adopted the budget awarding maintenance costs for the park. Meanwhile, the artists' lawsuit went nowhere. Trammel Crow had his way.[75]

In transforming Dallas into a cultural hub, the city had willing accomplices among business executives. Like J.C. Penny's Kenneth Russo, Dallas banker and developer Raymond Nasher both appreciated visual arts and saw its potential for driving economic development. "A strong and active cultural community makes this a better place to live and work, and draws new companies and talented employees to the area," he wrote. Doing his part to strengthen Dallas's "cultural community," in 1997 Nasher offered to donate his massive private art collection to the city. His collection, valued at about $200 million, included 66 outdoor sculptures worth over $50 million. He proposed putting his outdoor pieces on display in a downtown sculpture garden near the Dallas Museum of Art. The city rushed to make money available, offering $16 million to support the project. Nasher turned down the funds—he promised that his foundation

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[75] Same Verhovek, "Dallas Casts New Image, In Pronze, as a Cow Town," *New York Times*, January 17, 1994; Janet Kutner, "3 Artists Sue City Over Plan to Erect Sculpture of Steers," *Dallas Morning News*, June 23, 1993; Bryan Woolley, "The Art Snobs Meet Frankensteer," *Dallas Morning News*, August 15, 1993; Sylvia Martinez, "City Council Adopts No-New-Taxes Budget," *Dallas Morning News*, September 23, 1993; Michael Preker, "Faking History," *Dallas Morning News*, May 8, 1994; Larry Powell, "Get along, critics: This Catle Sculpture Ain't Half-Bad," *Dallas Morning News*, March 17, 1994; Donnis Baggett, "Let's Have a Round of Moos," *Dallas Morning News*, July 31, 1994.

would cover the expenses.[76] The sculpture garden took years to complete, with Nasher becoming embroiled in complicated negotiations with Trammel Crow over land acquisitions for the project. The *Dallas Morning News* looked forward to the day project was complete. Quick to trumpet the return the city would see, it declared: "When Raymond Nasher's world-class sculpture collection is added to the Arts District in a couple of years, Dallas will be even more competitive with other cities for corporate relocations."[77]

Not to be outdone, developer Trammell Crow donated his private collection of Chinese art to the city in 1998. To house his collection, Crow invested $5.5 million to develop a museum for the "Crow Collection of Asian Art." He built the museum in the Arts District, immediately across the street from the Nasher Sculpture Center.[78]

For Dallas to become a cultural icon, the city's power brokers also needed to deal with its racist past and present. According to Bartlett's campaign staff, Dallas wanted to be an "international city," but "there is a perception that Dallas lacks appreciation for the cultural diversity existing within." Described less delicately, white business executives and politicians had for decades excluded people of color from politics and displaced black and Mexican American people to make way for highways and expensive housing. Now they had an image problem to contend with. Pointing to a possible solution,

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[76] Raymond Nasher, "Art Needs Support From Business," *Dallas Morning News*, June 8, 1992; Christopher Lee, "Sculpture Garden to Boost Economy," *Dallas Morning News*, April 9, 1997.
[77] "Union Pacific," *Dallas Morning News*, April 24, 1997.
[78] Janet Kutner, "Crow's Feat: New Museum Provides a Sparkling Home for Founder's Eclectic Asian Art Collection," *Dallas Morning News*, November 29, 1998.

Bartlett's staff offered a glib observation: "In an 'international city,' race relations and cultural diversity is a major strength of the city, not a weakness."[79]

On the campaign trail, "race relations" to Bartlett largely meant holding meetings with white and black businessmen. Once in office, the Bartlett administration welcomed the city's "diversity" by providing communities of color a larger platform for arts and culture. As his campaign had suggested, the city should support and publicize African American institutions "as a marketing tool to grow the City of Dallas." To be "serious about cultural diversity," the city needed to "include historic African-American landmarks in the marketing of Dallas attractions" and "promote the programming of Dallas-based African-American art and culture institutions." This could solve the "image" problem.[80]

Bartlett followed this advice in office, elevating cultural "diversity" in downtown Dallas while reserving its residential life for white professionals. Under Bartlett's leadership the city spent $1.2 million to help develop the Dallas Museum of African-American Life and Culture southeast of downtown. To Mayor Bartlett, the museum painted the city in a new light. At its opening ceremony, he declared, "The museum is an extraordinary asset [for] a city that has . . . discovered inclusion."[81] Dallas also contributed public funds to help build a Latino Cultural Center. In a 1995 bond issue, the city included $3.5 million to develop the cultural center. The sponsoring organization

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[79] "An Inclusive Marketing Plan for the City of Dallas," folder: African American Advisory Group, Box 4c534b, Bartlett (Steve) Papers, BCAH.
[80] Ibid.
[81] Norma Adams Wade, "Ceremony Heralds Black Life, Culture," *Dallas Morning News*, November 14, 1993; "New Museum: African-American Museum a Cultural Resource," *Dallas Morning News*, November 13, 1993.

arranged to build the center in Deep Ellum, a neighborhood on the eastern edge of downtown, with the land acquisition funded by the city and a $250,000 donation from the Meadows Foundation. Despite years of delays as development plans grew more elaborate and construction costs mounted, the organizers broke ground on the project in 1999.[82] Meanwhile, the Dallas City Council in 1994 instructed the Office of Cultural Affairs, the city department responsible for allocating public funds to arts organizations, to increase the funding it allocated to groups organized or managed by people of color.[83]

With this wave of public spending, Dallas transformed its downtown. But with limited resources, the city invested in its image at the expense of services for the poor. The city used art and museums to paper over racism in city politics. It claimed itself as a cultural hub to attract corporate executives.

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By many accounts, Dallas's business outreach campaign, supported by its investments in downtown policing and housing development, delivered remarkable results. By the end of the 1990s, the vacancy rate of downtown office complexes fell to new lows. Continental Insurance, a Chicago company that the Bartlett administration had targeted in its business outreach campaign, decided to relocate 400 employees from Dallas's suburbs to a downtown office building, the Plaza of the Americas, signing a ten-

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[82] Mercedes Olivera, "Hispanic Center Meeting Set," *Dallas Morning News*, July 9, 1995; Frank Trejo "$250,000 Donated for Center," *Dallas Morning News*, June 23, 1996; "Latino Center Will Include Spanish, Mexican Motifs," *Dallas Morning News*, March 19, 1997; "Building of Latino Cultural Center Delayed," *Dallas Morning News*, November 25, 1998; Duchesne Drew, "Ceremony Held on Latino Center Site," *Dallas Morning News*, March 23, 1999.
[83] Lawson Taitte, "The Furor Over Ethnic Arts Funding," *Dallas Morning News*, June 19, 1994.

year lease.[84] Mobil Corporation, which had threatened to leave to the suburbs, decided to stay.[85] The director of one real estate firm described the changing occupancy rates as a "historical reversal of a trend that began in the 1950s."[86] But these improvements came at a significant cost. The downtown tax base rose as property values increased, but the central business district became a more exclusive space.

Some of the city's interventions looked innocent enough. Dallas's sales efforts depended in part on cosmetic improvements to the downtown landscape. Business recruitment documents boasted that Dallas had built the "largest planned Arts District in the country" in its downtown. The city had invested $81.5 million to create the Meyerson Symphony Hall in 1989, and the Dallas Museum of Art finished undergoing extensive renovations in September 1993. These projects drew people downtown, and connected business people with the cultural institutions. As the city noted, "a number of corporations use the Meyerson for special meetings or events."[87] The city paired its investment in the symphony and museum with a $100 million convention center and $30

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[84] Trey Garrison, "Continental Insurance Joins Parade to Downtown Dallas," *Dallas Business Journal*, February 28–March 6, 1997, clipping in folder 4 (Woodbine Materials / Articles), Box 5, Woodbine Development Corporation Papers, MA13-10, DML; Susan Warren, "Who Deserves the Blame for Downtown Dallas?" *Wall Street Journal*, May 28, 1997, clipping in folder 4 (Woodbine Materials / Articles), Box 5, Woodbine Development Corporation Papers, MA13-10, DML; Ben Johnson, "Downtown Dallas Comes Roaring Back!" *National Real Estate Investor*, October 1996, clipping in folder: 5 (Various Publications on Dallas), Box 5, Woodbine Development Corporation Papers, MA13-10, DML.

[85] Richard A. Oppel, "'The Horse is Still Flying' Downtown," *Dallas Morning News*, January 1, 1993.

[86] D Magazine, Special Edition: Downtown Dallas, November–December 1996, 52, folder: 5 (Various Publications on Dallas), Box 5, Woodbine Development Corporation Papers, MA13-10, DML.

[87] See, for example, City of Dallas, Economic Development Department, Headquarters Relocation Proposal to Taco Bell, November 5, 1993, Box 4c522b, Bartlett (Steve) Papers, BCAH; Proposal Update to Mobil Corporation, August 14, 1992, 29–31, Box 4c523b, Bartlett (Steve) Papers, BCAH.

million for a new sculpture, a fountain, and new landscaping and street improvements.[88] *D Magazine* in 1996 breathlessly announced that "downtown is a feast for the eye."[89]

The city's sales efforts depended on more than investments in new downtown attractions. New iconography, from sculptures to a concert hall, could signify that Dallas was a world-class city, but only if its appearance was not contradicted by emblems of supposed disorder. To sell Dallas to the nation's business leaders, city officials believed that they needed to bring housing for professional class people to neighborhoods near downtown. It also removed individuals who did not conform with their vision for the central business district.

To effectuate these goals, the city enforced building code standards in more stringent ways, and leveled public housing complexes. As public housing units fell, city leaders injected funds into infrastructure improvements and parks. Reflecting policy at the national level that replaced funding for public housing with vouchers that subsidized rental housing on the rental market, the city dispersed public housing residents by using Section 8 assistance to help former public housing residents live in new neighborhoods. While the city invested some of its resources into affordable housing development, almost solely to fulfill its obligations under the *Walker* settlement, it used far more of its tax revenue and fundraising capacity to support professional-class housing and entertainment venues in the central business district.

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[88] 1992 City of Dallas Performance Report, 7 Box 4c522b, Bartlett (Steve) Papers, BCAH.
[89] D Magazine, Special Edition: Downtown Dallas, November–December 1996, 75, folder: 5 (Various Publications on Dallas), Box 5, Woodbine Development Corporation Papers, MA13-10, DML.

To clean up the downtown, the city also incarcerated more juveniles and adults than ever before. It transformed areas where individuals would once gather into spaces where one's presence was considered suspicious—suspicious, that is, if the person did not fit city leaders' image for the central business district. To remove nonconforming behavior and populations, the city expanded downtown police patrols, and enacted laws forbidding panhandling and sleeping in public. The ways city leaders addressed homelessness were indicative of their motives. The city reduced the visibility of homelessness in the central business district by criminalizing sleeping in public and by establishing and enforcing nighttime anti-trespassing laws in public areas. City leaders made no effort to reduce homelessness in the most logical way possible: by making permanent shelter available to those in need.

The policies adopted by the Dallas City Council, the Bartlett administration, and other city leaders during the 1990s aimed to expand the city's tax base. Municipal revenue had fallen short of local needs during the 1970s and 1980s, but the City Council had no interest in increasing tax rates—such an approach was political dynamite. With federal aid to cities dwindling, Dallas could not rely on government grants to close gaps in its budget. Instead, city leaders looked to bring new businesses to vacant downtown office buildings. They hoped to increase property values, and thus property tax revenue, and generate more sales taxes.

But to achieve this end, Dallas needed to sell its business districts to business leaders throughout the U.S. and the world. It needed cleaner streets, more prestigious cultural attractions, and more vibrant professional class neighborhoods. The city's

crackdown on crime, and simultaneous criminalization of homelessness, helped effectuate these goals. In part, the plan worked. By the end of the 1990s, Dallas filled up office buildings that had lain vacant since the 1980s. As corporations moved their headquarters or administrative centers into Dallas's central business district, the city succeeded in securing new sources of municipal revenue. Dallas grew more wealthy. But to get there, it also became more unequal, more intolerant, and more punitive.

Conclusion

On August 4, 2014, the lawsuit that Craig MacKenzie and Curtis Lockey brought against the City of Dallas ground to a halt. The developers had retained one of the U.S.'s leading law firms specializing in Fair Housing Act litigation, Relman, Dane & Colfax, to represent them in the lawsuit. The claims they asserted against the city involved extraordinary legal contortions. They alleged that the city had steered affordable housing development away from Dallas's downtown, and to hold Dallas liable for this conduct, they sued under the federal False Claims Act. But after years of litigation, the district court and the Fifth Circuit Court of Appeals ultimately agreed that the developers' action had to be dismissed. The developers had failed to prove that they were the original source of information giving rise to their claims, a threshold requirement under the False Claims Act. Lockey and MacKenzie's unusual litigation strategy, and the immense hurdles they faced in holding Dallas liable, captured the extent to which federal authority over urban policy had waned since the 1970s.

In the mid 1990s, Dallas created a Tax Increment Financing District to finance downtown redevelopment projects. MacKenzie and Lockey hoped to tap into the TIF District's resources to support their plan to develop affordable housing, and in the early 2000s, they asked the city for help. They proposed to convert a downtown office building in Dallas into an apartment complex, with half of the units reserved for affordable housing. As Chapter 8 explained, the developers found city officials unreceptive to their plan and hostile to the prospect of downtown affordable housing development. The

developers recognized that the city's icy response reflected a broader pattern of behavior. As they argued, the city had obstructed affordable housing downtown in part by imposing a 30 percent cap on the number of income-restricted units that developers could include in downtown housing projects. Moreover, the city dedicated less than 0.5% of its $647 million tax increment financing budget to affordable housing. Dallas's city planners had also failed to conduct an analysis of impediments to fair housing in Dallas, a self-assessment that HUD required cities to conduct before submitting proposals for federal funding under the Community Development Block Grant and other programs.[1] Through these actions, Dallas failed to uphold its obligation under federal law to "affirmatively further" fair housing.[2]

The developers shoehorned these allegations into claims under the False Claims Act. Under the statute, a person with original knowledge of misconduct may stand in the shoes of the federal government. Acting on behalf of the government, the person could bring claims against anyone who made false statements to the federal government to receive federal funds.[3] As Lockey and MacKenzie argued, the city had represented in its funding application to HUD that it was affirmatively furthering fair housing. But Dallas had systematically steered affordable housing from downtown and failed to reduce housing segregation throughout the city. The city had therefore used false representations

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[1] Complaint ¶¶ 75, 132, *Lockey v. City of Dallas*, No. 11-cv-354 (N.D. Tex. February 22, 2011), ECF No. 2.
[2] For HUD's consolidated plan regulations requiring cities to "affirmatively further fair housing," see 24 C.F.R. §§ 91.225 and 91.325.
[3] See 31 U.S.C. § 3730(e)(4) ("The court shall dismiss an action or claim under this section . . . if substantially the same actions or transactions as alleged in the action or claim were publicly disclosed . . . unless . . . the person bringing the action is an original source of the information.").

to receive federal funds. The developers asked the court to require the city to pay them money as a reward and to return federal funds to HUD.[4] Although the False Claims Act did not provide the developers a legal basis for changing the city's policies, they could also use the threat of a large judgment to negotiate a settlement requiring policy reforms.

Unfortunately, Lockey and MacKenzie never had a chance to prove their allegations. The district court, in a decision that the Fifth Circuit affirmed, dismissed the case. As the Fifth Circuit explained, the developers' personal knowledge of Dallas's misconduct, which they gained during meetings with city officials, was not sufficient. Their claim also relied extensively on their analysis of public records; their personal knowledge was not sufficient to meet the demands of the False Claims Act's "firsthand knowledge" requirement.[5] Across the U.S., Relman, Dane & Colfax helped False Claims Act plaintiffs bring similar actions against cities to challenge discriminatory city policies. But along with Lockey and MacKenzie, they found the "firsthand knowledge" standard too demanding a threshold.[6]

At first blush, Relman, Dane & Colfax's legal strategy appears odd. Given the complexities and obstacles involved in False Claims Act litigation, why not pursue a more straightforward claim—one that only required proof of an individual injury but not

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[4] Complaint 56–58, *Lockey*, No. 11-cv-354.
[5] U.S. ex rel. Lockey v. City of Dallas, 576 F. App'x 431 (5th Cir. 2014). The district court's decision is Mem. and Order, *United States ex rel. Lockey v. City of Dallas*, No. 11-cv-354-O (N.D. Tex. Jan. 6, 2014), ECF No. 153.
[6] See, for example, United States ex rel. Freedom Unlimited, Inc. v. City of Pittsburgh, Pennsylvania, No. 12-cv-1600, 2016 WL 1255294 (W.D. Pa. Mar. 31, 2016); U.S. ex rel. Ellis v. City of Minneapolis, No. 11-cv-00416, 2014 WL 3928524 (D. Minn. July 24, 2014), *report and recommendation approved*, 2014 WL 3928525 (D. Minn. Aug. 12, 2014); United States ex rel. Hanna v. City of Chicago, 834 F.3d 775 (7th Cir. 2016); U.S. ex rel. Dunleavy v. Cty. of Delaware, 123 F.3d 734 (3d Cir. 1997).

extensive “firsthand knowledge” of the facts giving rise to the allegations? The answer is simple: the developers and their lawyers had no better option.

Shifts in federal housing and urban development policy since the 1970s explain the challenges that people faced in using litigation to challenge the policies of city governments. Urban renewal litigation in the 1960s opened the door for people to challenge local government decisions that threatened to uproot poor communities. Plaintiffs challenging urban renewal established that they had standing to enforce federal statutes, and had a right to bring claims under the Administrative Procedure Act to challenge the decisions of federal agencies, including HUD. Their achievements pointed to one future—one where poor people could hold federal officials accountable for enforcing program regulations that protected against displacement and discouraged segregation. But over the following decades, federal funding receded. Cities replaced federal aid with local bond-financing programs that gathered capital from private investors for local housing and neighborhood development programs. These local programs, like Dallas’s tax increment financing program, contained few regulations. Local programs left aggrieved residents few options for challenging the city’s use of bond proceeds.

Nor could residents use federal tax regulations to challenge local decisions. Cities sold bonds by promising investors that the federal government would not tax the interest they earned. Congress and the Treasury Department could regulate the ways cities used bonds by limiting the conditions on which municipal bond interest would remain exempt from taxes. But throughout the 1980s and 1990s, Congress merely imposed limits on a

special subset of private-purpose bonds that cities used to finance commercial and industrial development. Federal officials declined to regulate municipal bond markets, and imposed no regulations to govern municipal bonds used for housing and urban development.

Furthermore, even though cities like Dallas received funding through the Community Development Block Grant program, Congress had deliberately designed the program to carry few requirements, allowing local governments to have discretion over how they used federal funds. The federal government wanted to avoid using its spending power to regulate local policy. When Congress passed the 1974 Housing and Community Development Act, the prevailing view in HUD and Congress—shared among conservative and liberal lawmakers—was that federal funding should come with few strings attached. Program administrators received broad discretion to approve the comprehensive plans that municipalities submitted as a condition for receiving HUD funds. This left local activists with little hope of using litigation to challenge HUD's actions in awarding funds under the Community Development Block Grant.

In Dallas, Lockey and MacKenzie wanted to change the way the city used its tax increment financing program. But given HUD's discretion in administering the CDBG program, they could not sue HUD directly to challenge its decision to award grants to Dallas. They would also face insurmountable hurdles in attempting to sue the city directly under the Fair Housing Act. That would require them to allege that the city engaged in racial discrimination when it obstructed the developers' affordable housing plans. With

no other option, they turned to the False Claim Act, which proved to be yet another dead end.

Shifts in federal housing and urban development policy eroded residents' legal rights. At the same time, cities also became more responsive to private capital and business managers. Dallas designed its housing and development policies to attract investors. Instead of channeling municipal resources to poor residents, the city financed street improvements and housing developments for wealthier households. As Dallas fought to increase its tax base, it poured money into its downtown, hoping to attract corporate managers to bring their businesses to the City. Throughout the 1980s and 1990s, the city helped private developers pursue development projects that displaced poor people. But with the source of funds driving local urban renewal increasingly coming from private investors, residents could not resort to litigation to fight these injustices.

With city government responsive primarily to private investors, and litigation offering little promise, Dallas remains divided as ever. Today, a visitor can walk north across the expansive plaza adjacent to City Hall and find downtown sidewalks bustling with business managers, bankers, accountants, and lawyers. They pass in and out of the same high-end stores that draw people to Fifth Avenue in New York and the Magnificent Mile in Chicago. Main Street, once a source of anxiety for city planners in the 1980s and 1990s, is lined with luxury hotels, attractive parks, and striking displays of art. Continuing further north into State-Thomas, what was once Freedman's Town is now home to Whole Foods, upscale condominiums, fine dining, and more high-end retail.

Travel south or west of downtown and the landscape tells a different story. The streets show little sign of city investment. Poverty and homelessness remain widespread, with families living doubled-up in small homes. Even downtown, the city struggles to hide the misery that lies beneath its shiny surface. The downtown public library draws homeless people looking for a place to rest or read, but police officers are never far, and always eager to ask questions.

Dallas invested in its professional class, and at the expense of the poor, to deepen its tax base. Despite its efforts, Dallas's finances remain strained. In 2016, Dallas announced that it faced a massive $7.6 billion in unfunded pension liabilities and Moody's downgraded Dallas's bond rating multiple times. Unsure how they would cover pension costs, city officials gave serious thought to bringing Dallas into municipal bankruptcy.[7] This was an unthinkable proposition when Texas's representatives lobbied the federal government against amendments to the municipal bankruptcy code in the 1970s. But as retired firefighters and police made a run on the fund, withdrawing over $220 million, the city stood to benefit from the legislation. While the city struck a deal with pensioners to hold off a bankruptcy filing, its liabilities continue to climb.

Throughout the 1980s and 1990s, Dallas took on billions in debt. It wanted to keep taxes low while maintaining its operations amid reductions in federal funding. It sold bonds to build museums, performance venues, and stadiums, to fund infrastructure

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[7] Mary Walsh, "Dallas Stares Down a Texas-Size Threat of Bankruptcy," *New York Times*, November 20, 2016; Mimi Swartz, "Towering Debts," *Texas Monthly*, February 2017; Robert Wilonsky, "Moody's Again Downgrades Dallas Bonds over Pension Fund Crisis," *Dallas Morning News*, December 2016; Memorandum to the Mayor and Members of City Council, December 9, 2016, http://dallascityhall.com/government/citymanager/Documents/FY16-17%20Memos/Council-Memos_120916.pdf.

improvements, to finance industrial development and housing. Dallas is a city built on debt, and controlled by capital. The next time Moody's starts asking questions, the city manager will do all it takes to avoid another downgrade. If Dallas's history is any guide, austerity measures will fall on the shoulders of the poor. If this happens, federal courts will offer little protection.

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