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ABSENTEE LANDLORDS, RENT CONTROL AND HEALTHY GENTRIFICATION: A POLICY PROPOSAL TO DECONCENTRATE THE POOR IN URBAN AMERICA

*Jorge O. Elorza**

ABSTRACT

Empirical data overwhelmingly suggests that the presence of middle- and working-class homeowners is beneficial for inner-city communities. Yet, absentee landlords have a systematic financial advantage over resident landlords when it comes to purchasing homes in blighted neighborhoods. This advantage has disastrous effects for inner cities, as the communities with the greatest need for the stabilizing presence of middle- and working-class homeowners are the ones least likely to attract them. The lack of in-moving homeowners and the resulting increase in poverty cause declining neighborhoods to fall deeper into downward spirals.

In this Article, I propose a rent control plan designed to attract middle- and working- class homeowners to blighted neighborhoods, and I argue that many positive outcomes will result. By designing this plan, I hope to challenge the conventional wisdom that rent control has only one legitimate purpose, reducing tenants' rents, and call attention to the externalities caused by the absentee landlord industry. Second, I provide a legal and economic model for inner cities to deconcentrate poverty and to better integrate the poor into mainstream society. Third, I develop a model for healthy gentrification whereby vicious cycles of poverty are transformed into virtuous cycles of stability.

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* Assistant Professor of Law, Roger Williams University School of Law. B.S., University of Rhode Island; J.D., Harvard Law School. I would like to express my deep gratitude to Duncan Kennedy and Colleen Murphy for their helpful comments. I also benefited from the comments of Emilie Benoit, Jeffrey Dana, Jared Goldstein, Andrew Horwitz, James Huguley, Bruce Kogan, Timothy Kuhner, George Nnona, Nicolas Retsinas, Leticia Tejada, and David Zlotnick. I would also like to thank my able and diligent research assistants Timothy Cavazza, Katherine Johnston, Michael McMillen, and Rikin Mehta. This research was generously supported by a RWU SoL Summer Research Grant.

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INTRODUCTION

Until recently, rent control has been almost unanimously condemned by economists. While rent control has been effective as a short-term tool for reducing tenants' housing costs, its long-term, adverse consequences have been commonly believed to outweigh its benefits.¹ While I agree with these assessments of traditional rent control schemes,² I challenge the conventional wisdom to the extent that it assumes rent control can have only one legitimate purpose—the reduction of tenant's housing costs. In this Article, I hope to provide a new perspective by developing a rent control plan with an entirely different goal: deconcentrating poverty by encouraging an influx of middle- and working-class homeowners into blighted neighborhoods.³

¹ See Edward H. Rabin, *The Revolution in Residential Landlord-Tenant Law: Causes and Consequences*, 69 CORNELL L. REV. 517, 555 (1984) ("The popularity of rent control is puzzling in view of the virtual unanimity among professional economists that rent control is, in the long run, bad for all concerned—tenants as well as landlords."); ANTHONY DOWNS, A REEVALUATION OF RESIDENTIAL RENT CONTROLS 45–74 (1996) (arguing that rent control deters new rental construction, encourages under-maintenance, reduces tenant mobility, and produces many inefficiencies); Richard Arnott, *Rent Control: The International Experience*, reprinted in PERSPECTIVES ON PROPERTY LAW 415 (2002) (arguing that rent control reduces maintenance of the rental units, incites gentrification and abandonment by landlords, and ultimately does not make the units more affordable due to key money issues and black market transactions); Richard A. Epstein, *Rent Control and the Theory of Efficient Regulation*, 54 BROOK. L. REV. 741, 767 (1988) (arguing that rent control deters new construction not only by making the rental housing market less profitable in rent-controlled zones but also by sending a chilling message that non-rent-controlled zones may soon become regulated); Robert C. Ellickson, *Rent Control: A Comment on Olsen*, 67 CHI.-KENT L. REV. 947, 948 (1991) (stating that rent control forces landlords and tenants into uncooperative relationships).

² I define traditional rent control schemes as any whose primary purpose is the reduction of tenants' housing costs.

³ With a long and unified opposition to rent control, it is only recently that economists and legal scholars have begun, on a limited basis, to challenge the conventional wisdom. Commentators have examined whether a fine-tuned rent control ordinance, often referred to as "second-generation" rent control, can partly accomplish the goal of reducing rents without producing the harmful results of "first-generation" rent control. Often times, this analysis is not motivated by a normative claim such as "second-generation" rent control is desirable but rather that "second-generation" laws are not as bad as "first generation" laws. See Arnott,

The rent control scheme I propose has been entirely overlooked by legal and economic scholars. Depending on the needs of the local community, rent control may be designed to address an array of different goals, and each scheme will have different legal, economic, and political consequences. Much of the literature has missed these points and has declared broad pronouncements of the desirability of rent control without considering its infinite permutations.⁴

This rent control plan is intended to introduce the stabilizing presence of middle- and working-class homeowners into blighted neighborhoods.⁵ I argue that this plan can prevent the creation and perpetuation of concentrated poverty and will help increase the neighborhood-level contact of the poor with the middle- and working-class. If properly designed to suit the local needs, rent control can transform decaying slums into healthy and stable neighborhoods without triggering the unhealthy kind of gentrification that has historically displaced the poor from American cities.

By placing a rent ceiling on absentee landlords only,⁶ I argue that the market will encourage resident landlords⁷ to move into rent-controlled zones. Replacing absentee landlords with resident landlords will produce both subtle and dramatic improvements in a neighborhood's livability as resident landlords will enhance the community's aesthetic, social, economic, and political composition. These resident landlords, who will be mainly in-moving middle and working-class homeowners, will not only have strong incentives to improve the long-term health and sta-

supra note 1, at 415 ("In recent years . . . there has been a wave, or at least a swell, of revisionism among housing economists and policy analysts. Most experts on the subject, while not advocates of rent-control, are now considerably more guarded and qualified in their opposition, and some believe that a well-designed rent control program can, on balance, be beneficial.").

⁴ See DENNIS KEATING ET AL., RENT CONTROL: REGULATION AND THE RENTAL HOUSING MARKET 204 (1998) [hereinafter RENT CONTROL] (noting that "[t]he varying degrees of success of rent control programs underscore the need to consider carefully the type of rent regulation enacted, the way it is implemented, and, to the extent know, its actual impact rather than hypothetical speculation about its results."); Arnott, *supra* note 1, at 416 ("the effects of a rent control program are sensitive to the details of its provisions.").

⁵ In fact, this rent control proposal may, in the long run, actually increase rental rates. By making neighborhoods more attractive and thereby increasing demand, it is possible that rents will increase over time.

⁶ An absentee landlord is defined as the owner of a multi-unit residential building who does not use one of the apartments as her principal place of residence. Absentee landlords own homes that are considered non-owner-occupied.

⁷ A resident landlord is defined as the owner of a multi-unit residential building who uses one of the apartments as her principal place of residence. Resident landlords live in homes that are considered owner-occupied.

bility of the neighborhood and its institutions,⁸ but they will also play a vital socializing role.⁹

Part I of this Article develops a conceptual framework for understanding neighborhood instability. I chart a brief history of the middle class's departure from the inner city and the forces that lead to concentrated poverty in these urban areas. I also call attention to the hazardous results of an increased rate of absentee landlordism and the expected benefits that an increased middle- and working-class homeowner presence will have on a neighborhood. Part II lays out the proposed rent control scheme in detail and discusses the desirability of promoting healthy gentrification. Part III then takes a critical look at the proposal and considers the economic, political and legal obstacles to enacting the rent control plan.

I. UNDERSTANDING URBAN INSTABILITY

In his classic work, *The Truly Disadvantaged: The Inner City, the Underclass, and Public Policy*,¹⁰ William Julius Wilson identifies a number of structural factors responsible for concentrated poverty and the social dislocation it produces.¹¹ According to Wilson, racial, economic,

⁸ Denise DiPasquale & Edward L. Glaeser, *Incentives and Social Capital: Are Homeowners Better Citizens?* 2–3 (Nat'l Bureau of Econ. Research, Working Paper No. 6363, 1998) (“[B]ecause of the high transaction costs associated with homeownership, homeowners tend to be considerably less mobile than renters. Increased length of tenure in a community should also encourage investments in community, since homeowners will consume the benefits of community over a longer time period.”). The few incentives for tenants to improve property pre-date modern landlord-tenant relationships. See Richard A. Posner, *ECONOMIC ANALYSIS OF LAW* 82 (5th ed. 1998) (“Most farmers were tenants. Thus, it appears that a tenant would have little incentive to improve the land because any improvement that outlasted the period of his lease would confer an uncompensated benefit on the landlord under the doctrine of fixture.”).

⁹ EDWARD G. GOETZ, *CLEARING THE WAY: DECONCENTRATING THE POOR IN URBAN AMERICA* 27 (2003) (“[G]reater economic diversity in a neighborhood will benefit all residents, including the poor. Research evidence shows substantial support for this proposition. High school graduation rates, child cognitive development, and rates of teenage childbearing can be sensitive to neighborhood effects Living in areas of concentrated poverty has been shown to have an adverse effect on a range of life experiences, from isolating youth from employment opportunities to consigning them to inferior education, dangerous neighborhood conditions, and harmful environmental conditions. Studies have shown that neighborhood affects employment prospects, exposure to toxic wastes, and criminal behavior. These neighborhood effects are produced through the creation of a ‘ghetto culture’ that stresses short-term goals; through a lack of role models and stabilizing institutions; or through underfunded schools and reduced access to new jobs in suburban areas. While some analysts object to the concept of the underclass . . . , there is general consensus regarding the set of behavioral pathologies associated with concentrated poverty.”) (citations omitted).

¹⁰ WILLIAM JULIUS WILSON, *THE TRULY DISADVANTAGED: THE INNER CITY, THE UNDERCLASS, AND PUBLIC POLICY* (1987).

¹¹ *Id.* at 30–62 (crediting a complex web of factors entailing the effect of historic and contemporary discrimination, the impact of structural changes in the urban economy, the flow of migrants, and a change in the age structure of urban communities as the source of inner city problems.).

migratory, and demographic factors have caused a disproportionate number of the most disadvantaged people to live in “urban slums.”¹² Faced with a combination of limited access to quality jobs and little to no neighborhood-level contact with middle and working-class households, the residents of these communities become progressively isolated from mainstream society.¹³ This isolation, in turn, causes “concentration effects” whereby various indicators of social dislocation such as high crime, teenage pregnancy, joblessness, and underachieving schools rise to exponentially high levels.¹⁴ With time, residents (i.e. the underclass) become accustomed to these norms and are unable to improve their situation since they fail to develop the language, attitude, education, and job skills required for success in mainstream society.¹⁵ Since its release, Wilson’s book has framed the debate on urban poverty; it has triggered twenty years worth of scholarly and policy discourse, and his “concentration effects” thesis has received virtually universal empirical support.¹⁶

¹² See generally *id.* at 29–62.

¹³ *Id.* at 58.

¹⁴ *Id.* (“If I had to use one term to capture the differences in the experiences of low-income families who live in inner-city areas from the experiences of those who live in other areas in the central city today, that term would be ‘concentration effects.’ The social transformation of the inner city has resulted in a disproportionate concentration of the most disadvantaged segments of the urban black population, creating a social milieu significantly different from the environment that existed in these communities several decades ago.”); *id.* at 61 (“These concentration effects include the constraints and opportunities in neighborhoods in which the population is overwhelmingly socially disadvantaged—constraints and opportunities that include the kinds of ecological niches that the residents of these neighborhoods occupy in terms of access to jobs and job networks, availability of marriageable partners, involvement in quality schools, and exposure to conventional role models.”); see also GOETZ, *supra* note 9, at 237 (“[B]eing poor in a community of concentrated poverty heaps additional burdens upon people. These communities often receive inferior public services, and therefore are home to, for example, the most troubled and poorest-performing public schools. Furthermore, these communities are often remote from areas enjoying the most robust job creation and expansion, making it physically difficult for the poor to access new jobs. Such communities limit the type of ‘bridging’ social capital that residents need to improve their situations. Some experts even argue that these communities foster an oppositional culture that values and rewards ‘anti-social’ behaviors and substitutes a set of behavioral norms different from those held in American society at large. These norms, while perhaps adaptive to the extreme conditions existing in neighborhoods of concentrated poverty, only serve to further isolate those who adopt them from society as a whole.”) (citations omitted).

¹⁵ *Id.* at 57 (“The development of cognitive, linguistic, and other educational and job-related skills necessary for the world of work in the mainstream economy is thereby adversely affected.”).

¹⁶ GOETZ, *supra* note 9, at 21 (“Publication of William Julius Wilson’s *The Truly Disadvantaged* in 1987 triggered more than a decade of scholarly and policy discourse about the dynamics of poverty in urban America. Wilson documented the extreme living conditions of the urban underclass and argued that their systematic marginalization from mainstream social, economic, and political life produced an adaptive set of behavioral norms.”); *id.* at 3 (“[L]ittle argument exists about the results of this extreme concentration of poverty. It produces a range of social problems whose whole is greater than the sum of its parts. For example, school delinquency, school dropout, teenage pregnancy, out-of-wedlock childbirth, violent crime, and drug abuse rates are all greater in these communities than would be predicted by a linear

In this article, I propose a rent control plan that introduces a middle and working-class presence to inner city neighborhoods where the underclass is currently concentrated. By preventing concentrated poverty from developing, I argue that the “concentration effects” and the social dislocation it produces will be avoided. Furthermore, I argue that this plan will better integrate the poor into mainstream society and at the same time reduce society’s expenses such as subsidies and other costs associated with the underclass.

First, however, I offer a brief historical account that explains how private housing choices and public housing policies have shaped the demographic of urban neighborhoods. Specifically, I will describe how private homeowners’ choices, zoning ordinances, racial discrimination, and federal housing policy have contributed to concentrations of poverty in inner city neighborhoods. In this historical analysis, I purposefully exclude a discussion of the changes in the urban economy. Although this has contributed to urban poverty in substantial ways, the proposed plan is not intended to directly address this problem.¹⁷

A. CONCENTRATED POVERTY AND THE ABSENCE OF THE MIDDLE CLASS

1. *The American Ideal & Exclusionary Zoning*

The forces that contribute to high concentrations of poverty in inner city neighborhoods have their genesis in the rational decision-making of common, middle-class homeowners. Since the turn of the twentieth century, a commonly recognized American ideal has been to achieve middle-class status and move to the suburbs on the perimeter of an inner

extrapolation of poverty effects. Something about the extreme concentration of disadvantage begets even more community and individual dysfunction.”); Michael H. Schill & Susan M. Wachter, *The Spatial Bias of Federal Housing Law and Policy: Concentrated Poverty in Urban America*, 143 U. PA. L. REV. 1285, 1290 (1995) (“Wilson’s concentration effects hypothesis has received almost universal empirical confirmation.”).

¹⁷ Wilson states that the inner city’s transformation from a manufacturing to a service-based economy has created a mismatch between the jobs the inner-city poor are qualified for and the jobs that are available. See WILSON, *supra* note 10, at 41. Specifically, the growth in jobs requiring a higher education has not benefited the urban poor who have lower educational attainment rates. See *id.* Additionally, since many of the manufacturing jobs have moved from the inner-city to the suburbs, there is a spatial mismatch between the location of available jobs and the neighborhoods in which the poor reside. See *id.* at 42.

While finding a solution to the lack of jobs available to inner-city residents is crucial for deconcentrating poverty, I exclude this from my analysis because the proposed rent control scheme will not have a significant effect on creating new jobs. In this article, I limit my discussion of inner-city employment to Wilson’s “social buffer” thesis, the positive socializing presence of employed individuals, and the ability of employed individuals to connect the unemployed to job networks. See *id.* at 56–57.

city.¹⁸ For those able to afford the move,¹⁹ the early suburbs offered greater open-space and more comfortable living conditions than those found in the inner city slums.²⁰ As second and third generation European immigrants attained middle-class status, they fled the ethnic slums of the inner city and moved to the early suburbs.²¹ Thus began the modern trend of the middle class's flight from the inner city, and their segregation from the lower-class.

By the 1920s, however, the greater financial wherewithal of the middle class was insufficient to insulate it from the low-income, shanty communities of the inner city. Booming, industrial economies caused central cities to grow and rapidly expanded their borders.²² The cities' expansions soon began to encroach upon and eventually consumed the early suburbs on the periphery of the central cities.²³ Within a short time, once peaceful, single-family home suburbs were transformed into crowded neighborhoods with subdivided old homes and multi-family new ones. Suburbs that were located further away from the central city witnessed the consumption of the inner suburbs by the expanding inner city and many suburbs adopted zoning ordinances to prevent their communities from suffering the same fates.²⁴ By setting minimum lot sizes and restricting the number of residential units on a lot, these suburbs

¹⁸ SAM B. WARNER, JR., *STREETCAR SUBURBS: THE PROCESS OF GROWTH IN BOSTON, 1870-1900*, at 162 (1962) (stating that the "rural ideal . . . had encouraged middle class families to seek escape from the conditions of modern industrial life into an isolated family environment.").

¹⁹ See generally *id.* (discussing the great influence of transportation in housing patterns during the first half of the twentieth century). The cost of living in the suburbs included the daily commuting expenses. *Id.* at 52. Since public transportation was relatively limited and private coaches and cars were very expensive, living within walking distance of the factories demanded that the poor reside in inner city neighborhoods. *Id.* at 52-56. However, as public transportation improved, housing options expanded for the working class as they could now commute from farther distances. *Id.* at 64.

²⁰ See, e.g., JOHN H. MOLLENKOPF, *THE CONTESTED CITY* 36 (1983) ("In its study *Our Cities*, released in 1937 the National Resources Committee . . . characterized [cities] as 'the dusty and sometimes smoldering and reddened arena of industrial conflict.'").

²¹ See generally WARNER, *supra* note 18, at 164 (discussing the migration of "Americanized" immigrants from the slums of the inner city to the suburbs).

²² *Id.* at 56 ("Throughout the last third of the nineteenth century those areas just beyond the periphery of the old walking city enjoyed the most rapid growth. Here lower middle class construction filled all the farms, estates, and vacant lots . . . The lots were so small and the pattern of living so dense that the rural setting was lost altogether."); *id.* at 161 (stating that low-income groups came to occupy the suburbs but only "by destroying much of what the suburb had achieved").

²³ *Id.* at 56, 161.

²⁴ Andrew J. Cappel, *A Walk Along Willow: Patterns of Land Use Coordination in Pre-Zoning New Haven (1870-1926)*, 101 *YALE L.J.* 617, 634 (1991) ("Initial interest in zoning appears to have arisen as the result of anxieties associated with the rapid pace of urban growth in the years after 1870."); see also MOLLENKOPF, *supra* note 20, at 37 (stating that exclusionary practices in the Los Angeles metropolitan area originated from, among other factors, "suburban residents seeking to avoid paying for services to the less affluent").

were able to restrict the construction of low-income housing within their borders and thereby prevent the “invasion” of low-income families.²⁵

The effect of zoning ordinances on the poor was to erect a virtual barricade to living in the suburbs. Without viable housing options in the suburbs, the poor were relegated to the shanty neighborhoods of the inner city. Whereas free market forces would have converted the suburbs into low-income housing,²⁶ zoning ordinances prevented this from occurring. Economic advantage first allowed the middle class to flee from its lower-class neighbors, and zoning ordinances later allowed it to insulate itself from them. These systems of growth and regulation began the concentration of the poor within the inner city.²⁷

2. Federal Housing Policy & Racial Discrimination

Federal housing policy and racial discrimination encouraged the flight of middle-income households from the inner city and at the same time constrained low-income households’ mobility. From the mid-1930s to the mid-1970s, the Federal Housing Administration (FHA) provided \$119 billion in home mortgage insurance, which allowed many Ameri-

²⁵ *Ambler Realty Co. v. Village of Euclid*, 297 F. 307, 316 (N.D. Ohio 1924), *overruled by Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926) (“The purpose to be accomplished is really to regulate the mode of living of persons who may hereafter inhabit it. . . . [T]he result to be accomplished is to classify the population and segregate them according to their income or situation in life. The true reason why some persons live in a mansion and others in a shack, why some live in a single-family dwelling and others in a double-family dwelling, why some live in a two-family dwelling and others in an apartment, or why some live in a well-kept apartment and others in a tenement, is primarily economic. It is a matter of income and wealth, plus the labor and difficulty of procuring adequate domestic service. Aside from contributing to these results and furthering such class tendencies, the ordinance has also an esthetic purpose; that is to say, to make this village develop into a city along lines now conceived by the village council to be attractive and beautiful.”); *see also* *S. Burlington County NAACP v. Twp. of Mount Laurel*, 336 A.2d 713, 723 (N.J. 1975) (“Almost every [developing municipality] acts solely in its own selfish and parochial interest and in effect builds a wall around itself to keep out those people or entities not adding favorably to the tax base”); SHERYLL CASHIN, *THE FAILURES OF INTEGRATION: HOW RACE AND CLASS ARE UNDERMINING THE AMERICAN DREAM* 104–06 (2004) (arguing that “Euclidian” zoning ordinances were primarily intended to exclude the people who would live in unwanted apartment buildings and duplexes).

²⁶ Many homeowners opposed zoning ordinances because it prevented them from converting their properties to the most profitable use. To many homeowners, building an apartment house with many rental units would have been more profitable than building a single family home. *See, e.g.*, DOWNS, *supra* note 1, at 97 (stating that multi-family apartment buildings are the most economic built form of rental housing).

²⁷ Another factor that cannot be underestimated is the construction of interstate highways. This federally funded program contributed to the separation of the middle class from the inner-city poor by subsidizing the cost of building the suburbs. *See* CASHIN, *supra* note 25, at 113–15 (discussing the racial and class division subsidized by the federal highway program).

cans to become first-time homebuyers.²⁸ However, the benefits of the FHA program were extended primarily to the suburbs and their white residents as the FHA displayed an “anti-urban” and anti-black bias.²⁹

Potential homebuyers in the inner cities found it difficult to obtain loans under the FHA program, and when they did, it was on less favorable terms than suburban homebuyers.³⁰ Prospective inner-city homebuyers, who were disproportionately black, found that the “federal government displayed an intense color consciousness and insisted on discriminatory practices” by “virtually demand[ing] the use of racially restrictive covenants as a precondition before granting loan guarantees.”³¹ As federal assistance subsidized the building of suburban homes, inner city residents were either shut out or spurned from participating in one of the greatest wealth building schemes in American history: homeownership.³² In this way, as Arnold Hirsch notes in *With or Without Jim Crow: Black Residential Segregation in the United States*, “[T]he federal government invited and underwrote the outward migration of the white middle class and eroded the economic viability of the inner city.”³³ The results proved devastating for future generations of inner-city residents.³⁴

At the same time that middle-income households used the FHA insurance program to flee the inner cities, blacks began a massive population shift from southern rural towns to Northern and Midwestern industrial cities. As cotton picking became increasingly mechanized in the 1940s and 1950s and the demand for unskilled labor in the South

²⁸ Arnold Hirsch, *With or Without Jim Crow: Black Residential Segregation in the United States*, in *URBAN POLICY IN TWENTIETH-CENTURY AMERICA* 65, 89 (Arnold R. Hirsch & Raymond A. Mohl eds., 1993); CASHIN, *supra* note 25, at 110–11.

²⁹ Hirsch, *supra* note 28, at 86; Schill & Wachter, *supra* note 16, at 1309–10.

³⁰ Hirsch, *supra* note 28, at 86–87 (“Narrow lots, multifamily dwellings, rental units, and rehabilitation projects all had great difficulty acquiring FHA insurance, and managed to do so only infrequently, if at all, on terms less favorable than those granted to single detached homes in the suburbs.”).

³¹ *Id.* at 85.

³² CASHIN, *supra* note 25, at 113 (“[B]y withholding FHA insurance for loans in racially integrated or predominately black areas, FHA also greatly limited the home ownership options available to people of color. It prevented African Americans from participating in one of the largest wealth-producing programs in the history of our country.”); Hirsch, *supra* note 28, at 91 (“[L]ess than two percent of the housing constructed with federally insured mortgages between 1946 and 1959 was made available to Blacks.”).

³³ Hirsch, *supra* note 28, at 87.

³⁴ *Id.* at 86 (“[The Federal Housing Administration and public housing] facilitated the massive postwar suburban boom, helped strip older towns of their middle classes, and practically assured that thousands of the poorest blacks would remain locked in economically weakened central cities.”).

plummeted,³⁵ black farm workers migrated to the North and Midwest as economic opportunity lured yet greater numbers of blacks.³⁶

The housing vacancies left in inner cities by middle-income, sub-urb-bound whites were quickly filled by lower-income, in-moving blacks as "[t]he twentieth-century movement of blacks from the farms into American cities coincided with a white exodus out of the city to the suburbs."³⁷ This migration resulted in a lasting pattern of residential segregation, on both racial and economic grounds, whereby whites in northern and midwestern cities moved to the suburbs and created a ring around the central, black core.³⁸

The slum clearance and public housing programs further contributed to the isolation and concentration of the poor. Public housing developments were often built in areas with an already high degree of poverty, as communities with stronger political power successfully staved off attempts to build projects within their borders.³⁹ As the slums were cleared of older, dilapidated housing, many people not accommodated by the newly constructed public housing units were forced to move to transitional and low-quality housing in other parts of the inner city.⁴⁰ Ultimately, public housing simply reseggregated the poor (particularly the black poor) in areas with already high population densities.⁴¹ In this

³⁵ DANIEL R. FUSFELD & TIMOTHY BATES, *POLITICAL ECONOMY OF THE URBAN GHETTO* 61–62 (1984) ("Mechanization reduced the need for agricultural workers, and those who were employed in the remaining labor intensive phases of crop production were able to find work a much smaller number of days each year, relative to the pre-mechanization phase of farming.").

³⁶ *Id.* at 65 (describing the decrease and increase of the black population in the South and North, respectively).

³⁷ Hirsch, *supra* note 28, at 67; *see also* MOLLENKOPF, *supra* note 20, at 28 (describing the vacuum left by the departure of the white middle and professional class as "not negative for everyone. . . because it fostered a substantial migration of blacks and other minorities into the central cities."); Hirsch, *supra* note 28, at 70 ("The overwhelming majority of black southern migrants . . . [were] poor, and the brute facts of economic life greatly restricted the housing opportunities available to them." Therefore, for many blacks, their only housing options were in the shanty slums of the inner cities.).

³⁸ Hirsch, *supra* note 28, at 87 ("Public policy . . . gravely affect[ed] the pace and nature of that outward movement; the sudden appearance of white suburbs ringing increasingly Black-core cities . . . must be viewed in the context of federal management and support.").

³⁹ Alastair Smith, *Mixed Income Housing Developments: Promise and Reality*, JOINT CENTER FOR HOUSING STUDIES OF HARVARD UNIVERSITY 8 (2002) ("Many high-density, multifamily public-housing developments were sited in neighborhoods that already had high levels of poverty, and created an influx of very-low-income tenants. Often this was due to the objections of higher-income neighborhoods to sitting the developments there, making low-income neighborhoods the only politically feasible sites to build the housing.").

⁴⁰ Hirsch, *supra* note 28, at 89.

⁴¹ *Id.* ("Public housing, frequently used simply to free inner-city land for private development, became increasingly identified as a 'Black' program, used high-rise construction, and reseggregated its tenants in already densely populated core areas."); Schill & Wachter, *supra* note 16, at 1293 ("After ensuring that most public housing would be built in central cities, Congress also used statutory admissions requirements to fill public housing with extremely poor residents.").

way, concentrated poverty reached a size and scope that had never before been witnessed in the United States.⁴²

Housing policies and racial discrimination have had a profound effect on the makeup and structure of inner cities. “[T]hey facilitated the massive postwar suburban boom, helped strip older towns of their middle classes, and practically assured that thousands of the poorest blacks would remain locked in economically weakened central cities.”⁴³ The middle class’s flight from the inner city precipitated only greater middle class flight, as inner-city neighborhoods’ tax bases declined and crime rates rose.⁴⁴ The legacy of these public and private forces has shaped the composition of modern-day blighted and high-poverty neighborhoods and has greatly contributed to the social pathologies within them.

B. BENEFITS OF THE PROPOSED RENT CONTROL PLAN

1. *Middle- and Working-Class Presence*

Much of the distress experienced in blighted, high-poverty communities is due to the migration of middle-income households from the central city to the suburbs and the concentration of poverty their departure produces.⁴⁵ In turn, this concentrated poverty negatively impacts school

⁴² Hirsch, *supra* note 28, at 65. (stating that “[T]he rise of the *urban ghetto*—a massive, geographically continuous, isolated place of almost exclusively black residence and institutional life—is a relatively recent phenomenon.). See generally *id.* (crediting the rise of the urban ghetto to the federal government’s growing presence in urban affairs and to the persistently high levels of racial segregation).

⁴³ Hirsch, *supra* note 28, at 86.

⁴⁴ OSCAR NEWMAN, COMMUNITY OF INTEREST 83 (1980) (“In the early 1960s municipalities which were unconcerned with what they read as a small decline in their middle-income populations were surprised to see how quickly the combination of increasing crime and a declining tax base mushroomed into a crisis which sent wave after wave of middle-income residents scurrying to the suburbs. Some municipalities experienced a turnover in their populations within five years that no urban renewal program could redress in twenty. The circumstances in St. Louis, Detroit, Newark, Cleveland, and Washington bear witness to the uniformity of the malaise and the inevitability of the results. Municipalities which were not able to maintain a majority of middle-income residents entered into a declining spiral in which their initial descent only served to accelerate their further fall. In such circumstances it was not uncommon for middle-income residents to become critical actors in a self-fulfilling prophecy: their fears as to what would happen to their property values if they did not leave their neighborhoods quickly were realized—partly as a result of their own attitudes and hurried departures.”).

⁴⁵ See generally Roberto G. Quercia & George C. Galster, *Threshold Effects and the Expected Benefits of Attracting Middle-Income Households to the Central City*, 8 HOUSING POL’Y DEBATE 409 (1997) (“Over the past four decades, the transformation of large cities has been characterized by the suburbanization of America’s middle-income households. During the same period, deteriorating inner-city areas have experienced ever greater fiscal and social distress.”); see also Mark L. Joseph, *Is Mixed-Income Development an Antidote to Urban Poverty?*, 17 HOUSING POL’Y DEBATE 209, 213–16 (2006) (assessing the potential of mixed-income developments for lifting families out of poverty); Tama Leventhal & Jeanne Brooks-Gunn, *The Neighborhoods They Live in: The Effects of Neighborhood Residence on Child and Adolescent Outcomes*, 126 PSYCHOL. BULL. 309 (2000) (reporting that individuals living in

performance, causes crime rates to mushroom, and increases family fragmentation, substance abuse, and teenage pregnancy.⁴⁶ Without a middle- and working-class presence, the social and fiscal stability of cities is substantially undermined.⁴⁷

By introducing a middle- and working-class presence into inner cities, rent control can be expected to produce substantial social benefits. It is widely believed that the demographic composition of a neighborhood influences the “collective socialization process[] by shaping the type of role models youth are exposed to outside the home.”⁴⁸ As the middle class leaves the inner city, the social institutions and personal networks they support begin to break down. Whereas children living in neighborhoods where most adults are steadily employed develop “behaviors and attitudes that are conducive to success in both school and work,”⁴⁹ children from the underclass have few employed role models and develop behaviors and attitudes that are increasingly distant from wider society.⁵⁰

neighborhoods with low socioeconomic status have a relatively high rate of behavioral and emotional problems); Audrey G. McFarlane, *The New Inner City: Class Transformation, Concentrated Affluence and the Obligations of the Police Power*, 8 U. PA. J. CONST. L. 1, 7–9 (2006) (discussing the trend during the twentieth century of middle-income households leaving the inner city and moving to the suburbs).

⁴⁶ See Smith, *supra* note 39, at 7; see also Yili Xu, Mora L. Fiedler & Karl H. Flaming, *Discovering the Impact of Community Policing: The Broken Windows Thesis, Collective Efficacy, and Citizens' Judgment*, 42 J. RES. CRIME & DELINQ. 147, 167 (2005) (“At the community level, urban decay, manifested by devastating disorder and crime, and collapsed moral standards, is the ideal soil for propagation of crime. It alienates people, weakens the informal social control, provides the safe haven for criminals, and makes citizens more vulnerable to crime. In general, deteriorating communities produce more criminals and victims.”).

⁴⁷ Quercia & Galster, *supra* note 45, at 410–11 (arguing that “the out-migration of upper-income households has had a double impact on inner-city residents: fiscal and social. Fiscally, the loss of middle- and upper-income households has affected central cities in two ways. It has decreased the demand for housing, thus reducing its value and the city’s tax base. Also, this loss has left inner-city residents with weakened political power to attract public resources from state legislatures to their neighborhoods. Socially, the loss of middle- and upper-income households has weakened basic institutions and left high concentrations of low-income inner-city residents with no middle-class role models to emulate and with few means of learning about employment opportunities often located in the metropolitan periphery.”).

⁴⁸ James W. Ainsworth, *Why Does it Take a Village?: The Mediation of Neighborhood Effects on Educational Achievement*, 81 SOC. FORCES 117, 119 (2002).

⁴⁹ *Id.*

⁵⁰ DOUGLAS S. MASSEY & NANCY A. DENTON, *AMERICAN APARTHEID: SEGREGATION AND THE MAKING OF THE UNDERCLASS* 165–66 (1994) (“In response to the harsh and isolated conditions of ghetto life, a segment of the urban black population has evolved a set of behaviors, attitudes, and values that are increasingly at variance with those held in the wider society. Although these adaptations represent rational accommodations to social and economic conditions within the ghetto, they are not widely accepted or understood outside of it, and in fact are negatively evaluated by most of American society.”); see also Quercia & Galster, *supra* note 45, at 411 (“Socially, the loss of middle- and upper-income households has weakened basic institutions and left high concentrations of low-income inner-city residents with no middle-class role models to emulate and with few means of learning about employment opportunities often located in the metropolitan periphery.”).

Overall, the absence of middle-income households has left the inner-city poor spatially and socially isolated from those who can provide a model for the attitudes and behaviors conducive to success in mainstream society.⁵¹

Among other benefits, the presence of higher-income households in a neighborhood is expected to reduce crime⁵² and improve neighborhood schools.⁵³ These results are particularly appealing because an improvement of either would likely benefit all of the neighborhood's residents. Commentators have noted that because of their younger populations, denser living patterns, and lower tax bases, low-income communities are both more vulnerable to crime and less likely to receive police services.⁵⁴ Additionally, it is believed that middle-income households have a lower tolerance for criminal activity and have greater demand and support for police services that deter crime.⁵⁵ Because of this, it is expected that

⁵¹ WILSON, *supra* note 10, at 56–57 (“However, in ghetto neighborhoods that have experienced a steady out-migration of middle- and working-class families The net effect is that joblessness, as a way of life, takes on a different social meaning; the relationship between schooling and post-school employment takes on a different meaning. The development of cognitive, linguistic, and other educational and job-related skills necessary for the world of work in the mainstream economy is thereby adversely affected.”); *see also* Owen Fiss, *What Should Be Done For Those Who Have Been Left Behind?*, in *A WAY OUT: AMERICA’S GHETTOS AND THE LEGACY OF RACISM* 3, 14 (Joshua Cohen et al. ed., 2003) (stating that the plight of blighted inner city neighborhoods is due to “the weakening of social institutions and networks that results from the exodus of those who made it. The community is left to turn on itself, exposing those in the ghetto to a heightened risk of crime and violence, which degrades the quality of life in the community and creates further incentives for individual families and local businesses to flee. The sense of isolation increases as the quality of life spirals downward.”).

⁵² *See* NEWMAN, *supra* note 44, at 82–83 (speculating a number of reasons for the crime resistive capacity of middle-income communities, including a stronger tax base, fewer children, higher rate of two-parent households, and universally shared expectations about publicly acceptable behavior).

⁵³ *See* Smith, *supra* note 39, at 10 (citing Elvyn K. Wyly & Daniel J. Hammel, *Islands of Decay in Seas of Renewal: Housing Policy and the Resurgence of Gentrification*, 10 HOUSING POL’Y DEBATE 711 (1999) (stating that higher-income households will have an impact on reducing crime and improving neighborhood schools)).

⁵⁴ *See* NEWMAN, *supra* note 44, at 83 (stating that the flight of middle-class households increases crime in five ways: (1) lower-income people are both more vulnerable to crime and have “youth with a greater proclivity toward engaging in criminal activities;” (2) lower-income people live in subdivided homes with common entryways, leaving occupants more vulnerable; (3) it creates a higher density population; (4) it lowers the tax base and funds for police services; and (5) “it removes a population with a low tolerance for crime, a strong demand for police presence, and a support of police activities which deter crime.”); *see also* Smith, *supra* note 39, at 9 (“Very poor adults and their children may be less likely to engage in negative behavior if higher-income families are present.”).

⁵⁵ *See* NEWMAN, *supra* note 44, at 82 (arguing that middle-income communities have “a more universally shared set of expectations about what constitutes acceptable behavior in public streets and parks and are adamant about seeing to it that these rules are kept and, in their breach, demand, receive, and support police intervention.”).

neighborhoods will experience lower crime rates if higher-income families are present.⁵⁶

Social scientists also suggest that children's educational outcomes are severely hindered by the absence of middle income households.

Specifically, with fewer positive role models in their neighborhood, children may be less likely to learn important behaviors and attitudes that lead to success in school (e.g., high educational expectations or effort), both because of a lack of exposure to them and because they have no direct evidence that these attitudes and behaviors are useful or desirable.⁵⁷

It is further suggested that introducing a middle-income presence will provide better monitoring of deviant behavior so as to prevent the development of anti-school attitudes.⁵⁸ A middle-income presence will also provide greater resources and opportunities that will prove educationally beneficial by improving students' perceptions of job opportunities and by generally improving the schools students attend.⁵⁹ A 2002 study concluded that "[c]learly, the presence of high-status residents in the neighborhood plays a statistically important role in students' academic achievement."⁶⁰

Introducing a middle- and working-class presence is expected to produce fiscal benefits as well. Neighborhoods with low demand for housing reduce the value of the city's tax base, the primary source of revenue for American cities.⁶¹ With a diminished tax base, inner cities are increasingly unable to provide essential government services to their residents. But if there is a greater presence of middle-income households, the aggregate assessed value of homes will increase and allow for greater tax revenue collections.⁶² Furthermore, the introduction and retention of middle- and working-class families is expected to forestall

⁵⁶ See NEWMAN, *supra* note 44, at 83; Smith, *supra* note 39, at 10.

⁵⁷ Ainsworth, *supra* note 48, at 119–20.

⁵⁸ *Id.* at 117–21 (describing the various theories that explain how neighborhood characteristics affect educational outcomes. Namely, the author discusses collective socialization, social control, social capital, differential occupational opportunity, and institutional characteristics.).

⁵⁹ *Id.*; see also WILSON, *supra* note 10, at 57 (stating that as the middle-class move from the inner-city, "[t]he prospects for employment diminish, other alternatives such as welfare and the underground economy are not only increasingly relied on, they come to be seen as a new way of life").

⁶⁰ Ainsworth, *supra* note 48, at 131.

⁶¹ Quercia & Galster, *supra* note 45, at 410–12.

⁶² *Id.* at 412 ("[T]he unambiguous net effect [of having a greater middle income presence] will be to raise the aggregate assessed values of residences in the central-city jurisdiction, thereby permitting greater tax revenue collections from any given effective property tax rate.").

abandonment, a condition that entirely removes properties from the local tax rolls.⁶³

Aside from the increased tax base, Quercia and Galster argue that a middle- and working-class presence may help inner cities leverage political power into a larger share of state resources.⁶⁴ As the middle class left the inner city, it left behind poorer residents “with weakened political power to attract public resources from state legislatures to their neighborhoods.”⁶⁵ Thus, “the balance of power in state legislatures shifted in favor of suburbs.”⁶⁶ By attracting and retaining the stable and emerging middle class, cities can begin to reverse this trend and shift the balance of power back to inner cities. Ultimately, this will result in a greater share of state resources being devoted to the inner cities.

The absence of middle-income households has contributed to the concentration of poverty and has negatively impacted the social, fiscal, and political structure of inner-city life. Initial research on mixed-income communities has “[lent] support to the importance of healthy neighborhoods in breaking the cycle of poverty”⁶⁷ and “[m]any policy makers have concluded that these concentrations [of poverty] must be broken up at all costs.”⁶⁸ By reintroducing and retaining middle-income families in inner cities, it is expected that concentration effects and the dislocation they produce (such as declining school performance, high rates of criminal activity, family fragmentation, substance abuse, and teenage pregnancy) will decline, while the revenue base and social networks will improve. Middle-income households, therefore, are vital to the stability and overall health of inner city communities.

⁶³ *Id.* (“Middle-income resettlement in the central city is expected to have a direct effect on property tax revenues by increasing the demand for middle-quality housing, thus raising housing prices in this submarket and forestalling abandonment in the lower-quality submarket.”).

⁶⁴ *Id.* at 414 (“Bringing back or retaining middle-income households is expected to reverse the trend and somewhat shift the balance of power back to the cities, resulting in greater state transfers to cities.”).

⁶⁵ *Id.* at 411.

⁶⁶ *Id.* at 414.

⁶⁷ Smith, *supra* note 39, at 9; *see also* Ainsworth, *supra* note 48, at 118 (“Increasing concentration of poverty in urban areas over the last thirty years has renewed interest in the effects of neighborhood-level conditions on the well-being of residents.”).

⁶⁸ *See* Smith, *supra* note 39, at 8; *see also* Fiss, *supra* note 51, at 28 (“It is a social structure that concentrates and isolates the most disadvantaged and creates its own distinctive culture, and thus is integral to the perpetuation of the underclass. It is the paramount mechanism through which a historically subordinated group continues to be kept far beneath others in terms of wealth, power, and living standards. Accordingly, we need strategies that promise to dismantle that structure—to tear down the walls of the ghetto.”).

2. *Higher Rate of Homeownership*

Not only are blighted, inner-city neighborhoods plagued by an absence of middle- and working-class residents but they also suffer from high rates of absentee landlords.⁶⁹ This effectively deprives these communities of the benefits associated with high rates of homeownership, benefits that are quite substantial. By producing a greater presence of homeowners, as opposed to tenants, rent control can produce a number of direct and indirect benefits to all of the members in the community.

High homeownership rates increase property values and establish stability and cohesion within a neighborhood. A study conducted from 1980–1990 found that a 1% increase in the homeownership rate increased the value of each home in the area by an average of \$800 and a 10% increase in the homeownership rate produced an average increase of \$8,000.⁷⁰ Also, a number of empirical studies show that neighborhoods are stabilized by homeownership because of decreased turnover and greater upkeep and maintenance.⁷¹ Additionally, homeowners are more likely to be civically involved, to be a part of an organization, and to participate in collective political action,⁷² all of which promote greater neighborhood cohesion.

⁶⁹ The impact of absentee landlords on neighborhoods has been significantly under-researched. Many authors lament the dearth of information in this area. *See, e.g.*, Donald R. Haurin et al., *The Impact of Neighborhood Homeownership Rates: A Review of the Theoretical and Empirical Literature*, 13 J. HOUSING RES. 119, 143 (2003) (“Given the small amount of research on neighborhood homeownership effects, it is too early to know the nature of the relationship between neighborhood homeownership rates and net social benefits.”); *see also* Joseph Harkness & Sandra J. Newman, *Homeownership for the Poor in Distressed Neighborhoods: Does This Make Sense?*, 13 HOUSING POL’Y DEBATE 597, 599 (“Another critical neighborhood feature may be the homeownership rate, which has been largely ignored in the sizable and growing body of research on the effects of distressed neighborhoods on the life chances of children.”).

⁷⁰ William M. Rohe & Leslie S. Stewart, *Homeownership and Neighborhood Stability*, 7 HOUSING POL’Y DEBATE 37, 66 (1996) (exploring how homeownership rates affect neighborhood stability via study performed on single family homes, while admitting that the increase in property value is not limited to single-family homes).

⁷¹ *See id.* at 47–49, 51–52 (reviewing literature on the relation between homeownership and repairs, maintenance, and residential mobility); *cf.* Denise DiPasquale & Edward L. Glaeser, *Incentives and Social Capital: Are Homeowners Better Citizens?*, 45 J. URB. ECON. 354, 355 (1999) (“[B]ecause of the high transaction costs associated with homeownership, homeowners tend to be considerably less mobile than renters. Increased length of tenure in a community should also encourage investments in community, since homeowners will consume the benefits of community over a longer time period.”).

⁷² Rohe & Stewart, *supra* note 70, at 46 (“The empirical evidence indicates that homeowners are indeed more likely than renters to participate in local organizations, even after controlling for income, education, and other socioeconomic characteristics.”); DiPasquale & Glaeser, *supra* note 71, at 356 (“Homeowners are 15% more likely to vote in local [elections] and 6% more likely to work to solve local problems.”). *But see* William M. Rohe & Michael A. Stegman, *The Impact of Homeownership on the Social and Political Involvement of Low-Income People*, 30 URB. AFF. Q. 152 (1994) (finding that low-income homeowners are more

Homeownership also affects the children of homeowners and has been found to positively impact education, crime and teenage pregnancy within a neighborhood. Homeownership, as opposed to renting, produces a higher-quality home environment⁷³ which translates into positive outcomes for children. In fact, "cognitive outcomes are up to nine percent higher in math achievement and seven percent higher in reading achievement for children living in owned homes, *ceteris paribus*"⁷⁴ and further, children living in owned homes are less likely to drop out of high school or to become parents as teenagers.⁷⁵ This last indicator, having children during adolescence, is particularly noteworthy because teenage pregnancy is highly correlated with welfare dependency.⁷⁶

As for crime, the low rate of homeownership is once again important because children of homeowners have been found to have fewer behavioral problems.⁷⁷ Although it is yet unclear whether lower crime rates are direct results of increased homeownership or a result of increased residential stability, neighborhoods with higher homeownership rates have less crime.⁷⁸

The neighborhood-level effects of low homeownership (high absentee landlord) rates go beyond decreased educational outcomes and increased crime. Increasing the homeownership rate is also expected to improve the physical structure of a neighborhood's housing stock.⁷⁹ Re-

likely than renters to belong to neighborhood and block associations, but not other community organizations).

⁷³ Donald R. Haurin et al., *The Impact of Homeownership on Child Outcomes* 15 (Joint Ctr. for Housing Studies of Harvard Univ., Low-Income Homeownership Working Paper Series, LIHO-01.14, 2001), available at <http://www.jchs.harvard.edu/publications/homeownership/liho01-14.pdf>.

⁷⁴ *Id.*

⁷⁵ Richard K. Green & Michelle J. White, *Measuring the Benefits of Homeowning: Effects on Children*, 41 J. URB. ECON. 441, 457 (1994).

⁷⁶ See Chong-Bum An et al., *Teen Out-of-Wedlock Births and Welfare Receipt: The Role of the Childhood Events and Economic Circumstances*, 75 REV. ECON. & STAT. 195, 195 (1993) ("[T]hree out of four recipients of AFDC [welfare] benefits who are under age 30 first gave birth as a teenager, in most cases out of wedlock. . . . [In 1990,] about \$20 billion was paid a year to teenage mothers through welfare benefits, food stamps, and Medicaid."); Greg J. Duncan & Saul D. Hoffman, *Welfare Benefits, Economic Opportunities and the Incidence of Out-of-Wedlock Births among Black Teenage Girls*, 27 DEMOGRAPHY 519, 519 (1990) ("Extensive welfare dependence and poverty are especially common among [black families that consist of teenage mothers bearing out-of-wedlock children].").

⁷⁷ Haurin et al., *supra* note 73, at 15 ("these youth's greater cognitive abilities and fewer behavioral problems will result in higher educational attainment, greater future earnings, and a reduced tendency to engage in deviant behavior."); see also Robert J. Sampson et al., *Neighborhoods and Violent Crime: A Multilevel Study of Collective Efficacy*, 277 SCIENCE 918 (Aug. 1997).

⁷⁸ *Id.*

⁷⁹ See GEORGE C. GALSTER, HOMEOWNERS AND NEIGHBORHOOD REINVESTMENT 296 (1987) (indicating the "strong evidence that owner-occupants are better maintainers of single-family homes than are absentee-owners, even when controlling for differences in occupants, structure type and age, and surrounding neighborhood."); Rohe & Stewart, *supra* note 70, at 48

search has shown that resident landlords maintain their properties at greater levels than absentee landlords, and that homeowners are better prepared to pay for the upkeep and maintenance of their properties, even when other socioeconomic factors are controlled.⁸⁰ To emphasize the importance of increasing a neighborhood's homeownership rate, Galster states:

If nontrivial numbers of previously rented dwellings now converted to owner-occupancy are located in a given neighborhood, one can predict that the overall levels of upkeep in that area will be enhanced greatly. The expected impact likely is of a much larger degree than would ensue even from dramatic increases in resident socioeconomic status, optimistic neighborhood expectation, or neighborhood cohesiveness. . . . Indeed, expanding the number of homeowners appears to be the single most potent means for encouraging the upkeep of dwellings in a neighborhood. And the differences are even more dramatic when considering low-income occupants.⁸¹

High levels of absentee landlordism prevent the neighborhood benefits of homeownership from accruing to blighted, inner city neighborhoods. As a result, increased instability, high crime, underperforming schools, civic disengagement, high teenage pregnancy rates, and deteriorating physical structure continue to plague these communities. These conditions in turn cause blighted neighborhoods to not only foster, but to also maintain and reproduce an underclass culture.

C. ABSENTEE LANDLORDS AND THE SELF-PERPETUATING CYCLE OF BLIGHT

Local housing markets, and the incentives they provide, ensure that those neighborhoods most in need of the stabilizing presence of middle- and working-class homeowners are the ones least likely to attract them. Blighted, inner city neighborhoods with high poverty rates attract absentee landlords and at the same time repel potential resident landlords. The

("Research consistently shows that homeowners are more likely than renters to undertake repairs and that they spend more on them Some studies also indicate that resident landlords maintain their properties at higher levels than absentee landlords."); cf. Richard N. Spivack, *The Determinants of Housing Maintenance and Upkeep: A Case Study of Providence, Rhode Island*, 23 *APPLIED ECON.* 639, 643 (1991) (finding that the "absentee-landlord" variable was the most important factor in determining residential maintenance and upkeep decisions in a ten-year study conducted in Providence, Rhode Island).

⁸⁰ See Rohe & Stewart, *supra* note 70, at 84.

⁸¹ GALSTER, *supra* note 79, at 296.

result is a downward spiral whereby the neighborhood's decline assures its further descent.⁸²

In this section, I set out to answer the question of why there are so many absentee landlords in blighted neighborhoods.⁸³ It seems intuitively correct to think that people with enough purchasing power to buy a house would choose to live in a healthy and stable neighborhood, rather than in a deteriorating one with high poverty rates and many social problems. So initially, it makes sense to think that poor and unstable neighborhoods would have low homeownership rates. However, when pressed further, this explanation is not entirely satisfactory.

Basic economics tells us that if demand is low, property values will be low as well. Imagine a world without absentee landlords where all homeowners reside on their property. One would expect that if there is such a great aversion to living in a blighted neighborhood, the value of the homes in these neighborhoods would correspondingly decline to reflect the lower demand.⁸⁴ As home values decline, they will eventually attract willing purchasers. While some people would undoubtedly say, "You couldn't pay me to live there!," others would inevitably conclude, "At such a low price, buying a house in this neighborhood is a good investment." Faced with the prospect of prohibitively expensive neigh-

⁸² See NEWMAN, *supra* note 44.

⁸³

Category	Homeowning Households	Renting Households	Number of Households
Category I	73.9%	26.1%	66,932,648
Category II	60.6%	39.4%	20,501,789
Category III (High Poverty)	46.8%	53.2%	15,520,169
Category IV (Extreme Poverty)	27.2%	72.8%	2,525,495

Census data show the following household homeownership rates for the following four categories: Category I (0%–12.3% Poverty Rate), Category II (12.4%–19.9% Poverty Rate), Category III (20%–39.9% Poverty Rate), Category IV (Over 40% Poverty Rate). See Alemayehu Bishaw, *Areas with Concentrated Poverty: 1999*, U.S. CENSUS BUREAU, CENSR-16 at 11 (July 2005). A partial explanation for the high rental rates in High and Extreme Poverty neighborhoods is the concentration of subsidized and public housing units in these neighborhoods. However, the 1.3 million households living in public housing and the 4.5 million households living in subsidized housing cannot account for the over 18 million households living in either High or Extreme Poverty neighborhoods. *Id.*; Roberto G. Quercia & George C. Galster, *The Challenges Facing Housing Authorities in a Brave New World*, 8 HOUSING POL'Y DEBATE 535, 537 (1997); NAT'L HOUSING LAW PROJECT, HUD HOUSING PROGRAMS: TENANTS' RIGHTS 1/6 (3d ed. 2004). This would be true even if all public and subsidized units were located in these neighborhoods. However, subsidized housing developments are not as concentrated in High and Extreme Poverty neighborhoods as public housing developments.

⁸⁴ This is already partly true as home values tend to be lower in blighted neighborhoods. See Harkness & Newman, *supra* note 69, at 598 ("[T]he early pioneer homeowners would derive little or no benefit and in fact may bear considerable costs, such as low property values, high crime rates, poor schools, [etc.]").

borhoods, some emerging middle-class homebuyers would be expected to find homeownership in poor communities an acceptable option.

Additionally, given the attractiveness of owning a home and the ever increasing cost of rent, I suspect that many emerging middle-class families would prefer to purchase a house in a poor neighborhood as opposed to remaining tenants.⁸⁵ From an investment standpoint, owning rather than renting is substantially more attractive.⁸⁶ Particularly for families on the cusp of affording their first home, if home values in blighted neighborhoods truly reflected the conditions of the surrounding community, prices would be low enough to allow many tenants to become homeowners.

However, the emerging middle class's prospect of purchasing a relatively inexpensive home in a blighted neighborhood is thwarted by the operation of the absentee landlord industry. Since absentee landlords, by definition, do not live on the property, they do not factor in the aversion to living in the blighted neighborhood when they value a property. Instead, an absentee landlord determines the home's value by calculating the neighborhood's demand for low quality housing and the resultant fair market value of rent.⁸⁷ Since low-income tenants have few housing options (principally limited to inner-city slum neighborhoods), their rent payments may remain high even as the quality of the neighborhood declines.

In a blighted neighborhood with high concentrations of poverty and consequently, high demand for low quality housing, the financial advantage of purchasing a home is skewed in favor of the absentee landlord. Consider a multi-family house with three residential apartments of comparable quality. Two people are considering purchasing the house, one person intends on residing there (a potential "resident landlord") and the

⁸⁵ See ANDREW CAPLIN, *HOUSING PARTNERSHIPS: A NEW APPROACH TO A MARKET AT A CROSSROADS* (1997) 24–28 (discussing the many benefits of homeownership).

⁸⁶ *Id.*; see also NATIONAL ASSOCIATION OF HOME BUILDERS, *Special Report: Buying a New Home: A Solid Investment* (1998) (finding that if two identical families invested \$16,800, one in a home and the other in the stock market, the homeowner would realize a net return more than two times that of the renter); The economic benefits of homeownership may not necessarily be a function of the average return on investment. As commentators note, the benefits of homeownership may accrue from forcing owners to save for the future. See Edward Scanlon, *Homeownership and its Impacts: Implications for Housing Policy For Low-Income Families* 5 (Ctr. For Soc. Dev., Washington Univ., Working Paper No. 96-2, 1996) ("[H]omeowner median net wealth in the United States is \$78,400 while for renters it is \$2,300."); Nicolas P. Retsinas & Belsky, *Examining the Unexamined Goal, in LOW-INCOME HOMEOWNERSHIP: EXAMINING THE UNEXAMINED GOAL* 1, 9 (Nicholas P. Retsinas & Eric S. Belsky eds., 2002) (qualifying data that housing has a lower historical return on investment than stocks and bonds by noting that the low-income renter is hard-pressed to save and may see a host of financial benefits in owning.).

⁸⁷ Specifically, an absentee landlord will calculate the value of a home as a function of the expected yearly rental income.

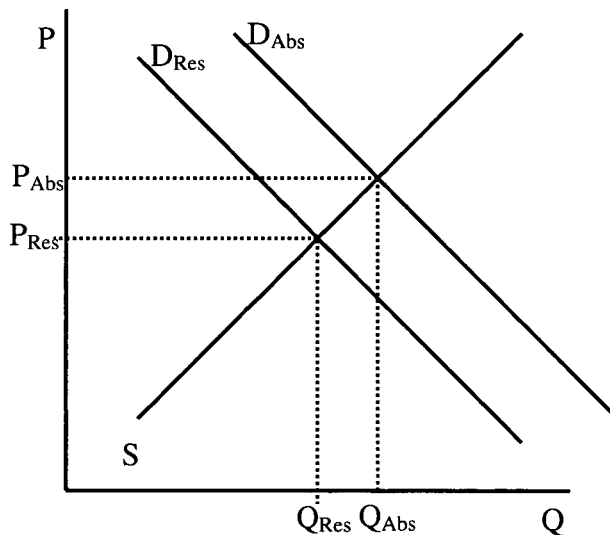
other intends on residing elsewhere (a potential “absentee landlord”). As reflected by the hypothetical figures in Table 1, the absentee landlord would view the home as a more valuable investment than would the resident landlord because the resident landlord would have to factor in her aversion to living in the neighborhood.

Table 1: Monthly Rental Income Before Rent Control		
Description	Monthly Rental Income	
	Absentee Landlord	Resident Landlord
Unit 1	\$800	\$500
Unit 2	\$800	\$800
Unit 3	\$800	\$800
Total	\$2400	\$2100

The \$800 amount reflects the fair market value of the apartment units. The \$500 amount for the resident landlord corresponding to “Unit 1” reflects the value that she would assign to the unit given that she must live in the blighted neighborhood. The reduced amount reflects the aversion that the owner, who has the ability to live in a more comfortable and stable neighborhood, would have to living amongst the high concentration of poverty and the social problems it produces.

In Table 1, the difference of \$300 in the monthly value would capitalize into a roughly \$36,000 difference in the value of the home.⁸⁸ The different values would yield double demand curves causing the absentee landlord’s demand, D_{Abs} , to be above and to the right of the resident landlord’s, D_{Res} . See Figure 1.

⁸⁸ $\$300 \times 12 \text{ months} = \$3,600 \text{ per year}$; $\$3,600/10\% = \$36,000$. A similar computation is discussed by Stephen E. Barton, *The Success and Failure of Rent Control in Berkeley, California*, in RENT CONTROL, *supra* note 4, at 88, 95 (citing Thomas S. Nessel, *The Effects of Rent Control: An Analytical Reassessment and the Experiences of Berkeley and Santa Monica, California, 1980–1990* (1992) (Ph.D. dissertation, University of Washington)).

FIGURE 1⁸⁹

All things being equal, the absentee landlord would value the home at level P_{Abs} , which is \$36,000 above the prospective resident landlord's value, P_{Res} .⁹⁰ This gives absentee landlords a sizeable advantage, which they will use to systematically outbid prospective resident landlords for the home.⁹¹

To drive home the importance of intervening in order to attract more resident landlords, consider the outlook for declining neighborhoods without the proposed rent control scheme. If the number of low-income people living in a neighborhood increases, a rental home becomes progressively more valuable to the absentee landlord. For instance, if there are more poor people in the neighborhood, demand for low quality rental units may increase. The increased demand would push rents higher and make the investment more attractive to the absentee landlord. Simply put, the more poor people in the neighborhood, the more the absentee landlord can charge in rent. Since absentee landlords need not live amongst the "concentration effects" and the social disloca-

⁸⁹ In this and the following figures, the slope of the resident and absentee landlords' demand curves will be assumed to be identical. However, because absentee landlords represent more of an investor class whereas resident landlords represent a first-time homebuyer, lower-middle class household, it can be expected that prospective resident landlords' demand will be more sensitive to home prices. In other words, in a more sophisticated model, resident landlords' demand curves will be flatter relative to absentee landlords' demand curves.

⁹⁰ $\$300 \times 12 \text{ months} = \$3,600 \text{ per year}$; $\$3,600/10\% = \$36,000$. See sources cited *supra* note 88.

⁹¹ Many other factors might contribute to absentee landlords' financial advantage. These include greater access to capital, greater expertise in the housing market, and heightened skills for repairs and maintenance.

tion that accompany high poverty rates, the absentee landlord only stands to gain by the increased concentration of poverty.⁹²

However, under the same scenario, the home becomes progressively less valuable to the resident landlord. She is surrounded by poverty and as crime increases, the schools get worse, and the homes fall into disrepair, her aversion to living in the neighborhood increases and causes her to assign a lower value to the home. Consequently, the resident landlord assigns a lower value to the home than the absentee landlord, widening the distance between points P_{Abs} and P_{Res} in Figure 1. Whenever the home goes on the market, the absentee landlord will likely purchase the home and the neighborhood will be deprived of the stabilizing presence of a higher-income homeowner. Repeated over time, this dynamic will result in an ever-increasing number of absentee landlords and will cause neighborhoods to progressively destabilize as the number of poor people grows. This is precisely what is known as a "downward spiral."⁹³

A neighborhood with high absentee landlord rates, high concentrations of poverty, high crime, underperforming schools, and deteriorating homes is costly to society.⁹⁴ "The lower the average income of a city's residents, the more needy that community is for funds to provide its residents with welfare services and police protection – but the less able it is to generate these funds from its own resources."⁹⁵ These costly, yet essential, government services are subsidized by tax payers living within

⁹² The obvious response to this argument is that absentee landlords do in fact care about the conditions of the neighborhood. If the neighborhood falls into a downward tailspin, the absentee landlord can lose rental revenue through the diminished demand for rental units. Therefore, the argument would go, the absentee landlord would care very deeply about the conditions of the neighborhood and would therefore have an incentive to invest in the maintenance and stability of the neighborhood. For a persuasive refutation of this argument, see Duncan Kennedy, *The Effects of the Warranty of Habitability on Low Income Housing: "Milk-ing" and Class Violence*, 15 FLA. ST. U. L. REV. 485 (1987) (arguing that it may be rational for landlords to under-maintain their rental buildings in declining, slum neighborhoods); HOUSING IN AMERICA: PROBLEMS AND PERSPECTIVES 188 (Roger Montgomery & Daniel R. Mandelker, eds., 2d ed. 1979) (suggesting that application of the game theory prisoners' dilemma supports lack of incentive for neighborhood homeowners to rehabilitate).

⁹³ The term "downward spiral" is used to describe a pattern of destabilizing feedback whereby a set of factors induce outcomes that further destabilize a system. Myrdal refers to this dynamic as "vicious circle." See *infra* text accompanying notes 154–58.

⁹⁴ See GOETZ, *supra* note 9, at 29 ("Neighborhoods of highly concentrated poverty produce negative community-level effects for cities. Obviously, high-poverty neighborhoods suffer from lack of private capital investment. At the same time, they create high service burdens for core governments. These two effects mutually reinforce each other, since disinvestment reduces property values, in turn reducing revenue for city government. Pack suggests that the increased social problems brought on by concentrated poverty in central-city neighborhoods lead to increased public costs. Her study of large American cities shows that those with high poverty levels have higher per capita expenditures for most municipal functions." (internal citations omitted)).

⁹⁵ NEWMAN, *supra* note 44, at 82.

and beyond the neighborhood's borders.⁹⁶ Housing, welfare, and medical subsidies must be paid by the public, along with those expenses associated with police protection and the criminal justice system.⁹⁷ Additionally, the human cost of reducing someone's dreams of a successful life to a distant probability should be considered.⁹⁸ In terms of current costs, it is unquestionable that high-poverty neighborhoods are expensive for society, but when one considers the propensity of such neighborhoods to perpetuate themselves, it becomes clear that these expenses will only endure and grow over time.⁹⁹ As a policy matter, it appears to make economic sense to intervene in the low-income housing market in order to decrease the costs associated with high poverty rates. Additionally, by integrating the poor and better preparing them to participate in mainstream social and economic life, they can be converted from net tax receivers into net tax payers.

My proposed rent control scheme aims to improve neighborhoods, increase home values, decrease poverty, and lower social costs by introducing more resident landlords to blighted neighborhoods. It is specifically designed to offset the systematic financial advantage that absentee landlords enjoy over prospective resident landlords. By increasing the resident landlord rate, the neighborhood will improve and thus reduce prospective homebuyers' aversion to living there. If designed properly, rent control can cause a "cumulative upward movement"¹⁰⁰ in living

⁹⁶ It is estimated that in 1992, the federal government alone spent over \$700 billion on welfare programs such as income assistance, social insurance, and education and training. See Gary Burtless, *Public Spending on the Poor*, in CONFRONTING POVERTY: PRESCRIPTIONS FOR CHANGE 57, (Danziger et al. eds., 1994).

⁹⁷ See U.S. Census Bureau, *Finances of County Governments: 2002*, 4 GOV'T. FIN. 9 (Feb. 2005) (finding that between 2001–2002, U.S. government agencies spent approximately \$33 billion on public welfare, including \$7.4 billion on cash and assistance, and \$1.2 billion on medical vendor payments); see also Laurie E. Felland et al., *Health Care Access for Low-Income People: Significant Safety Net Gaps Remain*, ISSUE BRIEF No. 84 (Ctr. for Studying Health System Change, Wash., D.C.), June 2004, available at <http://www.hschange.com/CONTENT/682/682.pdf> (noting that by 2002, twenty-nine states had reduced their funding for mental health agencies and Medicare mental health services because of the financial strains placed on states' budgets).

⁹⁸ See Michael R. Greenberg, *Improving Neighborhood Quality: A Hierarchy of Needs*, 10 HOUSING POL'Y DEBATE 601, 602 (1999) ("To live in a blighted environment is dispiriting, demeaning, and profoundly dehumanizing. Ugliness spreads, . . . [and] people flee before it, leaving wasteland behind them.").

⁹⁹ Jason C. Booz et al., *Where Did They Go?: The Decline of Middle-Income Neighborhoods in Metropolitan America*, THE BROOKINGS INSTITUTE 1 (Living Cities Census Series, June 2006) (finding that middle-income neighborhoods as a proportion of all metropolitan neighborhoods have declined from 1970 to 2000, while low-income and high-income neighborhoods have increased during that same period).

¹⁰⁰ GUNNAR MYRDAL, AN APPROACH TO THE ASIAN DRAMA: METHODOICAL AND THEORETICAL 1846 (1970) (describing "cumulative upward movement" as the dynamic under which a person has acquired the capacity to produce ever-increasing benefits for himself).

standards over time, deconcentrate poverty, and convert blighted neighborhoods into healthy and stable ones.

II. A PROPOSED RENT CONTROL PLAN TO ENCOURAGE AN INFLUX OF RESIDENT LANDLORDS

Rent control can be used as a tool to introduce a middle-income homeowner presence into blighted, inner-city neighborhoods with high rates of poverty. With time, rent control may even eliminate the existence of blighted neighborhoods by preventing the concentration of poor people and its deleterious effects. In short, rent control can transform blighted, urban neighborhoods into healthy and prosperous ones.

To this end, I propose the following rent control scheme that maximizes the benefits of rent control while limiting, and in some cases preventing, the drawbacks associated with traditional rent control.

A. THE BASICS OF THE PROPOSED RENT CONTROL PLAN

In this section, I will consider the effects on the local housing market of applying a rent ceiling only to absentee landlords. In my analysis, I will assume that the locality's implementation plan will make rent ceilings immediately applicable to absentee landlords' homes.¹⁰¹ I predict that this rent control plan will lead to more home-buying by prospective resident landlords.

Consider the same multi-family house from the previous section. Now, however, under a rent control regime that imposes a rent ceiling on the absentee landlord, the financial advantage shifts in favor of the resident landlord. For example, if the rent ceiling is set at \$500 for the absentee landlord and the resident landlord is able to charge market rents of \$800, the monthly rental income stream for each potential purchaser will be as reflected in Table 2.

¹⁰¹ An alternative would be to make rent ceilings applicable to absentee landlords' homes only after a home is sold. This would ensure that *whenever the home goes on the market*, a resident landlord will be the likely purchaser. However, this implementation plan would not push existing absentee landlords to place their homes on the market because their investments, in terms of monthly rental income, would remain unaffected. However, a plan that makes rent ceilings immediately applicable to existing absentee landlord homes would have very different consequences as it would cause these absentee landlords to immediately realize lower monthly rental income.

Table 2: Monthly Rental Income After Rent Control		
Description	Monthly Rental Income	
	Absentee Landlord	Resident Landlord
Unit 1	\$500	\$500 ¹⁰²
Unit 2	\$500	\$800
Unit 3	\$500	\$800
Total	\$1500	\$2100

Given these hypothetical figures, the rent ceiling causes the absentee landlord's monthly rental income to be \$600 below the resident landlord's, and this \$600 difference capitalizes into a quite substantial \$72,000 difference in the value of the home.¹⁰³

Under this scenario, the different income streams would again produce a double demand curve for the same property. However, this time, the absentee landlord's demand curve, D_{Abs} , has slid below and to the left of the resident landlord's, D_{Res} . See Figure 2.

Additionally, within a relatively short time span, a neighborhood with rent control may be transformed from one with a bleak outlook to one with renewed interest given its higher rate of resident landlords. This not only improves the residents' perceptions of the neighborhood,¹⁰⁴ but also the new resident landlords' as they will likely increase the value of other properties in that area.¹⁰⁵ Therefore, the possibility of a community filled with resident landlords will entice prospective home buyers to consider purchasing a home in the rent-controlled neighborhood.¹⁰⁶ If people believe that an increased homeownership rate will

¹⁰² This figure reflects the value a homeowner would assign to the unit if she intends to live in the home. The reduced amount reflects the aversion this homebuyer would feel towards living in the home being purchased.

¹⁰³ $\$600 \times 12 \text{ months} = \$7,200 \text{ per year}$; $\$7,200/10\% = \$72,000$. See *supra* note 88.

¹⁰⁴ ROLF GOETZE, UNDERSTANDING NEIGHBORHOOD CHANGE: THE ROLE OF EXPECTATIONS IN URBAN REVITALIZATION 31–33 (1979) (stating that perceptions of a neighborhood are as important as household income and housing conditions for predicting neighborhood investment).

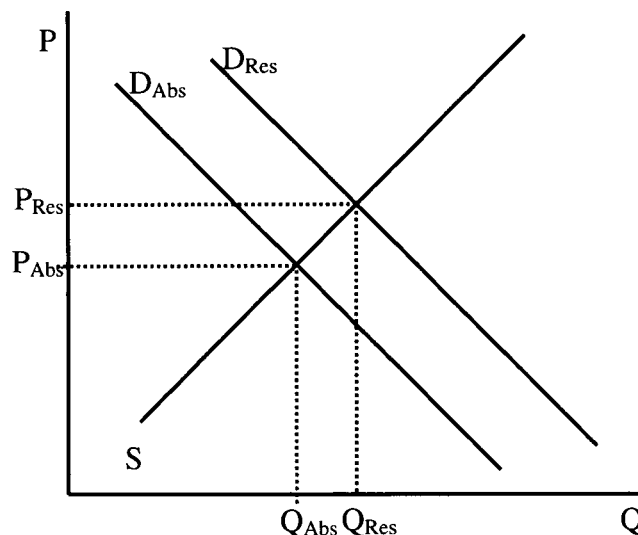
¹⁰⁵ See Rohe & Stewart, *supra* note 70.

¹⁰⁶ If the marginal cost of purchasing a home in a higher quality neighborhood is greater than the marginal value of living in that better neighborhood, people would forgo their purchasing options there and decide to purchase in the blighted neighborhood, of which residents and potential purchasers may have an improved perception (due to an increase in the homeownership rate). See GOETZE, *supra* note 104.

Additionally, if the proposed rent control scheme reduces the value of the homes, it may allow families who were formerly on the cusp of affording a home to now become homeowners in this neighborhood. In this way, middle-income and emerging middle-income households can be induced to move into formerly blighted, slum neighborhoods rather than follow the traditional path towards the suburbs or a "better" neighborhood. If potential resident landlords believe that they will be followed into the neighborhood by other resident landlords,

improve the neighborhood, the demand curve for prospective resident landlords, D_{Res} , will shift upwards and to the right.¹⁰⁷ See Figure 2.

FIGURE 2



After this shift, resident landlords will demand a higher quantity of homes in the rent control neighborhood and will pay a higher price than absentee landlords. This creates a systematic financial advantage for prospective resident landlords to purchase the homes whenever they are put up for sale.

1. *Setting the Rent Ceiling*

The critical question that each locality must answer when it enacts this rent control scheme is: "At what amount should the rent ceiling be set?" The answer to this question depends on two components: the minimum and maximum departure from the fair market rent.

Before determining the minimum and maximum departures from fair market rent, the expected demand from prospective resident landlords must be firmly established and the demand curve, D_{Res} , drawn.¹⁰⁸

purchasing a home in a blighted neighborhood might also be an attractive long-term investment strategy.

¹⁰⁷ This would occur by an increase to the value assigned to the unit into which the resident landlord will move. If prospective resident landlords have a more positive outlook for neighborhood because of the increase in resident landlords, there will be less aversion to living there. Therefore, the \$500 amount from the "resident landlord" column in Table 2 would increase to, say, \$600.

¹⁰⁸ The demand curve for resident landlords, D_{Res} , may be drawn by local real estate economists. By gathering historical purchasing and sales data within a given neighborhoods a baseline can be set to help determine the post-rent control demand curve. While this step in the process will entail a certain level of imprecision, forecasters should be able to generate

Once local demand is determined, its curve will provide the basis for the remaining analysis.

a) Minimum Departure from Fair Market Value

The rent control scheme should, at minimum, decrease rents to the point where they offset prospective resident landlords' aversions to living in a blighted neighborhood. As shown in Tables 1 and 2, a resident landlord's aversion to living in a blighted neighborhood reduces the value they assign to a home. The rent ceiling applied to absentee landlords should be sufficiently below fair market value to force them to internalize the conditions of the neighborhood into the value of the home in the same way that a prospective resident landlord does. Once the value attributed to the homebuyer's aversion is accounted for, the home should become more valuable to the prospective resident landlord. This will occur because prospective resident landlords will qualify for federal and local subsidies, such as tax deductions, which would certainly make the home more valuable to them.¹⁰⁹ I speculate that these subsidies will compensate for inherent advantages that absentee landlords may have, such as greater access to capital, more expertise in the housing market, and heightened repair and maintenance skills. Thus, prospective resident landlords will have a systematic financial advantage over absentee landlords.¹¹⁰

b) Maximum Departure from Fair Market Value

As for ascertaining the maximum departure from fair market values, the calculation depends on the number of homes that will go on the market after rent control is enacted. There are two ways that this can be controlled: 1) setting the rent ceiling at a moderate level and 2) limiting the number of homes subject to rent control.

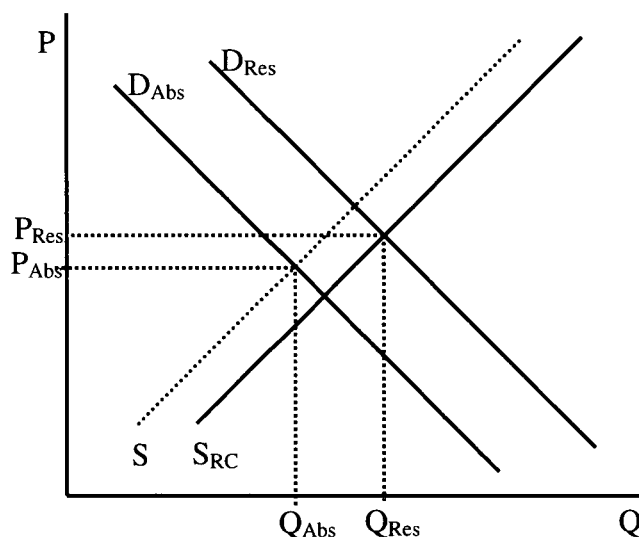
reasonably accurate estimates. As discussed *infra*, the proposed plan would certainly involve an implementation learning curve, but with more experience with the neighborhood response to this rent control plan, the resident landlord demand curve may be drawn with ever greater accuracy.

¹⁰⁹ Federal, state and local governments already provide substantial subsidies for homeowners. These subsidies, it is argued, provide resident landlords with financial advantages that absentee landlords do not qualify for, such as tax deductions. I do not dispute this point, however, this makes the proposed rent control scheme no less urgent. The existing "subsidies" for resident landlords do not require that they purchase homes in blighted neighborhoods, thereby allowing them to purchase homes in more stable areas. Rather, the proposed rent control scheme is designed to give prospective resident landlords incentives to purchase homes in the blighted neighborhoods that they would ordinarily bypass.

¹¹⁰ If the rent ceilings are not sufficiently below fair market value, there will be little or no incentive for absentee landlords to sell their properties. Thus, it is key that any plan avoid this result as insufficient values may produce problems comparable to those of traditional rent control schemes, thereby causing more harm than good. Last, the financial advantage for resident landlords must be sufficient to cover transaction costs.

Once absentee landlords are subject to rent ceilings, the value of their investment properties will fall. Those who purchased their homes at the highest prices will suffer operating losses whereby their costs, such as mortgage payments, debt service, and regular maintenance, will be higher than the controlled rental income. Facing a small or negative return on their investment, these absentee landlords will place their homes on the market, particularly since prospective resident landlords will still place a relatively high value on the homes (because they have the ability to charge market rents). The absentee landlord-owned homes on the market may cause a sudden spike in the supply of homes for sale within the neighborhood. The increased supply of homes for sale is depicted in Figure 3.

FIGURE 3



Under rent control, the original supply curve will shift to the right, now depicted as S_{RC} . This shift will change the quantity (Q_{Res}) of homes resident landlords demand and the price (P_{Res}) they will pay. Using the new equilibrium point for resident landlords, the values assigned to the home by resident and absentee landlords can be compared. So long as P_{Res} remains above P_{Abs} , the rent control scheme will be effective.¹¹¹

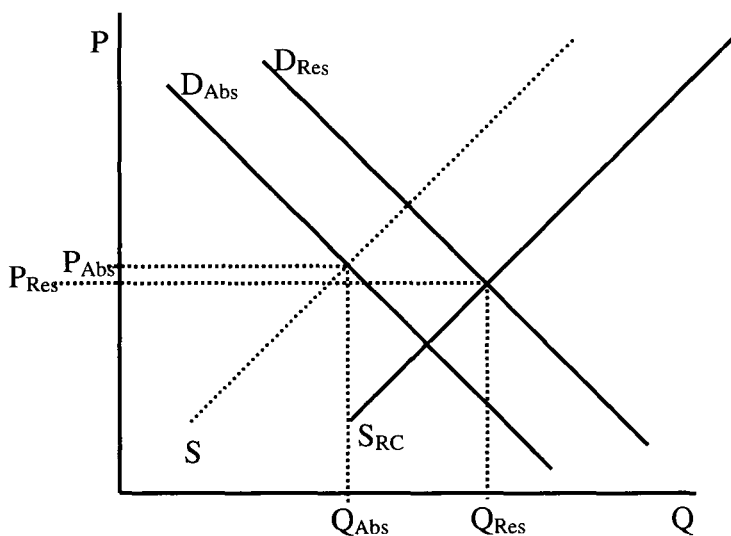
Notice that in Figure 3, the pre-rent control supply curve, S , is used to determine the value an absentee landlord assigns to a home. Regard-

¹¹¹ Note that the value to the resident landlord (P_{Res}) must be sufficiently above the value to absentee landlords (P_{Abs}) to cover transaction costs. Cooter defines "transaction costs" as "the cost of communications among the parties (including the value of time used up in sending messages), making side payments (the cost of the transaction, not the value of what is exchanged), and the cost of excluding people from sharing in the benefits exchanged by the parties." See Robert Cooter, *The Cost of Coase*, 11 J. LEGAL STUD. 1, 14-20 (1982).

less of the supply of homes available on the market, the home will retain a minimum value to the absentee landlord based on the expected rental income stream; this point is represented by the intersection of D_{Abs} and the original supply curve, S . In other words, the expected rental income will singularly determine the minimum value an absentee landlord assigns to a home. Therefore, the value to the absentee owner will not fall below the P_{Abs} point in Figure 3.¹¹²

It is crucial that the value to resident landlords (P_{Res}) remain above the value to absentee landlords (P_{Abs}), otherwise the homes will either not be sold or will be sold to another absentee landlord. If the rent ceilings are too severe, being an absentee landlord will become an unprofitable venture across the board and many absentee landlords will place their homes on the market. If this happens, absentee landlord-owned homes will flood the market and cause the supply curve to shift to the far right. Once the supply of homes on the market passes a certain point, the resident landlord's equilibrium point will produce a price (P_{Res}) below that of absentee landlords (P_{Abs}). This relationship can be seen in Figure 4.

FIGURE 4



In Figure 4, the supply of homes for sale has increased so much that resident landlords now value the home *below* absentee landlords. This result would prevent sales to resident landlords and may produce a further destabilization of the neighborhood. If the rent ceilings are set too

¹¹² This should be true unless the absentee landlord has to sell the home for other reasons. If the absentee landlord already plans on putting the home on the market, then the value that he will receive will depend on the supply of homes available. However, where the absentee wishes to remain in the absentee landlord business, it would not maximize his profits to sell the home to someone who values it below P_{Abs} .

low, potentially all of the absentee landlord-owned homes in the neighborhood could go on sale, and this number could be greater than the number of willing and able purchasers. Any unsold absentee landlord-owned homes would likely fall into disrepair as rental income would not cover regular repairs and maintenance. Since ownership would not change hands from absentee landlords to resident landlords, the only result would be to reduce the rent burden of tenants. In other words, the practical effect of this scheme would be similar to traditional rent control laws and should therefore be avoided.¹¹³

Policymakers can readily avoid this problem by either setting the rent ceiling at a moderate level or by limiting the number of homes subject to rent control. As shown in the preceding paragraphs, setting the rent ceiling too low or too high is fraught with negative consequences. Therefore, policymakers should strive to find the appropriate moderate rent ceiling that provides sufficient incentives for absentee landlords to sell and gives prospective resident landlords the sufficient financial advantage to purchase the property.

The second method of restricting the supply of homes on the market is accomplished by limiting the number of homes covered by rent control. Instead of applying rent control throughout an entire neighborhood, it can be limited to a few streets or blocks. This would undoubtedly lower the number of homes placed on the market and should not significantly affect the demand for homes within the neighborhood.¹¹⁴ This would ensure that the supply curve did not shift too far to the right and cause P_{Res} to fall below P_{Abs} . Although this approach may not produce the desired results of introducing a substantial number of middle-class homeowners throughout the neighborhood, it may make sense for cities to initially limit the scope of the rent control scheme to a small area. By beginning slowly, municipalities can develop the institutional skills necessary to set the rent ceiling at the appropriate level and forecast the resultant demand and supply. An initial small scale project will allow localities to develop a learning curve that will eventually allow them to extend rent control to larger areas.

¹¹³ This result would essentially make this rent control plan similar to all other rent control laws. By reducing rents and doing nothing else, the housing market would become less profitable. When this happens, fewer resources are dedicated to maintaining existing units and to producing new ones. Over the long term, the reduced supply of residential units will increase rental costs and may eventually hurt the very people it was intended to benefit. On these points, I very much agree with the critics of rent control. See Epstein, *supra* note 1, at 767; G. Samuel Zucker, *Insurance for Eviction Without Cause: A Middle Path for Tenant Tenure Rights and a New Remedy for Retaliatory Eviction*, 28 URB. LAWYER 113, 118 (1996).

¹¹⁴ However, limiting the number of homes subject to rent control might cause a slight reduction in demand as one would expect fewer resident landlords would move into the neighborhood. Thus, it would nullify whatever boost to demand prospective resident landlords' belief that they would be followed into the neighborhood by other resident landlords provided.

2. Targeted to Blighted Neighborhoods

Rent control should be enacted in a city's most blighted neighborhoods. Throughout the literature on rent control, commentators assume that rent control must be adopted at the city- or town-wide level. Traditionally, those in favor of rent control argue that it "protect[s] low-income households from rent increases" and thereby alleviates poverty.¹¹⁵ With this goal in mind, it seems logical to bestow the benefits of rent control upon all of the poor within the municipality's boundaries. However, the proposed rent control scheme maintains an entirely different goal; namely, to revitalize blighted neighborhoods by introducing a middle- and working-class, homeowner presence. Therefore, rent control will be most effective when targeted to communities particularly in need of revitalization, rather than to the entire city or town.

A "blighted" neighborhood, as I define it, is characterized by high poverty rates, underachieving public schools, and most importantly, high absentee landlord rates. Residents in these neighborhoods tend to have the lowest levels of education¹¹⁶ and political participation and are therefore typically unable to engage the local political institutions to work to their advantage.¹¹⁷ Being mostly relegated to the status of "renters" as opposed to "homeowners," these residents do not build equity in their home, move relatively frequently, and thus do not acquire the incentives to invest time, energy and money into improving the long-term outlook of the neighborhood.¹¹⁸ The result is a vicious cycle of poverty that is exceedingly difficult for a neighborhood to break because each generation is progressively less equipped to garner the educational, social, and economic resources necessary to break free.

Local legislative or administrative bodies must determine which neighborhoods are most in need of rent control. These bodies must ascertain which neighborhood will benefit the most from the introduction

¹¹⁵ Downs, *supra* note 1, at 15.

¹¹⁶ Bishaw, *supra* note 83, at 5 (explaining that education levels increase as neighborhood poverty declines, and that in neighborhoods with the following poverty rates, "over 40%," "less than 40%," "less than 20%," and "less than 12.3%," the percentage of residents with college or higher education is 8.6%, 11.6%, 15.4%, and 27.5%, respectively); Lawrence O. Picus, *Current Issues in Public Urban Education*, 7 HOUSING POL'Y DEBATE 715, 715-16 (1996) ("The dropout rate is often considerably higher in central city districts. Many of these districts have higher concentrations of disabled students who require access to specialized, and hence extensive, services. These and other factors often lead to lower student achievement in these [central city, high-poverty] districts.").

¹¹⁷ ROBERT D. DIETZ, HOMEOWNERSHIP ALLIANCE, THE SOCIAL CONSEQUENCES OF HOMEOWNERSHIP 6 (2003), available at http://www.newtowncdc.org/pdf/social_consequences_study.pdf ("One consistent finding concerning homeownership is that homeowners tend to vote more often. . . the homeowner voter rate is 69%, while the renter voting rate is 44%. This is consistent with the notion that homeowners are more concerned with local affairs and national policy than renters due to their stakeholder status as owners.").

¹¹⁸ DiPasquale & Glaeser, *supra* note 8.

of a middle- and working-class homeowner presence, and they can be assisted in this task by using Duncan Kennedy's definitions regarding neighborhood change. Kennedy has identified four types of neighborhood change that occur in urban housing markets:

- **"upward filtering"**—low-income people are moving in and higher-income people are moving out, values are unstable, and density is increasing;
- **"downward tailspin"**—many higher-income people are moving out and the remaining population is becoming homogeneously lower income, values are declining, and density is decreasing;
- **"upgrading in place"**—there is "new investment by low or lower middle income owners, without displacement of low income tenants, along with new construction for higher-income in-movers," values are increasing, and density is increasing;
- **"gentrification"**—higher income people move in, owners rehab existing structures, and lower income people are displaced," neighborhood is becoming homogeneously upper income, values are increasing, and density is decreasing.¹¹⁹

Policymakers should identify which neighborhoods are undergoing "upward filtering" or "downward tailspin" and convert them into ones that are "upgrading in place." Specifically, policymakers should target neighborhoods that are experiencing a loss of higher-income households and/or an influx of lower-income households. By encouraging the emerging middle-class to invest in these neighborhoods, while at the same time avoiding displacement of the existing low income tenants, rent control can give a neighborhood the most desirable change dynamic: "upgrading in place," in which the neighborhood improves and poor people gain.

Although I believe that the proposed rent control scheme will benefit blighted neighborhoods the most, the proposed plan may be used to prevent neighborhoods from falling into "blighted" status. If vigilant policymakers notice a steady climb in the number of absentee landlords on a given street, block, neighborhood, or district, rent control can be used to reverse that trend. In this way, rent control can also serve as a prophylactic measure to prevent the transition to a "downward tailspin."

3. *Targeted to Neighborhoods with a High Rate of 2- to 4-Unit Homes*

The proposed rent control plan will prove successful in those neighborhoods where a high rate of resident landlords would have a significant

¹¹⁹ Duncan Kennedy, *Legal Economics of U.S. Low Income Housing Markets in Light of "Informality" Analysis*, 4 J. L. Soc'y 71, 72-73 (2002).

impact on residents. However, not every neighborhood maintains the housing stock necessary to produce these results. For instance, families living in large apartment buildings with dozens of units (typical in New York City) will not benefit as much by the presence of resident landlords as would a family in a 2-unit home. If the average building in a blighted neighborhood has twenty residential units, one of which is occupied by the owner and the rest by low-income tenants, there will be a 5% rate of (presumably) middle-income households.¹²⁰ If the average building in a blighted neighborhood has two residential units, one of which is occupied by the owner and the other by low-income tenants, there will be a 50% rate of (presumably) middle-income households. It is unknown what rate, or critical mass, of resident landlords is required to produce the benefits discussed in Part I, but it is likely that the benefits derived from the close proximity of low- and middle-income households will not materialize if the middle-income presence is exceedingly small.¹²¹

Therefore, I propose that rent control be enacted only in neighborhoods with a high percentage of two-, three-, and four-family homes. Virtually every state in the Northeast and Midwest, along with numerous others across the country, has blighted neighborhoods that contain a sufficient percentage of two-, three-, and four-family homes.¹²² Cities such

¹²⁰ This analysis ignores the fact that the homeowners of the larger buildings would probably belong to a higher socioeconomic class than the homeowners of the smaller buildings. If this factor were considered, I speculate that it would provide another argument against applying rent control to the larger buildings. The larger landlords would be more likely to be professional landlords who do not hold a traditional job with steady hours and are less likely to serve as a model of "behaviors and attitudes that are conducive to success in both school and work." Ainsworth, *supra* note 48, at 119. Thus, one of the greatest benefits of attracting higher-income households to the neighborhood would not materialize. In addition, if the larger landlord is significantly better off than the rest of the neighborhood's residents there could be a sentiment of hostility and resentment against the landlord. Not only would this create an un-neighborly environment but it may significantly discourage these homeowners from residing on the premises. This would have a significant chilling effect and may deter the production of large rental buildings even in areas without rent control.

¹²¹ Determining the optimal homeowner percentage is beyond the scope of this article. However, sociologists and empirical researchers may help to address this question. Unfortunately, only a limited amount of research has been directed to this area; I am hopeful that this article along with the growing body of literature on the impact of homeownership rates on neighborhoods will help generate greater interest in this topic.

¹²² According to the 2000 Census, the following large cities were comprised of a housing stock where over 20% of the homes were 2- to 4-unit homes *and* they had poverty rates over 20%: Hartford and New Haven, CT; Fort Pierce, FL; Chicago, IL; New Orleans, LA; Lawrence and Springfield, MA; St. Louis, MO; Newark, New Brunswick, and Patterson, NJ; Albany, Buffalo, Newburgh, New York City, Rochester, and Syracuse, NY; Cincinnati and Cleveland, OH; Lancaster, PA; Providence, RI; College Station, TX; and Milwaukee, WI. Analysis of 2000 Census Data (on file with author).

Additionally, the following cities' have housing stocks whereby at least 15% of the homes are 2- to 4-unit homes: Oakland and San Francisco, CA; Fort Lauderdale, FL; Louisville, KY; Worcester, MA; Minneapolis, MN; Atlantic City, Jersey City, and Long Branch,

as Chicago, Cleveland, Hartford, Newark, Oakland, Providence, St. Louis and many others would be ideally suited.¹²³

Admittedly, this proposal is not designed to address the extreme forms of concentrated poverty found in large public housing developments. However, residential neighborhoods surrounding public housing developments would likely benefit from the proposed rent control scheme. The stability that higher-income resident landlords provide would presumably help mitigate whatever radiating influence public housing units may have on a surrounding community.

B. GENTRIFICATION AND DISPLACEMENT

Up until this point, the only changes to traditional rent control laws that I have discussed are the exemption for resident landlords and the application of this scheme limited to blighted neighborhoods with a high percentage of two-, three-, and four-family homes. These features are expected to encourage absentee landlords to sell their homes in blighted neighborhoods to middle- and working-class households. Resident landlords will replace absentee landlords and will have greater incentives to maintain and improve their homes, thereby improving blighted neighborhoods and causing rent levels to rise.¹²⁴ Poor tenants will face the "option" of paying more for higher quality housing or moving to neighborhoods with lower quality housing and lower rents. Undoubtedly, many tenants will move, either as a matter of choice or as a matter of force, and will be replaced by higher-income tenants.¹²⁵ This exodus could usher in a wave of gentrification that would place pressure on longtime tenants to relocate. While displacement would certainly disadvantage low-income tenants, I argue that displacement is actually desirable, so long as the result is a "dispersal" of the poor.

The gentrification caused by the proposed rent control scheme can lead to the displacement of a blighted neighborhood's residents in three distinct ways: 1) displacement of homeowners by higher-income homebuyers; 2) displacement of low-income tenants by in-moving resident landlords; and 3) direct and indirect displacement of low-income

NJ; Columbus, OH; Allentown, Harrisburg and Pittsburgh, PA; Charleston and Columbia, NC; San Marcos, TX; Salt Lake City, UT; Norfolk, VA; and Kenosha, WI.

The foregoing data relate to a city's housing stock and poverty rate as a whole. However, the proposed rent control plan need not be applied to an entire city. As pockets of poverty develop, rent control may be applied to specific neighborhoods or blocks within a city.

¹²³ *Id.*

¹²⁴ See *supra* Part IB.

¹²⁵ See, e.g., Wallace F. Smith, *Filtering and Neighborhood Change* (1964), reprinted in *HOUSING IN AMERICA: PROBLEMS AND PERSPECTIVES* 162 (Roger Montgomery & Daniel R. Mandelker eds., 2d ed. 1979) (stating that higher-income tenants have greater housing intensive preferences for higher quality housing and the purchasing power to pay the resulting premium).

tenants by higher-income tenants. Before I discuss each gentrifying pressure that causes displacement, I will give a brief introduction to the traditional process of gentrification and the types of homeowners that I predict will purchase homes from absentee landlords. Understanding how gentrification happens and the expected composition of the neighborhood's homeowners will help predict the impact that the proposed rent control scheme will have and what kinds of provisions will help reduce displacement.

1. *Traditional Process of Gentrification*

There is no agreed definition of gentrification but there are certain features shared by most definitions.¹²⁶ Peter Marcuse provides a clinical definition that draws particular attention to the social class aspect of gentrification:

Gentrification occurs when new residents—who disproportionately are young, white, professional, technical, and managerial workers with higher education and income levels—replace older residents—who disproportionately are low-income, working-class and poor, minority and ethnic group members, and elderly—from older and previously deteriorated inner-city housing in a spatially concentrated manner, that is, to a degree differing substantially from the general level of change in the community or region as a whole.¹²⁷

The process of gentrification is usually slow at first, consisting of a few urban pioneers moving into a community where both housing quality and rent levels are low. These early gentrifiers, predominantly tenants and often artists,¹²⁸ are termed “risk-oblivious” as they are willing to chance their personal safety in high crime neighborhoods and below standard buildings.¹²⁹ The depressed neighborhood generally attracts

¹²⁶ Lance Freeman, *Displacement or Succession: Residential Mobility in Gentrifying Neighborhoods*, 40 URB. AFF. REV. 463, 469-470 (2005) (highlighting the common dimensions of the disparate definitions of gentrification, including “(1) central city neighborhoods, (2) populated by low-income households that have previously experienced (3) disinvestment.” This causes an “(4) influx of the relatively affluent or gentry, and (5) an increase in investment.”).

¹²⁷ Peter Marcuse, *Gentrification, Abandonment, and Displacement: Connections, Causes, and Policy Responses in New York City*, 28 J. URB. & CONTEMP. L. 195, 198-99 (1985).

¹²⁸ Freeman, *supra* note 126, at 474 (“Renters whose income may or may not be rising concomitantly with rental increases may be especially vulnerable to displacement under these circumstances.”); *id.* at 471 (“[Y]oung artists and professionals who have relatively low incomes often pioneer gentrification.”).

¹²⁹ See Robert Kerstein, *Stage Model of Gentrification, An Examination*, 25 URB. AFF. Q. 620, 621 (1990).

progressively more pioneers until it eventually reaches a tipping point at which time gentrification accelerates.¹³⁰ Once a sufficient number of pioneers have entered the neighborhood and established neighborhood institutions (such as bars, cafes or restaurants), the neighborhood becomes stabilized, and the “risk-averse” middle-class overcomes its initial aversion and begins to move in to the now stabilized area.¹³¹ Once this occurs, the pace of gentrification accelerates as the poorer, longtime residents are unable to financially compete with the higher-income gentrifiers, and may ultimately move.¹³² As poor people leave the neighborhood, it becomes progressively more attractive to the risk-averse middle-class and gentrification prevents low-income tenants from finding affordable housing options within the neighborhood. Eventually, the median socioeconomic status of residents increases and the class character of the neighborhood is transformed.¹³³

2. *Likely Class Composition of Rent-Controlled Home Purchasers*

After my suggested rent control plan is enacted, a resident landlord will value any particular home more than an absentee landlord. Prospective resident landlords will outbid absentee landlords for homes and will eventually come to own most, if not all, of the homes in the rent-controlled zone.¹³⁴ However, the kinds of resident landlords expected to purchase these homes will not represent a random sample of homebuyers. Rather, I expect that these purchasers will be those individuals least averse to moving into blighted neighborhoods. Most likely,

¹³⁰ Cf. *id.* at 636 (finding that when risk-averse gentrifiers enter a neighborhood, “the gentrification process is likely to expand.”). Kerstein’s comment concerns neighborhoods where the *early in-movers* display risk-averse attitudes. *Id.* However, I suspect that this comment may be generalized because the increased purchasing power of the risk-averse is likely to raise housing costs and displace the poor. The vacancies left by out-going displacees will allow for yet more in-moving risk-averse gentrifiers.

¹³¹ *Id.* at 621 (noting that the risk-averse middle class “settle[s] in the neighborhood only after many other professional and managerial households have already located there and rehabilitated their homes substantially”).

¹³² *Id.*

¹³³ J. Peter Byrne, *Two Cheers for Gentrification*, 46 Howard L.J. 405, 406 (2003).

¹³⁴ The rate at which homeownership changes hands from the absentee landlords to the resident landlords is completely within the discretion of the local legislature. If the rent ceiling for absentee landlords is slightly below the market rent level, it will only provide a slight incentive for absentee landlords to sell and the cost of the house may not be reduced enough for lower-middle class households to afford. In this case, the change from absentee landlord ownership to resident landlord ownership is expected to be very slow. However, if the rent ceiling for absentee landlords is set significantly below the market rent level, there will be a high incentive for landlords to sell as they would seek to avoid monthly operating losses. A basic tenet of efficiency analysis dictates that ownership of a resource should lie with the person who values it the most. After rent control is adopted, virtually all resident landlords will value the property more than will absentee landlords.

they will be emerging middle-class households living in the same, similar, or nearby communities, as opposed to stable middle-class households living in more peaceful and comfortable suburban settings.¹³⁵ Since stable middle-class households have the greatest aversion to moving into blighted neighborhoods, they will value the home less than emerging middle-class households who live in the same or similar neighborhoods.¹³⁶ Although the empirical data does not exist, I speculate that the stable middle class's additional purchasing power (which would allow them to pay a higher price for the home) would be insufficient to compensate for the decreased value they would assign to living in such homes. At the time of purchase, these homes will be located in a *blighted* neighborhood, and I expect that risk-averse stable middle-class gentrifiers will be reticent about moving into the neighborhood before it has been sufficiently "stabilized."¹³⁷ As a result, I predict that emerging middle- and working-class households will place a greater value on the home and will not be outbid by the potential gentrifiers of the stable middle class.

3. *Displacement of Homeowners by Higher-Income Homebuyers*

After my suggested rent control plan is enacted and the resident landlord rate increases, it will take some time before the neighborhood significantly improves. But if rent control is successful at improving the perception, as well as the health and stability, of the blighted neighborhood, I expect that the demand for homes will increase, even among the risk-averse middle class.

If there is a high percentage of resident landlords in the neighborhood, it will be very difficult for gentrification to displace existing residents. The displacement of homeowners as a result of gentrification is very different than that of tenants.¹³⁸ Regarding homeownership, as the neighborhood improves and becomes more appealing to potential gentrifiers, it will also become more appealing to the resident homeowners and may induce them to remain in the neighborhood.¹³⁹ In fact, evidence

¹³⁵ Kerstein, *supra* note 129, at 622 (finding a "steady increase in the percentage of in-movers from suburban [communities]" and that "increasing proportions of in-movers will be from the suburbs than from other neighborhoods within the city").

¹³⁶ *Id.* (stating that "financially better-off families, more so than individuals and couples, tend to avoid neighborhoods that they perceive as risky").

¹³⁷ This prediction is consistent with the analysis of proponents of the Stage Theory of gentrification. See Kerstein, *supra* note 129, at 622 (suggesting that stable, middle-class households will not move into the gentrifying neighborhood until it has been sufficiently "suburbanized").

¹³⁸ Freeman, *supra* note 126, at 476. ("[R]enters would probably be more susceptible to displacement pressure, because they have much less control over their unit than owners.").

¹³⁹ It may be argued that in a gentrifying neighborhood, the increased real estate taxes caused by higher home values will displace homeowners who cannot afford the increase.

suggests that rather than resulting in displacement, gentrification causes households to remain in the neighborhood for longer periods of time so as to take advantage of the improved conditions.¹⁴⁰

Existing homeowners that have invested significant time and energy into maintaining and improving their homes and thereby stabilizing the neighborhood will logically have developed an attachment to both their house and the neighborhood. In traditional instances of gentrification, potential middle-class in-movers need not overcome the strong resistance that would result from high resident-homeowner rates. Instead, it is relatively easy for them to purchase homes or condominiums from developers who have in turn purchased the homes from absentee landlords or from the city via tax sales. When homes are held solely as investment properties, it is much easier and cheaper to negotiate a purchase because the owners have not developed a household interest in the home.¹⁴¹ As the neighborhood improves and attracts more gentrifiers, the remaining homeowners will have an even greater incentive to stay so as to enjoy the benefits of an upgraded neighborhood.¹⁴²

Last, it may be suggested that existing homeowners may be priced out of the market due to an increase in real estate taxes in a gentrifying market. However, since I propose that application of this scheme be limited to neighborhoods with a high percentage of 2-, 3-, and 4-family homes, it is likely that increased tax expenses will be offset through increased rental income. Therefore, it is unlikely that gentrification as a result of homeownership will displace existing resident landlords.

4. *Displacement of Low-Income Tenants by In-Moving Resident Landlords*

Displacement of the neighborhood's poor tenants, however, is a legitimate concern. The most direct form of displacement will occur as a result of in-moving resident landlords. When homes are purchased from absentee landlords, the new homeowners must occupy an apartment to establish themselves as resident landlords, a prerequisite for charging

However, given the housing stock required for this kind of rent control, any increase in real estate taxes will likely be offset by an increased rent that resident landlords can charge.

¹⁴⁰ Freeman, *supra* note 126, at 475 (detailing his study based on empirical data compiled in a neighborhood subject to traditional rent control that found, as a caveat, that the existence of rent control, and not the gentrifying conditions, may be the primary cause of the longer resident tenures).

¹⁴¹ See Margaret Jane Radin, *Property and Personhood*, 34 STAN. L. REV. 957 (1982) (arguing that certain property, such as a wedding ring, a portrait, or a house, have a value beyond what the tradition market will determine. "These objects are closely bound up with personhood because they are part of the way we constitute ourselves as continuing personal entities in the world." If these items are lost, there is perhaps no amount of money that can replace them.).

¹⁴² See generally Freeman, *supra* note 126.

higher rents. To secure an apartment, the in-moving landlord must evict a current tenant. Displacement is an unfortunate, but unavoidable, consequence of the proposed rent control scheme because in order to achieve the deconcentration of poverty, some poor residents must be forced to move. Short of building more rental units, the number of tenants must decrease in order for the number of resident landlords to grow.

This situation presents a problem for advocates and communities concerned about the displacement of the poor. Since those neighborhoods subject to the proposed rent control scheme are the poorest and most blighted areas, the rents of displaced tenants would tend to be relatively inexpensive. Thus, it is unlikely that these tenants will be able to find apartments of comparable quality at equal or lower rents in other neighborhoods. With the poor already spending a high percentage of their income on housing, even a slight increase in rent could have a significant impact on their economic stability.¹⁴³

If community concern is great, the rent control scheme could include a provision for a modest subsidy to the dislocated poor. For instance, the ordinance could require a one-time payment to those tenants replaced by the incoming homeowners. The cost of this one-time payment can be capitalized into the cost of the house and paid directly to the tenant by the new homeowner.¹⁴⁴ Additionally, the community could work towards enabling some of the neighborhood's existing tenants to purchase the homes.

An interesting filtering dynamic arises when incoming landlords replace outgoing tenants. Incoming homeowners will likely move from various parts of the town, city and state. However, all outgoing tenants will move from the same neighborhood. These outgoing tenants will not necessarily fill the vacancies left by the incoming homeowners in their former neighborhoods. Since the new homeowners will be slightly wealthier and have higher or more stable incomes, they will bear higher housing-specific preferences¹⁴⁵ that the poorer tenants cannot afford. This will trigger the filtering process as the vacancies created by the new homeowners will be filled by a class of tenants with lower housing-spe-

¹⁴³ JOINT CTR. FOR HOUSING STUDIES OF HARVARD UNIV., *THE STATE OF THE NATION'S HOUSING 2007*, at 25, <http://www.jchs.harvard.edu/publications/markets/son2007/son2007.pdf> (reporting that 1 in 7 American households spends more than half of its income on housing. Also, "[i]n 2005, households in the bottom quarter of the income distribution (earning \$23,000 or less) accounted for 78% of the severely housing cost-burdened.").

¹⁴⁴ The cost of this one-time payment will affect the demand and supply curves discussed *supra*. However, this payment will be factored into the demand curves as they are being drawn. Thus, the foregoing analysis will not change.

¹⁴⁵ This means that higher-income individuals will prefer and seek out higher-value homes and rental units. See generally Smith, *supra* note 125.

cific preferences.¹⁴⁶ In turn, each vacancy in higher quality housing will be filled by tenants from a lower income class who will filter up and upgrade their housing conditions.¹⁴⁷ Through this upward filtering process, the vacancies left by the new homeowners in their former neighborhoods will trickle down and eventually result in an upgrade in housing quality for poorer tenants.

As the poor filter up into better quality housing, they will become dispersed among more stable neighborhoods with higher rates of resident landlords. But to the extent that the poor are simply reconcentrating in another part of the city, rent control should be applied to that new neighborhood as well. At a meta-level, if all cities and towns apply this policy, the poor will become dispersed throughout society. The resulting neighborhood-level interactions of the poor with higher-income households will prevent their social and spatial isolation and will reduce the concentration effects that produce great social costs.

This process may have an additional benefit. Displacement by traditional gentrification replaces existing residents with in-movers from wealthier communities and often leads to tension and hostility between the older, poorer residents and the newer, wealthier ones. However, as mentioned above, it is unlikely that the proposed rent control scheme would encourage a sudden flurry of in-movers from wealthier communities into the blighted neighborhood because the risk-averse, middle-class individuals would not normally be willing to move into the neighborhood until it has been substantially stabilized by pioneers. A rapid change in the socioeconomic composition of a neighborhood may lead to tension, or as it is often called, "class warfare."¹⁴⁸ However, a change in homeownership by a class of landlords whose cultural and socioeconomic makeup is relatively similar to that of the existing tenants allows for a smoother, healthier transition.

¹⁴⁶ *Id.*; see also Kennedy, *supra* note 92, at 486 ("It has long been the case that new housing becomes available to the poor through trickle down, otherwise known as the filtering process. As higher income people build new housing for themselves in the suburbs, lower income people 'filter up' through the existing stock, so that today's poor often live in housing built for an earlier middle class.")

¹⁴⁷ *Id.*

¹⁴⁸ Ian Donnis, *Class Warfare in Olneyville: The Strains of a Worsening Statewide Housing Crisis Erupt on Providence's West Side*, THE PROVIDENCE PHOENIX, May 26–June 1, 2006, at 4; see also Nicole Stelle Garnett, *Review: Save the Cities, Stop the Suburbs?*, 116 YALE L.J. 598, 611 (2006) ("[M]any inner-city residents would be happy not to have new neighbors, new barriers to their views, and new competitors for parking spaces." (quoting Michael H. Schill, *Comment on Richard P. Voith & David L. Crawford's Smart Growth and Affordable Housing*, in *GROWTH MANAGEMENT AND AFFORDABLE HOUSING: DO THEY CONFLICT?* 102, 104 (Anthony Downs, ed., 2004))).

5. *Displacement of Low-Income Tenants by Higher-Income Tenants*

If the neighborhood improves as a result of an increased homeownership rate, demand for rental units will likely increase, not only among the young, middle class but among the poor as well. The desire to live in a healthy and stable neighborhood will push prices upward, especially since supply will likely not keep pace with the increased demand.¹⁴⁹ The higher potential rents will cause landlords to prefer tenants willing to pay the highest premium for better conditions. Not only do wealthier people have a higher initial preference for housing, but they are also financially able to outbid their less wealthy counterparts.¹⁵⁰ This process exerts a not-too-subtle pressure that over time will push the poorest families out and change the character of the neighborhood.

Similarly, as a neighborhood improves, resident landlords may come to view the remaining tenants from the pre-rent control era as incompatible with the new neighborhood makeup. The activities that were tolerated under an absentee landlord, such as late night noise, criminal activity, or drug use, may be at odds under the more watchful eye of a resident landlord. Put more offensively, the new emerging middle-class homeowners may view the characteristics and activities of the poor with fear and hostility. This will lead the resident landlords to exert pressure on the poorest families to move out of the neighborhood.

Depending on its view of the poor, the local legislature may be glad that the rent control plan will push the “nefarious” element out of the neighborhood or it may desire to enact a more comprehensive rent control scheme that protects the most “vulnerable” element from displacement. If the locality chooses to enact additional tenant protections, they should guard against indirect displacement caused by increases in rent and direct displacement caused by evictions. Suggestions for additional tenant protections are discussed in the Appendix.

Ultimately, I do not expect the transition from a blighted neighborhood to a healthy and stable one to occur overnight. As the homeownership rate increases, it will take some time before tangible improvements are realized, particularly for improving the neighborhood’s institutions (e.g., public schools). Thus, the displacement of poor tenants will not take the form of an immediate and drastic disruption. Rather, given the already high rates of mobility among tenants, I expect that the effect of direct displacement (of current tenants by new tenants) will be gradual

¹⁴⁹ See Andrejs Skaburskis & Michael B. Teitz, *The Economics of Rent Regulation*, in RENT CONTROL, *supra* note 1, at 57–58 (noting the inability of the housing market to meet the large spikes in demand for low-priced housing in the short term).

¹⁵⁰ See generally Smith, *supra* note 125.

and largely indiscernible.¹⁵¹ However, as tenants naturally cycle through apartments, it is expected that finding new apartments within a gentrifying neighborhood will become progressively more difficult, and over time, will cause the neighborhood to change.¹⁵² As discussed in the following section, this is not necessarily a bad result.

6. *Healthy Gentrification*

The proposed rent control scheme aims to transform blighted communities into healthy and stable living environments by introducing middle- and working-class homeowners to the neighborhoods. However, the ultimate goal is not merely to improve the neighborhood, but rather, to deconcentrate the poor and bring them closer to mainstream society. If the poor are displaced and resettle in other neighborhoods of low-quality housing and high poverty, the problem is not solved, but merely shifted. This is not the goal of the proposed plan!

In an effort to transform a "vicious cycle" of poverty and dependence into a "virtuous cycle" of stability and independence, local legislatures should adopt laws that *develop* people's abilities to contribute to society.¹⁵³ Blighted inner-city neighborhoods are riddled with personal, economic and social underdevelopment in various forms.¹⁵⁴ People fail to develop the education and expertise required to meaningfully participate and advance in mainstream society, groups fail to develop job networks that connect the unemployed with jobs, and communities fail to develop stable and supportive social relations.

Gunnar Myrdal explains the process of underdevelopment by describing the phenomenon of "circular causation" and applying it to the problem of underdevelopment in Southeast Asia.¹⁵⁵ Drawing from Ragnar Nurkse's theory of the "vicious circle of poverty,"¹⁵⁶ Myrdal reasons a country's state of poverty stems from its own state of poverty. The circular reasoning goes as follows:

[A] poor man may be weak; being physically weak, his working capacity may be low which means that he is poor, which in turn means that he will not have enough to eat; and so on. A situation of this sort, relating to a

¹⁵¹ Freeman, *supra* note 126, at 483 (finding that "gentrification does not appear to be associated with increased mobility or high levels of displacement")

¹⁵² Freeman, *supra* note 126, at 483-84.

¹⁵³ The concept of the "vicious cycle" is actually referred to as the "vicious circle" by MYRDAL, *supra* note 100. I use "vicious cycle" because it suggests a more repetitious and self-perpetuating process.

¹⁵⁴ See *supra* Part I.

¹⁵⁵ MYRDAL, *supra* note 100, at 1844.

¹⁵⁶ RAGNAR NURKSE, PROBLEMS OF CAPITAL FORMATION IN UNDERDEVELOPED COUNTRIES 4 (1953).

country as a whole, can be summed up in the trite proposition: "a country is poor because it is poor."¹⁵⁷

The same can be said of local American communities. Without high homeownership rates, residents of blighted neighborhoods are surrounded by greater numbers of poor households. High poverty rates breed social problems, and without a strong middle- and working-class presence, residents are further isolated from the mainstream. This prevents residents from acquiring a quality education and those skills necessary to overcome poverty, and further, deters prospective homebuyers from moving into the neighborhood. Thus, fewer homeowners are attracted to the neighborhood and poverty increases. The downward spiral continues!¹⁵⁸

The focus of advocates for the poor should be on intervening at a particular point in the vicious cycle that will convert it into a virtuous cycle that creates "cumulative upward movement" in the living conditions of the poor.¹⁵⁹ It is important to single out the many links in the chain of causation that compose and perpetuate the cycle of poverty, and determine the benefits and costs of intervening at any particular point. Special consideration should be given to the interventions that set in motion a process that positively influences other links in the chain of causation.

Advocates for the poor have long sought to address the persistent underdevelopment in American low-income communities by focusing on a number of local strategies. These strategies have included providing greater resources for education, making funds available for economic development, and subsidizing the cost of housing.¹⁶⁰ Each of these strategies has produced generally positive results in terms of improving the immediate condition of the poor, but each has produced mixed results in addressing the long-term fundamental causes of poverty.¹⁶¹ These policy interventions do not address the root causes as they fail to develop the poor's capacity to *determine their own fate* at the local neighborhood level.¹⁶² Without this kind of effect, the "vicious cycle" will never be converted into a "virtuous" one.

¹⁵⁷ MYRDAL, *supra* note 100, at 1844.

¹⁵⁸ See *supra* Part IA.

¹⁵⁹ MYRDAL, *supra* note 100, at 1844–47.

¹⁶⁰ See generally Burtless, *supra* note 96.

¹⁶¹ *Id.* at 51 (stating that "many of the most costly social programs do not even aim to reduce poverty as it is officially defined." These programs have specific and limited objectives such as "improving diet, basic medical care, and housing conditions.").

¹⁶² See Kennedy, *supra* note 119, at 74 ("Although we are mainly preoccupied with the welfare outcome for the particular subcategory of poor tenants, we need to recognize at the outset that this group plays a distinctly subordinate role in generating the neighborhood changes that largely determine its fate.").

As I argue in Part I, reintroducing middle- and working-class households into blighted neighborhoods will not only improve the regular maintenance and structural integrity of the homes, but it will also socialize the poor by helping them to develop language, attitude, education, and job-related skills required to meaningfully participate in mainstream society. I speculate that this will occur in an infinite number of ways; I will discuss a few brief and tangible examples.

First, resident landlords tend to reside in the same unit five times longer than tenants¹⁶³ and generally maintain their homes in better conditions than absentee landlords.¹⁶⁴ Their personal and economic interests in the home and the neighborhood, along with their longer tenure and better maintenance, make resident homeowners better able to monitor and sanction the deviant behavior of neighborhood children.¹⁶⁵ These homeowners have less tolerance for people who display a destructive disregard for the aesthetic quality of the neighborhood and refuse to permit littering and graffiti on their property.¹⁶⁶ Generally, resident landlords are able to keep a more watchful eye than absentee landlords. The cumulative effect of an entire neighborhood of homeowners displaying the same intolerance helps to socialize others to the antisocial nature of these activities and deters future behavior. The care and maintenance exhibited by resident landlords establishes neighborhood norms and places social pressure on residents to conform.

Also, middle- and working-class households provide models of traditional and successful employment habits.¹⁶⁷ Admittedly, the effects of youth being surrounded by a community of employed adults are difficult to measure. However, if routine work for the neighborhood's adults becomes the norm to which youth become accustomed, these adults will serve as models as they consider whether, when, and how to enter the

¹⁶³ NATIONAL ASSOCIATION OF REALTORS, SOCIAL BENEFITS OF HOMEOWNERSHIP AND STABLE HOUSING 7–8 (Jan. 2006), available at <http://www.columbusrealtors.com/Img/pdf/2455.pdf> (Although the report cites other possible explanations for the increased mobility rate among renters, such as relative youth and marital status, the report nonetheless concludes that homeownership has a statistically significant impact on lowering the mover rate. Additionally, the mover rate doubles for households living in poverty.); see also William M. Rohe et al., *The Social Benefits and Costs of Homeownership: A Critical Assessment of the Research* 21 (Joint Ctr. for Housing Studies of Harvard Univ., Low-Income Homeownership Working Paper Series, LIHO-01.12, 2001), available at <http://www.jchs.harvard.edu/publications/homeownership/liho01-12.pdf>.

¹⁶⁴ See generally GALSTER, *supra* note 79; Spivack, *supra* note 79.

¹⁶⁵ DIETZ, *supra* note 117, at 4 (“[D]ue to the financial stake in community conditions, homeowners are more likely to monitor and correct socially deviant behavior of children, and perhaps more importantly, adolescents.”).

¹⁶⁶ See *id.*

¹⁶⁷ See WILSON, *supra* note 10, at 60–61.

workforce.¹⁶⁸ This does not necessarily mean that they will pursue or find stable jobs, but it does mean that they will be introduced to a model that reflects mainstream goals.¹⁶⁹ As Scanlon notes, "the presence of stable working households will provide role models to central-city residents that are expected to reinforce mainstream values and behavioral norms regarding education, employment, and family structure."¹⁷⁰ Additionally, and perhaps most importantly, the presence of employed individuals helps connect the unemployed to job opportunities that are advertised primarily by word of mouth.¹⁷¹

Lastly, the improvement of education outcomes will ultimately determine whether residents of blighted neighborhoods ever break the chains of poverty. It is believed that children are the main beneficiaries of mixed-income housing arrangements as their interactions in school, the playground, or elsewhere help them to develop social ties with children from other social classes.¹⁷² The presence of middle-income households provides an anchor that deters an oppositional culture from developing whereby success in school is frowned upon and seldom expected.¹⁷³ Additionally, for those emerging middle-class families who

¹⁶⁸ *Id.* ("In neighborhoods in which nearly every family has at least one person who is steadily employed, the norms and behavior patterns that emanate from a life of regularized employment become part of the community gestalt.").

¹⁶⁹ Schill & Wachter, *supra* note 16, at 1289 ("[C]hildren growing up in neighborhoods with few employed role models develop weak attachments to the labor force. Lacking employment opportunities and the appropriate socialization to seek work, youths frequently engage in deviant or illegal activities to earn income and gain status, thereby further distancing themselves from middle-class norms. These behaviors are reinforced by peer groups. Activities that are likely to assist them in obtaining employment and social mobility, such as graduating from high school, are stigmatized rather than valued.").

¹⁷⁰ Quercia & Galster, *supra* note 45, at 417. See also WILSON, *supra* note 10, at 60–61 ("Inner-city social isolation also generates behavior not conducive to good work histories. . . . [T]he less frequent the regular contact with those who have steady and full-time employment (that is, the greater the degree of social isolation), the more likely that initial job performance will be characterized by tardiness, absenteeism, and, thereby low retention.").

¹⁷¹ Quercia & Galster, *supra* note 45, at 417 (stating that adults with stable jobs may also provide information about employment opportunities to their neighbors); WILSON, *supra* note 10, at 60 ("Inner-city isolation makes it much more difficult for those who are looking for jobs to be tied into the job network. Even in those situations where job vacancies become available in an industry near or within an inner-city neighborhood, workers who live outside the inner city may find out about these vacancies sooner than those who live near the industry because the latter are not tied into the job network.").

¹⁷² Smith, *supra* note 39, at 10 ("Because interaction between children [in mixed income developments] is more likely than between adult residents, there is a greater chance of significant interaction and positive benefits for children.").

¹⁷³ MASSEY & DENTON, *supra* note 50, at 167 ("The conditions in the ghetto, in short, make it exceedingly difficult to live up to broader societal values with respect to work, marriage, and family formation, and poor blacks are thus denied the opportunity to build self-esteem and to acquire prestige through channels valued in the wider society. As a result, an alternative status system has evolved within America's ghettos that is defined in *opposition* to the basic ideals and values of American society. It is a culture that explains and legitimizes the social and economic shortcomings of ghetto blacks, which are built into their lives by segrega-

decide to send their children to public schools, the greater public resources that this voting group can leverage will produce benefits that help all children.

While many inner-city reform measures aim to directly improve the performance of public schools or to jump-start economic development, it is important to remember the central idea of Wilson's "concentration effects" thesis. To Wilson, the structural transformation of the social, economic, and demographic composition of the inner city leaves the poor isolated from mainstream society¹⁷⁴ thereby preventing the "development of cognitive, linguistic, and other educational and job-related skills necessary for the world of work."¹⁷⁵ If the poor are socially integrated at the neighborhood-level with middle- and working-class groups, they will develop the skills and attributes necessary to meaningfully participate in society and, ultimately, to determine their own fates. And once the poor genuinely have the tools to do so, they will become part of a process within which they can improve their own lives. This is what is called a "virtuous cycle" and this is what I call "healthy gentrification."¹⁷⁶

While gentrification is associated with "outsiders" invading a community,¹⁷⁷ the proposed plan encourages the influx of homeowners who are not so different from the existing residents, thus allowing for a smoother transition. Even if some existing tenants are displaced, by combining the literature on concentrated poverty with that on gentrification, we see that dispersing and integrating the poor is precisely what is called for. For the existing tenants who are displaced, so long as localities can prevent them from re-segregating in other blighted neighborhoods, their living conditions will improve. The result will be neighborhoods that are more stable and communities whose members will be better positioned to participate in mainstream society.

C. OTHER PROVISIONS

In some instances, the proposed rent control plan should include a number of provisions that have been effectively employed by other rent

tion rather than by personal failings. This culture of segregation attaches value and meaning to a way of life that the broader society would label as deviant and unworthy.") Although Massey and Denton describe this phenomenon through the lens of racially segregative practices, the principle is based on geographic isolation and class segregation. *Id.* While the phenomenon is certainly correlated with racial segregation, it is not limited to it. Schill & Wachter, *supra* note 16, at 1289.

¹⁷⁴ WILSON, *supra* note 10, at 20–62.

¹⁷⁵ *Id.* at 57.

¹⁷⁶ Under the proposed plan, liberal and conservative interests converge. For liberals, the poor are better able to develop attitudes and expectations that will allow them to participate in mainstream society. For conservatives, the poor become less reliant on public support and better able to provide for themselves.

¹⁷⁷ See Marcuse, *supra* note 127.

control ordinances. The rent ceiling applied to absentee landlords should allow workable, yearly rent adjustments, in case an absentee landlord chooses to retain ownership of her property. This allowance will help avoid the legal challenges to rent control ordinances encountered by other localities.¹⁷⁸ Also, all large housing developments, including public and federally subsidized housing units, should be excluded.¹⁷⁹ Exclusion prevents the owners of these buildings from suffering a disproportionate impact, given their large number of units, and quells the chilling effect rent control may have on the construction of new, large housing developments.

Local legislatures should also consider adopting condominium conversion laws that restrict owners' abilities to take an apartment off the rental market by converting it into a condominium. On the one hand, condominium conversions may reduce the supply of available rental units but on the other hand, they may attract higher-income homeowners (condo owners). Each locality should assess whether this provision and its anticipated consequences would help further its goals.

Some localities may wish to exclude all new construction of residential units. The biggest criticism and accordingly, the biggest drawback to traditional rent control, is that it limits the supply of residential units produced by the market. Since traditional rent control laws make the rental market less profitable, they deter the construction of new units.¹⁸⁰ Moreover, since traditional rent control ordinances are usually

¹⁷⁸ See *Birkenfield v. City of Berkeley*, 550 P.2d 1001 (1976); see also Barton, *supra* note 88, at 92 (explaining the legal challenges that delayed the implementation of rent control in Berkeley, California.).

¹⁷⁹ See, e.g., COLLEGE PARK, MAR., CODE § 127-3, (excluding all "Apartment Buildings," defined as: "A building containing three or more dwelling units, each of which contain one or more rooms suitable for occupancy as a residence and that contain a kitchen and bathroom facilities. It does not include a single-family residence, or a duplex, triplex or quadraplex or fraternity or sorority house.").

¹⁸⁰ This happens to be one of the strongest criticisms against rent control. See DOWNS, *supra* note 1, at 45–52; Epstein, *supra* note 1, at 767; Timothy P. Terrell, *Edited Transcript of Proceedings of the Liberty Fund Inc. Seminar on the Common Law History of Landlord-Tenant Law*, 69 CORNELL L. REV. 623, 677 ("From an empirical point of view, the one bit of evidence that I have seen, which is very compelling, is a series of building permits issued in Washington, D. C., right before and after rent control—something like three to four thousand down to one or two hundred.")). However, many authors have concluded that empirical evidence shows very little support for the huge deterrence of new construction by rent control. See, e.g., Note, *Reassessing Rent Control: Its Economic Impact in a Gentrifying Housing Market*, 101 HARV. L. REV. 1835, 1844–45 (1988) [hereinafter *Reassessing Rent Control*]; W. Dennis Keating, *Commentary on Rent Control and the Theory of Efficient Regulation*, 54 BROOK. L. REV. 1223, 1229 (1989); Kenneth K. Baar, *Would the Abolition of Rent Controls Restore a Free Market?*, 54 BROOK. L. REV. 1231, 1232 (1989); Guy McPherson, *It's the End of the World as We Know It (And I Feel Fine): Rent Regulation in New York City and the Unanswered Questions of Market and Society*, 72 FORDHAM L. REV. 1125, 1160–61 (2004).

adopted to address a shortage of affordable housing,¹⁸¹ a policy that deters construction will only exacerbate the existing shortage. If the locality believes that applying rent control to newly constructed homes will deter construction, it should consider a provision that excludes all new construction of residential units.

Another potential provision enforces the implied warranty of habitability, or the minimum housing code.¹⁸² If a locality wants to aggressively ensure that each home within the rent control zone will comply with minimum housing quality standards, it may attribute code enforcement priority to these homes. Since homes in these neighborhoods would tend to be of the lowest quality, many apartments might not meet the minimum housing code standards.¹⁸³ Including an enforcement provision allows potential purchasers to capitalize the expected maintenance expense into the value paid for the home.¹⁸⁴

If the proposed rent control plan is successful in reintroducing a middle- and working-class homeowner presence to blighted neighborhoods, thereby deconcentrating the poor, it can be applied to new neighborhoods as pockets of poverty develop within them. Potentially, the poorest residents will be displaced by the proposed rent control scheme and will seek apartments in other nearby low-income neighborhoods.¹⁸⁵ As local policymakers notice a neighborhood either "filtering up" or experiencing a "downward tailspin," either as a result of or independent of the rent control plan in another neighborhood, rent control should be applied to this new neighborhood as well. The proposed plan's goal is to eradicate concentrations of poverty wherever they occur.

The problems of poverty may not be solved by the proposed rent control scheme, but they will certainly be alleviated. If rent control is applied to pockets of poverty as they develop, over time, the poor will be

¹⁸¹ See, e.g., LOS ANGELES, CAL., RENT STABILIZATION ORDINANCE, ch. 15, art. 1, § 151.01 ("There is a shortage of decent, safe and sanitary housing in the City of Los Angeles resulting in a critically low vacancy factor.").

¹⁸² See *Reassessing Rent Control*, *supra* note 180 (arguing that landlords in gentrifying markets can be deterred from under-maintaining units by enforcement of the warranty of habitability, within a regulatory scheme that also uses eviction restrictions, residential zoning restrictions, and a moratorium on condominium conversion).

¹⁸³ Kennedy, *supra* note 92, at 490 (arguing that in a declining neighborhood, a rational landlord may choose to "reduce maintenance below the level necessary to keep a building in existence as a residential unit").

¹⁸⁴ Localities should consider the effect this proposal would have on their ability to attract resident landlords. If it would significantly discourage people from purchasing such homes, the provision should obviously not be implanted.

¹⁸⁵ See Hirsch, *supra* note 28, at 92. ("The evidence is overwhelming that people conduct their housing searches in limited areas; that they are most aware of the housing available near their current residences; and that their existing location is the single most critical factor in determining their new location—and each of these findings is more true for low-income households, renters and minorities than others.").

dispersed throughout well-maintained neighborhoods with middle-income homeowners, rather than packed into crumbling neighborhoods of predominantly poor tenants and absentee landlords. Dispersal of the poor throughout society will produce collective socialization, will better integrate the poor into the fabric of mainstream American life, and will reduce the social costs created by concentration effects.¹⁸⁶

III. POTENTIAL BARRIERS AND ADVERSE CONSEQUENCES

There are a number of serious questions and potential barriers that the proposed rent control scheme must overcome. In this section, I confront criticisms particular to the proposed rent control scheme as well as the classic criticisms leveled at traditional rent control.

A. ECONOMIC CRITIQUES AND BARRIERS

1. *Deterred New Construction and Decreased Supply of Rental Housing*

The biggest criticism to traditional rent control schemes has been that over the long term, they actually hurt the people they are intended to help.¹⁸⁷ They do this by creating disincentives for people to invest in the construction of new housing units. To address this concern, previously-enacted rent control schemes have generally exempted newly constructed rental units and at least one has excluded substantially rehabilitated units.¹⁸⁸ Arguably, these exemptions are justified because an ordinance that renders investment in housing construction less profitable deters investors from financing the construction of new housing units.¹⁸⁹ Further, since traditional rent control schemes are usually adopted to address a shortage of affordable housing,¹⁹⁰ a policy that reduces the rate of new construction will only exacerbate the existing shortage.

Although I suggest that all newly constructed units be excluded from rent control, upon a closer examination, whether one includes or excludes such units may not make a significant difference in the long term. The primary impact of the proposed rent control scheme is to cause a shift in ownership from absentee to resident landlords. No change in the quantity of housing units would necessarily occur as a result of this change. Although it is reasonable to predict that the value of

¹⁸⁶ See generally WILSON, *supra* note 10.

¹⁸⁷ See *supra* note 1.

¹⁸⁸ BERKLEY, CAL., BERKELEY MUNICIPAL CODE, RENT STABILIZATION AND EVICTION FOR GOOD CAUSE ORDINANCE § 13.76.050(I) (2007); EAST PALO ALTO, CAL., RENT STABILIZATION ORDINANCE 076, § (5)(E) (1988); OAKLAND, CAL., NEW CONSTRUCTION ORDINANCE No. 12538, §§ 8.22.030(A)(5)–(6) (2007).

¹⁸⁹ See *supra* note 1.

¹⁹⁰ See, e.g., *supra* note 155.

homes will decrease slightly, it is unlikely that the proposed plan will have a noticeable effect on the production of new units.¹⁹¹

Since rent control limits sales of the relevant rental property to only prospective *resident* landlords, demand for these homes may decrease as a result of the smaller pool of potential purchasers and their lower anticipated purchasing power. If this were the only effect, it would cause the value of homes, both new and old, to decrease and would thereby deter new construction. However, the decreased demand from absentee landlords will be offset by the increased demand by resident landlords. If raising the resident landlord rate, and therefore the middle-income homeowner presence in a neighborhood, will have positive effects on the community, the number of people willing to live in the neighborhood will increase as well. The increased demand from prospective resident landlords will mitigate or offset the decreased demand from prospective absentee landlords. There is little or no decrease in the value of homes and consequently, little or no deterrence of the construction of new units.

Furthermore, since rent control should only be adopted in the most blighted neighborhoods, it is unlikely construction will be deterred because there is very little private construction in these neighborhoods to begin with.¹⁹² Without costly government subsidies, it is not cost-effective to construct housing for the poor.¹⁹³ Therefore, very little, if any, new construction in blighted neighborhoods would be deterred. Rather, over the long term, improved maintenance and a better outlook for the neighborhood, brought about by a greater middle- and working-class homeowner presence, will increase demand for new construction in these neighborhoods.

Under traditional rent control, neighboring communities must also be considered as these communities affect housing production in areas not yet subject to rent control. If developers fear that rent control will be extended to other neighborhoods, it may have a chilling effect on hous-

¹⁹¹ Keating, *Commentary on Rent Control and the Theory of Efficient Regulation*, 54 Brook. L. Rev. 1223, 1229 (citing “[e]mpirical evidence indicat[ing] that the level of new construction does not necessarily vary between similar rent controlled and non-rent controlled jurisdictions”); Kenneth K. Baar, *Would the Abolition of Rent Control Restore a Free Market?*, 54 Brook. L. Rev. 1231, 1232–34 (1989) (“The reports of the past few decades that have included data on new apartment construction in rent controlled jurisdictions have been mixed in their conclusions. A significant number, if not a majority of them, have reached the conclusion that rent controls have not had a significant negative impact on apartment construction.”).

¹⁹² Smith, *supra* note 125; see also HOUSING CRISIS TASK FORCE, LOS ANGELES CITY COUNCIL REPORT OF THE HOUSING CRISIS TASK FORCE 14 (2000), available at <http://housing-crisisla.ucla.edu/Recommendations/Findings.pdf> (“[L]and and building costs are so expensive that market-rate developers can’t construct new rental housing with rents under \$1,000 per month.”).

¹⁹³ *Reassessing Rent Control*, *supra* note 180, at 1836; Phillip Weitzman, *Economics and Rent Regulation: A Call for a New Perspective*, 13 N.Y.U. REV. L. & SOC. CHANGE 975, 981 (1984–1985).

ing construction in those neighborhoods.¹⁹⁴ However, this fear should not have an appreciable effect under the proposed scheme for the same reasons offered above. Namely, since the proposed rent control plan targets only blighted neighborhoods, little, if any, new construction will be deterred. In fact, the proposed plan may even increase demand for new construction.

2. *Inefficiencies Caused By Over- and Under-Consumption of Housing*

Another criticism of traditional rent control is that it is inefficient because it encourages tenants to both over- and under-consume housing.¹⁹⁵ Tenants in traditional rent controlled apartments are said to over-consume housing in that they occupy apartments beyond their means.¹⁹⁶ Traditional rent control reduces rent levels to the point where tenants live in apartments whose demand, and therefore price, is higher than the tenant could bear under market conditions. The rent ceiling allows tenants to live in apartments whose quality is beyond their means and leads to a reduced supply of housing. For instance, if rent control allows a single tenant to live in an apartment that's size exceeds what she could afford under market conditions, she may be occupying an apartment that would otherwise be occupied by a family. This inefficiency prevents the apartment from being possessed by the tenant who values it most¹⁹⁷ and therefore leads to an inefficient allocation of housing resources and ultimately, to a decrease in the housing supply.

On the other hand, rent control is said to also encourage tenants to under-consume housing.¹⁹⁸ As a rent control tenant's income rises, she is deterred from moving to a higher quality apartment commensurate with her purchasing power. Since the marginal increase in housing qual-

¹⁹⁴ Epstein, *supra* note 1, at 767 ("Even if new construction is exempt from the statute, existing rent control laws give a loud and clear signal that old policies may be reversed so that future units may be subject to similar restrictions. That prospect is, moreover, far from negligible because once those units are occupied, their residents add a new class of voters to the rolls whose interests can no longer be ignored in the political calculus. All rent control statutes thus depress the future total return of any investment. Reduced returns mean reduced investments, so that rent control statutes only exacerbate the housing shortages they are said to alleviate.").

¹⁹⁵ Edward L. Glaeser & Erzo F. P. Luttmer, *The Misallocation of Housing Under Rent Control*, 93 AM. ECON. REV. 1027, 1030, 1044 (1999) ("[W]e find that approximately 20 percent of apartments [in a rent control area in New York City] are in the wrong hands under the conservative assumption of efficient sorting on unobservable characteristics within demographic subgroups"); see also David P. Sims, *Out of Control: What Can We Learn from the End of Massachusetts Rent Control?*, 61 J. URB. ECON. 129, 150 (2007); D. Benjamin Barros, *Home as a Legal Concept*, 46 SANTA CLARA L. REV. 255, 287 (2006).

¹⁹⁶ See generally Glaeser & Luttmer, *supra* note 195.

¹⁹⁷ Measured by a person's willingness and ability to pay.

¹⁹⁸ Sims, *supra* note 195, at 150; Barros, *supra* note 195, 287.

ity will be less than the marginal increase in rent expense, the tenant will opt to remain in the lower quality, rent-controlled apartment. Traditional rent control encourages residents of controlled units to remain in their apartments longer than they otherwise would in order to reap the benefits of lower rents.¹⁹⁹ This causes a decrease in the supply of available apartments because tenants are less likely to move.

These legitimate criticisms function differently under the proposed rent control scheme and do not present a significant problem. Since rent for tenants in resident landlord property will not be significantly lower than the market rent, the incentive to over- and under-consume will be slight. Additionally, many housing scholars have questioned the extent to which rents for low-income tenants are the product of free market economics or the product of restrictive land-use controls.²⁰⁰

To the extent that restrictive land-use controls (i.e., zoning ordinances) limit the production of housing units, rent control corrects the fair market value of rents rather than distorts them. If a zoning ordinance prevents the construction of additional housing units, the housing supply will be lower than it would otherwise be without government regulation. Basic economics dictates that the diminished housing supply will increase the cost of housing, including rent.²⁰¹ This unearned "economic rent" that accrues to landlords forms the basis and justification for rent control.²⁰²

Rent control can correct the imperfections of the housing market. Just as the federal minimum wage is viewed as a control to militate against market imperfections caused by efforts to avoid starvation,²⁰³ so too can rent ceilings militate against the market imperfections caused by the drive to avoid homelessness. The severity of becoming homeless, much like starving, allows landlords to exploit their control over this primary, physiological need, and to extract economic rents from te-

¹⁹⁹ Ellickson, *supra* note 1, at 948.

²⁰⁰ *Reassessing Rent Control*, *supra* note 180, at 1850 ("Wealthy suburbs have avoided internalizing the adverse costs associated with development and poorer inhabitants by excluding lower-income families through single-family housing, and large-lot and minimum floor requirements. Government-created distortions such as these make it unlikely that existing housing prices efficiently allocate housing resources.").

²⁰¹ Barton, *supra* note 88, at 89 ("The forces that increase land values are generally joined by restrictive land-use controls that limit additional housing supply.").

²⁰² See Skaburskis & Teitz, *supra* note 149, at 47-56.

²⁰³ Julie E. Cohen, Lochner in *Cyberspace: The New Economic Orthodoxy of "Rights Management"*, 97 MICH. L. REV. 462, 513 (1998) ("Where the harsher consequences of commodification are unacceptable, society attempts to introduce stabilizing measures—for example, minimum wage laws and/or welfare grants to mitigate the starvation that serves as incentive to labor; rent control laws to lessen the impact of the laws of supply and demand on the housing market").

nants.²⁰⁴ The increase in rent levels causes people to under-consume because they cannot afford housing of sufficient quality. It also causes people to over-consume as people spend a higher percentage of their income on housing than they would in a perfect market.²⁰⁵ Viewed in this light, inefficiencies caused by the over- and under-consumption of housing are not created by rent control, but rather, are diminished by it.

Regardless of whether optimal efficiency is achieved in the rental housing market, most commentators have failed to consider the externalities caused by existing market conditions.²⁰⁶ By eliminating the conditions under which costly “concentration effects” take hold, namely high poverty rates and the absence of resident landlords, rent control may produce a result that is more efficient than the present state. In other words, even if rent control sets rent ceilings at an “inefficient” level, society’s long-term savings, measured by its prevention of “concentration effects” and reductions in subsidies to the poor, may decrease aggregate social costs.

3. *Under-Maintenance of Rental Units*

Under traditional rent control, landlords who own rental property when the ordinance takes effect must choose to either continue operating their properties in the same way they did before or to reduce maintenance to offset their revenue losses.²⁰⁷ Economists argue that landlords will choose to under-maintain their units because whatever short-term gains the tenants receive from reduced rents will be offset by long-term losses caused by the reduction in the quality of housing.²⁰⁸

This argument however, has not gone unchallenged. At least one commentator argues that maintenance outlays are only a small part of a landlord’s business plans as they “form only a minor part of the land-

²⁰⁴ See *Southern Burlington County NAACP v. Township of Mount Laurel*, 336 A.2d 713, 727 (N.J. 1975) (“There cannot be the slightest doubt that shelter, along with food, are the most basic human needs.”).

²⁰⁵ Edgar O. Olsen, *Is Rent Control Good Social Policy?*, 67 CHL.-KENT L. REV. 931, 940–44 (1991).

²⁰⁶ Arnott, *supra* note 1, at 418, discusses the “theory of the second best.” Arnott argues that efficiency analysis is incomplete if one does not consider that impact that a given policy will have on a separate or sub market. *Id.* For instance, if a policy produces less than optimal returns in the housing market but significantly reduces public subsidies, it may be the case that, on balance, the policy enhances efficiency. Commentators on rent control have frequently overlooked this point.

²⁰⁷ C. Peter Rydell & Kevin Neels, *Direct Effects of Undermaintenance and Deterioration*, in *THE RENT CONTROL DEBATE* 91–92 (Paul L. Niebanck, ed. 1985) (discussing the impact of rent control on maintenance expenditures).

²⁰⁸ *Id.* (“Reacting to revenue reductions by reducing maintenance expenditures, their behavior would gradually eliminate the initial price reduction benefits. Insofar as this behavior holds, rent control may be found to have transferred the social benefits associated with housing to some households in the short run, at the expense of other households in the long run.”).

lord's outlays, far less than mortgage interest payments, insurance payments, and, in some jurisdictions, water charges and property taxes."²⁰⁹ Another commentator states that:

The greater part of the category of physical deterioration seems to consist of those minor incidents of wear and tear and of the elements which, summed together, form a fairly regular and substantial component of annual housing costs: flaking paint, broken windows, cracked or warped siding, leaky roofs, clogged plumbing or drains, worn-out screens, scuffed floors or linoleum, etc. The point is that with adequate maintenance the house need not depreciate in these respects.²¹⁰

Even under traditional rent control it is not clear if decreased rents will lead to a substantially reduced quality of housing.

Under the proposed rent control plan, however, the under-maintenance of the housing stock is a non-issue. Under-maintenance becomes a concern in traditional rent control schemes because homeowners are prevented from recouping their repairs and maintenance expenditures by increasing rents. However, assuming that absentee landlords are induced to sell their homes, under the proposed plan, the purchasing resident landlords are fully aware of the restrictions rent control places on them. As stated, the reduced expected rental income will be capitalized into the price paid for the home, and will not impact the homeowner's expected profit. Whatever maintenance expenditures the homeowner expects are factored into the price paid for the home. Therefore, the application of rent control will not affect the amount of funds available for repairs and maintenance.

In fact, the proposed rent control scheme may increase the maintenance of the rental units. Studies have shown that even when controlling for a number of socio-economic factors, "resident landlords maintain their properties at higher levels than absentee landlords."²¹¹ In a conclusion that not only substantiates the notion of greater maintenance by resident landlords but also supports the core of this paper's thesis, Galster explains that "expanding the number of homeowners appears to be the single most potent means for encouraging the upkeep of dwellings in a neighborhood. . . [a]nd the differences are even more dramatic when considering low-income occupants."²¹² Therefore, rather than reduce main-

²⁰⁹ Skaburskis & Teitz, *supra* note 149, at 46.

²¹⁰ Ira S. Lowry, *Filtering and Housing Standards: A Conceptual Analysis*, 36 LAND ECON. 362, 365 (1960).

²¹¹ Rohe & Stewart, *supra* note 70, at 297.

²¹² GALSTER, *supra* note 79, at 296.

tenance, the proposed rent control scheme encourages resident landlords to maintain their homes.

B. POLITICAL CRITIQUES AND BARRIERS

1. *More Effective Alternatives*

It may be alleged that the proposed rent control scheme is unnecessary because prospective resident landlords can be granted a financial advantage via tax deductions. This argument posits that tax deductions are preferable because the cost of the proposed plan is borne by all tax payers, rather than the absentee landlords. Further, it may be argued that tax deductions are more desirable because the implementation of rent control laws and the informal markets they produce present substantial concern.²¹³

However, rent controls maintain at least two significant advantages over tax deductions. First, tax deductions diminish the in-moving homeowner's equity by increasing the purchase price. Whereas the proposed rent control plan will lower absentee landlords' demand and allow prospective resident landlords to purchase the home at a lower price,²¹⁴ tax deductions will do the opposite. Tax deductions would increase resident landlords' demand and thus increase the home's sale price. This allows sellers to realize a larger profit from the sale and consequently, strips more of the equity from the home. This is a precarious position for in-moving homeowners because the lack of equity exposes them to heightened risk by diminishing the "safety net" that equity provides.²¹⁵ Moreover, if resident landlords have a larger mortgage to pay, the higher payments will likely be recouped through increased rents, decreased maintenance, or both,²¹⁶ a result that is unfavorable for homeowners, tenants, and the community.

Second, tax deductions would effectively provide a public subsidy to prospective resident landlords, the cost of which would be borne by the locality via lower tax revenue. If tax deductions are extended to a significant number of homes, the subsequent cost to the public would assumedly be fairly substantial. It seems highly unlikely that any locality would be able to absorb the lower tax revenue, making tax deductions less politically feasible. Alternatively, rent control places the burden of

²¹³ See Epstein, *supra* note 1, at 741 (recounting his personal experience with a building superintendent who "needed to have his palm smeared").

²¹⁴ See *supra* Figure 2.

²¹⁵ Equity in a home is equivalent to a savings account or a "safety net." If a major expense arises, whether or not associated with the home, equity gives homeowners access to capital through a second mortgage. This may determine whether a homeowner survives a financial storm or loses her home to foreclosure.

²¹⁶ Rolf Goetze et al., *Stabilizing Neighborhoods*, reprinted in *HOUSING IN AMERICA*, 188 (Roger Montgomery & Daniel R. Mandelker eds., 2d ed. 1979).

the subsidy on absentee landlords, the parties substantially responsible for the neighborhood's downward trajectory.²¹⁷ Because of the additional equity for in-moving homebuyers and the imposition of the cost to the responsible parties, I believe that rent control is considerably more appealing and equitable.

Further, while I do not dispute that traditional rent control laws raise significant concerns regarding implementation and the informal market, I seriously question the magnitude of these concerns under the proposed scheme. Since I do not suggest that the proposed plan be implemented on a city- or town-wide level, the number of regulated homes will be markedly reduced, making it much easier for the locality to regulate the rent-controlled homes. More importantly, if rent control accomplishes its goal, there will be little need for regulation and oversight. If absentee landlords sell their homes to resident landlords, most of these concerns will disappear because resident landlords will not be subject to the strict rent ceilings.²¹⁸ The locality can focus its regulatory efforts on the limited number of absentee landlords who remain in the rent control zone.

Finally, the significant price reductions in traditional rent control laws induce landlords and tenants to engage in illegal agreements whereby the tenant pays a "key money" or "side payment" to the landlord in exchange for living in the rent controlled unit.²¹⁹ If the proposed plan is successful, then few absentee landlords would remain to engage in these illegal practices. Alternately, if absentee landlords do remain, these practices can be effectively regulated if localities police the absentee landlord-owned properties.²²⁰ Thus, the implementation and informal market concerns present under traditional rent control are either eliminated or greatly reduced under the proposed plan.

2. *Government Bureaucracy and Corruption*

The risk of government corruption seriously threatens the proposed rent control scheme, particularly in the choice of neighborhoods to which it will be applied. Since absentee landlords face the risk of having to sell

²¹⁷ See *supra* Part IC.

²¹⁸ If localities extend additional protections to existing tenants, resident landlords would only be subject to the Year 1 base rent level discussed in Part II. These base rent levels are specifically designed to *slightly* reduce rents. Since there is relatively little to gain for tenants living in rent-controlled apartments, this will significantly diminish the incentives for landlords and tenants to engage in "key money" or "side payment" transactions.

²¹⁹ See Amott, *supra* note 1.

²²⁰ Perhaps the most effective way to prevent these illegal "key money" payments would be to amend the local landlord-tenant law. If landlords are prevented from evicting tenants for non-payment of rent if it can be shown that they have accepted an illegal side payment, the practice can be adequately controlled. Tenants would learn very quickly that they can withhold rent and not be evicted. I believe this would effectively deter landlords from accepting "key money" payments.

their investments, there will likely be a strong lobbying campaign on behalf of absentee landlords to prevent rent control from applying to their homes.²²¹ This lobbying effort will come in two forms. First, absentee landlords, as a group, will lobby against rent control being enacted, and then against it being applied to certain neighborhoods. Second, if rent control is applied to neighborhoods in which their properties lie, individual absentee landlords will urge the locality to draw the boundaries of the rent-controlled neighborhood to exclude those properties that they own.

To prevent this political hazard, each locality should articulate clear guidelines for the kind of neighborhood to which rent control should be applied. Many cities already do this by designating areas as revitalization zones, tax incremental financing zones, and blighted zones.²²² By setting clear standards, advocates can ensure that the neediest neighborhoods will not be bypassed.

Even after a locality decides to apply rent control to a particular neighborhood, another contentious debate will ensue regarding where to draw the boundaries of the rent control zone. It will be impossible to act with utmost fairness to each homeowner because the process of line-drawing necessarily leads to two homes sitting next to each other, one subject to rent control and the other not. Further compounding this difficulty is the fact that often, a neighborhood will span beyond a local political boundary. Even if it makes sense to apply rent control to the entire neighborhood, a local legislator may vote against the zone reaching her political district. Therefore, it is important that independent, non-political actors draw these lines. Whether rent control reaches the right homes will depend on the extent to which this process is depoliticized.

3. *Government's Woeful Track Record*

Critics of the proposed plan may also cite the government's woeful track record of intervening in the housing market. In fact, many commentators blame the federal and local governments for the growth and expansion of highly concentrated poverty neighborhoods.²²³ Additionally, traditional rent control has often been characterized as a government

²²¹ Undoubtedly, a strong public campaign against rent control would occur in *any* neighborhood.

²²² See, e.g., ARIZ. REV. STAT. ANN. § 36-1471(2) (2006); CAL. HEALTH & SAFETY CODE § 33030 (Deering 2006); COLO. REV. STAT. ANN. § 31-25-103(2) (West 2006); MD. ANN. CODE art. 41, §14-803 (2006); MINN. STAT. § 469.002 (2005); OHIO REV. CODE ANN. § 1728.01 (LexisNexis 2006); R.I. GEN. LAWS § 45-31-8 (2006).

²²³ See generally Schill & Wachter, *supra* note 16 (arguing that federal public housing policy has greatly contributed to concentrated urban poverty); CASHIN, *supra* note 25 (arguing that zoning ordinances, the federal mortgage insurance program, urban renewal programs, and a host of private biases contributed to the creation of urban ghettos).

intervention that produced destructive unintended consequences.²²⁴ These commentators argue that the market is the best way to allocate scarce resources and that government intervention merely distorts the market's efficient operation.

However, there is no such thing as a free market in housing. Zoning laws, mortgage rate subsidies, housing subsidies, minimum housing codes, and an uncountable number of other laws, policies, and tax deductions significantly burden the free operation of the housing market. Unless one eradicates all forms of housing regulations, the proposed rent control scheme can play an important role alongside the regulations that now exist.

Although I readily concede my suspicions of government's ability to produce efficient results, I believe that local governments are very competent to regulate the housing market by enacting the proposed rent control plan. The government, at all levels, is particularly adept at setting the background rules by which everyone plays. In fact, I would argue that this is the *purpose* of government. The proposed rent control plan is intended to lay down the rules of engagement whereby private parties' incentives align in the right direction. Unlike "Section 8" vouchers or the public housing program, the proposed plan does not require the government, with its attendant bureaucracies and inefficiencies, to become a market participant. Rather, it proposes that government play the role it is institutionally established to perform. Much like zoning ordinances, after rent control is passed, government should have very little involvement beyond policing activities. Thus, the proposed rent control plan cannot be dismissed on simple "free market" grounds. Although government does have a woeful track record in housing interventions, this proposal only asks that it perform the foundational, yet limited, role of setting the background rules.

4. *Political Feasibility*

Of course, for the proposed scheme to be effective, it must first be enacted. In order to determine whether this rent control scheme is politically feasible, it is important to consider the effect it will have on the interests of the most politically influential group in local politics: existing homeowners.²²⁵ William Fischel argues that homeowners' "concern for home values is the central motivator of local government behavior."²²⁶

²²⁴ See sources cited *supra* note 1.

²²⁵ William A. Fischel, *THE HOMEVOTER HYPOTHESIS: HOW HOME VALUES INFLUENCE LOCAL GOVERNMENT TAXATION, SCHOOL FINANCE, AND LAND USE POLICIES* 4 (Harvard Univ. Press 2001) (stating that homeowners are the most "politically influential group within most localities.").

²²⁶ *Id.* at 5.

Therefore, the viability of rent control will depend on the impact it has on the home values of a neighborhood's existing homeowners.

For the reasons discussed in Part IB above, homeowners should readily welcome the entry of more homeowners.²²⁷

C. LEGAL BARRIERS

In this section I examine the legality of the proposed rent control scheme under the Substantive Due Process clause of the Constitution. Understanding that a thorough constitutional analysis would require an article of equal or greater length, I will make my analysis brief and concise.

1. *Substantive Due Process—Takings Clause*

The Fifth Amendment of the U.S. Constitution guarantees that “private property [shall not] be taken for public use, without just compensation.”²²⁸ Of interest to this analysis is not whether the land is being put to “public use,” but rather, whether compensation should be paid to those burdened by the plan.²²⁹ The Court has recognized broad principles implicit in the Fifth Amendment’s guarantee, but it has been unable to provide specific guidance as to what constitutes a taking, particularly where the alleged taking results from a government regulation that merely reduces the value of a person’s property.²³⁰ Aside from three clear rules which do not apply here,²³¹ the Court has not crafted a clear doctrinal approach for takings analysis.

The current takings doctrine was born in Justice Oliver Wendell Holmes’ opinion in *Pennsylvania Coal v. Mahon*,²³² which states that a regulation will be considered a taking if it “goes too far.”²³³ Rather than articulating a “set formula” for what constitutes a taking, the Court considers “justice and fairness” to determine whether a taking has oc-

²²⁷ See *supra* Part IB.

²²⁸ U.S. CONST. amend. V.

²²⁹ See *Kelo v. City of New London*, 545 U.S. 469 (2005) (dealing solely with the question of whether the City of New London’s redevelopment plan served a “public purpose”).

²³⁰ See, e.g., *Euclid v. Ambler Realty*, 272 U.S. 365 (1926); *Hadacheck v. Sebastian*, 239 U.S. 394 (1915).

²³¹ Rent control does not fall into any one of the three clear rules adopted by the Supreme Court. It does not “prohibit all economically beneficial use of land.” *Lucas v. S. C. Coastal Council*, 505 U.S. 1003, 1029 (1992). It does not impose upon a landowner a “permanent physical occupation” by the government. *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 426 (1982). Finally, it does not entail a government exaction. See *Dolan v. City of Tigard*, 512 U.S. 374, 383 (1994); *Nollan v. Cal. Coastal Comm’n*, 483 U.S. 825, 835 (1987).

²³² See *Pennsylvania Coal v. Mahon*, 260 U.S. 393 (1922).

²³³ *Id.* at 415.

curred.²³⁴ In its consideration, the Court has identified three “particularly significant” factors to determine whether a regulation violates the constitution: the economic impact of the regulation, the interference with reasonable, investment-backed expectations, and the character of the government action.²³⁵ Each of these factors is discussed in turn.²³⁶

The proposed rent control plan will likely survive the economic impact factor as the Court has stated that a “diminution in property value,”²³⁷ without more, is insufficient to sustain a takings action.²³⁸ In fact, the *Penn Central* Court cites two cases, *Euclid v. Ambler Realty*²³⁹ and *Hadacheck v. Sebastian*,²⁴⁰ in which property owners suffered a 75% and an 87.5% diminution in value, respectively, because of a local regulation. In each of these cases, the Court held that no taking had occurred.²⁴¹

The economic impact of the proposed rent control plan will certainly depend on the steepness of the rent ceiling applied to absentee landlords, the lower the rent ceiling, the greater the economic impact. While absentee landlords will surely experience a “diminution” in their property values, it is very doubtful that it will be close to the reductions experienced by the property owners in *Euclid* or *Hadacheck*. Although the homes will be worth less to an absentee landlord who manages the properties under rent control, they will retain a high value to prospective resident landlords who can charge higher rents. As such, absentee land-

²³⁴ See *Hodel v. Va. Surface Mining and Reclamation Ass’n, Inc.*, 452 U.S. 264, 295 (1981) (“[T]his Court has generally ‘been unable to develop any ‘set formula’ for determining when ‘justice and fairness’ require that economic injuries caused by public action be compensated by the government, rather than remain disproportionately concentrated on a few persons.’ Rather, [this court] has examined the ‘taking’ question by engaging in essentially ad hoc, factual inquiries that have identified several factors—such as the economic impact of the regulation, its interference with reasonable investment backed expectations, and the character of the government action—that have particular significance.” (quoting *Kaiser Aetna v. United States*, 444 U.S. 164, 175 (1979))).

²³⁵ *Id.*; see also *Penn Cent. Transp. Co. v. City of New York*, 438 U.S. 104, 124–25 (1978).

²³⁶ Notably, property owners, or their agents, have the burden of proof in establishing that a taking has occurred. Since the proposed rent control scheme is expected to have only a slight short-term impact on property values, it will be difficult, and probably impossible, to argue that the law is unconstitutional on its face. For the complainants to meet their burden, they must provide evidence of an actual, if not substantial, decrease in property value.

²³⁷ *Penn Cent.*, 438 U.S. at 131.

²³⁸ See Max Gibbons, *Of Windfalls and Property Rights: Palazzolo and the Regulatory Takings Debate*, 50 UCLA L. REV. 1259, 1266 (2003) (“[T]he *Penn Central* Court quickly noted that ‘diminution in property value’ by a regulation ‘reasonably related to the promotion of the general welfare’ does not, by itself, constitute a taking.”).

²³⁹ *Euclid v. Ambler Realty*, 272 U.S. 365 (1926) (analyzing zoning ordinance that prohibited land being put to industrial use).

²⁴⁰ *Hadacheck v. Sebastian*, 239 U.S. 394 (1915) (analyzing law that prohibited the operation of a brickyard in residential neighborhoods).

²⁴¹ *Penn Cent.*, 438 U.S. at 131.

lords will be able to sell their investment properties to prospective resident landlords for an amount close to the pre-rent control fair market value. It is extremely unlikely therefore, that the economic impact will approach that seen in *Euclid* and *Hadacheck*.

In conjunction with the “economic impact” prong of the *Penn Central* test, courts examine “the extent to which the regulation. . . interfere[s] with distinct investment-backed expectations.”²⁴² This factor has “become an increasingly important issue in regulatory takings jurisprudence, while [economic impact and the character of the government action] are now of questionable relevance.”²⁴³ Therefore, determining whether the proposed rent control scheme interferes with distinct (reasonable) investment-backed expectations is crucial to determining a regulation’s constitutionality.

Absentee owners would seem to have a strong argument that their investment-backed expectations have been seriously frustrated. In fact, Chief Justice Rehnquist’s dissenting opinion in *Penn Central* proclaims that “[t]he Court has frequently held that. . . the inability of the owner to make a reasonable return on his property requires compensation under the Fifth Amendment.”²⁴⁴ Once rent control takes effect, absentee landlords would argue, the rent ceiling will undoubtedly affect their ability to earn a reasonable return on their investment and would thus constitute a taking.

However, the “reasonable return” test suffers from numerous conceptual problems. As Justice Rehnquist notes, a court must first define what a reasonable return for various types of property would be, and then it must define the particular property unit at issue.²⁴⁵ In other words, a court must determine the numerator and denominator of the calculation. It must define a mandatory minimum return (the numerator) as well as the basis for determining the reasonable return rate (the denominator).

In deciding the denominator, a court must decide what constitutes the underlying value of the disputed land.²⁴⁶ Under the proposed rent control scheme, would the court use the value of the home at the time rent control went into effect, or would it use another value? Perhaps the original purchase price would be more appropriate? Similarly, the numerator issue would have to be resolved. What is a reasonable rate of return for absentee landlords, and what level of monthly rent would allow it to be realized? How does one account for the heterogeneous nature of the housing stock or of the different skill levels of landlords?

²⁴² *Id.* at 124.

²⁴³ Gibbons, *supra* note 238, at 1270.

²⁴⁴ *Penn Cent.*, 438 U.S. at 149 (Rehnquist, J., dissenting).

²⁴⁵ *Id.* at 149 n.13.

²⁴⁶ Epstein, *supra* note 1, at 751.

Without providing clear answers to these questions, this test is especially troublesome because it would require an individualized assessment of the ordinance's constitutionality for each and every absentee landlord. As a result of these conceptual problems, the Court has conceded that the reasonable rate of return standard has proven unworkable and cannot form the basis of a takings claim.²⁴⁷

Even assuming, *arguendo*, that the proposed rent control plan would deny absentee landlords a reasonable rate of return if they remained in the landlord business, the constitutional analysis would not be over. Since the homes would nonetheless retain a high value for prospective resident landlords, absentee landlords would be able to sell their homes, and in many cases, earn a reasonable return on their investment. No case or statute has ever declared being an absentee landlord as a protected right. So long as the home can be sold to an in-moving resident landlord, the rent control plan should not make absentee landlords suffer severe losses. Therefore, the plan does not offend absentee landlords' investment backed expectations.

With respect to the "character of the government action" prong, the Court explains that "[a] 'taking' may more readily be found when the interference with property can be characterized as a physical invasion by government, then when interference arises from some public program adjusting the benefits and burdens of economic life to promote the common good."²⁴⁸ Although the importance of this factor has been questioned,²⁴⁹ the Court has established a per se rule that a forced, permanent physical invasion constitutes a taking.²⁵⁰ No such physical invasion is compelled by the proposed rent control scheme however, and thus the per se rule will not apply.

With regard to this last prong, the proposed rent control plan is very similar to the regulation upheld in *Penn Central*, wherein the three-factor balancing test was born.²⁵¹ When New York City decided to enact its landmark preservation law, it did so believing that it would "enhance the quality of life" for all of its residents.²⁵² Accordingly, the city chose to

²⁴⁷ See *id.*; see also *Lucas v. S.C. Coastal Council*, 505 U.S. 1003, 1017 n.7 (1992) ("[The] uncertainty regarding the composition of the denominator in our 'deprivation' fraction has produced inconsistent pronouncements by the Court.").

²⁴⁸ *Penn. Cent.*, 438 U.S. at 124 (citation omitted).

²⁴⁹ See *Lucas*, 505 U.S. at 1027-29; *Loveladies Harbor, Inc. v. United States*, 28 F.3d 1171, 1179 (Fed. Cir. 1994) ("The effect . . . of *Lucas* was to dramatically change the third criterion [of the *Penn Central* balancing test], from one in which courts . . . were called upon to make *ad hoc* balancing decisions, balancing private property rights against state regulatory policy, to one in which state property law, incorporating common law nuisance doctrine, controls.").

²⁵⁰ See *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982).

²⁵¹ *Penn. Cent.*, 438 U.S. at 124-35.

²⁵² *Id.* at 108.

burden the owners of landmark properties in order to foster civic pride, protect and enhance the city's attraction for tourists and visitors, support and stimulate business and industry, strengthen the economy, and promote the use of historic landmarks for the education, pleasure and welfare of residents.²⁵³ After having two building plans rejected by the city, the owners of Penn Central Terminal sued to invalidate the historic preservation law on the grounds that it constituted a taking.²⁵⁴ The Court rejected the owner's argument, referencing a clause in the ordinance that allowed an owner to sell his building rights to adjacent parcels.²⁵⁵ Under this provision, the Court reasoned, an owner would be able to recover some of the value he claimed to have lost as a result of the ordinance.²⁵⁶

The purposes of the New York City ordinance in *Penn Central* are highly comparable to the expected results of rent control, such as fostering a healthier living environment, providing more stable communities, enhancing the city's tax base, supporting and stimulating investment, strengthening the local economy, and improving the welfare of the residents. Similarly, the proposed rent control plan burdens absentee landlords with the cost of improving blighted neighborhoods but allows them to offset some of the lost value of their properties by selling their homes to prospective resident landlords. Similar to the plaintiffs in *Penn Central*, this prong would not aid absentee landlords in their attempts to invalidate the proposed rent control plan.

Ultimately, the takings analysis is reduced to a fairness test. The three factors considered above should be analyzed in the aggregate to determine whether "justice and fairness" require that the economic injuries be compensated by the government.²⁵⁷ It should be stressed that the only aspect of this proposal that raises legitimate constitutional concerns is that which applies to absentee landlords.²⁵⁸ However, their properties are held as pure investments, similar to stocks, bonds, and commodities. Cries of unfairness, therefore, must be considered in the context of other investment opportunities and the role of government regulation in those areas.

In *Loretto v. Teleprompter Manhattan CATV Corp.*, the majority stated that "[t]his Court has consistently affirmed that States have broad power to regulate housing conditions in general and the landlord-tenant relationship in particular without paying compensation for all economic

²⁵³ *Id.* at 109.

²⁵⁴ *Id.* at 116–19.

²⁵⁵ *Id.* at 128–37.

²⁵⁶ *Id.* at 136–37.

²⁵⁷ *Hodel v. Va. Surface Mining & Reclamation Ass'n, Inc.*, 452 U.S. 264, 295 (1981) (quoting *Kaiser Aetna v. United States*, 444 U.S. 164, 175 (1979)).

²⁵⁸ Resident landlords will presumably purchase the property subject to and fully on notice of any restrictions.

injuries that such regulation entails.”²⁵⁹ The Court went on, in *Pennell v. City of San Jose*, to “recognize[e] that government may intervene in the marketplace to regulate rates or prices that are artificially inflated as a result of a monopoly or near monopoly or a discrepancy between supply and demand in the market for a certain product.”²⁶⁰ The *Pennell* Court faced a rent control ordinance that had a potentially greater impact on the value of homeowners’ properties than the current plan, yet the Court explicitly refused to reconsider the constitutionality of rent control.²⁶¹

The proposed rent control scheme will not perpetrate injustice upon absentee landlords. Their investments in rental property, like all investments, are accompanied by the inherent risk of adverse government regulation. As Bruce Ackerman states, “There can be little doubt that our economic organization is no longer permeated with a bias towards *laissez faire* in general; nor is there a particular prejudice against affirmative governmental action in matters relating to land use control—if anything, interventionism is even more common here than elsewhere.”²⁶² The proposed rent control scheme is no different than a zoning ordinance (in fact, I argue that it *is* a zoning ordinance) that regulates the manner in which a property owner uses her property. The scheme merely “adjust[s] the benefits and burdens of economic life to promote the common good” and thus, under current takings jurisprudence, should not be deemed unconstitutional.²⁶³

CONCLUSION

In 1980, Derrick Bell argued that the gains made by blacks during the civil rights movement came when their interests (temporarily) con-

²⁵⁹ *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 440 (1982).

²⁶⁰ *Pennell v. City of San Jose*, 485 U.S. 1, 11–12 (1988) (citations omitted).

²⁶¹ *Id.* at 12 n.6.

²⁶² Bruce Ackerman, *Regulating Slum Housing Markets on Behalf of the Poor: Of Housing Codes, Housing Subsidies, and Income Redistribution Policy*, 80 YALE L.J. 1093, 1163 (1971).

²⁶³ I added the caveat of “under current takings jurisprudence” to call attention to the fact that takings law may change given the changing composition of the Court’s justices. The Supreme Court justices have each shown a consistent disposition to uphold or strike down local government regulations that affect economic interests. In the important takings cases of *Nollan*, *Lucas*, *Dolan*, and *Kelo*, Justices Scalia, Rehnquist, Thomas and O’Connor voted to strike down the local statute in 15 out of 15 possible votes. Similarly, for the same cases, Justices Breyer, Stevens, Souter, and Ginsburg voted to uphold the local statute in 9 out of 9 possible votes. The only “wild card” in these cases was Justice Kennedy who voted to strike down the statute in *Lucas* and *Dolan* but voted to uphold the statute in *Kelo*.

This level of consistency among the court’s conservative and liberal justices suggests a political predisposition to uphold or strike down local government actions that burden property interests. As the composition of the court changes, it is possible that takings jurisprudence will tend towards the political disposition of the faction with the majority of justices.

verged with those of white mainstream society.²⁶⁴ Bell's thesis can be generalized to conclude that any minority group—be it a political, economic, racial, or other minority—is more likely to make tangible gains when their interests converge with those of the political and economic elites. Citations to the principle of “interest convergence” are legion and the concept has so much explanatory force that it is almost axiomatic. I ask rhetorically: Why would the politically or economically powerful ever purposefully disadvantage themselves?²⁶⁵

It follows that to the extent the poor align their interest with those of the politically and economically powerful, they will be more likely to achieve their goals. This article seeks to achieve that “interest convergence” by bringing the poor out from a socially, economically, and spatially isolated position and into an integrated and visible one. If their interests align with the majority's interests, society will finally develop the political will to systematically address the problems of poverty.

With middle-class neighborhoods disappearing and society becoming increasingly stratified by social class,²⁶⁶ now, more than ever, it is important to adopt policies that encourage mixed-income living arrangements, particularly those that deconcentrate the poor. Rent control should be used as one part of a larger strategy to revitalize decaying neighborhoods, disperse the poor, and promote higher homeownership rates in inner cities. By enlisting the spirited and underutilized determination of potential homeowners, along with their stabilizing and positively socializing presence, blighted communities may be transformed into healthy and stable places to live. The proposed rent control scheme

²⁶⁴ Derrick A. Bell, Jr., *Comment: Brown vs. Board of Education and the Interest Convergence Dilemma*, 93 Harv. L. Rev. 518, 524–25 (1980) (arguing that the “decision in *Brown* to break with the Court's long-held position on these issues cannot be understood without some consideration of the decision's value to whites, not simply those concerned about the immorality of racial inequality, but also those whites in policymaking positions able to see the economic and political advances at home and abroad that would follow abandonment of segregation.” Specifically, *Brown* provided “immediate credibility to America's struggle with Communist countries to win the hearts and minds of emerging third world peoples”, it helped quell dissension among returning, black, WWII veterans, and last, it helped pave the way for “further industrialization of the South.”).

²⁶⁵ It may be suggested that majorities purposefully disadvantage themselves in a great number of ways, such as affirmative action and public welfare programs. However, I believe it is more persuasive to argue that these programs provide substantial, compensating benefits to the majority. I call attention to the only justification that the Supreme Court has upheld for affirmative action (aside from redressing past discrimination): diversity in the classroom. The thrust behind this justification is that it enhances the learning experience of all.

Additionally, public welfare programs have long been justified as being public goods intended to benefit all of society, not only the poor who receive the direct benefits. See, e.g., Dwight R. Lee & Richard B. McKenzie, *Second Thoughts on the Public-Good Justification for Government Poverty Programs*, 19 J. Legal Stud. 189 (Jan. 1990).

²⁶⁶ See *supra* note 92.

seeks to weave the marginalized poor into the mainstream fabric of society and prevent unhealthy neighborhood conditions from producing the costly “concentration effects” that benefit no one.

APPENDIX

1. *Additional Tenant Protections*

If the locality is concerned that displaced tenants will simply to another neighborhood with concentrated poverty, it has the option of adopting additional tenant protections. While this would certainly be a tricky task, localities can adopt sensible anti-displacement policies by understanding the underlying power dynamic between landlords and tenants.

If adopted, the tenant protections must align landlords' and tenants' incentives so that each party's rational, self-interested decisions will produce a healthy and stable neighborhood. In the relationship between them, no group can have a disproportionate amount of power over the other. If landlords are allowed to arbitrarily increase rents or to freely evict tenants, they will enjoy too much power and low-income tenants may be replaced by higher-income ones. On the other hand, if landlords are not able to increase the rent or if they cannot evict the tenants, the balance of power may swing too far in favor of tenants by converting them into virtual life tenants. The key is to find a workable balance of power between each group, a balance that traditional rent control schemes have struggled to establish.

To strike a workable balance of power between landlords and tenants, many jurisdictions have adopted the "good cause" requirement. This requirement has been adopted by the federal government (public housing)²⁶⁷ and many jurisdictions (traditional rent control)²⁶⁸ to purposefully make it difficult for landlords to carry out evictions. Under "good cause" provisions, evictions are only allowed when the tenant has breached a provision in his lease. However, this swings the balance of power far onto the side of the tenant, a result that is equally undesirable because it makes it difficult to ever evict a tenant.²⁶⁹

²⁶⁷ 42 U.S.C.A. § 1437d(l) (2007) ("Each public housing agency shall utilize leases which . . . require that the public housing agency may not terminate the tenancy except for serious or repeated violation of the terms or conditions of the lease or for other good cause.").

²⁶⁸ Cities that have tenant protections built into their rent control laws commonly include "good cause" eviction provisions. *See, e.g.*, East Palo Alto, Cal., Ordinance to Stabilize Rents for Residential Housing and Establish Good Cause Evictions § 13(A) (1988) (prohibiting eviction of tenants in rent stabilized units unless a specifically enumerated condition is satisfied).

²⁶⁹ In order to evict a tenant for "good cause," a landlord must allege and prove a lease violation by the tenant. For obvious reasons, it is more difficult to carry out a "good cause" eviction than an eviction for no reason whatsoever. Aside from evidentiary difficulties, the court process for "good cause" evictions is more complicated than evictions for non-payment of rent. A landlord may need to comply with discovery requests, respond to pre-trial motions, and interview witnesses, among other procedural and substantive requirements. These tasks are difficult in their own right, and are made even more difficult where a tenant hires an attorney.

Landlords, of course, may hire an attorney as well. However, it is the author's personal experience that these cases are often burdensome to the attorney and therefore costly for the landlord. If the case eventually goes to trial, securing all of the witnesses and evidentiary

To address this conundrum, one possible solution is to make the in-moving resident landlords subject to a gradually increasing rent ceiling.²⁷⁰ When the resident landlord purchases the home from an absentee landlord, the resident landlord should be able to charge market rents for each rented unit. However, once there is turnover in any one of the units, the graduated rent scheme could apply. For instance, the rent ceiling could be set at a progressively higher level commensurate with the tenant's length of tenure. If the ceiling in Year 1 is \$600, the ceiling in Year 2 should be, say, \$650, in Year 3, \$700, and so on. When the current tenant vacates the apartment and a new tenant moves in, the landlord would return to the Year 1 ceiling.²⁷¹ This balances the amount of bargaining leverage landlords and tenants enjoy and will ensure that both parties have an incentive to create a long-term peaceable living arrangement, a condition that is vitally important for enhancing a neighborhood's stability.

Landlords will have a financial incentive to enable tenants live in the apartment for long periods of time because, as time goes by, the landlord will be able to charge progressively higher rents. However, after enough time passes and the landlord is able to charge market rents or higher, the landlord will probably elect to charge rent slightly below the prevailing market level.²⁷² This decision would serve the purpose of encouraging tenants to remain in the apartment because the landlord would want to avoid the tenant vacating and having to return to the Year 1 base rent level.

Landlords would, however, maintain the right to evict tenants, even without "good cause." Since landlords must live alongside potentially unwelcome, or even unruly, tenants, it is important that landlords enjoy

material proves difficult and often eviction actions fail. Therefore, providing a "good cause" provision to protect tenants from displacement would swing the balance of power too far in favor of tenants by making it extremely difficult for landlords to evict.

²⁷⁰ Many localities allow landlords to increase controlled rents to keep pace with inflation. See, e.g., San Jose Rent Control Ordinance discussed in *Pennell v. City of San Jose*, 485 U.S. 1 (1988). The proposed rent control plan is designed independent of yearly cost of living adjustments.

²⁷¹ It is important to stress that the graduated rent scheme is an *optional* feature of this proposal. If the locality believes that either absentee landlords or new resident landlords will manipulate the system to evict the existing tenants, the locality is certainly free to provide additional tenant protections. The graduated rent scheme is merely one suggestion for dealing with this potential problem.

If localities do indeed choose to include additional tenant protections, it is important to set the Year 1, 2, and 3 rents at levels that will not make the investment unprofitable for resident landlords.

²⁷² Tenants may acquire a personal attachment to the apartment and may be willing to pay fair market value rent for the unit. However, this personal preference (which cannot be expected to apply to all tenants with the same force) will be balanced by the landlord's risk of dropping down to the Year 1 base rent. On average, rent levels in the rent-controlled neighborhood will be slightly lower than those in other, non-controlled neighborhoods.

the power to evict. However, the thought of reverting back to the Year 1 rent ceiling will militate against the landlord capriciously and arbitrarily evicting the tenants.

Tenants will similarly benefit from the graduated rent scheme. Principally, since landlords would benefit if tenants remain in the apartment for long spans, landlords would offer incentives like higher quality services or lower rents to convince tenants to stay. Not only will this improve the maintenance and physical conditions of the apartments, but it will induce tenants to remain in the neighborhood for longer periods. Over time, tenants will invest greater energy towards building social relations in the neighborhood and will invest more time in improving the long-term health of the neighborhood and its institutions.²⁷³

The final method in which the existing poor tenants may find themselves displaced is through eviction notices from either the absentee landlord or the in-moving resident landlord. It is plausible that many members of the risk-averse middle class will foresee the changes that a neighborhood will experience under rent control and will purchase homes in blighted areas. Ostensibly, these potential gentrifiers will reason that if there is enough demand for these homes by fellow middle-class members, they could all purchase the homes, evict the residents, and change the character of the area virtually overnight. More realistic, however, is the prospect that absentee landlords will perceive a greater value if the home is sold free of any tenants. Perhaps the absentee landlord can command a higher price by attracting resident landlords who prefer to fill the house with their own tenants. The additional purchasing power of the stable middle class may allow them to pressure absentee landlords to clear the area of poor tenants as a precondition to purchase.

²⁷³ Local lawmakers should be careful to set the Year 1 rent ceiling for in-moving resident landlords at an appropriate level and should be intentional about the yearly rent increases. The Year 1 rent ceiling should be sufficiently lower than the market rents so as to provide an adequate level of deterrence against arbitrary evictions. If the Year 1 rent ceiling is too close to actual market rents, new landlords will have immense bargaining leverage because reverting back to the Year 1 rent level will not impose a significant burden. However, the Year 1 rent ceiling cannot be too much lower than the fair market rent level because it will either give too much power to tenants or cause the landlords to suffer operating losses.

Next, the yearly, gradual rent increases should be carefully calculated by lawmakers. The pace at which rent ceilings will reach market levels determines how deterred new landlords will be from evicting tenants, and how much bargaining leverage these tenants will have. The Year 1 rent ceiling and the gradual, yearly increases will also determine the level of rent charged to long-term residents. Even when the rent ceiling exceeds the fair market level, landlords will likely charge slightly below this amount to encourage their tenants to stay. How far below the fair market value a landlord charges will be determined by how much the landlord wants to avoid dropping to the Year 1 rent level.

Last, this scheme should include an exception for tenants who are evicted for good cause. If the tenant breaches his or her lease, it is unfair and counterproductive to force the landlord to return to the Year 1 rent level.

This poses a serious risk that new resident landlords will prefer to forego the initially high rent ceiling and evict the current tenants, regardless of the fact that they would then fall to the lower rent ceiling, Year 1 level, required for new tenants. If the potential gentrifiers have sufficiently high incomes, they would be able to absorb the decreased rental income and pay a higher percentage of the mortgage payment from their own non-rental income. Similarly, existing absentee landlords who foresee this process may decide it is profitable to evict all tenants and to sell the empty home to middle-class in-moving homebuyers, who may then fill the home with higher-income tenants of their choice.

To avoid rapid and wide-scale neighborhood displacement, the rent control scheme must also include an initial protection for tenants. For instance, a penalty may be imposed on any landlord who evicts a tenant within one year of purchasing or selling the home (assuming that the tenant was not evicted for "good cause"). This penalty would additionally deter sellers from evicting all tenants before the home is sold and higher-income homebuyers from evicting tenants once they purchase the home.

Local legislatures may choose to adopt provisions that ensure that the rent control plan also benefits those tenants who currently live in the neighborhoods. This is best accomplished by encouraging individuals who not only commit to live in the neighborhood, but also commit to live amongst the current residents, to purchase the homes. These additional tenant protections could certainly help achieve this goal.

2. *Risk of Underestimating High Tenancy Turnover*

A potential drawback of the additional tenant protections is the risk that in-moving resident landlords will overestimate the expected rental income from the apartments. Overestimating the rental income causes a homebuyer to overvalue the house and to pay too much for it. If the rental income is lower than expected, many homebuyers may not be able to afford their monthly mortgage payments and will eventually default on their loans. Moreover, since in-moving resident landlords will probably be emerging-middle- and working-class households, even a slight decrease in rental income may prevent them from making their mortgage payments.

Computing the expected rental income is fraught with uncertainty whenever someone purchases a home, but it is potentially magnified under the proposed rent control scheme.²⁷⁴ Under the graduated rent ceilings for resident landlords, the monthly rental income will depend on

²⁷⁴ This uncertainty would be magnified if the locality chooses to include the optional provisions to prevent tenant displacement, i.e. the graduated rent ceilings discussed *supra*.

the tenants' length of tenure; the longer the tenants live in the apartment, the closer their rent will be to fair market value.²⁷⁵ It is difficult to determine how much rental income will be generated in the short or long term because rental income will be dependant on the landlord's ability to select "good" tenants (i.e., tenants who will remain in the apartment for a long time).

There is a risk that landlords will systematically underestimate the tenancy turnover rate and consequently, overestimate the monthly rental income. The uncertainty of the rental income stream will cause a tug-of-war between increases and decreases in house prices. The risk of perpetually renting to "bad" tenants will decrease the price of homes, while the belief that short-term tenants can be effectively screened out will increase the price of homes. Eventually, real estate appraisers will set the price of homes at a level that presumes an average short- and long-term rental income stream, a practice that leads to its own set of problems.

There is good reason to doubt that real estate appraisers will set the value of the home at the appropriate level. A level that assumes an average rental income stream would be suitable, but there is reason to believe that appraisers will assume an above-average rental income stream. The role of the real estate appraiser is to give an independent valuation of the home so that the mortgagor (i.e. bank) has the appropriate amount of collateral against its loan. However, since appraisers earn their fee on a per engagement basis, and are usually selected by the real estate broker, they have an incentive to appraise the home at a level amenable to the real estate broker. This ensures that the real estate broker, who has great demand for home appraisals, returns to the company for future appraisals. Since real estate brokers earn commissions as a percentage of the total loan amount, they prefer appraisers who systematically, but not beyond a reasonable level, overvalue the homes.²⁷⁶

²⁷⁵ Notably, this will not provide incentive for rent control tenants to leave the apartment as rents approach the market level. The graduated rent ceiling protects low-income tenants from increased rents caused by high demand and low supply. If rent control is applied to limited areas, it is unlikely that tenants will be able to find another rent-controlled apartment. Thus, tenants acting as rational market actors will opt to stay in the rent-controlled apartment even as rents rise in order to take advantage of the improved neighborhood and the slightly below-market rents.

²⁷⁶ Under the current system of home purchases and mortgage applications, mortgagors/banks must rely on appraisers being truly independent parties. If the mortgagor industry loses the trust in appraisers' independence, a new system will have to be devised that shuts out these "independent" appraisers. Therefore, there is reason to believe that the appraisals will approximate the true market values. However, the administrative cost involved prohibits each bank (sometimes national banks) from either having a local monitoring group or having their own local appraisal services. Banks' inability to micromanage the appraisal process will cause home values to be systematically overvalued. See *Reassessing Rent Control*, *supra* note 180, at 1840 ("[E]xperts, particularly real estate brokers, have incentives to create expectations of

This problem is seen most often in refinancing situations. For mortgage refinances, there is no “buyer” to exert downward pressure on the valuation of the property. Without this downward pressure, everyone benefits by pushing the value of the house higher. The homeowner has a more valuable asset and can qualify for a lower mortgage rate, the broker secures a higher commission, and the appraiser has a happy customer who will request his services again.

This dilemma is not specific to rent-controlled homes, but the added uncertainty of computing the expected rental income and the added discretion afforded to appraisers leads to an overvaluation of homes and ultimately, to foreclosures. This potential drawback should be anticipated and addressed by local legislatures, preferably in conjunction with the local lending industry. Proper control mechanisms and sufficient education ensure that homebuyers are aware of the risks involved and that they factor these risks into the offer price for the home.

For this reason, when local lawmakers include the optional, graduated rent ceiling, I suggest that the Year 1 base rent amount be set relatively close to the fair market level. Too much of a discount will only magnify the risk involved in the investment. Since the expected homebuyers are lower middle-income and emerging middle-income households, a sensible strategy that minimizes the economic risk that these households will incur is to set the Year 1 base rent level only slightly below market level. If it is set too low, these households will be stripped of precisely what they seek: economic security.

future increases in order to make greater profits.”); *id.* at 1850 (“[R]eal estate brokers have an incentive to increase commissions by inflating prices”).