

**CITY NIMBYS**  
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Cities have traditionally been thought of as “growth machines”, while many suburban towns were notorious for exclusionary and growth-limiting not-in-my-backyard (NIMBY) policies aimed at protecting the property values of their “homevoters.” Increasingly, cities are experiencing substantial opposition to proposed new development, driven, in substantial part, by renters who fear that the development will make their homes less affordable and either cause them to have to leave the neighborhood or change the neighborhood to something less familiar and appealing to them.

NIMBYism in cities raises familiar issues, as well as issues quite distinct from more traditional NIMBYism.<sup>1</sup> Neighbors of proposed development in cities are likely to have more wide-ranging interests: while both renters and homeowners fear increasing costs (rents and taxes, respectively) and changes in their neighborhoods, renters and homeowners otherwise are likely to be affected in very different ways from development pressures. Further, while suburban NIMBYism is often associated with attempts to exclude lower income and minority households and pull-up-the-drawbridge behavior by those who just recently arrived in new neighborhoods, opposition to development in cities is often associated with concern about displacement of existing residents. Because cities have historically been the home of disproportionate numbers of the poor and of racial and ethnic minorities, opposition to development in cities also reflects worries about how to preserve racially and economically diverse neighborhoods and prevent neighborhood changes that could disproportionately burden people of color.

This article describes the rising opposition to development in cities, unpacks the reasons for the rise, and shows how they make city NIMBYism different in critical ways from traditional suburban NIMBYism. It then considers the implications those

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1. “NIMBY” often is used as a pejorative term, essentially assuming that opponents to development are selfish, racist, or classist (or some combination of those). I do not share those assumptions. Opposition to development proposed in the opponent’s neighborhood is not necessarily wrong. While some opposition to development may be motivated by racism or classism, other opposition may be based upon legitimate concerns about securing the investments in neighborhood infrastructure or schools that the development will necessitate; minimizing the disruption that construction and operation of the development may cause; remedying flaws in the processes used to site or approve the development; or ensuring fairness of the distribution of the benefits and burdens of the development. Further, although some (perhaps even most) opposition is self-interested, distinguishing between situations in which self-interest is inappropriate and those in which it serves society’s values—such as stewardship of the places to which people become attached—is extremely difficult. See Patrick Devine-Wright, *Rethinking NIMBYism: The Role of Place Attachment and Place Identity in Explaining Place-protective Action*, 19 J. COMMUNITY & APPLIED SOC. PSYCH. 426 (2009); Rick Jacobus, *We Are All NIMBYs . . . Sometimes*, SHELTERFORCE (Sept. 12, 2017), <https://shelterforce.org/2017/09/12/we-are-all-nimbys-sometimes/>; Owen Pickford, *Does Homeowner Greed Cause Less Housing?* THE URBANIST (May 22, 2017), <https://www.theurbanist.org/2017/05/22/does-homeowner-greed-cause-less-housing/>.

differences have for how researchers and policymakers should respond. Part I surveys the few academic discussions to date that have focused on growing opposition to development in cities. Part II reviews what we know (and do not know) about whether opposition to new development and regulatory restrictions on development that stem from that opposition are increasingly imposing constraints on new building. Part III assesses the potential consequences of increasing barriers to development. Part IV explores the factors that might explain growing opposition to new construction.<sup>2</sup> Part V discusses what those factors reveal about how opposition to development in cities differs from opposition in suburbs, and suggests the research and policy analysis that might help land use decision-makers respond more effectively to opposition to development in cities.

### I. FROM “GROWTH MACHINES” TO “EXCLUSIONARY CITIES”?

Cities have always enjoyed robust discussions about the desirability of particular development proposals—indeed images of Jane Jacobs taking on Robert Moses,<sup>3</sup> or Jackie Kennedy leading the protest against proposals to replace Grand Central Terminal with an office tower,<sup>4</sup> are much more iconic representations of opposition to development than the typical suburban scenes.<sup>5</sup> But at the same time, cities generally have been considered “growth machines” in which land use officials cater to the interests of an elite coalition concerned primarily with economic growth<sup>6</sup>—in contrast to

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2. Obviously, opposition to new development implicates the huge topic of gentrification, which is beyond the scope of this article. I focus here on risk aversion related to renters’ financial stake in their homes and neighborhood, not on the broader cultural, social, and ideological reasons that people oppose what they consider to be “gentrification.”

3. Images available in *Story of Cities #32: Jane Jacobs v Robert Moses Battle of New York’s Urban Titans*, GUARDIAN (Apr. 20, 2016), <https://www.theguardian.com/cities/2016/apr/28/story-cities-32-new-york-jane-jacobs-robert-moses>.

4. Image available in *The Surprising Role Jackie Kennedy Onassis Played in Saving Grand Central*, CITYLAB (Feb. 5, 2013), <https://www.citylab.com/equity/2013/02/surprising-role-jackie-kennedy-playing-saving-grand-central-station/4596/>.

5. Images of suburban opposition that have become important historical documents usually revolve around developments that would serve racial minorities, such as the bitter fights over the siting of public housing in Yonkers, New York. See Fernanda Santos, *Mixed Success in Yonkers*, N.Y. TIMES, May 28, 2006, <http://www.nytimes.com/2006/05/28/nyregion/28yonkers.html>; BRICK BY BRICK: A CIVIL RIGHTS STORY (Kavanagh Productions 2007); *Show Me a Hero* (HBO television broadcast, Aug. 16, 2015).

6. See, e.g., Harvey Molotch, *The City as a Growth Machine: Toward a Political Economy of Place*, 82 AM. J. SOC. 309 (1977), which was later more fully developed in JOHN R. LOGAN & HARVEY L. MOLOTCH, *URBAN FORTUNES: THE POLITICAL ECONOMY OF PLACE* (1987).

“exclusionary” suburbs and smaller towns,<sup>7</sup> controlled by “homevoters” and their “mercenary concern with property values.”<sup>8</sup>

Those characterizations were always extremes. Cities differ dramatically in their characteristics, as do suburbs.<sup>9</sup> Further, policies regarding growth and development have varied over time in both cities and suburbs; and neither cities nor suburbs have ever had monolithic populations, as many suburbs as well as cities have included both pro-growth and exclusionary factions.<sup>10</sup> Scholars, accordingly, have cautioned against overly-simplistic categories, noting that some cities act more like suburbs are alleged to act, and vice versa.<sup>11</sup> Nevertheless, the dichotomy has been a useful generalization, and informed much of the thinking about land use policies, the division of land use power between local, regional, and state governments, and the nature of judicial review of land use

7. Robert C. Ellickson, *Suburban Growth Controls: An Economic and Legal Analysis*, 86 YALE L.J. 385, 405–07 (1977); see also Richard Briffault, *Our Localism: Part I - The Structure of Local Government Law*, 90 COLUM. L. REV. 1, 3 (1990); Bruce W. Hamilton, *Zoning and the Exercise of Monopoly Power*, 5 J. URB. ECON. 116 (1978); James A. Thorson, *An Examination of the Monopoly Zoning Hypothesis*, 72 LAND ECON. 43 (1996).

8. WILLIAM A. FISCHER, THE HOMEVOTER HYPOTHESIS: HOW HOME VALUES INFLUENCE LOCAL GOVERNMENT, TAXATION, SCHOOL FINANCE AND LAND-USE POLITICS 18 (2001) [hereinafter FISCHER, HOMEVOTER HYPOTHESIS]. Prior to Professor Fischer’s groundbreaking book, J.M. Pogodzinski & Tim R. Sass, *The Theory and Estimation of Endogenous Zoning*, 24 REGIONAL SCI. & URB. ECON. 601 (1994) was a leading exploration of homeowners’ influence on land use decisions. THE HOMEVOTER HYPOTHESIS has led to a large literature. See, e.g., Christian A.L. Hilber & Frédéric Robert-Nicoud, *On the Origins of Land Use Regulations: Theory and Evidence from US Metro Areas*, 75 J. URB. ECON. 29 (2013); John F. McDonald & Daniel P. McMillen, *Determinants of Suburban Growth Controls: A Fischer Expedition*, 41 URB. STUD. 341 (2004); François Ortalo-Magné & Andrea Prat, *On the Political Economy of Urban Growth: Homeownership Versus Affordability*, 6 AM. ECON. J. MICROECON. 154 (2014); Lee Anne Fennell, *Homes Rule*, 112 YALE L.J. 617 (2002) (book review); Richard Schragger, *Consuming Government*, 101 MICH. L. REV. 1824 (2003) (book review). See also William A. Fischer, *The Rise of the Homevoters: How the Growth Machine was Subverted by OPEC and Earth Day*, in EVIDENCE AND INNOVATION IN HOUSING LAW AND POLICY 13 (Lee Ann Fennell & Benjamin J. Keys eds., 2017).

9. Indeed, many older suburbs closest to central cities now share many of the characteristics of under-resourced neighborhoods in cities. See, e.g., SCOTT W. ALLARD, *PLACES IN NEED: THE CHANGING GEOGRAPHY OF POVERTY* (2017); ELIZABETH KNEEBONE & ALAN BERUBE, *CONFRONTING SUBURBAN POVERTY IN AMERICA* (2014).

10. For poignant reminders of the opposition to low-income housing that occurred in cities, with all its racist and classist overtones, see, e.g., Joshua M. Zeitz, *WHITE ETHNIC NEW YORK: JEWS, CATHOLICS, AND THE SHAPING OF POSTWAR POLITICS 190–194* (2007) (describing opposition in Forest Hills, Queens in New York City); Jake Blumgart, *Integrating Whitman*, SHELTERFORCE, May 4, 2016, <https://shelterforce.org/2016/05/04/integrating-whitman/> (describing opposition in Philadelphia). Of course, such opposition is not just a thing of the past. See, e.g., Maya Dukmasova, *Opposition to Affordable Housing in Jefferson Park is Nothing New for Chicago*, CHICAGO READER, Feb. 23, 2017, <https://www.chicagoreader.com/Bleader/archives/2017/02/23/opposition-to-affordable-housing-in-jefferson-park-is-nothing-new-for-chicago>.

11. See, e.g., Andrew H. Whittemore, *Requiem for a Growth Machine: Homeowner Preeminence in 1980s Los Angeles*, 11 J. PLAN. HIST. 124, 132–33 (2012); Mark Purcell, *The Decline of the Political Consensus for Urban Growth: Evidence from Los Angeles*, 22 J. URB. AFF. 85 (2000).

decisions.<sup>12</sup> Recently, however, several scholars have argued that the dichotomy is increasingly inaccurate, as cities have adopted land use practices long associated with suburbs—imposing more restrictions on land through downzonings, charging significant fees for development approval, and taking land off the market through programs to preserve historic landmarks and open space.<sup>13</sup>

Several economists first sounded the alarm, warning that the growth of cities was being stymied by the increasing stringency of their land use regulations.<sup>14</sup> David Schleicher was the first legal scholar to write about the change, noting in 2013:

Scholarship on the political economy of land use—using methodologies ranging from public choice to regime theory—has tried to explain a world in which tony suburbs run by effective homeowner lobbies use zoning to keep out development, but big cities allow relatively untrammelled growth because of the political influence of developers. But the world has changed. Over the past few decades, as demand to live in them has increased, big cities have become responsible for substantial limits on development, particularly in desirable neighborhoods.<sup>15</sup>

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12. See Vicki Been, Josiah Madar, & Simon McDonnell, *Urban Land Use Regulation: Are Homevoters Overtaking the Growth Machine?*, 11 J. EMPIRICAL LEG. STUD. 227, 238–40 (2014) (discussing how the homevoter and growth machine hypotheses have affected land use policy).

13. The cities most often mentioned as imposing more restrictions are Boston, Los Angeles, New York, and San Francisco. It is not clear whether the City NIMBYism phenomenon is more pronounced in those high-cost, high-demand, cities (most of which also have rent regulation protections for tenants, which could cause tenants to act more like homeowners).

14. See Edward L. Glaeser, *Houston, New York Has a Problem*, CITY J., Summer 2008, at 62, 67 (“[T]he unavoidable fact is that New York makes it harder to build housing than Chicago does—and a lot harder than Houston does. The permitting process in Manhattan is an arduous, unpredictable, multiyear odyssey involving a dizzying array of regulations, environmental and otherwise, and a host of agencies. Then developers must deal with neighborhood activists and historical preservationists.”); Edward L. Glaeser, Joseph Gyourko, & Raven Saks, *Why is Manhattan So Expensive: Regulation and the Rise in Housing Prices*, 48 J. L. & ECON. 331 (2005); see also Paul Krugman, Opinion, *That Hissing Sound*, N.Y. TIMES, Aug. 8, 2005, <http://www.nytimes.com/2005/08/08/opinion/that-hissing-sound.html> (noting that “in the Zoned Zone, which lies along the coasts, a combination of high population density and land-use restrictions—hence ‘zoned’—makes it hard to build new houses”). Economist and journalist Ryan Avent also raised the issue, see RYAN AVENT, *THE GATED CITY* (2011).

15. David Schleicher, *City Unplanning*, 122 YALE L.J. 1670, 1675 (2013). Schleicher and Rick Hills previously observed the phenomenon in passing. See Roderick M. Hills, Jr. & David Schleicher, *Balancing the “Zoning Budget”*, 62 CASE W. RES. L. REV. 81, 85 (2011) (mentioning the surprising number of downzonings in New York City during the Bloomberg Administration); see also Roderick M. Hills, Jr. & David Schleicher, *Planning an Affordable City*, 101 IOWA L. REV. 91, 93 (2015) (“[M]any of the biggest and richest cities in America . . . increasingly look like collections of exclusive suburbs, with neighborhoods filled with homeowners stopping the construction of needed commercial and residential development.”).

Around the same time, puzzled by New York City's land use policies during the Bloomberg administration Josiah Madar, Simon McDonnell, and I analyzed scores of neighborhood-wide rezonings, affecting over 20% of the City's land that the City adopted between 2002 and 2009.<sup>16</sup> We investigated the association between the nature of each rezoning and a variety of lot and neighborhood characteristics in order to test various hypotheses that follow from the homevoter and growth machine theories.<sup>17</sup> We found:

[A] surprising level of empirical support for the homevoter-based theory, even though New York City is probably the last place in the United States that one would expect to see zoning policy catering to the interests of homeowners, rather than the growth machine. New York City has the lowest homeownership rate of any major city in the nation, for example, and its land-use policies have long been associated with the interests of the real estate industry. Nevertheless, our results show considerable evidence that homeowners have much more influence on land-use policy than the received wisdom about urban land-use politics would predict.<sup>18</sup>

John Mangin then coined the term “the new exclusionary zoning” to describe limits on development that cities began to impose as wealthier households started to pour back into urban neighborhoods in the 2000s (after abandoning the city for the suburbs in the 1960s and 1970s).<sup>19</sup> He argued: “The effect has been the same as in the exclusionary suburbs: The anti-development orientation of certain cities is turning them into preserves for the wealthy as housing costs increase beyond what lower-income families can afford to pay.”<sup>20</sup> He documented both the increasing stringency of zoning, parking requirements, historic preservation and environmental regulations, as well as the rise of new approval processes and “double-veto approvals” required for development proposals.<sup>21</sup> Mangin also was one of the first to note the irony

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16. Been et al., *supra* note 12, at 228.

17. *Id.*

18. *Id.* at 229 (footnotes omitted). See also Charles Joshua Gabbe, Do Land Use Regulations Matter? Why and How? (Jan. 1, 2016) (unpublished Ph.D. dissertation, University of California at Los Angeles) <https://escholarship.org/uc/item/6db0k1k5> (conducting a similar study of Los Angeles and reaching similar conclusions).

19. John Mangin, *The New Exclusionary Zoning*, 25 STAN. L. & POL'Y REV. 91, 91 (2014).

20. *Id.* at 92.

21. *Id.* at 100.

that affordable housing and community development advocates sometimes are championing the very limits on development that were driving up prices.<sup>22</sup>

Most recently, Wendell Pritchett and Shitong Qiao argued that both American and Chinese cities are acting like exclusionary suburbs, and explored why both countries are seeing that phenomenon, despite their many differences.<sup>23</sup>

## II. ARE REGULATORY STRINGENCY AND OPPOSITION TO DEVELOPMENT ACTUALLY INCREASING?

While those scholars and many other observers believe that land use regulations in many cities are becoming more stringent, and opposition to development has become more intense, there is little direct evidence about how either have changed over the years. Researchers have tried to document the restrictiveness of land use regulations directly through surveys and indices,<sup>24</sup> but those are

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22. *Id.* at 93–94.

23. Wendell Pritchett & Shitong Qiao, *Exclusionary Megacities*, 91 S. CAL. L. REV. (forthcoming Mar. 2018). *Cf.* Jennifer Darrah-Okike, *Disrupting the Growth Machine: Evidence from Hawai'i*, 34 URB. AFF. REV. 1 (2017) (using a case study of successful opposition to a proposed beachfront residential development as evidence that the growth machine can be defeated).

24. *See, e.g.*, MADELYN GLICKFELD & NED LEVINE, REGIONAL GROWTH—LOCAL REACTION: THE ENACTMENT AND EFFECTS OF LOCAL GROWTH CONTROL AND MANAGEMENT MEASURES IN CALIFORNIA (Lincoln Inst. Land Use Pol'y 1992); Leah Brooks & Byron Lutz, *From Today's City to Tomorrow's City: An Empirical Investigation of Urban Land Assembly*, 8 AM. ECON. J.: ECON. POL'Y 69 (2016); Bengte Evenson & William C. Wheaton, *Local Variation in Land Use Regulations [with Comments]*, BROOKINGS-WHARTON PAPERS ON URB. AFFAIRS 221 (2003); Edward Glaeser & Bryce Ward, *The Causes and Consequences of Land Use Regulation: Evidence from Greater Boston*, 65 J. URB. ECON. 265 (2009); Joseph Gyourko, et al., *A New Measure of the Local Regulatory Environment for Housing Markets: The Wharton Residential Land Use Regulatory Index*, 45 URB. STUD. 693 (2008); Lawrence Katz & Kenneth Rosen, *The Interjurisdictional Effects of Growth Controls on Housing Prices*, 30 J. L. & ECON. 149 (1987) (surveying growth caps in the San Francisco Bay Area); Ned Levine, *The Effects of Local Growth Controls on Regional Housing Production and Population Redistribution in California*, 36 URB. STUD. 2047 (1999); Eli Noam, *The Interaction of Building Codes and Housing Prices*, 10 REAL ESTATE ECON. 394 (1983); John M. Quigley & Larry Rosenthal, *The Effects of Land Regulation on the Price of Housing: What Do We Know? What Can We Learn?*, 81 CITYSCAPE 69 (2005); Albert Saiz, *The Geographic Determinants of Housing Supply*, 125 Q. J. ECON. 1253 (2010); Jenny Schuetz, Rachel Meltzer, & Vicki Been, *31 Flavors of Inclusionary Zoning: Comparing Policies from San Francisco, Washington, DC, and Suburban Boston*, 75 J. AMER. PLAN. ASS'N. 441 (2009); David Segal & Philip Srinivasn, *The Impact of Suburban Growth Restrictions on U.S. Housing Price Inflation, 1975-1978*, 6 URB. GEOGRAPHY 14 (1985); David D. Foster & Anita A. Summers, *State Executive/Legislative and Judicial Activities and the Strength of Local Regulation of Residential Housing* (U. of Pa. Wharton Real Estate Ctr., Working Paper No. 577, 2007); Emily Thaden & Ruoniu Wang, *Inclusionary Housing in the United States: Prevalence, Impact, and Practices* (Lincoln Inst. Land Pol'y, Working Paper No. WP17ET1, 2017); Edward L. Glaeser, Jenny Schuetz, & Bryce Ward, *Regulation of the Rise of Housing Prices in Greater Boston* (PIONEER INST. POL'Y BRIEF SERIES, Feb. 2006), [https://www.hks.harvard.edu/sites/default/files/centers/rappaport/files/brief\\_housingregs.pdf](https://www.hks.harvard.edu/sites/default/files/centers/rappaport/files/brief_housingregs.pdf); Rolf Pendall, Robert Puentes & Jonathan Martin, *From Traditional to Reformed: A Review of Land Use Regulations in the Nation's 50 Largest Metropolitan Areas*,

plagued with several problems. First, because land use is primarily regulated at the local level, and local governments differ dramatically in their geography, demography, state and local government structures, land use systems, and implementation regimes, it is difficult to compare across jurisdictions and over time. Second, and most importantly for our purposes, the surveys are point-in-time instruments, and do not provide information about how regulations have changed over the years.<sup>25</sup> While a few researchers have done case studies of regulatory changes over time in particular jurisdictions,<sup>26</sup> those demonstrate the complexity of measuring regulatory stringency and regulatory change, and highlight the difficulty of generalizing from one jurisdiction to another.

Instead, the evidence of increasing regulatory stringency lies in the fact that in many of the American metropolitan areas experiencing increasing demand for housing, the market is not responding to the demand by supplying more housing; instead, prices are increasing.<sup>27</sup> In general, prior to the 1970s, increasing house prices were accompanied, as expected, by increases in construction activity, but in more recent decades, response is less elastic—signaling that supply is being constrained either by natural, geographical limits or by regulation.<sup>28</sup> Economists Edward Glaeser, Joseph Gyourko, and Raven Saks studied the relationship between housing supply and housing prices over the decades since the 1950s, and concluded that:

In a small, but increasing number of metropolitan areas (primarily, but not exclusively, on the coasts), housing prices have soared, and new construction has plummeted. . . . These

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BROOKINGS INST. (Aug. 1, 2006), <https://www.brookings.edu/research/from-traditional-to-reformed-a-review-of-the-land-use-regulations-in-the-nations-50-largest-metropolitan-areas/>. See also Joseph Gyourko & Raven Molloy, *Regulation and Housing Supply*, 5 HANDBOOK REGIONAL & URB. ECON. 1289 (2015) (reviewing several of the most recent surveys in detail).

25. A notable exception is Kristoffer Jackson, *Do Land Use Regulations Stifle Residential Development? Evidence from California Cities*, 91 J. URB. ECON. 45, 47 (2016).

26. See Gabbe, *supra* note 18, at 42–73.

27. See, e.g., Joseph Gyourko, Christopher Mayer & Todd Sinai, *Superstar Cities*, 5 AM. ECON. J.: ECON. POL'Y, 167 (2013); see also Gyourko & Molloy, *supra* note 24. But see Thomas Davidoff, *Supply Elasticity and the Housing Cycle of the 2000s*, 41 REAL EST. ECON. 793, 811 (2013) (disputing that price increases stemmed from decreased elasticity in this particular time period).

28. See, e.g., John M. Quigley & Steven Raphael, *Regulation and the High Cost of Housing*, 95 AM. ECON. REV. 323 (2005) (determining that responsiveness to demand through new construction is weaker in more regulated cities, relative to less regulated cities, especially for multi-family housing); C.J. Gabbe, *How Do Developers Respond to Land Use Regulations? An Analysis of New Housing in Los Angeles*, HOUSING POL'Y DEBATE (published online Oct. 9, 2017).



constraints do not appear to be caused by a declining availability of land, but rather they are the result of a changing regulatory regime that makes large-scale development increasingly difficult in expensive regions of the country.<sup>29</sup>

In addition, in recent decades, housing prices in certain metropolitan areas diverged from the price of land and construction. Prior to 1970, housing prices rose in tandem with land and construction costs. After 1970, however, in a relatively few metropolitan areas, construction costs (materials and labor) stayed comparatively flat after adjusting for inflation,<sup>30</sup> while land costs increased,<sup>31</sup> and the gap between housing prices and construction cost widened.<sup>32</sup> Glaeser and Gyourko recently documented the trend by estimating changes over time in the extent to which market prices equal the full social costs of producing the housing unit—a critical measure of the efficiency of the housing market.<sup>33</sup> They found that in 1985, over 90% of the metropolitan areas studied had median price-to-cost ratios of around 1 or less, meaning that the housing market was supplying homes at close to the cost of producing those homes (including materials, labor, land, and reasonable profit). Only five areas (in California and Hawaii)—or 6.4% of all areas studied—had medians above 1.25, meaning that the price was more than 1.25 times the cost of production.<sup>34</sup> By 2013, however, the percentage of markets in which housing prices were more than 1.25 times the cost of production had increased to 15.4%.<sup>35</sup> Despite the high prices in those markets, the market is not

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29. Edward L. Glaeser, et al., *Why Have Housing Prices Gone Up?*, 95 AM. ECON. REV. 329, 329 (2005) [hereinafter Glaeser, et al., *Prices*]. In the working paper on which the article is based, the authors studied 102 metropolitan areas, and found the median rate of new construction (number of housing units built or permitted in a decade as a share of the units existing at the beginning of the decade) was 36% for the 1970–1980 decade, but had dropped to 14% in the 1990–2000 decade (and was then less than 7% in San Francisco, New York, and Los Angeles). Edward L. Glaeser, et al., *Why Have Housing Prices Gone Up?* 6, 28 (Nat'l Bureau of Econ. Res., Working Paper No. 11129, 2005), <http://www.nber.org/papers/w11129.pdf> [hereinafter Glaeser, et al., *Working Paper*].

30. Gyourko & Molloy, *supra* note 24, at 1290–91 (“This trajectory is consistent with the idea that any inelasticity of housing does not have at its root an inelasticity of the supply of the structure component of homes.”); Glaeser, et al., *Prices*, *supra* note 29, at 329.

31. See, e.g., Joseph B. Nichols, et al., *Swings in Commercial and Residential Land Prices in the United States*, 73 J. URB. ECON. 57, 68 (2013).

32. Gyourko & Molloy, *supra* note 24, at 1291.

33. Edward L. Glaeser & Joseph Gyourko, *The Economic Implications of Housing Supply* 32 J. ECON. PERP. 3 (2018).

34. *Id.* at 13.

35. *Id.* at 13–14.

very responsive to demand, indicating that either geographical or regulatory constraints are interfering with the market.<sup>36</sup>

That indirect evidence of increasing regulatory stringency is bolstered by a wealth of evidence that housing production in many of the nation's largest cities is lagging far behind population and job growth,<sup>37</sup> and is below what competitor cities around the nation or globe are producing.<sup>38</sup>

Just as there is no direct evidence about how regulatory constraints on building have changed in recent years, there also is no direct evidence that local opposition to development in cities has increased, such as comprehensive data about the extent or intensity of public participation in development disputes.<sup>39</sup> Again, however, there is ample anecdotal evidence that opposition to development by both higher-income neighborhoods of homeowners and lower-income neighborhoods with large shares of renters in the nation's most productive cities has been particularly intense in recent years.<sup>40</sup> Further, as detailed above, there is considerable evidence

36. See *id.* at 5–8. A similar measure of changing constraints on supply shows that while the physical cost of constructing the house once represented 90% of the value of the home in an expensive metropolitan area, by 2000, there were 27 metropolitan areas for which physical cost accounted for only 60% or less of home value. Glaeser, et al., *Working Paper*, *supra* note 29, at 5.

37. There is no agreement on how to estimate the supply “gap” for any particular city or region, in part because the market is dynamic: high (low) demand may induce (deter) increases in supply, and low (high) supply may deter (induce) demand. See MAC TAYLOR, CALIFORNIA'S HIGH HOUSING COSTS: CAUSES AND CONSEQUENCES 9 (LEGISLATIVE ANALYST'S OFFICE OF CALIFORNIA 2015), <http://www.lao.ca.gov/reports/2015/finance/housing-costs/housing-costs.pdf>. Laura Bliss, *Is Housing Catching Up?*, CITYLAB (May 26, 2017), <https://www.citylab.com/equity/2017/05/is-housing-catching-up/528246/>, compares the number of units added to the housing stock, multiplied by the average household size for the jurisdiction, against the total population growth during the same period. Blanca Torres, *Housing's Tale of Two Cities: Seattle Builds; S.F. Lags*, SAN FRANCISCO BUSINESS TIMES, Apr. 28, 2017, <https://www.bizjournals.com/sanfrancisco/news/2017/04/28/san-francisco-seattle-housing-production-pipelines.html>, compares housing growth to job growth (but noting that unaffordable housing may slow job growth, so a gap between housing production and job growth may understate the extent to which housing production is inefficiently low. See, e.g., Ritashree Chakrabarti & Junfu Zhang, *Unaffordable Housing and Local Employment Growth: Evidence from California Municipalities*, 52 URB. STUD. 1134 (2015).

38. See, e.g., Robin Harding, *Why Tokyo is the Land of Rising Home Construction But Not Prices*, FIN. TIMES, Aug. 3, 2016, <https://www.ft.com/content/t023562e2-54a6-11e6-befd-2fc0c26b3c60>; JONATHAN WOETZEL ET AL., A TOOL KIT TO CLOSE CALIFORNIA'S HOUSING GAP: 3.5 MILLION HOMES BY 2025, (McKinsey Global Institute 2016) (comparing California's housing production per capita to that of other states).

39. For useful explorations of opposition to housing development over the years, see Pierre Filion & Kathleen McSpurren, *Smart Growth and Development Reality: The Difficult Co-ordination of Land Use and Transport Objectives*, 44 URB. STUD. 501 (2007); Rolf Pendall, *Opposition to Housing: NIMBY and Beyond*, 35 URB. AFF. Q. 112, 114 (1999).

40. See, e.g., TAYLOR, *supra* note 37, at 16; Paaavo Monkkonen, *Understanding and Challenging Opposition to Housing Construction in California's Urban Areas*, (University of California Center Housing, Land Use and Development Lectureship & White Paper 2016); Kim-Mai Cutler, *How Burrowing Owls Lead to Vomiting Anarchists (Or SF's Housing Crisis Explained)*, TECH CRUNCH, (Apr. 14, 2014), <https://techcrunch.com/2014/04/14/sf-housing/>. For recent examples, just in New York City, see Sally Goldenberg & Gloria Pazmino, *Phipps*

that supply is not meeting demand, and that the regulatory process limits supply, in part, because of that opposition.<sup>41</sup>

### III. WHY DOES INCREASING OPPOSITION AND REGULATORY RESTRICTIVENESS MATTER?<sup>42</sup>

#### *A. Restrictions on Supply Increase Housing Prices*

Dozens of empirical studies have shown that more restrictive land use regulations are associated with higher housing prices. Most of the studies are cross-sectional—comparing cities with more stringent regulations to those with less restrictive regimes. Joseph Gyourko and Raven Saks Molloy<sup>43</sup> recently surveyed that literature and concluded: “[t]he vast majority of studies have found that locations with more regulation have higher house prices and less construction.”<sup>44</sup> Cross-sectional studies cannot prove causation, however, because they do not eliminate the possibility that other differences between the cities explain the disparities observed in housing construction and prices. Further, what may seem like comparable regulations in the cities studied, may be applied or enforced very differently across cities and over time.

Several researchers have tried to tease out the causal link between regulation and limits on supply by studying changes in regulations, and have found that the imposition of more stringent land use controls leads to lower supply and higher prices. Kristoffer

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*Houses Withdraws Controversial Rezoning Application in Queens*, POLITICO (Sept. 19, 2016), <https://www.politico.com/states/new-york/city-hall/story/2016/09/philips-houses-withdraws-controversial-rezoning-application-in-queens-105599>; Miriam Hall, *Developer Drops Plan for Vinegar Hill Resi Building After Community Backlash*, THE REAL DEAL (June 6, 2017), <https://therealdeal.com/2017/06/06/developer-drops-plans-for-vinegar-hill-resi-building-after-community-backlash/>; Steven Wishina, *Inwood Residents Killed a ‘Trojan Horse’ for Gentrification—Now What?*, VILLAGE VOICE (Aug. 17, 2016), <https://www.villagevoice.com/2016/08/17/inwood-residents-killed-a-trojan-horse-for-gentrification-now-what/>.

41. See, e.g., Gabbe, *supra* note 18; Monkkonen, *supra* note 40, at 8; Matt Weinberger, *This Is Why San Francisco’s Insane Housing Market Has Hit The Crisis Point*, BUS. INSIDER (July 8, 2017), <http://www.businessinsider.com/san-francisco-housing-crisis-history-2017-7>.

42. This section draws heavily upon Vicki Been, Ingrid Gould Ellen, & Katherine M. O’Regan, *Supply Skepticism: Housing Supply and Affordability*, HOUSING POLICY DEBATE (forthcoming, 2018). While this section focuses on restrictions such as land use regulations, housing supply is also constrained by decisions about where to invest in transit and other infrastructure, and by other public policy decisions outside the land use realm.

43. Gyourko & Molloy, *supra* note 24. For another excellent review, see Edward Glaeser & Joseph Gyourko, *The Impact of Building Restrictions on Housing Affordability*, FRBNY ECON. POL’Y REV. 21 (2003). For more recent studies not included in those reviews, see Gabbe, *supra* note 18; Nils Kok, et al., *Land Use Regulations and The Value of Land and Housing: An Intra-Metropolitan Analysis*, 81 J. URB. ECON. 136 (2014) (concluding that in the San Francisco Bay Area, changes in the regulatory stringency and number of approvals needed to obtain permits or zoning strongly correlate with land value, and thereby lead to higher house prices).

44. Gyourko & Molloy, *supra* note 24, at 1317.

Jackson, for example, used longitudinal data from California to assess how a city's adoption of additional land use regulations affected the number of new construction permits issued in the city.<sup>45</sup> He found that each additional land use regulation adopted reduced multifamily permits by an average of more than 6%, and reduced single-family permits by more than 3%.<sup>46</sup> Regulations reducing allowable density had even larger effects.<sup>47</sup> Jeffrey Zabel and Maurice Dalton, using longitudinal data in Massachusetts, found that increases in minimum lot sizes were followed by significant increases in prices.<sup>48</sup> Using longitudinal data about the Boston metropolitan area, Edward Glaeser and Bryce Ward also found that the adoption of more stringent local regulations led to higher house prices.<sup>49</sup>

Other researchers have employed instrumental variables to assess the causal relationship between regulatory restrictions and housing supply and prices. Using that approach, Keith Ihlanfeldt found that predicted regulations in Florida significantly increase the price of single-family homes.<sup>50</sup> Raven Saks Molloy concluded that predicted increases in labor demand led to less residential construction and larger increases in housing prices in metropolitan areas with more restrictive housing supply.<sup>51</sup> Similarly, Christian Hilber and Wouter Vermeulen used instrumental variables to test the causal relationship between a jurisdiction's regulatory restrictiveness and the elasticity of its housing market's response to increases in demand. They found that in English municipalities with more restrictions, increases in demand led to increases in local

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45. See Jackson, *supra* note 25, at 46–54.

46. *Id.* at 54.

47. *Id.*

48. Jeffrey Zabel & Maurice Dalton, *The Impact Of Minimum Lot Size Regulations On House Prices in Eastern Massachusetts*, 41 REG'L. SCI. & URB. ECON. 571 (2011).

49. Edward L. Glaeser & Bryce A. Ward, *The Causes and Consequences of Land Use Regulation: Evidence from Greater Boston*, 65 J. URB. ECON. 265, 265 (2009). Glaeser and Ward find that the coefficient falls in magnitude and loses statistical significance once they control for population demographics, which they argue should be expected if buyers can find similar homes in other jurisdictions as perfect substitutes. *Id.* at 267, 275–76. While supply restrictions may increase prices in a market as a whole, they may not increase them disproportionately in the particular locality where they are imposed, if the effects spill over to other jurisdictions. See, e.g., Kristof Dascher, *Home Voters, House Prices, and the Political Economy of Zoning* (Beiträge zur Jahrestagung des Vereins für Socialpolitik 2012: Neue Wege und Herausforderungen für den Arbeitsmarkt des 21. Jahrhunderts - Session: Political Economy I D10-V1 2012), available at <http://hdl.handle.net/10419/62069> (exploring how the spillover effects of zoning may affect the relationship between a jurisdiction's share of homeowners and its zoning policies).

50. Keith R. Ihlanfeldt, *The Effect of Land Use Regulation on Housing and Land Prices*, 61 J. URB. ECON. 420, 422 (2007).

51. Raven E. Saks, *Job Creation and Housing Construction: Constraints on Metropolitan Area Employment Growth*, 64 J. URB. ECON., 178, 183 (2008).

house prices, rather than increases in supply.<sup>52</sup> Albert Saiz concluded that land use regulations as well as geographic constraints affect the elasticity of a jurisdiction's response to changes in housing demand—again using instrumental variables to test the causal relationship between regulatory stringency, housing prices, and population growth.<sup>53</sup>

In sum, the evidence shows that restricting supply increases housing prices. In turn, higher housing prices are one reason that housing is unaffordable to an increasing number of American households, as Section IV.B. details. Housing prices are just one part of the affordability crisis—stagnant wages and incomes,<sup>54</sup> the increasing volatility of incomes,<sup>55</sup> and the dearth of smaller “starter” homes<sup>56</sup> all may contribute to the nation's unaffordability crisis. Nevertheless, increasing house prices are a significant part of the problem.

### *B. Restrictions on Supply Threaten the Nation's Productivity*

As Ed Glaeser documented in *The Triumph of Cities*, a central reason for many cities' success in the decades since their locational

52. Christian A. L. Hilber & Wouter Vermeulen, *The Impact of Supply Constraints on House Prices in England*, 126 *ECON. J.* 358, 361 (2016).

53. Saiz, *supra* note 24, at 1280, 1286.

54. Between 1999 and 2012, real median household income fell from \$58,665 to \$53,331 in 2016. U.S. BUREAU OF THE CENSUS, REAL MEDIAN HOUSEHOLD INCOME IN THE UNITED STATES [MEHOUNUSA672N], FRED, FED. RESERVE BANK OF ST. LOUIS, <https://fred.stlouisfed.org/series/MEHOUNUSA672N> (last visited Mar. 11, 2018). In part, the decline was driven by stagnant wage growth. See JAY SHAMBAUGH, ET AL., THIRTEEN FACTS ABOUT WAGE GROWTH, (The Hamilton Project 2017), [http://www.hamiltonproject.org/assets/files/thirteen\\_facts\\_wage\\_growth.pdf](http://www.hamiltonproject.org/assets/files/thirteen_facts_wage_growth.pdf). The trend seems to be reversing, however, real median household income has been increasing steadily since 2014. BERNADETTE D. PROCTOR ET AL., INCOME & POVERTY IN THE UNITED STATES: 2015, (U.S. CENSUS, 2016), <https://www.census.gov/content/dam/Census/library/publications/2016/demo/p60-256.pdf>.

55. Elisabethe Jacobs & Jacob Hacker, *The Rising Instability of American Family Incomes, 1969-2004: Evidence from the Panel Survey of Income Dynamics*, *ECON. POL'Y INST.* (2008), <http://www.epi.org/publication/bp213/>; see also, PEW CHARITABLE TRUSTS, HOW INCOME VOLATILITY INTERACTS WITH AMERICAN FAMILIES' FINANCIAL SECURITY (Mar. 2017), <http://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2017/03/how-income-volatility-interacts-with-american-families-financial-security>; Rob Valletta & Catherine van der List, *Involuntary Part-Time Work: Here to Stay?*, (Federal Reserve Board of San Francisco Economic Letter 2015-19, 2015), <https://www.frbsf.org/economic-research/publications/economic-letter/2015/june/involuntary-part-time-work-labor-market-slack-post-recession-unemployment/>; cf. BOARD OF GOVERNORS OF THE FED. RESERVE SYSTEM, REPORT ON THE ECONOMIC WELL-BEING OF U.S. HOUSEHOLDS IN 2015 18 (2016), <https://www.federalreserve.gov/2015-report-economic-well-being-us-households-201605.pdf> (noting that 20% of those surveyed indicated that their monthly income varies occasionally, and 12% reported that their income often varies quite a bit from month to month, but that those numbers were about the same in 2015 as in 2013).

56. JOINT CTR. FOR HOUS. STUDIES, STATE OF THE NATION'S HOUSING 3–8 (Harv. Joint Ctr. for Housing Stud., 2017) (reporting the share of small single-family homes fell from 37% of all completions in 1999 to just 21% in 2015; the number of condominiums and townhouses built fell even more dramatically over the past decade) [hereinafter JOINT CTR.].

advantage on transportation hubs became less important is what has come to be called the “new agglomeration economics.”<sup>57</sup> David Schleicher describes agglomeration economics most succinctly: “Location matters. When people and capital congregate in particular cities and regions, they learn and trade more easily, and this creates wealth and generates economic growth.”<sup>58</sup> Glaeser notes that New York City is the nation’s largest city because: “The high value of knowledge mean[s] that being in the city is particularly valuable. . . [and] high density levels are particularly conducive to chance meetings, regular exchanges of new ideas and the general flow of information.”<sup>59</sup>

The value of agglomeration is substantial. While New York City, San Francisco, and San Jose, for example, have 4% of the nation’s population, they are responsible for 12.6% of the nation’s gross national product.<sup>60</sup>

The growth of the most productive cities has been limited however, in part because of restrictive land use policies that limit housing supply and make housing more expensive.<sup>61</sup> Chang-Tai Hsieh and Enrico Moretti argue that the restricted growth has significant consequences for the country as a whole: “Incumbent homeowners in high productivity cities have a private incentive to restrict housing supply. By doing so, these voters de facto limit the number of US workers who have access to the most productive of American cities. In general equilibrium, this lowers income and welfare of all US workers.”<sup>62</sup>

Hsieh and Moretti estimate that relaxing land use regulations in just those three cities to the level of stringency of the median American city would increase the nation’s gross domestic product by nearly 9%.<sup>63</sup> That estimate may be unrealistically high, nevertheless other scholars have estimated that the benefits of

57. EDWARD L. GLAESER, *CITIES, AGGLOMERATION AND SPATIAL EQUILIBRIUM* 1–14 (Oxford Univ. Press 2008); *see also* EDWARD GLAESER, *TRIUMPH OF THE CITY: HOW OUR GREATEST INVENTION MAKES US RICHER, SMARTER, GREENER, HEALTHIER, AND HAPPIER* (Penguin Books, 2011)[hereinafter GLAESER, *TRIUMPH OF THE CITY*].

58. David Schleicher, *Stuck! The Law and Economics of Residential Stagnation*, 127 *YALE L. J.* 78, 96 (2017).

59. Edward L. Glaeser, *Urban Colossus: Why is New York America’s Largest City?* 30 (Nat’l Bureau of Econ. Res., Working Paper No. 11398, 2005), <http://www.nber.org/papers/w11398.pdf>.

60. U.S. CENSUS BUREAU, *ANNUAL ESTIMATES OF THE RESIDENT POPULATION – UNITED STATES – METROPOLITAN STATISTICAL AREA* (2016), <https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk>; *see also* U.S. DEPT. OF COMMERCE, BUREAU OF ECON. ANALYSIS, *GROSS DOMESTIC PRODUCT BY METROPOLITAN AREA* (2016), [https://bea.gov/newsreleases/regional/gdp\\_metro/2017/pdf/gdp\\_metro0917.pdf](https://bea.gov/newsreleases/regional/gdp_metro/2017/pdf/gdp_metro0917.pdf).

61. *See* GLAESER, *TRIUMPH OF THE CITY*, *supra* note 57.

62. Chang-Tai Hsieh & Enrico Moretti, *Housing Constraints and Spatial Misallocation* 3 (Nat’l Bureau of Econ. Res., Working Paper No. 21154, 2017).

63. *Id.* at 24.

relaxing land use constraints in the nation's most productive cities would be substantial.<sup>64</sup> The best of those estimates take into account both the costs and the benefits of growth in a relatively small number of already booming cities.<sup>65</sup> Of course, allowing additional growth in the nation's most productive cities does not preclude other cities from improving their productivity.<sup>66</sup>

*C. Restrictions on Supply May Increase Income Inequality and Segregation by Income and Race*

The inability of cities to grow to accommodate the jobs generated by increased productivity also threatens to worsen inequality, for two reasons. First, making it even harder for low-income, less educated people to move to where job opportunities are by limiting housing supply may further widen the gap between those who are doing well and those who are left behind. Peter Ganong and Daniel Shoag argue that land use restrictions are a major culprit in the widening income gap between different regions of the country.<sup>67</sup> They show that in the century before 1980, per-capita incomes across different areas of the United States were converging, but beginning in the 1980s, that convergence slowed dramatically.<sup>68</sup> At the same time, there was a substantial decline in mobility: prior to 1980, people moved from low-income to higher-income places to take advantage of better employment prospects and higher wages, but over the past 30 years, that is much less true.<sup>69</sup> Ganong and Shoag argue that high housing prices in productive areas are the culprit: while it is still advantageous for high-skilled workers to move to

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64. See AVENT, *supra* note 14 (removing barriers to greater density could increase GDP by a half a percentage point); Devin Bunten, *Is the Rent Too High? Aggregate Implications of Local Land-Use Regulation* 30 (Fed. Reserve Bd. Finance and Econ. Discussion Series 2017-064, 2017), <http://www.devinbunten.com/research/zoning> (finding that aggregate welfare would increase by 1.4% under the optimal stringency, after accounting for the costs of increased density and other effects of relaxing land use regulations); Glaeser & Gyourko, *supra* note 24, at 5 (overly restrictive land use regulations in the most productive cities impose a cost of about 2% of gross domestic product each year); Andrii Parkhomenko, *The Rise of Housing Supply Regulation in the U.S.: Local Causes and Aggregate Implications* 33 (Bd. Of Governors of the Fed. Reserve, Working Paper No. 2017-064, 2017), [https://www.andrii-parkhomenko.net/files/Parkhomenko\\_JMP.pdf](https://www.andrii-parkhomenko.net/files/Parkhomenko_JMP.pdf) (estimating that total output would be 2.1% higher and mean wages 2% higher in 2007 than they actually were if regulatory stringency had not increased beyond its 1980 levels).

65. See, e.g., Bunten, *supra* note 64.

66. See, e.g., Aaron M. Renn, *The Gated City* (Book Review), URBANOPHILE (Oct. 9, 2011), <http://www.urbanophile.com/2011/10/09/review-the-gated-city-by-ryan-avent/>

67. Peter Ganong & Daniel Shoag, *Why Has Regional Income Convergence in the U.S. Declined?* 102 J. URB. ECON. 76, 89–90 (2017); see also Stijn Van Nieuwerburgh & Olivier Weill, *Why has House Price Dispersion Gone Up?* 77 REV. ECON. STUD. 1567, 1589–99 (2010).

68. Ganong & Shoag, *supra* note 67, at 76–78.

69. See *infra* Section IV.A. for further documentation of the falling rates of mobility in the United States.

areas with better employment opportunities, high housing costs offset the gains low-skilled workers would enjoy from moving. They conclude that “[t]ighter regulations impede population flows to high-income areas, weaken convergence in human capital and weaken convergence in per capita income.”<sup>70</sup>

Other research has documented the decline in mobility from areas that lack job opportunities to areas that do offer jobs.<sup>71</sup> In those regions that lost manufacturing jobs due to competition from other countries over the past few decades, for example, high unemployment rates and significant average wage declines have persisted over the subsequent decades. In part, that is because people are not leaving those places to go to areas that have better jobs, but instead are dropping out of the labor market, or remaining unemployed.<sup>72</sup>

A second reason that increasing restrictions on housing supply may exacerbate income inequality is that as cities limit housing supply, existing homeowners in those metropolitan areas capture the increases in housing values—often at the expense of renters. As Matthew Rognlie has noted: “housing plays a pivotal role in the modern story of income distribution.”<sup>73</sup> Homeowners are already a tremendously advantaged group, with a median net worth in 2016 that was 44.5 times that of households that rented.<sup>74</sup> Adding further to their wealth, while limiting the ability of others to build wealth through homeownership, will likely exacerbate those differences.

70. Ganong & Shoag, *supra* note 67, at 90. See also Richard Florida, *THE NEW URBAN CRISIS: HOW OUR CITIES ARE INCREASING INEQUALITY, DEEPENING SEGREGATION, AND FAILING THE MIDDLE CLASS—AND WHAT WE CAN DO ABOUT IT* (2017).

71. See Mai Dao, Davide Furceri, & Prakash Loungani, *Regional Labor Market Adjustments in the United States: Trend and Cycle*, 99 REV. ECON. & STAT. 243 (2017).

72. Benjamin Austin, Edward Glaeser, & Lawrence Summers, *Saving the Heartland: Place-Based Policies in 21st Century America*, at 5–18, BROOKINGS PAPERS ON ECON. ACTIVITY (Conference Draft, Spring 2018), <https://www.brookings.edu/bpea-articles/saving-the-heartland-place-based-policies-in-21st-century-america/>; David H. Autor, David Dorn, Gordon H. Hanson, & Jae Song, *Trade Adjustment: Worker Level Evidence*, 129 Q. J. ECON. 1799, 1827–30 (2014); David H. Autor, et al., *The China Syndrome: Local Labor Market Effects of Import Competition in the United States*, 103 AM. ECON. REV. 2121, 2141–42 (2013). See also Dao, Furceri, & Loungani, *supra* note 71.

73. Matthew Rognlie, *Deciphering the Fall and Rise in the Net Capital Share: Accumulation or Scarcity?*, BROOKINGS PAPERS ON ECON. ACTIVITY 13 (Spring, 2015), [https://www.brookings.edu/wp-content/uploads/2016/07/2015a\\_roglnlie.pdf](https://www.brookings.edu/wp-content/uploads/2016/07/2015a_roglnlie.pdf); see also Gianni La Cava, *Housing Prices, Mortgage Interest Rates and the Rising Share of Capital Income in the United States*, (Bank for Int’l Settlements Working Paper No. 572, 2016), <https://www.bis.org/publ/work572.pdf> (“[T]he rise in the share of housing capital income over recent decades reflects a combination of: 1) lower real interest rates; 2) lower consumer price inflation; and 3) constraints on the supply of new housing in some large US cities.”).

74. Jesse Bricker et al., *Changes in U.S. Family Finances from 2013 to 2016: Evidence from the Survey of Consumer Finances*, 103 FED. RES. BULLETIN, 13 (2017), <https://www.federalreserve.gov/publications/files/scf17.pdf>. For discussion of how public policy has favored homeowners over renters, see generally Andrea J. Boyack, *Equitably Housing (Almost) Half a Nation of Renters*, 65 BUFF. L. REV. 109 (2017).



Further, existing homeowners have very different demographic characteristics than renters. Homeownership opportunities of Blacks and Latinos have never been equal to those afforded to whites,<sup>75</sup> and in 2016, only 45% of Blacks and 46% of Latinos owned their own homes, compared to 73% of whites.<sup>76</sup> In addition, as Glaeser and Gyourko point out: “As owners tend to be older and renters are younger, the reduction in housing supply [has] created an intergenerational transfer to currently older people who happened to have owned in the relatively small number of coastal markets that have seen land values increase substantially . . . .”<sup>77</sup>

Making it harder for people to move to areas with higher levels of productivity and privileging existing homeowners accordingly likely will exacerbate inequality. It also may increase residential segregation by income and race. Residential segregation by income has increased significantly in recent years. As Harvard’s Joint Center on Housing recently reported:

Between 2000 and 2015, the share of the poor population living in high-poverty neighborhoods rose from 43 percent to 54 percent. . . .

At the same time, high-income households have become more likely to live in largely high-income neighborhoods. From 1990 to 2015, the share of households earning \$150,000 or more living in high-income neighborhoods (where 20 percent or more of households have incomes of at least \$150,000) grew from 40 percent to 49 percent.

High-income households are also becoming more concentrated in dense urban neighborhoods.<sup>78</sup>

Existing research on the relationship between restrictions on housing supply and residential segregation is limited, but the research does suggest an association between land use restrictions

75. See, e.g., RICHARD ROTHSTEIN, *THE COLOR OF LAW: A FORGOTTEN HISTORY OF HOW OUR GOVERNMENT SEGREGATED AMERICA* (Liveright Publishing, 2017); BERYL SATTER, *FAMILY PROPERTIES: RACE, REAL ESTATE, AND THE EXPLORATION OF BLACK URBAN AMERICA* (Henry Holt and Company, 2010).

76. Lisa J. Dettling, et al., *Recent Trends in Wealth-Holding by Race and Ethnicity: Evidence from the Survey of Consumer Finances*, FEDS NOTES (Sept. 27, 2017), <https://doi.org/10.17016/2380-7172.2083>. Even among homeowners, the mean net housing wealth of Black homeowners was \$94,400, compared with \$215,800 for whites. *Id.*

77. Glaeser & Gyourko, *supra* note 24, at 18.

78. *Id.* at 17. See also Sean F. Reardon & Kendra Bischoff, *Income Inequality and Income Segregation*, 116 AM. J. SOC. 1092 (2011) (noting the rise of income inequality associated with increasing income segregation across cities); Tara Watson, *Inequality and the Measurement of Residential Segregation by Income in American Neighborhoods*, 55 REV. INCOME & WEALTH 820, 820 (2009) (one standard deviation increase in income inequality raises residential segregation by income by 0.4-0.9 standard deviations).

and both income and racial segregation. Michael Lens and Paavo Monkkonen recently assessed the relationship between different types of regulation and income segregation using detailed data about regulations, along with measures of income segregation for different income groups in 2000 and 2010, in 95 metropolitan areas. They found that higher levels of income segregation of the affluent, although not of low-income households, are associated with density restrictions, greater levels of local government involvement in permitting processes for development, and multiple levels of regulatory review.<sup>79</sup>

More stringent restrictions on density also are associated with greater racial segregation in large U.S. metropolitan areas.<sup>80</sup> Further, density limits are associated with smaller minority populations.<sup>81</sup> In Massachusetts, for example, Matthew Resseger found that blocks zoned for multifamily housing have Black population shares 3.4 percentage points higher, and Hispanic population shares 5.8 percentage points higher, than the blocks directly across the border from them that are zoned for single family use.<sup>82</sup>

In conclusion then, restrictions on supply in the nation's growing cities threaten to increase income inequality, exacerbate the gap in wealth between renters and owners (categories already divided by race, ethnicity, class, and age), further the trend towards greater segregation of wealthy households, and stifle progress in reducing racial segregation.

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79. Michael C. Lens & Paavo Monkkonen, *Do Strict Land Use Regulations Make Metropolitan Areas More Segregated by Income?*, 82 J. AM. PLAN. ASS'N 6, 11–12 (2016) (noting that the authors find that other forms of regulation, such as exactions or open space requirements, are not associated with income segregation); see generally Jonathan T. Rothwell & Douglas S. Massey, *Density Zoning and Class Segregation in U.S. Metropolitan Areas*, 91 SOC. SCI. Q. 1123 (2010) (finding that more stringent density restrictions lead to higher levels of income segregation).

80. Jonathan T. Rothwell, *Racial Enclaves and Density Zoning: The Institutionalized Segregation of Racial Minorities in the United States*, 13 AM. L. & ECON. REV. 290, 290 (2011) (finding that “anti-density regulations are responsible for large portions of the levels and changes in segregation from 1990 to 2000”); see generally Jonathan T. Rothwell & Douglas S. Massey, *The Effect of Density Zoning on Racial Segregation in U.S. Urban Areas*, 44 URB. AFF. REV. 779 (2009) (finding a strong relationship between low-density zoning and racial segregation); see also ARTHUR C. NELSON, CASEY J. DAWKINS & THOMAS W. SANCHEZ, *THE SOCIAL IMPACTS OF URBAN CONTAINMENT* 91–92 (2016) (urban growth boundaries associated with faster decreases in levels of racial segregation).

81. Rolf Pendall, *Local Land Use Regulation and the Chain of Exclusion*, 66 J. AM. PLAN. ASS'N 125, 126 (2000); John M. Quigley, Steven Raphael, & Larry A. Rosenthal, *Local Land-use Controls and Demographic Outcomes in a Booming Economy*, 41 URB. STUD. 389, 411 (2004).

82. Matthew Resseger, *The Impact of Land Use Regulation on Racial Segregation: Evidence from Massachusetts Zoning Borders* (Harv. Univ. Working Paper, 2013), [https://scholar.harvard.edu/files/resseger/files/resseger\\_jmp\\_11\\_25.pdf](https://scholar.harvard.edu/files/resseger/files/resseger_jmp_11_25.pdf).

*D. Restrictions on Supply Are Associated with Increased Environmental Harms*

Restrictions on supply often are associated with lower density and less compact development, because they prevent further development in lower density areas and divert housing demand to areas further from the central business district.<sup>83</sup> Lower density, in turn, is associated with higher vehicle miles traveled, which results in increased air pollution and greenhouse gas emissions.<sup>84</sup> Higher density and more compact urban forms result in less energy use for heating and cooling buildings, and therefore, result in lower greenhouse gas emissions.<sup>85</sup> Development at higher densities is associated with lower per capita impacts on water quality.<sup>86</sup> Research also finds an association between higher density development and lower rates of destruction of critical habitat and open space.<sup>87</sup>

Given the negative effects restrictions on supply impose, it is important to explore what motivates support for (or at least acceptance of) such restrictions, which depends in turn on why development generates so much opposition.

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83. JONATHAN LEVINE, ZONED OUT: REGULATION, MARKETS, AND CHOICES IN TRANSPORTATION AND METROPOLITAN LAND USE (2006); Arnab Chakraborty, et al., *The Effects of High-Density Zoning on Multifamily Housing Construction in the Suburbs of Six US Metropolitan Areas*, 47 URB. STUD. 437, 447 (2010). See also Rolf Pendall, *Do Land-Use Controls Cause Sprawl?* 26 ENV'T & PLAN. B 555 (1999); Kurt Paulsen, *Geography, Policy or Market? New Evidence on the Measurement and Causes of Sprawl (and Infill) in Metropolitan Regions* 51 URB. STUD. 2629 (2014) (finding that with increasing regulatory stringency, measured by the Wharton Restrictions Index, new housing units consume less land).

84. For reviews of the vast literature, see Reid Ewing, Shima Hamidi, & Jack L. Nasar, *Compactness Versus Sprawl: A Review of Recent Evidence from the United States*, 30 J. PLAN. LIT. 413 (2015); Reid Ewing & Robert Cervero, *Travel and the Built Environment*, 76 J. AM. PLAN. ASS'N 265 (2010); Mark R. Stevens, *Does Compact Development Make People Drive Less?*, 83 J. AM. PLAN. ASS'N 7 (2017). See also the debates those reviews generated, e.g., Reid Ewing & Robert Cervero, *Does Compact Development Make People Drive Less? The Answer is Yes*, 83 J. AM. PLAN. ASS'N 19 (2017); Susan Handy, *Thoughts on the Meaning of Mark Stevens's Meta Analysis*, 83 J. AM. PLAN. ASS'N 26 (2017).

85. Hossein Estiri, *Differences in Residential Energy Use Between US City and Suburban Households*, 50 REG'L. STUD. 1919, 1920 (2015); Reid Ewing & Fang Rong, *The Impact of Urban Form on U.S. Residential Energy Use*, 19 HOUS. POL'Y DEBATE 1, 22 (2008); Christopher Jones & Daniel M. Kammen, *Spatial Distribution of U.S. Household Carbon Footprints Reveals Suburbanization Undermines Greenhouse Gas Benefits of Urban Population Density*, 48 ENVTL. SCI. & TECH. 895, 901 (2014); Eirik Resch, et al., *Impact of Urban Density and Building Height on Energy Use in Cities*, 96 ENERGY PROCEDIA 800, 801 (2016).

86. John S. Jacob & Ricardo Lopez, *Is Denser Greener? An Evaluation of Higher Density Development as an Urban Stormwater-Quality Best Management Practice*, 45 J. AM. WATER RESOURCES ASS'N 687, 688 (2009).

87. REID EWING, ET AL., ENDANGERED BY SPRAWL: HOW RUNAWAY DEVELOPMENT THREATENS AMERICA'S WILDLIFE, (Nat'l Wildlife Found. 2005), [https://www.nwf.org/~media/PDFs/Wildlife/EndangeredbySprawl.pdf](https://www.nwf.org/~/media/PDFs/Wildlife/EndangeredbySprawl.pdf).

#### IV. WHAT EXPLAINS THE RISING OPPOSITION TO DEVELOPMENT IN CITIES?

##### *A. People Are Moving Less, so Their Housing and Neighborhood Conditions Matter More*

Households in the United States have become “stuck” in place.<sup>88</sup> Indeed, “[t]he typical American is now half as likely to have moved in the past year as their counterpart in 1950. This is true for both long-distance migration and local mobility, as well as for Americans of nearly all sociodemographic or socioeconomic statuses.”<sup>89</sup> Migration rates are lower “than at any point in the post-war period” and “have also entered a period of continuous decline that is longer than any recorded in the twentieth century.”<sup>90</sup>

Many more people move within the same county than move across state or country lines, but the decline in such short-distance moves (those within the same county) in the past few decades has been dramatic: Between 1986 and 1987, for example, 11.6% of the population moved within the same county, but between 2016 and 2017, only 6.8% moved within the same county.<sup>91</sup> Also, the decline in those moves has been particularly sharp for renters,<sup>92</sup> as Figure 1 shows:

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88. Schleicher, *supra* note 58. *But see* Naomi Schoenbaum, et al., *Responses to David Schleicher, Stuck! The Law and Economics of Residential Stagnation*, 127 YALE L. J. FORUM (2017), <https://www.yalelawjournal.org/collection/responses-to-david-schleicher-stuck>.

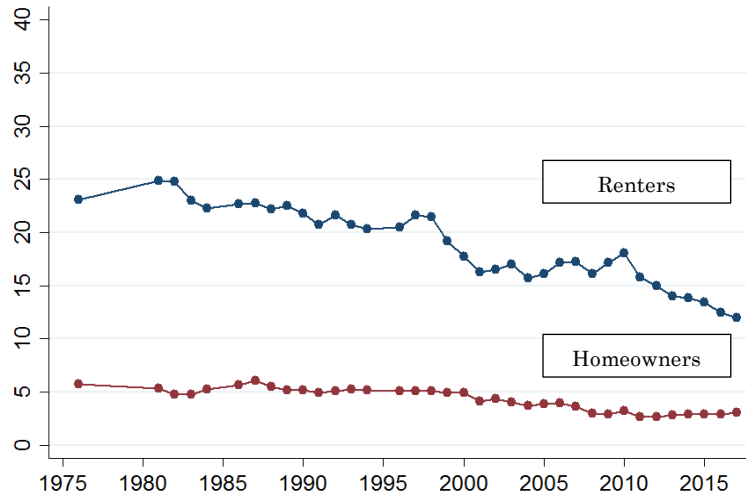
89. Thomas B. Foster, *Decomposing American Immobility: Compositional and Rate Components of Interstate, Intrastate, and Intracounty Migration and Mobility Decline*, 37 DEMOGRAPHIC RES. 1515, 1516 (2017); *see also* Thomas J. Cooke, *It Is Not Just the Economy: Declining Migration and the Rise of Secular Rootedness*, 17 POPULATION SPACE & PLACE 193 (2011); Greg Kaplan & Sam Schulhofer-Wohl, *Understanding the Long-Run Decline in Interstate Migration*, 58 INT'L ECON. REV. 57 (2017).

90. Raven Molloy, et al., *Internal Migration in the United States*, 25 J. ECON. PERSPECTIVES 173, 182 (2017); *see also* Raven Molloy, Christopher L. Smith, Riccardo Trezzi, & Abigail Wozniak, *Understanding Declining Fluidity in the U.S. Labor Market*, BROOKINGS PAPERS ON ECON. ACTIVITY, 183 (2016), <https://www.brookings.edu/wp-content/uploads/2016/03/molloytextspring16bpea.pdf>.

91. U.S. CENSUS, CURRENT POPULATION SURVEY, HISTORICAL MIGRATION/GEOGRAPHIC MOBILITY TABLES, TABLE A-1: ANNUAL GEOGRAPHIC MOBILITY RATES, BY TYPE OF MOVEMENT: 1948-2017, *available at* <https://www.census.gov/data/tables/time-series/demo/geographic-mobility/historic.html> (last visited March 15, 2018). *See also* Raven Molloy, Christopher L. Smith, & Abigail Wozniak, *Job Changing and the Decline in Long-Distance Migration in the United States*, 54 DEMOGRAPHY 631 (2017).

92. The same relationship holds when the respondents are segmented into high income and low income renters and buyers.

Figure 1: Percentage of Working Age Adults Who Moved Within the Same County in the Prior Year by Housing Tenure<sup>93</sup>



The causes of the decline are disputed.<sup>94</sup> As noted earlier, some blame the decline in part on land use restrictions that make it hard to buy or rent in markets with job opportunities.<sup>95</sup> Greg Kaplan and Sam Schulhofer-Wohl find that interstate migration is falling because of “a reduction in the geographic specificity of returns to different types of skills and an increase in workers' information about how much they will enjoy living in alternative locations.”<sup>96</sup> Others find that the aging of the population contributes to the decline, but cannot fully explain it.<sup>97</sup>

Whatever the cause, the fact that fewer people are moving likely affects their interest in protecting their neighborhood against changes that they would find threatening or undesirable. As people stay in place for longer periods of time, they are likely to take more of an interest in proposed developments that may affect the costs of their current housing, or the quality of life in their current

93. NYU Furman Center calculations based upon U.S. CENSUS CURRENT POPULATION SURVEY, HISTORICAL MIGRATION/GEOGRAPHIC MOBILITY TABLES, TABLE A-4: GEOGRAPHICAL MOBILITY BY TENURE 1988-2017, available at <https://www.census.gov/data/tables/time-series/demo/geographic-mobility/historic.html> (last visited Mar. 15, 2018); see also Press Release, U.S. Census Bureau, Declining Mover Rate Driven by Renters, Census Bureau Reports (Nov. 15, 2017), available at <https://www.census.gov/newsroom/press-releases/2017/mover-rates.html>.

94. For a review of the literature on the causes of the decline in mobility, see Molloy, Smith, & Wozniak, *supra* note 90, at 198–99.

95. Ganong & Shoag, *supra* note 67, at 89; Hsieh & Moretti, *supra* note 62, at 12.

96. Kaplan & Schulhofer-Wohl, *supra* note 89, at 92.

97. Fatih Karahan & Darius Li, *What Caused the Decline in Interstate Migration in the United States?*, FED. RES. BANK OF N.Y. LIBERTY STREET ECON., (Oct. 17, 2016), <http://libertystreeteconomics.newyorkfed.org/2016/10/what-caused-the-decline-in-interstate-migration-in-the-united-states.html>.

neighborhood. Recent research affirms that although homeowners are more likely than renters to vote, the length of residence in a community by both renters and owners is a significant predictor of electoral participation.<sup>98</sup> While the relationship between mobility, neighborhood conditions, and different forms of civic engagement is complicated,<sup>99</sup> the research suggests that longer residence in a neighborhood is likely to result in more of—at least some—forms of political engagement.<sup>100</sup>

*B. As an Increasing Number of Renters Compete for Too Few Units, Rents Are Rising, and More Renters Are Paying Too Much of Their Incomes for Housing*

The Harvard Joint Center for Housing Studies reports that the number of renters increased by 9 million over the past decade, the largest ten-year gain on record.<sup>101</sup> The share of households across the nation who rent is “at a 50-year high of 37 percent, up more than 5 percentage points from 2004, when the nation’s homeownership rate peaked.”<sup>102</sup> In the metropolitan areas containing the bigger cities that this article primarily is concerned with (the 53 metropolitan areas that have populations of more than one million), the share of households that rent ranges from about 29% to 52%.<sup>103</sup> Those growing numbers of renters are chasing too few rental units,

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98. See William M. Rohe, & Mark Lindblad, *Reexamining the Social Benefits of Homeownership After the Foreclosure Crisis*, in HOMEOWNERSHIP BUILT TO LAST: BALANCING ACCESS, AFFORDABILITY, AND RISK AFTER THE HOUSING CRISIS 99 (Brookings Institution Press: 2014) (surveying the literature); Brian J. McCabe, *Are Homeowners Better Citizens? Homeownership and Community Participation in the United States*, 91 SOC. FORCES 929, 941 (2013) (“[R]esidential stability is a significant predictor of electoral participation” but is “unrelated to joining membership groups, including neighborhood groups and civic organizations.”); see also BRIAN J. MCCABE, *NO PLACE LIKE HOME: WEALTH, COMMUNITY AND THE POLITICS OF HOMEOWNERSHIP* (Oxford Univ. Press 2016).

99. For an exploration of the some of the complex interactions between housing tenure, mobility, and civic engagement, see Kim Manturuk, Mark Lindblad, & Roberto Quercia, *Homeownership and Civic Engagement in Low-Income Urban Neighborhoods: A Longitudinal Analysis*, 48 URB. AFF. REV. 731 (2012). For discussions of the relationship between various neighborhood characteristics and civic engagement, see Michael C. Grillo, et al., *Residential Satisfaction and Civic Engagement: Understanding the Causes of Community Participation*, 97 SOC. INDICATORS RES. 451 (2010); Joan-Josep Vallbé & Jaume Magre Ferran, *The Road Not Taken. Effects of Residential Mobility on Local Electoral Turnout*, 60 POL. GEOGRAPHY 86 (2017) (exploring the relationship between city size, mobility and participation in local elections).

100. See, e.g., Jonas Hedegaard Hansen, *Residential Mobility and Turnout: The Relevance of Social Costs, Timing and Education*, 38 POLIT. BEHAVIOR 769 (2016); Benjamin Highton, *Residential Mobility, Community Mobility and Electoral Participation*, 22 POL. BEHAVIOR 109 (2000); Peverill Squire, et al., *Residential Mobility and Voter Turnout*, 81 AM. POL. SCI. REV. 45 (1987).

101. JOINT CTR., *supra* note 56, at 11.

102. *Id.* at 25.

103. SEWIN CHAN & GITA KUHN JUSH, 2017 NATIONAL RENTAL HOUSING LANDSCAPE: RENTING IN THE NATION’S LARGEST METROS, NYU FURMAN CENTER 16 (2017).

despite increasing production of multifamily housing<sup>104</sup> and conversion of single family housing from homeownership to rentals.<sup>105</sup> Indeed, the national rental vacancy rate was at a 30-year low of 6.9% in 2016.<sup>106</sup>

No doubt, at least in part, because of that shortage, rents have increased substantially in recent years: of the 53 metropolitan areas with populations of more than one million, Sewin Chan and Gita Kuhn Jush of NYU's Furman Center found that virtually all saw increases in their inflation-adjusted median rents between 2012 and 2015. Indeed, across the 53 metropolitan areas as a group, median inflation-adjusted rents increased at an annualized rate of 1.9%, with Denver seeing annualized rates as high as 6.6%.<sup>107</sup>

Accordingly, renters are facing increasing rents just to stay where they are. If renters need to move, they face even more significant increases in their housing costs. While rents are typically reported for the median or typical renter, those rates reflect all rentals, regardless of a renter's length of tenure. But for a household looking for new housing, the rent being charged for apartments recent listed is more relevant than the rent people already in apartments are paying. For the 53 metropolitan areas Chan and Jush studied, recently available two-bedroom units had a median rent that was 4.8 % higher than the median rent of all two-bedroom units.<sup>108</sup> Moreover, in some jurisdictions, the premium for recently marketed units was extraordinarily high: 33% in San Jose, for example, and 29% in San Francisco.<sup>109</sup>

Another way of assessing the concern renters may have about having to find new housing uses the number of homes renting for prices that households making various incomes can afford. For households with low and moderate incomes, the number of homes that are affordable—costing 30% of the household's income or less—and available—not rented by higher income households<sup>110</sup>— falls far short of needs. The National Low Income Housing Coalition estimates that there are only 35 affordable and available homes for every 100 extremely low income (“ELI”) households (the 26% of all renters making 30% or less of the “area median income” designated

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104. JOINT CTR., *supra* note 56, at 11.

105. See Dan Immergluck, *Renting the Dream: The Rise of Single-Family Rentership in the Sunbelt Metropolis* 99 (Working Paper, 2017), [https://www.researchgate.net/publication/320935123\\_Renting\\_the\\_Dream\\_The\\_Rise\\_of\\_Single-Family\\_Rentership\\_in\\_the\\_Sunbelt\\_Metropolis](https://www.researchgate.net/publication/320935123_Renting_the_Dream_The_Rise_of_Single-Family_Rentership_in_the_Sunbelt_Metropolis).

106. JOINT CTR., *supra* note 56, at 28.

107. CHAN & JUSH, *supra* note 103, at 5.

108. *Id.* at 7.

109. *Id.*

110. Indeed, many of the households that are now renters, but would likely have been homeowners in the past, are higher income households that can outbid lower income households for lower cost housing. *Id.*

by HUD for their metropolitan area).<sup>111</sup> Among the largest metropolitan areas, the number of affordable and available homes ranges from 12 for every 100 ELI renter households in Las Vegas, NV to 46 for every 100 in Boston, MA.<sup>112</sup> The situation is not as dire—although still problematic—for higher income renters: for every 100 families making 50% of the area median income or less (about 41% of all renter households) across the country, there are 55 homes available and affordable across the nation.<sup>113</sup> For every 100 families making at or below 80% of area median income (about 61% of all renter households), there are 93 homes available and affordable.<sup>114</sup>

Thus, renters staying in place are facing higher rents. If they move, they face substantial rent premiums and significant gaps in the supply of affordable housing. Those problems have gotten worse in recent years. Across all 53 of the nation's metropolitan areas with more than 1 million in population, a household earning the median household income of \$61,000 in 2015 could afford 75% of the rental units that were rented within the prior 12 months—i.e. could spend no more than 30% of income to rent those units. As recently as 2006, 82% of recently available units were affordable to the median income household.<sup>115</sup>

At the same time, fewer renters have any room in their budgets to absorb rent increases. In 2015, in the 53 metropolitan areas with populations of more than one million, almost 48% of all renters were paying more than 30% of their income for housing related expenses—the standard the Department of Housing and Urban Development uses to identify households that are “rent-burdened.”<sup>116</sup> About 24% were paying more than half of their income towards housing expenses, or were what HUD refers to as “severely rent-burdened.” While those numbers have dropped slightly in the

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111. NAT'L LOW INCOME HOUS. COAL., *THE GAP: A SHORTAGE OF AFFORDABLE HOMES* 2, 4–5 (2017), [http://nlihc.org/sites/default/files/Gap-Report\\_2017.pdf](http://nlihc.org/sites/default/files/Gap-Report_2017.pdf)

112. *Id.* at 8–9.

113. *Id.* at 4–5.

114. *Id.* at 3–5 & Appendix A.

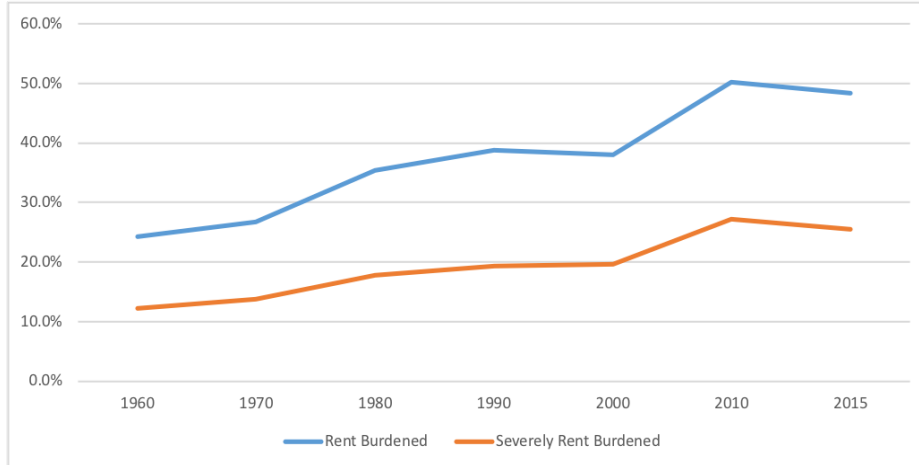
115. CHAN & JUSH, *supra* note 103, at 24. The number ranged from 95% of units being affordable in Salt Lake City for the median income Salt Lake City household in 2015, to only 43% of units in Miami being affordable for the median income Miami household. *Id.*

116. *Id.* at 9. See also JOINT CTR., *supra* note 56, at 31–32 (assessing rent burden nationally). See also *Rental Burdens: Rethinking Affordability Measures*, EDGE (Po'ly Dev. & Res. of the U.S. Dep't of Hous. & Urban Dev.), [https://www.huduser.gov/portal/pdredge/pdr\\_edge\\_featd\\_article\\_092214.html](https://www.huduser.gov/portal/pdredge/pdr_edge_featd_article_092214.html) (citing to and expanding upon HUD definition of cost burdens).



last three years,<sup>117</sup> rent burdens across the nation are far higher than in past decades, as Figure 2 shows:

Figure 2: Share of U.S. Renter Households That Were Rent Burdened and Severely Rent Burdened, 1960-2015<sup>118</sup>



Rent-burdened households have already cut spending on a variety of important needs, such as food and healthcare, just to afford their current rents.<sup>119</sup> There is little or no room for additional rent increases in their budgets.<sup>120</sup> Unfortunately, for many households, rising rents will increase the risk of evictions, as Matthew Desmond's work powerfully shows.<sup>121</sup>

117. Those declines have to be read cautiously because of the changes resulting from the fact that more higher-income households are continuing to rent rather than buy than in the past. See CHAN & JUSH, *supra* note 103, at 17, 28.

118. This figure shows the percent of all U.S. renter households that spent 30% or more (rent burdened) and 50% or more (severely rent burdened) of their household income on rent. Rent for 1960 is coded to the midpoint of the range (e.g. rent is coded as \$54.5 if the range is \$50-\$59). American Community Survey, IPUMS-USA, University of Minnesota, NYU Furman Center calculations (on file with author).

119. JOINT CTR., *supra* note 56, at 33. See also WILL FISCHER, RESEARCH SHOWS HOUSING VOUCHERS REDUCE HARDSHIP AND PROVIDE PLATFORM FOR LONG-TERM GAINS AMONG CHILDREN 4, (Ctr. on Budget & Pol'y Priorities 2015), <https://www.cbpp.org/sites/default/files/atoms/files/3-10-14hous.pdf>. See also Sandra J. Newman & C. Scott Holupka, *Housing Affordability and Investments in Children*, 24 J. HOUS. ECON. 89 (2014); DIANE WHITMORE SCHANZENBACH, ET AL., WHERE DOES ALL THE MONEY GO: SHIFTS IN HOUSEHOLD SPENDING OVER THE PAST 30 YEARS? (The Hamilton Project 2016), [http://www.hamiltonproject.org/papers/where\\_does\\_all\\_the\\_money\\_go\\_shifts\\_in\\_household\\_spending\\_over\\_the\\_past\\_30\\_y](http://www.hamiltonproject.org/papers/where_does_all_the_money_go_shifts_in_household_spending_over_the_past_30_y).

120. The pressure on renters to avoid rent increases undoubtedly is compounded by the increasing volatility and unpredictability of incomes. See, e.g., JONATHAN MORDUCH & RACHEL SCHNEIDER, *THE FINANCIAL DIARIES: HOW AMERICAN FAMILIES COPE IN A WORLD OF UNCERTAINTY* (Princeton Univ. Press 2017); see also sources cited, *supra* note 55.

121. MATTHEW DESMOND, *EVICTED: POVERTY AND PROFIT IN THE AMERICAN CITY* (Crown/Archetype 2016).

Further, as Michael Stegman has outlined, the situation in many cities is not likely to improve markedly in the coming years:

Unfortunately, the already unacceptable situation in the rental market is likely to worsen in the coming decade absent a sustained national response. Over the next ten years, new household formation by millions of young millennials will intensify the demand for rental housing. So, too, will the increasing diversity of the U.S. population; the Urban Institute estimates that nearly 90% of new households that will form between 2020 and 2030 will be minority. (Goodman, Pendall & Zhu 2015). At least in the near term, many of these new minority households will lack the resources and credit histories to access affordable mortgage credit and, absent creative market and government responses, will seek rental housing. Add to this mix the millions of aging baby boomers who will seek to downsize from owned housing to rental, and we are in for a very rocky ride.<sup>122</sup>

At bottom, then, the number of American households in major metropolitan areas who are renting their homes is increasing, but the rental stock is not growing sufficiently to keep up with that demand.<sup>123</sup> Rents are accordingly rising, and the number of households stretched to the financial breaking point by rent burdens has increased significantly over recent decades. No wonder then, that renters worry about any land use change that they think could result in even higher rent increases.

*C. Neighborhood Residents Are Increasingly Wary That Development in Their Neighborhoods Will Increase Their Housing Costs and Potentially Cause Them to Have to Leave Their Homes*

Opposition to new housing may be motivated by many different factors, but often stems from a fear that the proposed development

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122. Michael A. Stegman, *The Housing Market Cannot Fully Recover Without a Robust Rental Policy*, 37 B.C. J. L. & SOC. JUSTICE 395, 397 (2017); see also ALLISON CHARETTE, ET AL., PROJECTING TRENDS IN SEVERELY COST-BURDENED RENTERS: 2015-2025, 8-10 (Joint Ctr. for Hous. Studies Harv. Univ. 2015) (assessing lowering vacancy rates and soaring price increases due to population conditions).

123. See, e.g., California Housing Partnership Corp., *California's Housing Emergency: State Leaders Must Immediately Reinvest in Affordable Homes* (Mar. 2018), <https://1p08d91kd0c03rlxhmtydpr-wpengine.netdna-ssl.com/wp-content/uploads/2018/03/CHPC-State-Housing-Need-Report-2018-Web.pdf> (documenting the gap between the growing number of renters and the supply of rental units.)

will impose more costs than benefits on its neighbors.<sup>124</sup> As Rolf Pendall has pointed out: “In economic terms, owners of existing dwellings act rationally when they pay attention to proposals for new development in their communities and when they oppose houses that might reduce their own homes’ value.”<sup>125</sup>

Michael Hankinson recently applied those insights to better understand renters’ opposition to new development in cities, arguing:

Imagine you are a renter in a city with high housing prices, living in one of the few remaining affordable neighborhoods. On your street, a new market-rate condominium is proposed. Generally, you believe that new supply helps to mitigate rising prices. However, this one condominium would be a minuscule addition to the overall supply, making it unlikely to appreciably lower prices citywide. Instead, the new building is more likely to signal to other developers that your neighborhood is an undervalued investment. Your landlord may see the new building and consider selling or renovating her own, leading to higher rents or even eviction. In short, the long-run benefit of more supply is eclipsed by the immediate, short-run threat of displacement.<sup>126</sup>

Given the tight rental market described above, and the number of households that are already rent-burdened, it is not surprising that renters, especially those in denser cities,<sup>127</sup> are exhibiting the same risk-averseness that NIMBY homeowners have long shown.<sup>128</sup> Further, there is little hard evidence to counter their fear that new development in their neighborhood may increase rents nearby.<sup>129</sup> While many researchers have studied the effect that new subsidized

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124. Carissa Schively, *Understanding the NIMBY and LULU Phenomena: Reassessing Our Knowledge Base and Informing Future Research*, 21 J. PLAN. LIT. 255, 256–57 (2007).

125. Pendall, *supra* note 39, at 114.

126. Michael Hankinson, *When Do Renters Behave Like Homeowners? High Rent, Price Anxiety, and NIMBYism*, AM. POL. SCI. REV., at 6 (2018).

127. Land use restrictions tend to be stricter in denser areas, probably because density exacerbates some externalities from nearby land uses. See Gyourko & Molloy, *supra* note 24, at 1332; Hilber & Robert-Nicoud, *supra* note 8, at 35; Saiz, *supra* note 24, at 1274.

128. For helpful discussions of homeowner risk-aversion, which of course is the foundation of Fischel’s homevoter hypothesis, see FISCHEL, HOMEVOTER HYPOTHESIS *supra* note 8. See also LEE ANNE FENNELL, THE UNBOUNDED HOME: PROPERTY VALUES BEYOND PROPERTY LINES (Yale Univ. Press 2009); Lee Anne Fennell, *Homeownership 2.0*, 102 NW. U. L. REV. 1047 (2008); Fennell, *supra* note 8; William A. Fischel, *Voting, Risk Aversion, and the NIMBY Syndrome: A Comment on Robert Nelson’s “Privatizing the Neighborhood,”* 7 GEO. MASON L. REV. 881 (1999); Chris Bradford, *The Risk of Home Ownership*, AUSTIN CONTRARIAN (June 30, 2008), <http://www.austincontrarian.com/austincontrarian/2008/06/the-risk-of-homeownership.html>

129. Been, Ellen, & O’Regan, *supra* note 42, at 8–9.

affordable housing has on low-income blighted neighborhoods,<sup>130</sup> there is very little research about how new market rate (or mixed-income) development affects sales prices for housing in the neighborhood, and none on how new development affects rents.<sup>131</sup> The best existing evidence is a study of low-income neighborhoods in California's Bay area, which found that the production of market rate housing was associated with a *lower* probability that low-income residents in the neighborhood would experience displacement.<sup>132</sup>

The gap in evidence likely is a function of several methodological challenges. First, it is difficult to establish causation because developers are more likely to build market rate housing in neighborhoods that are already seeing price and rent increases. Those increases signal an unmet demand to developers, so it is hard to disentangle whether any price increases that follow the introduction of new housing result from the housing, or from the increasing demand for housing in the neighborhood. Second, new housing likely will have mixed effects. On the one hand, it may attract additional demand, which could put pressure on the rents of existing housing. On the other hand, it may reduce demand as the construction imposes various costs (such as traffic congestion from construction vehicles, noise, and dust) on the neighborhood, or if the new residents put such a strain on local services that the neighborhood becomes less desirable. Further, new construction will absorb some of the demand that already exists, which will reduce the pressure that demand is already putting on the existing supply.<sup>133</sup> These different effects probably will vary with neighborhood context, and without further study, it is impossible to know which effect will dominate in various circumstances.

But evidence does exist about the city-wide effects of supply constraints, and despite the evidence, many neighborhood residents, advocates, and even some policy-makers are increasingly skeptical that additional supply will help reduce the rate at which rents are increasing across a city.<sup>134</sup> Ingrid Gould Ellen, Katherine O'Regan, and I have called this phenomenon "supply skepticism"

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130. For recent reviews of the literature, see Rebecca Diamond & Tim McQuade, *Who Wants Affordable Housing in their Backyard? An Equilibrium Analysis of Low Income Property Development* (Nat'l Bureau of Econ. Res., Working Paper, 2016); Virginia McConnell & Keith Wiley, *Infill Development: Perspectives and Evidence from Economics and Planning*, 20–25 (Resources for the Future, Working Paper No. DP 10–13, 2010).

131. This discussion again draws on Been, Ellen, & O'Regan, *supra* note 42.

132. MAC TAYLOR, PERSPECTIVES ON HELPING LOW-INCOME CALIFORNIANS AFFORD HOUSING 9 (Legislative Analyst's Office of California 2016).

133. Been, Ellen, & O'Regan, *supra* note 42.

134. See, e.g., Karen Narefsky, *What's In My Backyard?*, JACOBIN (Aug. 8, 2017), <https://www.jacobinmag.com/2017/08/yimbys-housing-affordability-crisis-density>.

and have explored the arguments of supply skeptics elsewhere.<sup>135</sup> We show that those arguments are inconsistent with the empirical evidence and with basic economic principles.<sup>136</sup> Nevertheless, supply skepticism lies behind some of the opposition to new development in cities,<sup>137</sup> and makes the risk-averseness that Hankinson describes even more difficult for proponents of additional housing supply to counter.<sup>138</sup>

#### V. IMPLICATIONS OF DIFFERENCES BETWEEN CITY AND SUBURBAN OPPOSITION

The reasons Part IV articulates for the increase in opposition to development in cities also suggest the differences between the opposition that is driven by suburban homevoters and opposition in cities. Opposition in cities is more likely to include, and even be led by, renters.<sup>139</sup> Further, a root cause of some—or perhaps most—of the opposition by renters is fear of rent increases that could lead them to have to leave their neighborhoods. Those factors, combined with the legacy of discrimination and exclusionary zoning that prevented many racial and ethnic minorities from moving out of the inner city, mean that City NIMBYism is more likely to involve concerns that racial minorities and low, moderate, or even middle-income households are being priced, or pushed, out, rather than kept out, of the neighborhood. Objections to development in cities, thus may be more about expulsive zoning than exclusionary zoning.<sup>140</sup> Opposition in cities is also more likely to be more

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135. See Been, Ellen, & O'Regan, *supra* note 42.

136. We also conclude that supply skepticism does highlight that adding supply is unlikely ever to meet the housing needs of the very lowest income households in a jurisdiction, and will have to be paired with subsidies, other incentives, or inclusionary housing requirements, to house those families. *Id.* at 9.

137. For examples, see Been, Ellen, & O'Regan, *supra* note 42, at 4–9.

138. Some of that difficulty also stems from the fact that our arguments accept basic microeconomic theories about markets, while some of the supply skeptics reject those tenets. See, e.g., GAR ALPEROVITZ & JAMES GUSTAVE SPETH, *AMERICA BEYOND CAPITALISM: RECLAIMING OUR WEALTH, OUR LIBERTY, AND OUR DEMOCRACY* (Democracy Collaborative Press 2011); CITIES FOR PEOPLE, NOT FOR PROFIT: CRITICAL URBAN THEORY AND THE RIGHT TO THE CITY (Neil Brenner, et al., eds., Routledge 2012); DAVID HARVEY, *REBEL CITIES: FROM THE RIGHT TO THE CITY TO THE URBAN REVOLUTION* (Verso Books 2012); EDWARD SOJA, *SEEKING SPATIAL JUSTICE* (Univ. of Minnesota Press 2010); see also *RIGHT TO THE CITY, Mission & History*, <https://righttothecity.org/about/mission-history/>.

139. Of course, not all opposition to development in cities is driven by tenants; homeowners also sometimes oppose development, and organized interest groups such as advocates for historic preservation also can be powerful opponents of new development.

140. The term “expulsive zoning” was first coined by Yale Rabin. See Yale Rabin, *Expulsive Zoning: The Inequitable Legacy of Euclid*, in *ZONING AND THE AMERICAN DREAM: PROMISES TO KEEP* 101–21 (Charles M. Haar & Jerold S. Kayden, eds., American Planning Association 1989). For an excellent discussion of the issue, see Jon C. Dubin, *From Junkyards to Gentrification: Explicating a Right to Protective Zoning in Low-Income Communities of Color*, 77 MINN. L. REV. 739 (1993). For a literature review, see Andrew H. Whittlemore, *The*

concerned about growing inequality that disadvantages low, moderate, and middle income families than about protecting the existing privilege of (predominantly) older white suburban residents.

Some City NIMBYism, like some suburban NIMBYism, likely is motivated primarily by self-interest, and some may be motivated by racism, classism, or other intolerance. Further, some suburban NIMBYs, along with some City NIMBYs, have similar and very legitimate complaints about specific development proposals, the public approval process, or the jurisdiction's plans (or lack of planning) for growth. But today's City NIMBYism raises legitimate concerns, different from those raised by traditional suburban NIMBYism, that researchers and policy makers need to address head-on.<sup>141</sup>

First, there must be a better understanding of how new development affects both its host neighborhood and the jurisdiction as a whole. Because the threat of increased rents is top-of-mind for many neighborhood residents, researchers should focus on documenting whether new construction slows or increases the trajectory of rents in a neighborhood that is experiencing increased demand. Because it is difficult to establish causation given that increased demand may both attract new construction, and be driven by new construction, researchers will need sophisticated methodologies to tease out the relationship between new construction and rents. Of course, that relationship likely will be affected by such factors as whether the jurisdiction has any form of rent regulation (and if so, how it enforces the regulatory requirements); whether the existing housing stock in the neighborhood is primarily owner-occupied or rental; and whether the neighborhood is subject to restrictions beyond the usual zoning constraints such as historic preservation or contextual zoning. Research accordingly must account for those different contexts.

Fear that rent increases or conversion of existing housing to other uses may cause displacement is another major factor in opposition to new development. The evidence about whether displacement actually occurs in changing neighborhoods, who is affected by any such displacement, and how they are affected, however, is again woefully inadequate to answer residents' concerns—this must be a continued focus for research.<sup>142</sup> Similarly,

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*Experience of Racial and Ethnic Minorities with Zoning in the United States*, 32 J. PLAN. LIT. 16 (2016).

141. Despite the differences between city and suburban opposition to development, cities should be able to learn from policies designed to overcome exclusionary zoning in the suburbs.

142. I have outlined the gaps in our understanding of displacement elsewhere. See Vicki Been, *What More Do We Need to Know About How to Prevent and Mitigate Displacement of*

more needs to be done to identify how those who stay in a gentrifying neighborhood are affected by the changes in the neighborhood.<sup>143</sup>

Much more thought and study also needs to be devoted to identifying which responses to displacement work in different contexts.<sup>144</sup> Many tools, ranging from inclusionary housing requirements to legal assistance for tenants, are being tried in different neighborhoods and jurisdictions,<sup>145</sup> and it is imperative that the effects of those tools be rigorously evaluated to ensure that jurisdictions can tailor the tools to most effectively address the issues most relevant to their changing neighborhoods.

Concerns that new construction will cause or exacerbate gentrification, and that the population moving into the neighborhood may lead the neighborhood to become less integrated by race and ethnicity or income over time, also need to be examined. Changes in the neighborhood may initially result in a more diverse population, especially if the neighborhood's population was primarily minority, but residents reasonably fear that changes will lead the neighborhood eventually to become predominantly white and wealthy. Recent research indicates that the demographic trajectories of gentrifying neighborhoods are complex.<sup>146</sup> All these questions about how neighborhoods are likely to change depend in part upon better information about the race, ethnicity, and income of those who stay, those who leave, and those who move into, areas undergoing change.<sup>147</sup>

In debates over new construction, some opponents question just how much additional housing is needed. Because the housing market is dynamic, and the supply of housing both affects and is affected by such factors as household formation rates, immigration patterns, employment trends, neighboring jurisdictions' behavior,

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*Low- and Moderate-Income Households from Gentrifying Neighborhoods*, in A SHARED FUTURE: FOSTERING COMMUNITIES OF INCLUSION IN AN ERA OF INEQUALITY (Christopher Herbert, Jonathan Spader, Jennifer Molinsky, and Shannon Rieger, eds., Cambridge, MA: Joint Cntr for Housing Studies, forthcoming 2018).

143. See, e.g., Ingrid Gould Ellen & Katherine O'Regan, *How Low Income Neighborhoods Change: Entry, Exit, and Enhancement*, 41 REG'L SCI. & URB. ECON. 89 (2011).

144. For a comprehensive assessment of the research needed, see Been, *supra* note 142.

145. For useful catalogues of the tools available, see LUKE HERRINE, ET AL., GENTRIFICATION RESPONSE: A SURVEY OF STRATEGIES TO MAINTAIN NEIGHBORHOOD ECONOMIC DIVERSITY, (NYU Furman Cntr for Real Estate and Urban Pol'y, 2016), [http://furmancenter.org/files/NYUFurmanCenter\\_GentrificationResponse\\_26OCT2016.pdf](http://furmancenter.org/files/NYUFurmanCenter_GentrificationResponse_26OCT2016.pdf); Jeffrey Lubell, *Preserving and Expanding Affordability in Neighborhoods Experiencing Rising Rents and Property Values*, 18 CITYSCAPE 131 (2016).

146. See, e.g., Michael D. M. Bader & Siri Warkentien, *The Fragmented Evolution of Racial Integration since the Civil Rights Movement*, 3 SOCIOLOGICAL SCI. 135 (2016); Ronald J.O. Flores & Arun Peter Lobo, *The Reassertion of a Black/Non-Black Color Line: The Rise in Integrated Neighborhoods Without Blacks in New York City, 1970-2010*, 35 J. URB. AFF. 255 (2012); Terra McKinnish, Randall Walsh, & T. Kirk White, *Who Gentrifies Low-Income Neighborhoods?*, 67 J. URB. ECON. 180 (2010).

147. See Been, *supra* note 142.

and mobility patterns and trends, it is difficult to specify what any jurisdiction's housing "gap" really is. Work that develops a standard measure, and hones a methodology to account for the market's dynamism, would help give those estimates more rigor and credibility.<sup>148</sup>

Further, the increasing role of renters in disputes over construction and other changes in neighborhoods requires better thinking and experimentation regarding how best to engage neighborhood residents about their needs, hopes, and views on changes proposed for their neighborhood. It also requires additional debate about how to effectively and fairly mitigate or offset the costs, and distribute the benefits, that change may bring to the community. Shorter term renters will have different interests than longer term renters, and the interests of all renters are likely to be very different from the interests of homeowners and local businesses. Those differences need to be addressed openly in discussions about how public participation processes, land use approval procedures, and the nature of negotiations over community benefits and mitigation measures should change to account for legitimate concerns of renters, homeowners, workers, and businesses in the surrounding neighborhoods.

Finally, efforts to open exclusionary suburbs involved giving people who had been shut out of those neighborhoods the choice to move into them.<sup>149</sup> Those choices involved a myriad of sacrifices by the individuals making the move.<sup>150</sup> But development in neighborhoods currently populated primarily by people excluded from other neighborhoods by racial and ethnic discrimination in the past (and in some places, still today) now threatens to impose burdens that the residents are not choosing to assume. That critical difference raises a host of legal and social justice issues that need to be confronted forthrightly.<sup>151</sup>

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148. Compare TAYOR, *supra* note 132, and WOETZEL ET AL., *supra* note 38, for examples of differing estimates used in California.

149. See, e.g., XAVIER DE SOUZA BRIGGS ET AL., MOVING TO OPPORTUNITY: THE STORY OF AN AMERICAN EXPERIMENT TO FIGHT GHETTO POVERTY (2010); Jens Ludwig et al., *Long-Term Neighborhood Effects on Low-Income Families: Evidence from Moving to Opportunity*, 103 AM. ECON. REV. 226 (2013). Lisa A. Gennetian et al., *The Long-Term Effects of Moving to Opportunity on Youth Outcomes*, 14 CITYSCAPE 137 (2012); Susan Clampet-Lundquist & Douglas S. Massey, *Neighborhood Effects on Economic Self-Sufficiency: A Reconsideration of the Moving to Opportunity Experiment*, 114 Am. J. Soc. 107 (2008); Ingrid Gould Ellen & Margery Austin Turner, *Do Neighborhoods Matter and Why?*, in CHOOSING A BETTER LIFE? EVALUATING THE MOVING TO OPPORTUNITY SOCIAL EXPERIMENT 313 (John M. Goering & Judith D. Feins eds., 2003) (reviewing literature).

150. See Ludwig, et al., *supra* note 149.

151. Those conversations have begun in, ROTHSTEIN, *supra* note 75; THOMAS SHAPIRO, TOXIC INEQUALITY: HOW AMERICA'S WEALTH GAP DESTROYS MOBILITY, DEEPENS THE RACIAL DIVIDE, AND THREATENS OUR FUTURE (2017); Vicki Been, *Gentrification, Displacement and Fair Housing*, FURTHERING FAIR HOUSING: PROMISES, PROTESTS, AND PROSPECTS FOR RACIAL



We are unlikely to make progress towards providing affordable homes in thriving, safe, and high quality neighborhoods if we do not hear, respect, and seriously attempt to resolve the concerns that may lead to opposition to new development in the nation's growing cities. That is not to say that we should prevent necessary change, entrench privilege, or protect property values over human needs. It is, instead, a call for careful attention to which fears and concerns can and should be addressed, and which must yield to the greater social need to keep our cities affordable and open to all.

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JUSTICE IN AMERICA'S NEIGHBORHOODS (forthcoming 2018); Rachel D. Godsil, *The Gentrification Trigger: Autonomy, Mobility, and Affirmatively Furthering Fair Housing*, 78 BROOK. L. REV. 319 (2013); Jonathan Kaplan & Andrew Valls, *Housing Discrimination as a Basis for Black Reparations*, 21 PUB. AFF. Q. 255 (2007).

