

Housing Policies Contributing to Juvenile Delinquency

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I. INTRODUCTION

Concentrations of low-income housing subjects families in assisted units to unequal conditions of slum, blight, and a number of related problems. Some of the additional problems faced by people in low-income housing are higher crime rates, undue concentrations of persons in poverty, low median incomes, high unemployment rates, and adverse environmental conditions. Additionally, concentrations of low-income housing in Louisville, Kentucky have put a strain on the juvenile justice system by perpetuating juvenile offenses through the negative consequences of childhood exposure to violence and drug dealing in areas of concentrated poverty.

When Congress enacted the Fair Housing Act of 1968 (FHA),¹ families with children were not included as a protected category because housing discrimination against families with children was not generally recognized as an issue. Over the next two decades, discrimination against children in housing emerged as a major civil rights issue. Many laws were ineffective due to lack in both comprehensiveness and stringent penalties, which led fair housing advocates to search for a judicial breakthrough.²

In 1980, a Department of Housing and Urban Development (HUD) commissioned study found widespread discrimination against families with children.³ The report provided congressional proponents with the justification to add family status to the Fair Housing Amendments Act of 1988 (FHAA).⁴ Other studies of the time confirmed that local housing markets have widespread child discrimination.⁵

In a study of the greater Washington area in 1986, there were black and white testers sent to 266 rental properties in the area having a black population of 20 percent less than the overall city population, and the study found that 53 percent of the time white individuals were treated more favorably.⁶ The study concludes that black home seekers in the tri-state area experience multi-faceted discrimination; often they were told that apartments are not available, or they were discouraged from establishing residency in those available.⁷

The nationwide emergence of housing discrimination against children was related to long-term demographic trends.⁸ The number of households in the United States grew much faster than the population because of a higher proportion of single-person households and childless couples.⁹ This significant increase in smaller households adversely affected the housing opportunities for families with children.¹⁰ The influx of smaller households in the housing market increased the

¹ The Fair Housing Act of 1968, Pub. L. No. 90-284, 82 Stat. 81 (1968) (codified at 42 U.S.C. §§ 3601-3619, 3613 (1988)).

² James Morales, *Creating New Housing Opportunities for Families with Children: The Fair Housing Amendments Act of 1988*, 2 CLEARINGHOUSE REV. 744, 750-51 (1988).

³ R. MARANS & M. COLTEN, A NATIONAL SURVEY, U.S. DEPT. OF HOUSING URBAN DEVELOPMENT (1980).

⁴ 28 U.S.C. §§ 2341-42, 3610-3614, 3614(a), 3615-3619 & 3631 (1988).

⁵ H.R. REP. No. 100-711, at 19-21 (1988) (Conf. Rep.).

⁶ 134 CONG. REC. S10458 (daily ed. Aug. 1, 1988) (statement of Sen. Spector).

⁷ *Id.*

⁸ Morales at 745.

⁹ *Id.*

¹⁰ *Id.*

demand for housing.¹¹ In the competition for housing, smaller households, most of which do not have children, became the preferred customers. Property owners simply did not have to rent or sell to families with children.¹²

Opposition to the newly protected category of "familial status" was prevalent.¹³ Advocates of adult housing, intent on preserving the sanctuaries of "adult-only" housing, were especially vocal.¹⁴ However, in 1988, Congress passed the Fair Housing Amendments Act which took effect on March 12, 1989.¹⁵ The FHAA added three fundamental innovations: (1) the protected categories of "familial status" and "handicapped persons";¹⁶ (2) "teeth" by means of apparently powerful and efficient administrative enforcement apparatus;¹⁷ and (3) "sting" in the form of punitive damages and civil penalties.¹⁸

In landmark legislation, H.R. Res. 1158, 100th Cong., The Fair Housing Amendments Act of 1988 (FHAA), Congress has enacted a nationwide prohibition on housing discrimination against families with children. On June 29, 1988, the House of Representatives passed H.R. 1158 by a vote of 376 to 23. The Senate considered a substitute version of the bill on August 2, 1988, and passed it by a margin of 94 to 3. Without sending it to a conference committee, the House then voted on August 8 to adopt the Senate version of the bill.¹⁹ President Reagan signed H.R. 1158 into law on September 13, 1988 and the FHAA became effective on March 12, 1989.²⁰

II. DISCRIMINATION AGAINST FAMILIES WITH CHILDREN

HUD's 1980 study documented rampant and increasing discrimination against families with children.²¹ Twenty-five per cent of all housing providers completely shut their doors to families with children, while another fifty percent imposed some restrictions, bringing the number of instances of housing discrimination to two million per year, nationwide.²²

Familial discrimination was most prevalent in efficiency and one-bedroom apartments. Furthermore, newly constructed rental units charged higher rents to families than to other tenants.²³ An earlier study concluded that sixty-three per cent of housing complexes in two California cities preferred no children.²⁴ By the mid 1980's, family discrimination became a central housing policy issue, prompting one Congressman to call it a "nationwide housing

¹¹ *Id.*

¹² *Id.*

¹³ Edward Allen, *Six Years After Passage of the Fair Housing Amendments Act: Discrimination Against Families With Children*, 9 ADMIN. L.J. AM. U. 297 (1995).

¹⁴ *Id.*

¹⁵ Fair Housing Amendments Act of 1988, Pub. L. No. 100-430, 102 Stat. 1619 (1988).

¹⁶ 42 U.S.C. §§ 3604, 3606 (1988).

¹⁷ 42 U.S.C. §§ 3615 - 3619 (1988).

¹⁸ 42 U.S.C. § 3611 (1988).

¹⁹ 134 CONG. REC. H6491-97 (daily ed. Aug. 8, 1988) (statement of Rep. Edward).

²⁰ Morales at 751.

²¹ Allen at 302.

²² *Id.*

²³ 134 CONG. REC. S10544, S10553 (daily ed. Aug. 1, 1988) (statement of Sen. Helms).

²⁴ Morales at 745.

crisis."²⁵ The "crisis" was partly attributable to the relative poverty of families with children. In 1979, fifty-three percent of female-headed families rented housing.²⁶ Seventy percent of these families lived in poverty.²⁷ Eight million low income renters competed for half as many affordable units. As a result, by 1980, an estimated one-third of the homeless were families with children.²⁸ Large rental units capable of accommodating families simply were not available.

Opposition to including families with children as a protected category was fierce. Landlords and condominium/townhouse owners argued that children would bring higher insurance costs and greater tort liability, in turn provoking existing adult communities to raise rents.²⁹ Additionally, landlords considered the behavior of unsupervised children a major irritant, and wanted to curb their "mischievousness, boisterousness, and rowdiness."³⁰

The Fair Housing Act prohibited housing discrimination on the basis of race, color, religion, sex, or national origin. The FHAA amended the law by adding "familial status" as a protected class.³¹ The FHAA also added a section prohibiting discrimination in residential real estate transactions and in the terms or conditions of such transactions.³² These transactions include the making of loans for the purchase of a dwelling, the making of loans secured by residential units, and "the selling, brokering, or appraising of residential real property."³³

It is conventional wisdom that familial discrimination has a disproportionate impact on minority families.³⁴ That realization, recognized in the FHAA's legislative history, may well have fueled some FHAA opponents who feared that the amendments would hinder their ability to bar "undesirable" minority families by legally banning children.³⁵ Congressional opponents, who did not oppose the FHAA "handicapped persons" provisions, were very engaged in the debate of "familial status" by the House Committee on the Judiciary.³⁶ Moreover, those opponents sponsored an amendment to eliminate the family status provisions, which FHAA supporters narrowly defeated by a committee vote of 19 to 15.³⁷

III. The Fair Housing Amendments Act of 1988

²⁵ 134 CONG. REC. 4612 (1988).

²⁶ *Fair Housing Amendments Act of 1988: Hearings on H.R. 1158 Before the Subcomm. on Civil and Constitutional Rights of the House Comm. on the Judiciary*, 100th Cong. 372-73 (1987) (statement of James Morales, staff attorney, National Center for Youth Law).

²⁷ *Id.*

²⁸ 134 CONG. REC. H4611 (daily ed. June 22, 1988) (statement of Rep. Miller).

²⁹ Symposium, *The State of the Union: Civil Rights: The Fair Housing Amendments Act of 1988: The Second Generation of Fair Housing*, 42 VAND. L. REV. 1049 (1989).

³⁰ *Id.*

³¹ 42 U.S.C. §§ 3604-06, 3617 (1988 and Supp. V 1993).

³² 134 CONG. REC. H6491 (daily ed. Aug. 8, 1988) (statement of Rep. Mazzoli).

³³ 42 U.S.C. § 3604 (1988).

³⁴ *Betsey v. Turtle Creek Ass'n*, 736 F.2d 983 (4th Cir. 1984).

³⁵ Symposium, *The State of the Union: Civil Rights: The Fair Housing Amendments Act of 1988: The Second Generation of Fair Housing*, 42 VAND. L. REV. 1049 (1989).

³⁶ 100 CONG. REC. H4612 (daily ed. June. 22, 1988) (statement of Rep. Edwards).

³⁷ H.R. REP. NO. 100-711, at 85 (1988).

The 1988 amendments to the Fair Housing Act prohibit discrimination against families with children younger than eighteen.³⁸ This protected class includes all imaginable household combinations with children including:

- (1) households in which a minor is "domiciled" with parents;³⁹
- (2) persons with legal custody of the minor;⁴⁰ or
- (3) designees of the parent or persons with legal custody;⁴¹
- (4) pregnant women; and
- (5) families in the process of receiving legal custody of a child.⁴²

Congress intended to extend broad standing principles to those seeking redress under the FHA.⁴³ The House Judiciary Committee commented that the term "aggrieved persons" in the 1988 amendments "adopts as its definition language similar to that contained in . . . existing law, as modified to reaffirm the holdings of the Supreme Court's decisions in *Gladstone* and *Havens Realty*."⁴⁴ In *Gladstone, Realtors v. Village of Bellwood*, the Court held that, because Congress intended standing under the FHA "to extend to the full limits of Art. III, the normal prudential rules do not apply."⁴⁵ As long as the plaintiff suffers "actual injury as a result of the defendant's conduct, he is permitted to prove that the rights of another were infringed."⁴⁶

In *Gorski v. Troy*, the Seventh Circuit concluded that the "definition of familial status specifically includes the 'designee' of parents or other persons having custody of the children."⁴⁷ The court reiterated the well-established tenet that the "aggrieved person" definition of the Act is extremely broad.⁴⁸ The Supreme Court has previously noted in *Trafficante v. Metropolitan Life Ins. Co.*, that "the language of the Fair Housing Act is broad and inclusive."⁴⁹ This expansive interpretation applies equally to families with children.⁵⁰ The FHAA statute recognizes familial status as a protected class.

Under the Fair Housing Amendments Act, the statutory list of proscribed conduct remains generally the same for all protected categories. It is unlawful to discriminate against a family with children under the age of eighteen by:⁵¹

- (1) refusing to sell, rent, negotiate for, "or otherwise make unavailable or deny" a dwelling;⁵²
- (2) varying invidiously the "terms, conditions, or privileges of a sale or rental" or in the

³⁸ 42 U.S.C. §§ 3604-06, 3617 (1988 and Supp. V 1993).

³⁹ *Id.* § 3604(a) (1988).

⁴⁰ *Id.* § 3604(b) (1988).

⁴¹ *Id.* § 3604(c) (1988).

⁴² 42 U.S.C. § 3602(k) (1988).

⁴³ *Gorski v. Troy*, 929 F.2d 1183, 1187 (7th Cir. 1991).

⁴⁴ H.R. REP. NO. 711 at 3, *reprinted in* 1988 U.S.C.C.A.N. 2173, 2184.

⁴⁵ *Gladstone, Realtors v. Village of Bellwood*, 441 U.S. 91 (1979).

⁴⁶ *Id.*

⁴⁷ *Groski*, at 1188.

⁴⁸ *Id.* at 1188-89.

⁴⁹ *Trafficante v. Metropolitan Life Ins. Co.*, 409 U.S. 205, 209 (1972).

⁵⁰ *Id.*

⁵¹ 42 U.S.C. § 3602(k) (1988).

⁵² 42 U.S.C. § 3604 (1988).

- provision of services or facilities of a dwelling;⁵³
- (3) making or publishing any discriminating statement in regard to a sale or rental;⁵⁴
 - (4) misrepresenting the availability of a dwelling;⁵⁵
 - (5) "blockbusting" or inducing a person to sell or rent any dwelling by representations about the presence of members of families with children in the neighborhood;⁵⁶
 - (6) discriminating in access to real estate services;⁵⁷
 - (7) retaliating, coercing, intimidating, or threatening a family with children who has exercised a right under the FHAA.⁵⁸

Congress prohibited disparate treatment of families with children by enumerating specific examples of unlawful discrimination. The Housing Provider must not:

- (1) base security deposits and rents on family size;⁵⁹
- (2) make recreational facilities available to single tenants;⁶⁰
- (3) advertise in a manner which indicates any disinclination to accept children;⁶¹
- (4) consign children to a "family ghetto" within a housing complex.⁶²

Nothing in the law suggests, however, that housing providers must suffer an inequitable burden. Providers may refuse family applicants on the basis of legitimate criteria such as bad credit, weak references, a history of disturbing other tenants, or patent overcrowding.⁶³

III. JUVENILE JUSTICE SYSTEM

Today's juvenile justice system maintains rehabilitation as its primary goal and distinguishes itself from the criminal justice system in a few important ways. With a handful of exceptions, in most states delinquency is defined, "as the commission of a criminal act by a child who was under the age of 18 at the time."⁶⁴ In lieu of prison, juvenile court judges draw from a range of legal options to meet the dual goals of the safety needs of the public and the treatment needs of the youth. Another key distinction is that unlike adult criminal proceedings, juvenile court hearings are often closed to members of the public and records are often confidential; protecting children from carrying the burdens of their delinquent activity into adulthood.

Because juvenile records are not automatically expunged or sealed, youth often face collateral consequences from their involvement in the legal system. They may have difficulty obtaining housing, employment, serving in the military, or obtaining financial aid for college. The 2002 Supreme Court ruling in *Department of Housing and Urban Development v. Rucker*, upheld the

⁵³ *Id.* § 3604(b).

⁵⁴ *Id.* § 3604(c).

⁵⁵ *Id.* § 3604(d).

⁵⁶ *Id.* § 3604(e).

⁵⁷ 42 U.S.C. § 3606 (1988).

⁵⁸ 42 U.S.C. § 3617 (1988).

⁵⁹ 24 C.F.R. § 100.65(b)(1) (1994).

⁶⁰ 24 C.F.R. § 100.65(b)(4)-(5) (1994).

⁶¹ 24 C.F.R. § 100.75 (1994).

⁶² 24 C.F.R. § 100.70(c)(4) (1994).

⁶³ 134 CONG. REC. H4468 (daily ed. Nov. 1988) (statement of Rep. Egnor).

⁶⁴ 18 U.S.C. § 5031

right of public housing authority (PHA)'s to evict families of children who engage in criminal or delinquent conduct; even if that conduct is unknown to the parents and does not occur on public housing property.⁶⁵ Research has documented the correlation between delinquency and risk factors such as poverty and poor home or community environment.⁶⁶ Juvenile records checks may create or further impact already tenuous family relations by pitting parents, guardians, or siblings against children with delinquent backgrounds.⁶⁷ Parents who become angry and resentful may even abuse children who prevent them from getting housing.⁶⁸ Familial rejection destroys family ties and the support systems essential to rehabilitating troubled youth. Parents may even force a delinquent child to leave home; either in retaliation for the embarrassment brought on the family or simply to avoid eviction of other family members.⁶⁹

Some PHA's use the discretion in the federal regulations to permit nonoffending family members to remain in public housing after a crime.⁷⁰ On the other hand, some PHA's have adopted a policy of dismissing evictions based on the conduct of one household member when the other tenants exclude the offending member from the tenancy.⁷¹ In these circumstances, nonoffending family members have great incentive to force offending children to move out.⁷²

Children with multiple risk factors such as inadequate or erratic parental supervision combined with substandard living conditions have the greatest risk of subsequent delinquency.⁷³ Families who qualify for public housing are typically in the greatest need, and those who lose federally funded housing have great difficulty finding new affordable housing.⁷⁴ Children and families that are expelled from public housing are often forced into homelessness, temporary shelters, or overcrowded residences with extended family members who may be financially strained.⁷⁵ Because public housing developments are often in the lowest income neighborhoods it is reasonable to expect that some evicted families will move to abandoned buildings or other low-income housing nearby.⁷⁶ Parents in public housing, many of whom are single parents living below the poverty line, with difficulty securing even basic necessities like rent, food, and clothes cannot watch their children all the time.⁷⁷ The realities of public housing often make close supervision of children difficult.

Crime in public housing results in large part from dilapidated physical space, concentrated pools of poverty perpetuated by low income limits, poor management, and the placement of low-

⁶⁵ 535 U.S. 125, 133-36 (2002).

⁶⁶ Janet Gilbert et al., *Applying Therapeutic Principles to a Family-Focused Juvenile Justice Model (Delinquency)*, 52 Ala. L. Rev. 1153, 1155 (2001), at 1170, 1175.

⁶⁷ Kristine Henning, *Eroding Confidentiality In Delinquency Proceedings: Should Schools and Public Housing Authorities Be Notified?*, 79 N.Y.U.L. Rev. at 574.

⁶⁸ Josephine Gittler, *The American Drug War, Maternal Substance Abuse and Child Protection: A Commentary*, 7 J. Gender, Race & Just. 237, 244 n. 28 (2003).

⁶⁹ *Id.*, at 262.

⁷⁰ 24 C.F.R. 966.4(1)(5)(vii)(B) (2003).

⁷¹ Nelson H. Mock, Note, *Punishing the Innocent: No-Fault Eviction of Public Housing Tenants for the Actions of Third Parties*, 76 Tex. L. Rev. 1495, 1530 (1998).

⁷² *Id.*, at 1500.

⁷³ Gilbert at 1175.

⁷⁴ Mock, *supra* note 291, at 1498-500.

⁷⁵ *Id.*, at 1499.

⁷⁶ William F. Maher, *Wisdom Revisited: Judicial Intervention and the Exercise of Discretion in "Strict Liability" Public Housing Evictions*, 8 *J. Affordable Housing & Community Dev.* 218, 218 (1999).

⁷⁷ Mock, *supra* note 291, at 1498-99.

income housing developments in crime-ridden areas.⁷⁸ Increased public spending is needed to de-concentrate pools of poverty and to improve existing affordable housing developments. New affordable housing developments must also include the creation of social services, treatment programs, educational and recreational outlets for residents may render greater long-term gains and avoid the costs associated with juvenile arrests and adjudications.⁷⁹ Affordable housing programs must do more than just building more buildings; it must build up more people by also providing access to job training, self-sufficiency programs, and opportunities for quality education.

Local governments should develop affordable housing plans that spread out affordable housing in combination of single-family homes and medium-sized apartment complexes, and attempt to convert existing concentrated low-income housing communities into mixed-income neighborhoods.⁸⁰ New affordable housing facilities must be constructed outside of economically impoverished and crime-ridden areas.⁸¹ Dispersing affordable housing in this way avoids concentrations of poverty and unemployment that are root causes of crime in public housing.⁸²

IV. AFFORDABLE HOUSING PROGRAMS

Both the efficiency and equity of housing programs for low-income households are frequently called into question.⁸³ To the extent that affordable housing programs promote development primarily in low-income neighborhoods, they may only serve to increase the concentration of poverty, particularly in terms of limiting access to good jobs, schools, and other means to achieve upward economic and social mobility. A frequent charge leveled against affordable housing programs is that they have concentrated poverty, particularly in inner-city neighborhoods.⁸⁴ Encouraging affordable housing development in areas already concentrated with poverty provides incentives for low-income residents to stay, as well as attracting additional economically disadvantaged residents from elsewhere to these neighborhoods.⁸⁵ The even higher poverty and segregation that results can have severe negative consequences in terms of access to employment and education opportunities.⁸⁶ The characteristics of one's place of residence have important implications for child and adult outcomes, and the negative consequences of childhood exposure to violence and drug dealing in areas of concentrated urban poverty may be particularly severe.⁸⁷

V. LOW INCOME HOUSING TAX CREDIT PROGRAM AND THE QCT

⁷⁸ Patrick E. Clancey & Leo Quigley, HOPE VI: A Vital Tool for Comprehensive Neighborhood Revitalization, 8 Geo. J. on Poverty L. & Pol'y 527, 536-541 (2001).

⁷⁹ *Id.*, at 540 - 41

⁸⁰ Skinner, *supra* note 365, at 543.

⁸¹ *Id.*

⁸² Kristin Henning, Article: Eroding Confidentiality In Delinquency Proceedings: Should Schools And Public Housing Authorities Be Notified?, 79 N.Y.U.L. Rev. 520 at 588.

⁸³ Matthew Freedman, Article: Low-Income Housing Development and Crime, Journal of Urban Economics 70.2-3 (2011), available at: http://works.bepress.com/mathew_freedman/12.

⁸⁴ Douglas Massey: American Apartheid: Segregation and the Making of the Underclass (1998).

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ Ingrid Ellen, Does Neighborhood Matter? Assessing Recent Evidence, Housing Policy Debate, Volume 8, Issue 4, Fannie Mae Foundation 1997.

The Low Income Housing Tax Credit (LIHTC) was created under the Tax Reform Act of 1986 and is a dollar-for-dollar tax credit for affordable housing investments. The LIHTC gives incentives for the investment of private equity in the development of affordable housing aimed at low-income households. The LIHTC accounts for the majority of all affordable rental housing created in the United States today.⁸⁸

The Tax Reform Act of 1986 did not include Qualified Census Tract (QCTs). The QCT provision of the LIHTC statute encourages private developers to build low-income housing in low-income and high-poverty areas.⁸⁹ QCTs and the similar concept of difficult development area (DDAs) were added by amendments to the tax code in the Omnibus Reconciliation Act of 1989.⁹⁰ QCT's likely were intended to provide additional incentives for the rehabilitation or replacement of substandard rental housing in low-income areas.⁹¹ Prior to 2002, a census tract qualified as a QCT if 50% of its households had incomes below 60% of the Area Median Gross Income (AMGI) unless the total population of designated QCTs within a metropolitan area exceeds 20% of that metropolitan area's population. In cases in which the population requirement is not met, tracts within a metropolitan area are ranked according to the share of households with incomes below 60% of the AMGI.⁹² Working down that list, tracts are designated eligible until adding another tract would breach the 20% threshold.⁹³

The Community Renewal Tax Relief Act of 2000 added another criterion to determine eligibility. Effective January 1, 2002, a census tract qualified for QCT status if at least 50% of its households have incomes below 60% of the AMGI or if the poverty rate of the tract is at least 25% (still subject to the same population restriction).⁹⁴ This change immediately increased the number of designated tracts from 7,700 in 2001 to over 9,900 in 2002.⁹⁵ The share of the U.S. population living in QCTs jumped from under 10% to over 13%.⁹⁶

The changes that increased QCT eligibility provided more choices of locations where the additional development incentives are available for locating housing within low-income or high—poverty rate, areas.⁹⁷ The current LIHTC law allows an increase in basis to apply only to LIHTC financed buildings located entirely within the boundaries of the census tracts designated by HUD as QCTs.⁹⁸ Despite the use of the QCT designation in the LIHTC program for almost

⁸⁸ The New York Times, A Tax Credit Worth Preserving, Editorial (2012), available at http://www.nytimes.com/2012/12/21/opinion/a-tax-credit-worth-preserving.html?_r=0

⁸⁹ U.S. Department of Housing and Urban Development: Low-Income Housing Tax Credit Qualified Census Tracts (2007).

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² Freedman at 10.

⁹³ *Id.*

⁹⁴ U.S. Department of Housing and Urban Development: Low-Income Housing Tax Credit Qualified Census Tracts (2007).

⁹⁵ *Id.*

⁹⁶ Freedman at 10.

⁹⁷ U.S. Department of Housing and Urban Development: Low-Income Housing Tax Credit Qualified Census Tracts (2007).

⁹⁸ *Id.*

25 years, research on the effect of designated census tracts in the program is lacking.⁹⁹ Questions regarding the effect of the LIHTC program remain unanswered.

- Do LIHTC properties provide low-income households with access to neighborhoods of opportunity?¹⁰⁰
- Does such access to neighborhoods of opportunity differ for particular populations, such as minorities, those with extremely low incomes, and families or the elderly?¹⁰¹
- Do LIHTC properties contribute to the deconcentration, or concentration, of poverty or minority groups?¹⁰²
- How does access to LIHTC housing benefit tenants in terms of housing cost burden and residential stability?¹⁰³
- Do the priorities states set forth in their Qualified Allocation Plans (QAPs) affect LIHTC outcomes?¹⁰⁴

VI. ANALYSIS OF JEFFERSON COUNTY KENTUCKY QCT DATA AND THE EFFECTS OF CONCENTRATING AFFORDABLE HOUSING ON LOW-INCOME JUVENILES

The U.S. Department of Housing and Urban Development (HUD) provides data on low-income housing tax credit projects.¹⁰⁵ The data include all projects receiving any tax credits through the LIHTC program, and for most developments, have information on the exact location of the project, total number of low-income units, type of project, amount and type of funding, whether the project is targeted at a particular group (families, the elderly, disabled, homeless, etc.) and other information.¹⁰⁶ In Jefferson County Kentucky there are 50 QCT's¹⁰⁷ which contain 76 percent of the approximately 21,000 units of federally assisted multifamily housing in the county.¹⁰⁸

The Kentucky Kids Count Data Center tracks a wide variety of indicators by county and city council district. The 50 QCT's are located in 10 Louisville Metro Council Districts. During 2010 – 2012:

- There were 5,700 juvenile court proceedings.¹⁰⁹ Seventy-one (71) percent of the juvenile court proceedings occurred from youth who live in city council districts located in QCT's.¹¹⁰

⁹⁹ *Id.*

¹⁰⁰ Moelis Institute For Affordable Housing, Article: What Can We Learn about the Low-Income Housing Tax Credit Program by Looking at the Tenants? (2012) available at: http://furmancenter.org/files/publications/LIHTC_Final_Policy_Brief_v2.pdf

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ Qualified Census Tracts, <http://www.huduser.org/QCT/qctmap.html>

¹⁰⁶ *Id.*

¹⁰⁷ Qualified Census Tracts and Difficult Development Areas, <http://qct.huduser.org/index.html>.

¹⁰⁸ National Housing Preservation Data Base, <http://www.preservationdatabase.org>.

¹⁰⁹ Kids Count Data Center – <http://datacenter.kidscourt.org>.

¹¹⁰ *Id.*

- A total of 1,251 6 -12 grade students were placed in an alternative school program. Seventy-two (72) percent of the students placed in an alternative school program lived in an area designated as a QCT.¹¹¹
- A total of 12,374 K-12 students missed more than 10 percent or more school days. Fifty-two (52) percent of the students lived in an area designated as a QCT.¹¹²
- A total of 11,578 K-12 students experienced homelessness. Fifty-eight (58) percent of the students lived in an area designated as a QCT.¹¹³
- All Louisville Metro Council Districts within a QCT, except one, have more than 25 percent of families with related children living below the poverty level. Council Districts 4 and 6 have more than 50 percent of families with related children living below the poverty level.¹¹⁴

The Kentucky Kids Count Data Center findings, overlaid with concentrations of affordable housing located in a QCT clearly represents a correlation between the data points. Children growing up in a QCT in Jefferson County Kentucky have a higher probability of entering the judicial system, being placed in an alternative school program, missing more than 10 percent of school days, and possibly experience some form of homelessness.

Of particular concern is the possibility that the volume of juvenile crime in Jefferson County may be related in part to “the spatial concentration of low-income families in high-poverty, high-crime urban neighborhoods.”¹¹⁵ Criminal activity may be “contagious” in high-crime areas because the social penalties for committing crime or the probability of arrest may be lower than in other neighborhoods;¹¹⁶ the concentrations of poverty and assisted affordable housing in Jefferson County have extreme negative impacts on children in low-income families.

VII. INCENTIVIZING DEVELOPMENT IN QCT’S CONTRADICTS THE INTENT OF THE FAIR HOUSING ACT

The LIHTC program incentives for developing affordable housing in areas with low-incomes and high poverty are in conflict with the requirements of the Fair Housing Act (FHA). The FHA makes it unlawful to "make unavailable or deny, a dwelling to any person because of race. . . ." ¹¹⁷ Section 3605(a) provides that it is unlawful "for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of race. . . ." ¹¹⁸

In March 2008, the conflict between the LIHTC program and the FHA came to light when Inclusive Communities Project, Inc. (ICP) filed suit against the Texas Department of Housing and Community Affairs claiming that the distribution of LIHTC in Dallas violated 42 U.S.C. §§

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ Jens Ludwig, ARTICLE: Is Crime Contagious?, 50 J. Law & Econ. 497.

¹¹⁶ *Id.*

¹¹⁷ 42 U.S.C. § 3604(a).

¹¹⁸ § 3605(a).

1982 and 1983, the Fourteenth Amendment, and the FHA, 42 U.S.C. §§ 3604 and 3605.¹¹⁹ The Texas Department of Housing & Community Affairs (TDHCA) administers the LIHTC program in Texas.¹²⁰ Developers apply to TDHCA for tax credits for particular housing projects. Such credits may be sold to finance construction of the project.¹²¹

The court found that TDHCA disproportionally allocated LIHTC funds located in above average minority concentrations.¹²² Additionally, the court found that TDHCA did not justify its actions with a compelling government interest, and prove that there were no less discriminatory alternatives creating a disparate impact to the community.¹²³ TDHCA appealed to the U.S. Supreme Court, which granted certiorari in October 2014. If the Court finds that ICP met the burden of proof standard for disparate impact claim, finding that discriminatory effect is sufficient to establish a violation of Title VIII, the FHA, it might encourage litigation challenging state LIHTC geographic allocations based on the discriminatory effect of locating LIHTC units predominantly in minority areas of cities. That could lead to court orders invalidating LIHTC allocations, requiring new analysis of applications so as not to have discriminatory effect.

The ICP filed another law suit in August 2014, *The Inclusive Communities Project, Inc., v. The United States Department of Treasury (Treasury) and Office of Comptroller of the Currency (OCC)*, claiming that the Treasury and OCC's administration of the LIHTC program is the cause of the existing racial segregation of LIHTC units in the City of Dallas. Additionally, the actions of the Treasury and OCC violate their duty to affirmatively further fair housing pursuant to 42 U.S.C. § 3608(d).

“All executive departments and agencies shall administer their programs and activities relating to housing and urban development (including a Federal agency having regulatory or supervisory authority over financial institutions) in a manner to further the purpose of this title and shall cooperate with the Secretary to further such purposes.”¹²⁴

Neither the Treasury nor OCC have a single regulation, guideline, or process to prevent the use of federal tax credits for housing units to be located in racially concentrated, high poverty, low income areas as marked by conditions of slum, blight, and distress that will thereby perpetuate segregation.

VIII. WHERE DO WE GO FROM HERE: POLICY IMPLICATIONS

The presence of a significant number of extremely low-income households in LIHTC properties located in QCT's means that the families that occupy the housing are at risk and that these properties should be included in discussions about targeting services that can help the families overcome the burdens associated with concentrations of poverty. At state, local and national levels policymakers should look for ways to incentivize development of new affordable housing

¹¹⁹ *The Inclusive Communities Project, Inc. v. Texas Department of Housing & Community Affairs*, 747 F.3d 275 (2014).

¹²⁰ 26 U.S.C. § 42.

¹²¹ *Inclusive Cmty. Project, Inc. v. Tex. Dep't of Hous. & Cmty. Affairs*, 860 F. Supp. 2d 312, U.S. Dist. (N.D. Tex. 2012).

¹²² *Inclusive Cmty.*, at 500.

¹²³ *Id.*

¹²⁴ 42 U.S.C. § 3608(d).

in areas of opportunity, as compared to areas of despair with the current QCT incentives. Policy makers must work together to address urban poverty holistically, as compared to patch working programs that address the needs of the low-income.

An example of how programs can be leveraged together to help low-income individuals break the generational cycle of poverty is the Family Scholar House program in Jefferson County Kentucky. Through a partnership with the Louisville Metro Housing Authority, the Family Scholar House nonprofit organization, the University of Louisville and Kentucky Housing Corporation, a program developed to create affordable housing opportunities for low-income single parents who pursue higher education.¹²⁵

As of 2014, the program has housed 347 families with a total of 528 children.¹²⁶ Eight hundred eighty one (881) families are enrolled in the pre-residential program receiving services including academic advising, case management, peer support, and connection to other resources while waiting for housing to become available.¹²⁷ Over 140 college degrees have been earned by Scholar House participants and 23 of the participants children have pursued post-secondary education.¹²⁸ The Family Scholar House’s mission is to “end the cycle of poverty and transform our community by empowering families and youth to succeed in education and achieve life-long self-sufficiency.”¹²⁹ The success of the Family Scholar House program, through the collaboration of state, and local policymakers is commendable and should be used as a model for additional programs.

State, local and national policy makers need to learn from the success of leveraging resources supporting low-income children residing in a QCT’s. In Jefferson County a Scholar House like program for children could be created that address many of the same issues as the Family Scholar House Program addresses: affordable housing, tutoring, case management, peer support, and connection to other resources. New affordable housing must be constructed outside of economically impoverished and crime-ridden areas and a new holistic approach must be developed so that business of providing affordable housing goes beyond the creation of buildings, to a business of developing people by providing opportunity through coordination of public purpose programs.¹³⁰

IX. CONCLUSION

The United States must establish a policy agenda that put’s greater emphasis on fair housing and mandate that the I.R.C. § 42 program affirmatively further fair housing by creating incentives for states and developers to create new affordable housing in areas outside of QCT’s while balancing the need to continue preserve previously created projects located in QCT’s at a lower concentrations. De-concentration of low income housing will greatly support juvenile justice by allowing greater opportunity for focused rehabilitation and re-entry services to connect youth

¹²⁵ Family Scholar House website, www.familyscholarhouse.org.

¹²⁶ 2014 Family Scholar House, By The Numbers, available at <http://familyscholarhouse.org/media/6404/bythenumbers1.2014.pdf>

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.*

with meaningful opportunities for self-sufficiency and community integration. At the same time, reducing the financial burdens placed the courts, school systems and public programs.

In February 2013, HUD promulgated a disparate impact regulation, recognizing that not only discriminatory intent, but also discriminatory effect, is actionable under the Fair Housing Act, just as it is under civil rights provisions.¹³¹ Before the regulation, “courts across the country have applied the disparate impact standard in evaluating claims under the Fair Housing Act, in recognition that ‘effect, not motivation,’ is the standard, because a thoughtless housing practice can be as unfair to minority rights as a willful discriminatory scheme. Every circuit to consider the question, eleven in all, has held that the Fair Housing Act prohibits housing practices that have a disparate impact on a protected group, even in the absence of discriminatory intent.”¹³²

Ultimately, it will be the Supreme Court which determines whether or not the HUD regulation will stand. If the Court finds that ICP met the burden of proof standard for disparate impact claim, finding that discriminatory effect is sufficient to establish a violation of Title VIII of the Civil Rights Act of 1968, it might encourage litigation challenging state LIHTC geographic allocations based on the discriminatory effect of locating LIHTC units predominantly in minority areas of cities. That could lead to court orders invalidating LIHTC allocations, requiring new analysis of applications so as not to have discriminatory effect.

State, local and national policy makers need to study the effects of concentrating affordable housing in QCT’s develop equivalent incentives for developing in areas of opportunity. Policy makers should seek to leverage community resources to fully support low-income children. In Jefferson County a Scholar House like program for children could be created that address many of the same issues as the Family Scholar House Program addresses: affordable housing, tutoring, case management, peer support, and connection to other resources. New affordable housing must be constructed outside of economically impoverished and crime-ridden areas and a new holistic approach must be developed so that business of providing affordable housing goes beyond the creation of buildings, to a business of developing people by providing opportunity through coordination of public purpose programs.¹³³

¹³¹ 24 C.F.R. § 100 (2014).

¹³² Michael G. Allen, *ASSESSING HUD’S DISPARATE IMPACT RULE: A PRACTITIONER’S PERSPECTIVE*, 49 Harv. Civ. Rights-Civ. Liberties L. Rev. 156 (2014).

¹³³ *Id.*